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BLOGS

Terminations

Second Circuit Opinion Highlights Difference Between “Expiration” and “Termination” of Distribution Agreement

In *Sleepy's LLC v. Select Comfort Wholesale Corp.*, the United States Court of Appeals for the Second Circuit reversed the dismissal of a distributor's breach of contract claims, holding that the terms of the parties' distribution agreement may have remained in place after its expiration date. 779 F.3d 191 (2d Cir. 2015). The distributor, Sleepy's, claimed that the manufacturer, Select Comfort, had breached the nondisparagement provision in the parties' distribution agreement. The trial court found that the distribution agreement ceased to operate after its stated expiration date, and the court refused to consider evidence of Select Comfort's alleged disparaging conduct occurring after that date. In holding that the agreement ceased to operate, the court reasoned that the agreement expressly required a signed waiver in order to extend its terms “after termination,” and no party executed such a waiver after the expiration date. Because Sleepy's did not present evidence of disparagement occurring prior to the distribution agreement's expiration date, the court dismissed Sleepy's breach of contract claim.

Drawing a distinction between “expiration” and “termination” of the distribution agreement, the Second Circuit reversed and remanded. The appellate court noted that the distribution agreement did not expressly require a signed waiver in order to extend its terms where it merely expired as opposed to terminated. Therefore, it directed the trial court to examine whether the distribution agreement (and its nondisparagement provision) continued to operate, even after the agreement's expiration date.

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