

**BLOGS**

Preliminary Injunctions

## Sixth Circuit Affirms Preliminary Injunction Against Holdover Franchisee

The Sixth Circuit Court of Appeals recently upheld the district court's grant of Little Caesar's motion for a preliminary injunction preventing a holdover franchisee from continuing to operate its restaurants. *Little Caesar Enters., Inc. v. Miramar Quick Serv. Rest. Corp.*, Case. No. 19-1860 (6th Cir. June 25, 2020). Lathrop GPM represented Little Caesar in this case. As we previously reported in Issues [244](#) and [246](#) of *The GPMemorandum*, this case involves a franchisee of four Little Caesars franchises in Connecticut and Massachusetts that was terminated for its failure to adhere to operational standards. Nearly a year after the case was filed, Little Caesar sent supplemental notices of termination arising from Miramar's failure to report gross sales and pay the corresponding royalty and advertising fees, and moved for a preliminary injunction to prevent Miramar from continuing to operate the restaurants, infringing on Little Caesar's trademarks, and violating its post-termination obligations. The district court granted Little Caesar's motion.

Miramar appealed, first claiming that the district court erred in granting the injunction because Little Caesar failed to prove by clear and convincing evidence that Miramar violated the franchise agreement. The appellate court easily disposed of this argument noting that the clear and convincing standard would not apply to a breach of contract claim even at trial, let alone at the preliminary injunction stage, and finding that the declarations and exhibits Little Caesar submitted in support of its motion provided ample evidence of Miramar's violations. Miramar next argued that the district court erred in granting the injunction because Little Caesar allegedly violated the implied covenant of good faith and fair dealing by terminating its franchise agreement in a retaliatory manner. In dismissing this argument, the Sixth Circuit cited well-established case law providing that because Miramar had breached the franchise agreements, Little Caesar could terminate the agreements regardless of its alleged motivation. Finally, Miramar argued that Little Caesar had waived its right to an injunction by allowing it to operate for a year after the initial termination before seeking injunctive relief. The Sixth Circuit found that Miramar had forfeited this argument by failing to raise it before the district court. But it also determined that the argument would fail because the termination notices demanded that Miramar cease operations and cease using Little Caesar's marks, but stated that Little Caesar's election to seek judicial enforcement of the termination and its acceptance of amounts paid by Miramar did not constitute acquiescence in Miramar's continued operations and use of Little Caesar's marks.

### Related People

**Maisa Frank**

Partner

Washington, D.C.

202.295.2209

[maisa.frank@lathrooggpm.com](mailto:maisa.frank@lathrooggpm.com)**Richard C. Landon**

Partner

Minneapolis

612.632.3429

[richard.landon@lathrooggpm.com](mailto:richard.landon@lathrooggpm.com)

### Related Services

[Franchise & Distribution](#)