

# Franchise: 2025 Year in Review

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**Collaborative. Accountable. Authentic.**  
**Legal Solutions for Business Objectives.**



January 21, 2026

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# Topics Overview

- Federal Enforcement and Antitrust
- Where Can I Be Sued – Forum and Venue
- Vicarious Liability
- State Franchise Laws



# Federal Enforcement and Antitrust

# Turnover and Enforcement at FTC



- Currently only two commissioners
  - Chair Andrew Ferguson
  - Commissioner Mark Meador
- Former Commissioner Rebecca Slaughter's challenge to her dismissal still pending
- Developments in Robinson Patman Act enforcement

# Robinson Patman Act



## Diverging Paths for the FTC's First Two Robinson-Patman Act Enforcement Actions in Decades

- *Federal Trade Commission v. Southern Glazer's Wine and Spirits, LLC*, 8:24-cv-02684 (C.D. Cal.)
- *Federal Trade Commission v. PepsiCo, Inc.*, 1:25-cv-00664, (S.D.N.Y.)

# FTC v. Southern Glazer's Wine and Spirits, LLC

- On December 12, 2024, the FTC filed a complaint alleging Southern violated the RPA by selling wine and spirits to small, independent businesses at higher prices than it charged large national and regional chains
  - Both Republican commissioners dissented to the action, with Commissioner Fergusson suggesting the suit was an imprudent use of the agency's limited resources, even though he did agree that the RPA should be actively enforced when there is strong evidence of harm to competition
- On April 17, 2025, C.D. Cal. denied Southern's motion to dismiss
  - Rejected Southern's argument that complaint focused only on *intrastate* sales
  - Found the prima facie elements of RPA claim were plausibly alleged

# FTC v. PepsiCo, Inc.

- On January 12, 2025, the FTC filed suit against PepsiCo alleging that it provided Walmart with promotional payments, allowances, and services while failing to make similar benefits available to Walmart's competitors on proportionally equal terms.
  - Filed immediately before the leadership of the FTC changed
  - Both Republican Commissioners filed dissents that criticized the agency's decision to file the complaint on the eve of the transition between the Biden and Trump administrations and asserted that the complaint itself was "wholly deficient" and represented a "politically motivated travesty"
- On May 22, 2025, the FTC voluntarily dismissed the case

# Private RPA Actions

- *U.S. Wholesale Outlet & Distrib., Inc. v. Living Essentials, LLC*, 2025 WL 1513438 (C.D. Cal. May 28, 2025)
  - Living Essentials provided Costco with promotional allowances not made available to plaintiffs on proportionally equal terms
  - No evidence that Costco used the promotions to divert sales from plaintiffs, nor was there sufficient evidence that the plaintiffs were forced to lower their prices to unprofitable levels in order to compete
- *Power Buying Dealers USA, Inc. v. Juul Labs, Inc.*, 2025 WL 1582426 (N.D. Ill. June 4, 2025)
  - Dismissed because amended complaint omitted the required relevant geographic market in which the distributors competed for customers
- *Mark Breiner DDS, LLC v. BTL Indus., Inc.*, 2025 WL 1907270 (D. Mass. July 10, 2025)
  - Alleged defendant doubled the prices after plaintiff began selling below-MAP prices
  - Court dismissed claim because plaintiff forfeited discounted prices by withdrawing from MAP

# Federal Policy on Antitrust and AI

- Under Biden Administration, DOJ and FTC had signaled an aggressive stance towards the use of algorithms trained on competitive data
  - Withdrew longstanding policy statements and “safety zones” related to information sharing between competitors
  - Concern about how machine learning and artificial intelligence have allowed competitors to use shared non-public industry information in collusive and anticompetitive ways.
- In July 2025, the Trump Administration released "Winning the Race: America's AI Action Plan," which framed AI as the site of a new "space race" for economic advancement.
  - Outlined a policy to “Review all Federal Trade Commission (FTC) investigations commenced under the previous administration,” as well as final orders, consent decrees, and injunctions, to ensure none “advance[s] theories of liability that unduly burden AI innovation.”
  - Enforcement around AI focused mainly on deceptive marketing claims about AI function

