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## BLOGS

Duty of Good Faith and Fair Dealing

# Texas Federal Court Refuses to Require Distributor to Prevent Encroachment by Dealers Against Each Other

In *Mailing and Shipping Systems, Inc. v. Neopost USA, Inc.*, 2013 U.S. Dist. LEXIS 44909 (W.D. Tex. Mar. 28, 2013), the United States District Court for the Western District of Texas refused to require a distributor to protect a dealer from territorial encroachment by rival dealers based solely on the duty of good faith and fair dealing set forth in Section 1.034 of the Texas Business and Commerce Code. The plaintiff, a postage meter and mailing machine dealership with territories in Texas and New Mexico, alleged that Neopost, a distributor, breached its dealership agreement and the duty of good faith and fair dealing by failing to prevent territorial encroachment by rival dealers. The parties' agreement prohibited the dealer from soliciting, or selling or leasing products to, customers outside of its exclusive territory, but it did not require the distributor to prevent territorial encroachment.

The court held that this provision did not create any contractual obligations on the part of supplier Neopost. It noted that the duty of good faith and fair dealing imposed by Section 1.034 does not apply to all franchise relationships, but may apply to distributorship agreements predominantly involving the sale of goods. The court found that even if Section 1.304 applied to the dealership agreement, the intent of the statutory provision was to buttress the parties' existing promises, and not to create any new obligations for either party. Because the dealership agreement did not expressly state that Neopost would protect the plaintiff from territorial encroachment by rival dealers, the court decided that the duty of good faith and fair dealing did not support the claim for damages.

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