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Defeating a Motion to Dismiss a Franchise Case in Federal Court

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Introduction

A motion to dismiss a complaint in federal court is a relatively inexpensive method to terminate litigation against a defendant. It has the advantage of not revealing the strategy of the defendant's case while putting the plaintiff in the position of losing his case at the very beginning of litigation. If the defendant loses his motion to dismiss the complaint, he has lost virtually nothing, while the loss of the motion by the plaintiff is devastating. While a motion to dismiss the case can be appealed, the better course of action is to prevail at the district court level. Therefore, a plaintiff must make all possible efforts to defeat this motion.

Franchising (General)

Franchising is regulated by the Federal Trade Commission pursuant to its rule ("FTC Rule").[1] Some states have enacted statutes concerning franchising.[2] Some have enacted regulations concerning franchising,[3] and some have enacted special industry laws.[4]

In franchise cases a plaintiff must be certain to allege all of the requirements in the state franchise statute to survive a motion to dismiss the complaint. Quite simply, review the statute and be certain to have an allegation covering each requirement. Many states also have regulations covering franchising. These regulations should also be reviewed to ensure that there is an allegation covering each requirement.

Franchising (Fraud in the Inducement)

It is quite possible that the franchisee will allege fraud in the inducement in his complaint. The franchisor will most likely have an integration clause in the franchise agreement. The franchisee will have to show why the integration clause should not be given effect.

Federal Rule of Civil Procedure 9(b) states that malice, intent, knowledge and other conditions of mind of a person *may be averred generally*. Rule 9 should be considered in light of the spirit of modern federal pleading as summed up in Rule 8(a) and 8(e), which emphasize that pleading should be short, concise and direct. *United States v. Kralmann*, 3 F.R.D. 473 (D. Ky. 1943), *United States v. Dittrich*, 3 F.R.D. 475 (D. Ky. 1943).

Rule 9 must also be construed in conjunction with Rule 8, which says a complaint is not required to plead evidence. *Schlick v. Penn-Dixie Cement Corp.*, 507 F.2d 374 (2d Cir. 1974), *cert. denied*, 421 U.S. 976 (1975). Rule 9 is not to be read as exception to Rule 8(a) but rather in conjunction with this rule. *Brown v. Joiner International Inc.*, 523 F. Supp. 333 (S.D. Ga. 1981).

In *Golden v. Mobil Oil Corp.*, 882 F.2d 490 (11th Cir. 1989), the U.S. Court of Appeals for the 11th Circuit held that:

> Procedural unconscionability exists when the individualized circumstances surrounding the transaction reveal that there was no "real and voluntary meeting of the minds" of the

> contracting parties. *Kohl*, 398 So. 2d at 868 (quoting *Johnson v. Mobil Oil Corp*., 415 F. Supp. 264 (E.D. Mich. 1976)). 882 F.2d at 493.

In *Durham v. Business Management Associates*, 847 F.2d 1505 (11th Cir. 1988), which involved a motion for summary judgment, the 11th Circuit held that:

> The application of the rule [9(b)], however, must not abrogate the concept of notice pleading. *Friedlander v. Nims*, 755 F.2d 810 (11th Cir. 1985); see also *Howell Petroleum Corp. v. Weaver*, 780 F.2d 1198 (5th Cir. 1986). Allegations of date, time or place satisfy the Rule 9(b) requirement that the *circumstances* of the alleged fraud must be pleaded with particularity, but alternative means are also available to satisfy the rule. *Seville*, 742 F.2d at 791; *Shared Network Technologies Inc. v. Taylor*, 669 F. Supp. 422 (N.D. Ga. 1987). 847 F.2d at 1511-12.

In *Ziemba v. Cascade International Inc.*, 256 F.3d 1194 (11th Cir. 2001), which dealt with a securities fraud case, the 11th Circuit held that "[m]alice, intent, knowledge and other condition of mind of a person *may be averred generally*." 256 F.3d at 1202. [Emphasis added]. This has been followed in the complaint.

Franchising (Uniform Franchise Offering Circular)

In many cases the franchisee believes that the franchisor has not prepared a proper Uniform Franchise Offering Circular and that he should be able to obtain relief on that basis. An examination of the FTC Rule appears to show that there is a private cause of action to enforce this statute.

