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BLOGS

Trademarks

Seventh Circuit Upholds Judgement of Contempt Due to Franchisee's Failure to Comply with Preliminary Injunction

In *Pearle Vision, Inc. v. Romm*, 2008 WL 4059793 (7th Cir. Sept. 3, 2008), the United States Court of Appeals for the Seventh Circuit reviewed the lower court's decision holding a former multi-unit franchisee in contempt for failing to comply with a preliminary injunction, and awarding a judgment on the contempt in favor of the plaintiff franchisor in the amount of \$321,000.

The defendant is an optometrist and former franchisee who had operated (by himself and through his companies) four Pearle Vision stores, pursuant to separate franchise agreements. After the plaintiff had terminated his franchise agreements and filed suit against him, the defendant made an attempt late at night to haul away equipment and records from one of the stores. The franchise agreements required the defendant to provide copies of all patient records. They also required a terminated franchisee to "cooperate in an orderly change of management," and gave the franchisor the right to purchase the store equipment upon termination. Although the district court issued an injunction ordering all records and equipment to be made available to the plaintiff, the defendant repeatedly failed to produce patient files and comply with the court's other directives. For example, after producing computers containing no patient data and testifying that the computers were all he had to produce, the defendant then admitted that he had maintained patient data on his store computers. The court ultimately sanctioned the former franchisee \$1,000 per day until he produced patient records and equipment. After the court awarded summary judgment to the franchisor and subsequent bankruptcy proceedings had concluded, the court reinstated the case to determine whether to enter judgment on the contempt. The defendant then made further missteps, which included failing to appear at court hearings and refusing to produce tax returns. In light of all this, the court concluded that the defendant had willfully disregarded the court's injunction order and entered judgment against him.

On appeal, the Seventh Circuit affirmed the full amount of sanctions that the trial court imposed against the defendant. In so doing, the court noted that the defendant had been given several opportunities to contest the sanctions and purge the contempt through compliance, but that he failed to take advantage of those opportunities.