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BLOGS

Advertising

Wisconsin Federal Court Grants Preliminary Injunction Barring Former Franchisee From Broadcasting Misleading Radio Ad

A federal court in Wisconsin granted a franchisor's motion for a preliminary injunction prohibiting a former franchisee from broadcasting a misleading radio advertisement about the franchisor's business. *Paul Davis Restoration, Inc. v. Everett*, 2014 U.S. Dist. LEXIS 172227 (E.D. Wis. Dec. 12, 2014). Following a series of lawsuits, the franchisor, Paul Davis, sought to enforce an arbitration award against former franchisee Everett. Everett responded by running an ad, which purported to be a "business advisory," construing the franchisor's attempt to enforce the award as illegal conduct. The ad ended by saying it was paid for by "Paul Davis Restoration of NOWI."

The court held that Everett's use of the Paul Davis trade name at the end of the ad was a violation of the Lanham Act. Although Everett removed the trade name from the ad after Paul Davis filed its motion for a preliminary injunction, the court found that the claim was not moot. Due to the parties' litigious history, the court decided that there was a likelihood the violations would recur absent an injunction. It then found that Paul Davis had a high likelihood of success on the merits of its claim that the ad was misleading under the Lanham Act. Although Everett claimed the ad was protected speech under the First Amendment, the court determined it was commercial speech and, therefore, subject to regulation under the Lanham Act. Everett could not legally broadcast an ad claiming that Paul Davis broke the law, the court said, when in fact an arbitral panel had reached the opposite conclusion. After finding that Paul Davis had a strong likelihood of success on the merits, the court noted that the other preliminary injunction factors weighed in favor of Paul Davis as well.

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