

BLOGS

Terminations

Seventh Circuit Affirms Summary Judgment in Favor of Franchisor Regarding Termination Under PMPA

In *Al's Service Center, et al. v. BP Products North America, Inc.*, 2010 U.S. App. LEXIS 6270 (7th Cir. Mar. 26, 2010), the Seventh Circuit affirmed a district court's summary judgment ruling in favor of BP, finding that BP had not violated the Petroleum Marketing Practices Act (PMPA). In this case, a gas station franchisee was notified by the Illinois Department of Transportation of a partial condemnation of its property for a road widening project, which would result in the closing of some of the entrances to its gas station and consequently would negatively impact its business. In March 2003, BP notified Al's that it would terminate the franchise 10 days before the condemnation took effect, pursuant to the provision in the PMPA that grounds for terminating the relationship "includes events such as . . . condemnation or other taking, in whole or in part, of the marketing premises pursuant to the power of eminent domain." The dealer's lease for the premises expired by its own terms a month after the 2005 condemnation, and BP told Al's to vacate the premises because the franchise had been terminated. Al's did not close the business, however, and BP continued selling it gasoline. A year later, as part of the widening project, the state removed Al's roadside pylon sign. Al's asked BP to replace it but BP refused. The sign was never replaced, and Al's abandoned the business in 2008 and brought suit alleging that BP violated the PMPA by improperly terminating its franchise agreement.

In affirming the district court's summary judgment order in favor of BP, the Seventh Circuit found that the March 2003 letter did not terminate the franchise at that time, as the condemnation did not occur for more than two years after the letter was sent. The Seventh Circuit also found that both Al's and BP continued to behave as if the franchise contracts remained in effect and that no change of practical significance in the franchise relationship occurred until more than three years after the letter. The Seventh Circuit further found that it was reasonably clear, though not certain, that BP was entitled under the PMPA to terminate the franchise or decline to renew the franchise relationship when the condemnation occurred. Finally, the court concluded that BP's refusal to replace the sign was not a constructive termination because a necessary PMPA element is that the franchisor's conduct forced an end to the franchisee's use of the franchisor's trademark, purchase of the franchisor's fuel, or occupation of the franchisor's service station, none of which happened here. Ultimately, the Seventh Circuit concluded that the franchise relationship ended only when Al's abandoned its business, which was not BP's fault.