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BLOGS

Application of Franchise and Dealer Protection Laws

Product Mark-Up Found Not to Be a Franchise Fee; Exclusive Distribution Rights Did Not Include Intellectual Property

The United States District Court for the District of Minnesota recently denied a distributor's motion for a preliminary injunction, relying on two conclusions of law favorable to the manufacturer defendant. In *Coyne's & Company v. Enesco*, 2007 U.S. Dist LEXIS 79003 (D. Minn. Oct. 12, 2007), the plaintiff had been granted the exclusive rights to distribute the defendant's product line in the United States and Mexico, in exchange for a 50 percent markup on the products. Plaintiff sued for a preliminary injunction when it appeared the defendant would begin distributing its products in North America through a different party.

In support of its claim of irreparable harm (a necessary component of the injunction request), the plaintiff made two arguments: (1) that the Minnesota Franchise Act applied to its relationship with the defendant; and (2) the defendant's actions constituted infringement of plaintiff's exclusive right to use the trademarks and copyrights associated with the products. Irreparable harm is presumed under the Minnesota Franchise Act and in claims of copyright and trademark infringement. With relatively little analysis, the court found, however, that the 50 percent product markup did not constitute a franchise fee, but rather was an "ordinary business expense" for the distributor. Further, the court found no threatened copyright or trademark infringement, as the distribution agreement did not grant the plaintiff exclusive trademark or copyright rights. The court rejected the plaintiff's argument that its exclusive distribution rights necessarily included exclusivity to use the intellectual property associated with the products.

Since the plaintiff relied on the presumed irreparable harm that flows from a violation of the Minnesota Franchise Act or a copyright or trademark infringement, and since the court held that neither could be established as a matter of law, the preliminary injunction motion was denied for lack of irreparable harm. The court concluded that the plaintiff would have an adequate remedy by seeking money damages for breach of contract, if a breach could be proved.