W-6: Litigating Franchise Cases Under Unfair Trade Practices Statutes

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Introduction

- Federal Trade Commission
  - Limited Resources
  - No Private Right of Action Under the FTC Act
- 1964 Model Uniform Deceptive Trade Practices Act
A Successful Little FTC Act Claim May Have a Significant Impact on All Parties

• