

A solid yellow right-angled triangle pointing towards the top-left corner.

BLOGS

Terminations

Virginia Federal Court Dismisses Counterclaim Against Supplier and Enforces Termination of At-Will Distribution Agreement

In *Frank Brunckhorst Co., L.L.C. v. Coastal Atlantic, Inc.*, 2008 WL 276409 (E.D. Va. Jan. 29, 2008), the court granted a national distributor's motion to dismiss a counterclaim brought by one of its regional distributors who had been terminated. The plaintiff, a national distributor of Boar's Head deli products, sued the regional distributor for trademark infringement and nonpayment. The defendant regional distributor countersued on numerous grounds, including breach of contract, tortious interference, and fraud.

In dismissing the counterclaims, the Virginia federal court first determined that the plaintiff did not breach the contract under Virginia law because the "at-will" contract involved in this case, which contract was oral and had no definite duration, was terminable at any time by either party for any reason. The defendant argued that the contract had an agreed-upon duration because the plaintiff promised the defendant exclusive distribution rights so long as it continued to promote and build brand identification for the Boar's Head brand. However, the court found that under Virginia law, an agreement for an exclusive distributorship conditioned upon one's best efforts to promote a brand does not transform a contract terminable at will into one that can be terminated only for just cause. The court noted that even if this were the case, enforcement of the oral contract would be barred by the statute of frauds because it could not be performed within a year. The court also noted the longevity of the parties' 23-year distribution relationship, which demonstrated that the defendant had more than enough time to operate its distributorship and recoup its investment before the plaintiff terminated the at-will contract.

As to the defendant's tort claims, the court found that the plaintiff could not tortiously interfere with an at-will contract that it chose to terminate. The tortious interference claims also failed since the defendant made no allegations that the plaintiff employed any illegal or independently tortious means, violated a trade or professional standard, or conducted itself unethically. The court held that the defendant failed to state properly its fraud claims, noting that the plaintiff's alleged duties that gave rise to the purported misrepresentation were based in contract and not tort. The court further held that even if the plaintiff had concealed certain "activities or motives" to take over the defendant's distribution network, no constructive fraud existed because the plaintiff had no duty outside the contract to disclose those actions to the defendant. Although the court characterized some of the plaintiff's actions as "perhaps unsavory", it acknowledged those actions to be within its legal rights.