The Federal Trade Commission expressed its view when the FTC Rule was issued that private actions should be permitted by the courts for Rule violations.[5] To date, no federal court has permitted a private action for Rule violations.[6] Therefore, if a motion is made to dismiss a complaint as to a count alleging a violation of the FTC Rule, it will most likely be granted.

Motion to Dismiss (General Requirements)

Rule 8(a)(2) of the Federal Rules of Civil Procedure simply requires "a short and plain statement of claim" showing pleader is entitled to relief. All a complaint needs to do is afford a defendant fair notice of a plaintiff's claim and grounds upon which it rests. *Westlake v. Lucas*, 537 F.2d 857 (6th Cir. 1976); *McDonald v. General Mills Inc.*, 387 F. Supp. 24 (E.D. Cal. 1974), *Friends of the Earth v. Carey* 401 F. Supp. 1386 (S.D.N.Y. 1975), *affirmed in part and reversed in part on other grounds*, 535 F.2d 165 (2d Cir. 1976); *Harbert v Rapp*, 415 F. Supp. 83 (W.D. Okla. 1976); *Leeward Petroleum Ltd. v. Mene Grande Oil Co*., 415 F. Supp 158 (Del. 1976); *Lucas v. Park Chrysler Plymouth Inc*., 62 F.R.D. 399 (Ill. 1974), and *Western Colorado Fruit Growers Association v. Marshall*, 473 F. Supp. 693 (Colo. 1979). To ensure that a plaintiff will survive a motion to dismiss, the complaint should be drafted so that all aspects of the case are apparent from the four corners of the document.

Only a month ago the 11th Circuit held that "[t]he threshold of sufficiency that a complaint must meet to survive a motion to dismiss for failure to state a claim is, as we have stated previously, '*exceedingly low*.' *Ancata v. Prison Health Servs. Inc*., 769 F.2d 700 (11th Cir. 1985), (citing *Quality Foods de Centro America S.A. v. Latin American Agribusiness Development*, 711 F.2d 989 (11th Cir. 1983))." *Financial Security Assurance Inc. v. Stephens Inc.*, (11th Cir. May 31, 2006) at *8-9. [Emphasis added].

The 2d Circuit in the well-known case *Twombly* v. *Bell Atlantic Corp.*, 425 F.3d 99 (2d Cir. Oct. 3, 2005), (an appeal to the U.S. Supreme Court has been filed), reversed and remanded the District Court's order to dismiss the case in question. The 2d Circuit said:

> We review *de novo* the dismissal of a complaint for failure to state a claim, accepting as true all facts alleged in the complaint and drawing all inferences in favor of the plaintiff. *Todd v. Exxon Corp.*, 275 F.3d 191 (2d Cir. 2001). "*A complaint should not be dismissed for failure to state a claim 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim, which would entitle him to relief.'" Id. at 197-98* (quoting *Conley v. Gibson*, 355 U.S. 41 (1957)). "At the pleading stage … *the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.*" *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.*, 375 F.3d 168 (2d Cir. 2004), (citation, brackets and internal quotation marks omitted). 425 F.3d at 106. [Emphasis added]…
>
> "The purpose of pleading is to facilitate a proper decision on the merits," according to *Conley*, 355 U.S. at 48, and not simply to screen out complaints based on a lack of artful lawyering before any facts have been discovered, *id*. "Ordinary pleading rules are not meant to impose a great burden upon a plaintiff." *Dura Pharms. Inc. v. Broudo*, 544 U.S. 125 (2005); see also Fed. R. Civ. P.

> 8(f) ("All pleadings shall be so construed as to do substantial justice."). 425 F.3d at 10.
>
> Rule 8(f) provides that "all pleadings shall be so construed as to do substantial justice." This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. "The provisions for discovery are so flexible and the provisions for pretrial procedure and summary judgment so effective, that attempted surprise in federal practice is aborted very easily, synthetic issues detected and the gravamen of the dispute brought frankly into the open for the inspection of the court." 5 C. Wright and A. Miller, Federal Practice and Procedure § 1202, p. 76 (2d ed. 1990). 425 F.3d at 108.