# State Policy on Antitrust and AI

- In October, California approved legislation that explicitly makes pricing algorithms subject to the antitrust protections in the Cartwright Act
  - Law prohibits any anticompetitive use of common pricing algorithms or coercion to adopt algorithm-derived prices, as well as lowering the pleading standard for Cartwright Act claims.
  - California will define “common pricing algorithm” as “any methodology, including a computer, software, or other technology, used by two or more persons, that uses competitor data to recommend, align, stabilize, set, or otherwise influence a price or commercial term.”
- In contrast to developments in federal cases in Hotel industry
  - Algorithmic conspiracy allegations failed because there was no indication that confidential, non-public competitor data was used by the computer pricing algorithms.
  - California’s law will make it easier for California plaintiffs to assert anticompetitive algorithm claims under state law.

# Where Can I Be Sued?

## Forum and Venue

# Where can I be sued?

*(with apologies to Dr. Seuss)*

- I've been sued where?
- You can't sue me here.
- Don't sue me there.
- You can't sue me anywhere?



# *I've been sued where?* – Removal & fraudulent joinder



*Larmon v. Planet Fitness Franchising, LLC*,  
2025 WL 2721088 (N.D. Ill. Sep. 24, 2025).

- Defendants have “heavy burden” to establish fraudulent joinder.
- But a proposed defendant is fraudulently joined where “after resolving all issues of fact *and law* in favor of the plaintiff, the plaintiff cannot establish a cause of action against the instate defendant.”
- Planet fitness employee could not be joined to complaint to defeat diversity jurisdiction where proposed amended complaint did not sufficiently allege employee was “active tortfeasor.”

# *I've been sued where?* – First to file rule

*Eve Sales Corp. v. Marie Sharp's, USA, LLC*, 2025 WL 606497 (S.D.N.Y. Feb. 24, 2025).

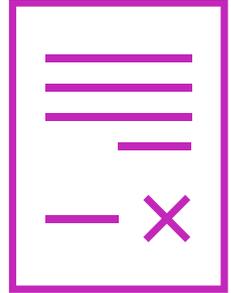
- Presumption: the first suit filed determines forum.
- Not so for “improper anticipatory declaratory judgment actions.”
  - Filed in response to specific, direct threat of litigation.
  - Co-opts “natural plaintiff’s” choice of forum.
- Result: motion to transfer.



# You can't sue me here – Personal jurisdiction

*Lane v. Baywood Hotels, Inc.*, 2025 WL 2419727 (E.D. La. Aug. 21, 2025).

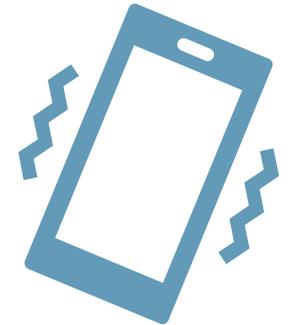
- ADA suit against franchisee, franchisor, and franchisor's holding company.
  - Alleged basis for franchisor liability: franchise agreement.
  - Alleged basis for holding company liability: anti-discrimination policy.
- Court dismissed both franchisor and franchisor's holding company for lack of personal jurisdiction.
  - Franchise agreement insufficient to confer specific personal jurisdiction on franchisor because claims did not arise from franchise agreement and no allegations of control beyond typical licensor quality control provisions.
  - Holding company was not a party to franchise agreement, had no control over hotel, and didn't direct any conduct toward Louisiana vis-à-vis the complaint's allegations.



# You can't sue me here – Personal jurisdiction ctd.

*Hoffman v. BCI Acrylic, LLC*, 2025 WL 2896821 (N.D. Ill. Oct. 10, 2025).

- N.D. Illinois putative TCPA class action by Washingtonian against Illinois manufacturer and Washington distributor. Distributor moved to dismiss or transfer.
- TCPA claims are intentional torts for jurisdictional analysis: conduct underlying the claims must be purposefully directed at Illinois to find jurisdiction.
- Plaintiff not party to dealership agreement— cannot enforce its forum selection clause.
- Suit transferred to Washington to avoid bifurcation.
  - Court opined that manufacturer would be subject to jurisdiction in Washington because of alleged agency relationship.



