BLOGS

Antitrust

Tying Claim Against Franchisor Ultimately Fails on Other Grounds

A case that has stood as one of the only recent precedents for an antitrust tying claim in franchising was dismissed last week by the court in *Burda v. Wendy's Int'l, Inc.*, 2012 U.S. Dist. LEXIS 145447 (S.D. Ohio Oct. 9, 2012). Last week's decision favors the franchisor, after the same court twice had refused to dismiss the plaintiff franchisee's tying claims, as reported in Issues 124 and 136 of *The GPMemorandum*. This time, on motion for summary judgment, Wendy's prevailed on all claims, including the challenge to the franchisor's involvement in the supply of products to the system.

Despite this being known all along as an antitrust case, the most interesting aspect of the summary judgment ruling related to Wendy's termination of the franchisee. The court held that the franchisor could terminate Burda's franchisee immediately for multiple defaults within a six-month period, even without providing the contractual 30 days to cure on the last default. The "independent right to terminate" based on multiple defaults also was not modified by the final default notice, which, like the earlier notices, referenced the normal time to cure. Moreover, Wendy's also had the right to terminate immediately based on the franchisee's insolvency. As to the antitrust tying claim, which the court earlier had refused to dismiss, summary judgment was granted because the evidence ultimately showed the plaintiff in prior agreements had released all claims against the franchisor. The fact that plaintiff Burda was a licensed lawyer was an important factor for the court in holding the releases enforceable.

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