Dubray v. Rosebud Housing Authority, 565 F. Supp. 462 (D.S.D. 1983), citing the U.S. Supreme Court, held that:

> A complaint should not be dismissed for insufficiency *unless it appears to a certainty that plaintiffs are entitled to no relief under any state of facts which could be proved in support of their claims*. In passing on a motion to dismiss, all material allegations in the complaint are taken as admitted, with all such allegations construed favorably to the plaintiffs. *Scheuer v. Rhodes*, 416 U.S. 232 (1974). Otherwise stated, the question is whether in a light most favorable to the plaintiffs, and with every doubt resolved in their behalf, the complaint states any valid claim for relief. *The court may dismiss a complaint pursuant to Rule 12(b)(6) only when the allegations of the complaint itself clearly demonstrate that they do not have a claim*. See 5 Wright & Miller, Federal Practice & Procedure, Civil, § 1357. 565 F. Supp. at 465. [Emphasis added].

The system of notice pleading does not require plaintiff to plead facts or legal theories, and a complaint that sets out a claim for relief is sufficient to withstand a motion to dismiss as long as there is any set of facts, consistent with allegations, under which relief could be granted. *Nance v. Vieregge*, 147 F.3d 589 (7th Cir. 1998), *cert. denied*, 525 U.S. 973 (1998).

In *Lombard's Inc. v. Prince Manufacturing Inc.*, 753 F.2d 974 (1985), the 11th Circuit, citing the U.S. Supreme Court, held that:

> Under notice pleading the complaint need only "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.* (quoting *Conley v. Gibson*, 355 U.S. 41 (1957)). 753 F.2d at 975.

Antitrust Allegations

It is quite possible that a franchisee will include federal and state antitrust allegations in his complaint. As such, it is important to have arguments ready to defeat a motion to dismiss these counts.

As shown in *Twombly*, discovery is both appropriate and mandated to permit a plaintiff to obtain evidence to support his allegations and to offer evidence to support the claims. This argument should be used to show that an antitrust count should not be dismissed until the franchisee has had discovery, provided that he has properly alleged the antitrust requirements.

The 2d Circuit specifically addressed the issue of pleading concerning antitrust actions. It held that:

> Antitrust claims are, for pleading purposes, no different. We have consistently rejected the argument — put forward by successive generations of lawyers representing clients defending against civil antitrust claims — that antitrust complaints merit a more rigorous pleading standard, whether because of their typical complexity and sometimes amorphous nature, or because of the related extraordinary burdens that litigation beyond the pleading stage may place on defendant and the courts. See *Todd*, 275 F.3d at 198 [HN7] ("No heightened pleading requirements apply in antitrust cases."); *George C. Frey Ready-Mixed Concrete Inc. v. Pine Hill Concrete Mix Corp.,* 554 F.2d 551 (2d Cir. 1977), (rejecting the argument that "antitrust claims, because of their complexity, must be pleaded with greater specificity than other claims," and concluding that "a short, plain statement of a claim for relief which gives notice to the opposing party is all that is necessary in antitrust cases, as in other cases under the Federal Rules … [;] *the discovery process is designed to provide whatever additional sharpening of the issues may be necessary*"); *Nagler v. Admiral Corp.*, 248 F.2d 319 (2d Cir. 1957) (noting that "it is true that antitrust litigation may be of wide scope and without a central point of attack, so that defense must be diffuse, prolonged and costly," and that "many defense lawyers have strongly advocated more particularized pleading in this area of litigation," but concluding that "it is quite clear that the federal rules contain no special exceptions for antitrust cases"). *Indeed,*

> *it has been argued from time to time that antitrust cases are less suitable candidates for dismissal at the pleading stage than some other kinds of litigation because evidence of the claimed illegality is likely to be in the exclusive control of the defendants.* See *Hosp. Bldg. Co. v. Trs. of Rex Hosp.*, 425 U.S. 738 (1976), "*In antitrust cases, where 'the proof is largely in the hands of the alleged conspirators,' dismissals prior to giving the plaintiff ample opportunity for discovery should be granted very sparingly.*" (Quoting *Poller v. Columbia Broad. Sys. Inc.*, 368 U.S. 464 (1962)). 425 F.3d at 108-09. [Emphasis added].

The 2d Circuit said that "[t]o survive a motion to dismiss, as we have explained, an antitrust claimant must allege only the existence of a conspiracy and a sufficient supporting factual predicate on which that allegation is based." 425 F.3d at 114. Therefore, the mere allegation of these facts should defeat a motion to dismiss these counts.