# Don't sue me there – Effective forum selection clauses

*Convenience Stores Leasing & Mgmt., LLC v. Singh*, 2025 WL 470458 (E.D. Wis. Feb. 12, 2025).

- Permissive venue selection clause in franchisor home state.
- Franchisee successfully removed to federal court in franchisor home state then transferred venue to federal court in franchisee home state.

Don't say “may” when you mean “must.”

- *Rawson Inc. v. Associated Materials, LLC*, 2025 WL 2784967 (D.N.M. Sept. 30, 2025).
- Forum selection clause insufficiently incorporated into distribution agreement.
  - “[S]tandard Invoice Terms and conditions, available at [website] (the ‘Invoice Terms’), which are hereby incorporated herein by reference, shall apply to all sales hereunder.”

Forum selection requirements should be obvious and explicit.

# Know your states!



**21 states have statutes or rules that regulate where franchise-related litigation may occur.**

# *You can't sue me anywhere?* – Arbitration clauses

- *MJ Enter. Holdings, Inc. v. Spiffy Franchising, LLC*, 2025 WL 2163052 (D. Md. July 30, 2025).
- Parties signed franchise agreement and Maryland Addendum.
  - Franchise Agreement mandated arbitration in North Carolina.
- Court found that parties mutually agreed to arbitrate all claims except Maryland franchise law claims.
- Court stayed litigation of state franchise claims until arbitration of other claims complete.

## Maryland Addendum:

“This franchise agreement provides that disputes are resolved through arbitration. A Maryland franchise regulation states that it is an unfair or deceptive practice to require a franchisee to waive its right to file a lawsuit in Maryland claiming a violation of the Maryland Franchise Law. *In light of the Federal Arbitration Act, there is some dispute as to whether this forum selection requirement is legally enforceable.*”

# *You can't sue me anywhere?* – Arbitration clauses ctd.

- *CS Anaheim Hotel Invs. LLC v. Choice Hotels Int'l, Inc.*, 2025 WL 1359015 (C.D. Cal. May 9, 2025).
- Parties signed franchise agreement and California Addendum.
  - Franchise Agreement mandated arbitration of most claims in Maryland.
- Franchisor compelled to arbitrate.
- Lack of mutuality with respect to Maryland venue  $\neq$  lack of mutuality with respect to arbitration generally.

## California Addendum:

“The Franchise Agreement requires venue to be limited in Maryland. This provision may not be enforceable under California law.”

## *You can't sue me anywhere?* – Arbitration clauses ctd.

**State courts still determine unconscionability of arbitration clauses.**

- *Nu Skin Enterprises, Inc. v. Raab*, 2025 WL 3184889 (10th Cir. Nov. 14, 2025).
- Distributors sued in Washington state court, alleged distribution agreements unenforceable.
- Nu Skin filed suit in D. Utah to compel arbitration of distributors' claims.
- D. Utah stayed the action pending Washington court's determination of arbitration agreement enforceability.
- Tenth Circuit affirmed stay.

# Vicarious Liability

# Vicarious Liability

Traditional PI Claims

Trafficking

Employment

# Traditional Vicarious Liability – Personal Injury

- *Massage Heights v. Hagman*, 68 Tex. Sup. Ct. J. 755 (Tex. 2025)
  - Alleged sexual assault by massage therapist employed by franchisee.
  - Jury found Massage Heights (franchisor) jointly liable with franchisee and other defendants, and awarded actual and exemplary damages.
  - Court of appeals reversed award of exemplary damages but otherwise affirmed judgment.
  - Supreme Court reversed court of appeals, finding Massage Heights:
    - (1) had no duty of care to customers
    - (2) had no duty to refrain from entering into the franchise agreement or terminating the franchise agreement, and
    - (3) did not undertake a duty to protect her via the franchise agreement.



