Lathrop GPM

BLOGS

Franchise Sales/Transactions

No Claim for Refusal to Provide Same Store Sales Under Old Rule

The federal district court for the Northern District of Illinois recently rejected a franchisee's counterclaims, relating to the franchisor's omission of same store sales information for the franchised unit purchased by the franchisee. In *7-Eleven, Inc. v. Spear,* 2011 U.S. Dist. LEXIS 67415 (N.D. Ill. June 23, 2011), a convenience store franchisee was terminated for consistent failure to maintain a minimum net worth for the franchised store, as required by the franchise agreement. The franchisor obtained summary judgment on its action to enforce termination, leaving only the franchisee's counterclaims, which alleged that the franchisor's presale disclosure activity violated the Illinois Franchise Disclosure Act (IFDA) and the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA). The franchisee argued that the franchisor should have disclosed the allegedly poor prior financial performance of the unit that was purchased by the franchisee. The court rejected the counterclaim, holding that because the prior FTC Franchise Rule and the UFOC Guidelines (in effect at the time disclosure was made) did not affirmatively require the franchisor to provide same store earnings information, the franchisor had no duty to do so.

The franchisee also argued that, regardless of whether the IFDA or the UFOC Guidelines required it, the franchisor had an independent duty to disclose the poor prior performance of the store to correct a misimpression left by the earnings claim that the store at issue would perform as well as the average. The court flatly rejected this argument, noting that to rely on such a misimpression, the franchisee would have had to ignore the express instructions of the earnings claim, including the admonition that franchisees should not use the earnings claim to predict the financial performance of their store. Further, the franchisor's Item 19 disclosure specifically stated that the information represented an average of store earnings for stores which had been open and operating for at least 12 months and excluded the results from stores open for less time, such as the store at issue. The franchisee could not reasonably have been misled about what information the franchisor's earnings claim was communicating. **(Note: the disclosure in this case was made prior to the effective date of the revised FTC Franchise Rule, which now requires disclosure of certain information regarding the past ownership of a previously franchised unit now under the franchisor's control.)**