The 2d Circuit went on to hold:

> Thus, in a regime that contemplates the enforcement of antitrust laws in large measure by private litigants, although litigation to summary judgment and beyond may place substantial financial and other burdens on the defendants, neither the Federal Rules nor the Supreme Court has placed on plaintiffs the requirement that they plead with special particularity the details of the conspiracies whose existence they allege. Cf. *Radovich,* 352 U.S. at 453-54 (noting that Congress "has provided sanctions allowing private enforcement of the antitrust laws by an aggrieved party," and that "in the face of such a policy, this court should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in those laws"). 425 F.3d at 116.

In *Levine v. Central Florida. Medical Affiliates*, 72 F.3d 1538 (1996), the 11th Circuit:

> explained that the District Court had granted a motion for directed verdict "before [the plaintiff] reached that part of his case involving restraint on competition." *Id.* at 829. *We criticized the District Court's premature ruling and stated that "the better course would have been to defer ruling on the motions for directed verdict until after [the plaintiff] had presented his entire Section 1 case." Id.* at 828. 72 F.3d at 1555. [Emphasis added].
>
> *A claim for conspiracy to monopolize, on the other hand, does not require a showing of monopoly power*. 72 F.3d at 1556. [Emphasis added].

McCallum v. City of Athens, Ga., 976 F.2d 649 (11th Cir. 1992), held that "[a] motion to dismiss for lack of jurisdiction, pursuant to Rule 12(b)(1) or 12(h)(3), is inappropriate in such [antitrust] cases unless the interstate-commerce claim is patently frivolous." 976 F.2d at 650. The provisions in the franchise agreement combined with market share should be able to defeat the motion to dismiss these counts.

The 5th Circuit in *Cliff Food Stores Inc. v. Kroger Inc.*, 417 F.2d 203 (5th Cir. 1969), held that:

> *Summary disposition of litigation, especially antitrust cases, is disfavored* and amendments should be liberally granted so that all cases may be decided on their merits. *Food Basket Inc. v. Albertson's Inc.*, 383 F.2d 785 (10th Cir. 1967). Thus, *a motion to dismiss on the basis of the pleadings alone should rarely be granted.* A court must accept as true all facts that are well-pleaded in the complaint, and it must view those facts in the light most favorable to the plaintiff. *Lewis v. Brautigam*, 227 F.2d 124 (5th Cir. 1955). *A complaint should not be dismissed unless there is no possibility that the plaintiff can recover under the allegations of his complaint. International Erectors Inc. v. Wilhoit Steel Erectors & Rental Service*, 400 F.2d 465 (5th Cir. 1968). 417 F.2d at 205. [Emphasis added].

Based upon the above authorities, if a complaint properly alleges all aspects of each statute together with the support of the facts specific to the case, the franchisee should survive a motion to dismiss the complaint.

Notes

[1] 16 CFR 436.1 *et seq.*

[2] Arkansas (Franchise Practices Act, Ark. Code of 1987, Title 4, Chap. 72, § 4-72-207); California (Franchise Investment Law, Cal. Corp. Code, Div. 5, Parts 1 to 6, §§ 31000 to 31516, and Contracts for Seller Assisted Marketing Plans, Cal. Civ. Code, Div. 3, Part 4, Title 2.7, §§ 1812.200 to 1812.221); Connecticut (Business Opportunity Investment Act, Conn. Gen. Stat., Title 36b, Chap. 672c, §§ 36b-60 to 36b-80); Florida (Franchises and Distributorships, Fla. Stat. 1995, Chap. 817, § 817.416 and Sale of Business Opportunities Act, Fla. Stat., 1995, Chap. 559 §§ 559.80 to 559.815); Georgia (Business Opportunity Sales, Code of Ga., Title 10, Chap. 1, Art. 15, Part 3, §§ 10-1-410 to 10-1-417); Hawaii (Franchise Investment Law, Haw. Rev. Stat. Title 26, Chap. 482E, §§ 482E-1 to 482E5, 482E8, 482E9, 482E11 and 482E12); Illinois (Franchise Disclosure Act of 1987, Ill. Laws of 1987, Chap. 85-551, and Business Opportunity Sales Law of 1995, Ill. Compiled Statutes of 1996, Chap. 815,

