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BLOGS
Antitrust

Two of Supplier's Antitrust Tying Claims Survive Franchisor's Motion to Dismiss

The United States District Court for the Western District of Kentucky recently granted in part but denied in part a motion brought by tire retreading franchisor, Bridgestone Bandag, LLC, to dismiss a four-count complaint brought by Shamrock Marketing, Inc., alleging that Bandag implemented an unlawful tying arrangement in violation of Sections 1 and 2 of the Sherman Act. *Shamrock Marketing, Inc. v. Bridgestone Bandag, LLC*, 2011 U.S. Dist. LEXIS 25109 (W.D. Ky. Mar. 11, 2011). Shamrock is a family-owned Kentucky corporation that supplies "curing envelopes" and other accessories to tire retreading shops, including Bandag franchisees. It alleged that Bandag's "Q-Fund," which provides incentives to its franchisees to purchase curing envelopes and other accessories from Bandag, unlawfully ties the sale of precured tread rubber to the sale of Bandag curing envelopes and other Bandag accessories.

Noting that the motion "raises some difficult questions at the intersection of franchise agreements and antitrust enforcement," the court denied Bandag's motion to dismiss Counts II and III of Shamrock's complaint, holding that Shamrock had standing and sufficiently pled an antitrust injury by alleging that the Q-Fund eliminated competition throughout the market for curing envelopes and accessories. The court granted Bandag's motion to dismiss Counts I and IV, however, holding that *Kodak*-style lock-in claims were not appropriate in the franchise context and Shamrock's alleged single-brand relevant tying market therefore failed to state a claim.