# Traditional Vicarious Liability – Personal Injury

- *Coryell v. Morris*, 330 A.3d 1270 (Pa. 2025)
  - Delivery driver accident led to lawsuit against driver, franchisee, and franchisor, Domino's.
  - Jury found driver negligence caused the collision, and Domino's exercised or had the right to exercise sufficient control over the franchisee to be vicariously liable.
  - Domino's appealed. A split panel reversed, then the Superior Court heard argument en banc and the Court affirmed.
  - It found the franchise agreement and ops manual left the franchisee "with practically no discretion how to conduct the day-to-day operations of its franchise store."
- *Neely v. Great Escapes Pelahatchie, LP*, 2024 WL 5125415 (S.D. Miss. Dec. 16, 2024)
  - Plaintiffs (children) caught *E. coli* from water park and sued franchisor and others.
  - Court dismissed negligence claims against franchisor, finding franchisor owed no duty of care to franchisee's invitees.
  - It found the franchisor did not voluntarily assume or retain control over the park's water-safety program.

# Sex Trafficking

- Many cases brought under Trafficking Victims Protection Reauthorization Act (TVPRA) against hotel franchisors.
  - Most remain in early or discovery stages.
- *AMG v. Red Roof Inns*, 2025 WL 588645 (S.D. Ohio Feb. 24, 2025)
  - On franchisor’s motion to dismiss, court dismissed direct liability perpetrator claim.
  - Direct liability beneficiary liability (commercial venture) claim survived, as did vicarious liability and principal-agent claims.
  - Court declined to transfer case to Virginia, where the hotels were located.
- *A.S. v. Red Roof Inns*, 2024 WL 5245123 (S.D. Ohio Dec. 30, 2024)
  - On motion by franchisee, court struck franchisor’s claims for common law indemnification and contribution against franchisee.
  - Court declined to stay and sever the franchisor’s contractual indemnification and breach of contract claims.

# Sex Trafficking

- *C.S. v. Subway Worldwide, Inc.*, 2025 WL 472475 (D.N.D Feb. 12, 2025)
  - Employee of franchised Subway restaurant was assaulted by her supervisor.
  - Brought claims against the franchisee and franchisor for violation of TVPRA and several negligence claims.
  - Court declined to dismiss TVPRA beneficiary liability claim, pointing to an ostensible agency theory.
  - Court also declined to dismiss negligence claims against franchisor under agency and joint employer theories.



# Joint Employer



- *Sharp v. Arthur Murray Int'l Inc.*, 2025 WL 2938368 (D. Md Oct. 16, 2025)
  - Franchisee employee alleged racial and disability discrimination, hostile work environment, retaliation, and wrongful termination.
  - Court rejected joint employer arguments finding plaintiff did not allege sufficient control over employment decisions.

- *Edmonds v. McDonald's USA, LLC*, 2025 WL 1066193 (W.D. Va. Apr. 9, 2025)
  - Employee alleged racial discrimination under joint employer and agency theories based on treatment by managers.
  - Court dismissed claims finding insufficient allegations that McDonald's exercised the requisite control over the franchisee's operations.



# State Franchise Laws

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- **Non-Renewal under NJFPA**

- *Scion Hotels LLC v. Holiday Hospitality Franchising LLC*, 2025 WL 2170322 (3d Cir. July 31, 2025)
  - Scion entered into franchise agreement with HHC for New Jersey Holiday Inn that was “non-renewable.”
  - HHF declined to renew in 2021, Scion alleged wrongful nonrenewal, constructive termination, and imposition of unreasonable standards of performance under the NJFPA.
  - Third Circuit vacated summary judgment
  - Agreement’s “non-renewal” clause was unenforceable because NJFPA requires a franchisor to show “good cause” for nonrenewal and provision functioned as an impermissible release of HHF’s statutory obligation

- **Existence of Franchise Relationship Under NJFPA**

- *N.A.R, Inc. v. E. Outdoor Furnishings*, 2025 WL 287497 (N.J. Super. Ct. App. Div. Jan. 24, 2025)
  - Terminated retailer of outdoor kitchens alleged violation of NJFPA
  - Appellate court concluded that retailer had not established a written contract granting license to use manufacturer’s mark, as required under the statute

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