BLOGS
Terminations

Supreme Court Decides for Franchisor on PMPA Claims for Constructive Termination and Nonrenewal

The United States Supreme Court has held that claims of "constructive" termination and nonrenewal under the Petroleum Marketing Practices Act will not lie when the franchisee continues to operate under the franchisor's marks. *Mac's Shell Service, Inc. v. Shell Oil Products Co.*, No. 08-240, and *Shell Oil Products Co. v. Mac's Shell Service, Inc.*, 2010 U.S. LEXIS 2203 (March 2, 2010). As reported in Issue 128 of *The GPMemorandum*, this was the first Supreme Court decision to interpret the PMPA. This decision could also help business format franchisors in similar cases.

After a joint venture between Shell and Texaco notified Shell franchisees that a volume-based program would be discontinued, the franchisees sued, claiming constructive termination and nonrenewal of their franchise agreements. The essence of the Supreme Court ruling is that—at least under the PMPA—a franchisee cannot hold onto its franchise "under protest" while claiming damages for wrongful termination or nonrenewal. If the franchisee still has the franchise, it simply cannot claim to have been terminated in violation of the federal statute, and it cannot claim wrongful nonrenewal when it signs a renewal agreement. It remains to be seen, however, if this same logic will apply in all franchise cases, as one of the bases for the Supreme Court's ruling was that state law rights (such as those available to all franchisees both in and out of the PMPA context) remain available to the franchisees. The Court also held open the possibility of injunctive relief being available to a franchisee as an alternative to accepting a change "under protest." Nevertheless, it does appear that the rationale underlying this month's high court ruling should apply in any case in which a franchisee is claiming damages for "termination" or "nonrenewal" despite having retained its franchise.