§§ 602/5-1 to 602/5-135); Indiana (Ind. Code, Title 23, Art. 2, Chap. 2.5, §§ 1 to 51 and Business Opportunity Transactions, Ind. Code, Title 24, Art. 5, Chap. 8, §§ 1 to 21); Iowa (Business Opportunity Promotions Law, Iowa Code, 1995, Title XX, Chap. 523B, §§ 523B.1 to 523B.13); Kentucky (Sale of Business Opportunities Law, Ky. Rev. Stat. and 1988 Supp., Title XXIX, Chap. 367, §§ 367.801 to 367.819 and 367.990); Louisiana (Business Opportunity Sellers and Agents, La. Rev. Stat. of 1950, Title 51, Chap. 21, §§ 51:1801 to 51:804); Maine (Sale of Business Opportunities, Maine Rev. Stat. and 1990 Cum. Pocket Part, Title 32, Chap. 69-B, §§ 4691 to 4700-B); Maryland (Franchise Registration and Disclosure Law, Code of Md. Article-Business Regulation, Title 14, §§ 14-201 to 14-233 and Business Opportunity Sales Act, Code of Md., Title 14, §§ 14-101 to 14-129); Michigan (Franchise Investment Law, Mich. Comp. Laws, 1979, Chap 445, §§ 445.1501 to 445.1545 and Business Opportunities, incorporated into the Consumer Protection Act, Mich. Comp. Laws, 1979, §§ 445.901 to 445.922); Minnesota (Franchises, Minn. Stat. 1996, Chap. 80C, §§ 80C.01 to 80C.22), Mississippi (Miss. Code 1972, Title 75, Chap. 24, § 75-24-55); Nebraska, Seller-Assisted Marketing Plan Act, Neb. Rev. Stat. of 1943, Chap. 59, Art. 17, §§ 59-1701 to 59-1761); New Hampshire (Distributorship Disclosure Act, N.H. Rev. Stat., Title XXXI, Chap 358-E, §§ 358-E:1 to 358-E:8); New Jersey (Franchise Practices Act) N.J.S.A. 56:10-1 *et seq.*; New York (General Business Law, Art. 33, §§ 680 to 695); North Carolina (Business Opportunity Sales Law, N.C. Gen. Stat., Chap. 66, Art. 19, §§ 66-94 to 66-100); North Dakota (Franchise Investment Law, N.D. Century Code, Title 51, Chap. 51-19, §§ 51-19-01 to 51-19-17); Ohio (Business Opportunity Purchasers Protection Act, Ohio Code, Title 13, Chap. 1334, §§ 1334.01 to 1334.15 and 1334.99); Oklahoma (Business Opportunity Sales Act, Okla. Stat., 1991, Title 71 Chap. 4, §§ 801 to 828); Oregon (Franchise Transactions, Or. Stat., Title 50, Chap 650, §§ 650.005 to 650.085); Rhode Island (Franchise Investment Act, Gen'l Laws of R.I., 1956, Title 19, Chap. 28.1, §§ 19-28.1-1 to 19-28.1-34); South Carolina (Business Opportunity Sales Act, Code of Laws of S.C., 1976, Title 39, Chap. 57, §§ 39-57-10 to 39-57-80); South Dakota (Franchises for Brand-Name Goods and Services, S.D. Codified Laws and 1971 Pocket Supp., Title 37, Chap. 37-5A, §§ 37-5A-1 to 37-5A-87 and Business Opportunities, S.D. Codified Laws and 1989 Pocket Supp., Chap. 37-25A, §§ 37-25A-1 to 37-25A-54); Tennessee ("Little FTC Act," Tenn. Code, Title 47, Chap. 18, §§ 47-18-101 to 47-18-117); Texas (Business Opportunity Act, Business & Commerce Code, Title 4, Chap. 41, §§ 41.001 to 41.303); Utah ("Little FTC Act," Utah Code of 1953 and 1987 Supp., Title 13, Chap. 11, §§13-11-1 to 13-11-23 and Business Opportunity Disclosure Act, Utah Code 1953, 1989 Cum. Supp., Title 13, Chap. 15, §§ 13-15-1 to 13-15-6); Virginia (Retail Franchising Act, Va. Code of 1950, Title 13.1, Chap. 8, §§ 13.1-557 to 13.1-574 and "Little FTC Act," Code of 1950, 1987 Replacement Vol., Title 59.1, Chap. 17, §§ 59.1-196 to 59.1-207 and Business Opportunity Sales Act, Code of 1950, Title 59.1, Chap. 21, §§ 59.1-262 to 59.1-269); Washington (Franchise Investment Protection Act, Wash. Rev. Code, 1989, Title 19, Chap. 19.100, §§ 19.100.010 to 19.100.940 and Business Opportunity Fraud Act, Wash. Rev. Code, 1989, Title 19, Chap 19.110, §§ 19.110.010 to 19.110.930); Wisconsin (Franchise Investment Law, Wis. Stat., 1993-94, Chap 553, §§ 553.01 to 553.78 and Wisconsin Organized Crime Control Act, Wis. Stat., 1993-94, Chap 946, §§ 946.82); Washington, D.C. ("Little FTC Act," D.C. Code, 1981, Title 28, Chap 39, §§ 28-3901 to 28-3908).

