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State Franchise and Dealer Laws

State Appeals Court Holds That Terminated Distributors Cannot Assert Claims Under the Texas Deceptive Trade Practices Act

The Court of Appeals of Texas has reversed a trial court ruling and held that terminated distributors could not assert claims against their supplier under the Texas Deceptive Trade Practices Act (DTPA). *AdvoCare Int'l, L.P. v. Ford*, 2013 Tex. App. LEXIS 1162 (Tex. Ct. App. Feb. 5, 2013). After AdvoCare (a supplier of Ephedra® and certain other products) terminated their distributorships, several of the distributors filed suit alleging various claims including violations of the DTPA. At trial, a jury awarded them damages and attorneys' fees under that claim. The court of appeals reversed the judgment, finding that the distributors did not qualify as "consumers" and therefore could not bring a claim under the DTPA. The DTPA excludes those relationships that convey only intangible property rights, such as arrangements with distributors and sales representatives. Moreover, claims under the DTPA must be based on damages tied to an alleged defective product or service. Here, the sole basis for the distributors' claimed damages was the value of their distributorships as of the date AdvoCare terminated them. Therefore, the distributors could not state a DTPA claim.

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