ANTITRUST LAWS

Price fixing. A manufacturer of men's clothing and a retailer that operated a large number of clothing stores did not engage in a vertical price fixing conspiracy in violation of Sec. 1 of the Sherman Act, the U.S. Court of Appeals in Boston had decided. A complaining competitor alleged a course of conduct in which the retailer pressured the manufacturer to terminate its distribution relationship with the competitor because the competitor was undercutting the defending retailer's prices. The complaining competitor's offering of evidence that (a) the defending retailer complained to the manufacturer of the competitor's deep discounting, (b) the retailer stopped placing orders with the manufacturer after the manufacturer continued to supply the competitor despite the complaints, and (c) the retailer resumed marketing the manufacturer's clothing after the manufacturer ceased selling to the competitor failed to establish that the manufacturer and defending retailer were acting in concert.

An inference could clearly be made that, when pressed, the manufacturer opted to do business with the larger, defending retailer rather than to jeopardize that relationship by continuing to deal with the complaining competitor, in the court's view. However, no showing was made that reflected a commitment on the manufacturer's part to a minimum retail price maintenance scheme or that suggested that the manufacturer's reassurances to the defending retailer were anything more than an acknowledgment of its unilateral decision to stop supplying the competitor.

The most natural inference from the evidence—that the manufacturer took sides as between two dealers and chose the more lucrative of them—made manifest a legitimate, independent reason for terminating the less desirable distribution relationship, according to the court. To allow the inference of concerted action when dealers were terminated by manufacturers in response to complaints from competing dealers would both inhibit management's exercise of its independent business judgment and emasculate the terms of the antitrust statutes, the court reasoned.

Euromodas, Inc. v. Zanella, Ltd., CA-1, ¶ 12,830

common law fraud. On the unchallenged evidence, the franchisee reasonably relied on the demographic reports and demonstrated damage attributable to the misrepresentations, the court decided. After opening, the two franchises operated at a significant loss and were terminated by the franchisor after the franchisee became delinquent on his payment of franchise and advertising fees.

Team Tires Plus, Ltd. v. Heartlein, DC Minn., ¶ 12,820, ¶ 12,821

Non-Signatory to Franchise Agreement Could Allege Fraud

The brother of an ice cream shop franchisee adequately alleged a claim for fraud under New York law against the franchisor of his brother's shop, a federal district court in New York has ruled. The claims brought by the franchisee of the

shops were transferred to a Maryland federal district court pursuant to a valid and enforceable forum selection clause in the agreement.

The brother was allegedly a provider of funds for the franchise purchase and a "silent partner" to the agreement, although his name was not on franchise agreement. Drawing all inferences in favor of the brother for purposes of the franchisor's motion to dismiss, the franchisor fraudulently misrepresented estimates of construction and equipment costs for the franchise in the UFOC that it provided to the franchisee, according to the court. The fact that the representation was not made directly to the brother was not fatal to the claim because the brother alleged that he relied upon it to his detriment and that the franchisor intended the misrepresentation to be conveyed to him.

Statutory Claims

The brother did not have standing to allege a violation of the Maryland Franchise Registration and Disclosure Law because there was no allegation that the brother was sold or granted a franchise by the franchisor. The brother's allegation that the franchisor violated the FTC Franchise Rule by failing to provide accurate information in its UFOC was dismissed because there was no private right of action to enforce the Rule. The brother failed to plead a direct injury or to show that he was a target of anticompetitive conduct, therefore, he lacked standing to allege violations of the antitrust laws. An alleged violation of the federal racketeering law failed for lack of any particularized allegation. The entities alleged to have conspired with the franchisor were not named, the predicate acts alleged were not specified, and it was not alleged that the predicate acts were related and that they amounted to, or posed a threat of, continuing criminal activity.

G&R Moojestic Treats, Inc. v. Maggiemoo's Intl., L.L.C., DC N.Y., ¶ 12,826

Appointment of New Distributor Did Not Breach Agreement

A manufacturer of snow removal equipment did not breach a distributorship contract by appointing a third party, which had been a customer of the distributorship in the past, as a distributor of the manufacturer's equipment, the U.S. Court of Appeals in Boston has determined. A prior decision by the federal district court in Boston (¶ 12,703, BUSINESS FRANCHISE GUIDE 2002—2004 New Developments Transfer Binder) was affirmed. There were no written agreements between the manufacturer and the plaintiff distributor that prohibited the manufacturer from appointing additional distributors in a given area. The manufacturer's oral statements to the distributor suggested little more than a casual reassurance that the manufacturer hoped they would enjoy a good business relationship, the court observed. Based on those general statements, no reasonable jury could conclude that the parties intended to create a contract which limited the right of the manufacturer to appoint distributors, a right which was fundamental to the manufacturer's entire distribution system. Moreover, in recognition of the fact that the manufacturer could appoint additional distributors, the parties had entered into an Offset Agreement, which provided compensation to the distributor in the event of such an appointment