[3] Cal. Admin. Code, Title 10, Chapter 3, Subchapter 2.6, §§ 310.000 to 310.505; Hawaii Department of Commerce and Consumer Affairs, Title III, Business Registration, Title 16, Chapter 37, §§ 16 to 37-1- 16-37-8; Ill. Admin. Code, Title 14, Subtitle A, Chapter II, Part 200, §§ 200.100 to 200.901; Iowa Admin. Code, Insurance Division (191), Chapter 55, §§ 55.1 (523B) to 55.9 (523B); Md. Code Regs., State Law Department, Division of Securities, Title 02, Subtitle 02, Chapter 8, §§ 02.02.08.01 to 02.02.08.17; Minn. R., 1995, Department of Commerce, Chapter 2860, §§ 2860.0100 to 2860.9930; New York Department of Law, Bureau of Investor Protection and Securities — Codes, Rules and Regulations of the State of New York, Title 13, Chapter VII, §§ 200.1 to 201.16; Okla. Business Opportunity Regulations, Rules 660:25-1-1 to 660:25-1-3, 660:25-3-1, 660:25-3-2, 660:25-5-1 and 660:25-7-1; Or. Admin. R., Department of Consumer and Business Services, Division of Finance and Securities, Chapter 441, Division 325, §§ 441-325-010 to 441-325-055 and Division 13, §§ 441-13-040; Tex. Admin. Code, Title I, Part IV, Chapter 97, §§ 97.1 to 97.42; Va. Admin. Code, Title 21, Chapter 110, §§ 5-110-10 to 5-110-90; Wash. Admin. Code, Department of Financial Institutions, Securities Division, Chapter 460-80, §§ 460-80-100 to 460-80-910 and Chapter 460-82, §§ 460-82-200; Wis. Admin. Code, Chapters SEC 31 to SEC 36, §§ SEC 31.01 to SEC 36.01.

[4] California (Real Estate Licenses, Business and Professions Code, Div. 4, Part 1, Chap 3, Art. 3, § 10177(m)); Maryland (Gasohol and Gasoline Marketing, Md. Com. Law, Title 11, § 11-303); New York (Motor Fuels, Gen. Bus. Law, Art. 11-B, § 199-b and Cigarettes, Tax Law, Art. 20-A, §§ 485 to 489); Tennessee (Motor Fuel Franchise, Tenn. Code, Title 47, Chap. 25, §§ 47-25-601 to 47-25-607); Vermont (Service Station Operators and oil companies, Vt. Stat., Title 9, Chap. 109, § 4103); Virginia (Motor Vehicles, Va. Code of 1950, Title 46.2, Chap. 15, Art. 7, §§ 46.2-1566 and 46.2-1567); Washington, D.C. (Retail Service Stations, D.C. Code, 1981, Title 10, Chap 2, § 10-222).

[5] 43 FR 59723 & 44 FR 49971.

[6] *Alfred Dunhill Limited. v. Interstate Cigar Co.*, 499 F.2d 232 (2d Cir. 1974) ("Nowhere does the [FTCA] bestow upon either competitors or consumers standing to enforce its provisions."), *Brill v. Catfish Shaks of America Inc.*, 727 F. Supp. 1035 (E.D. La. 1989) ("there is no private right of action for violation of the FTC's franchise disclosure rules") (citing *Freedman v. Meldy's Inc.*, 587 F. Supp. 658 (E.D. Pa. 1984)).

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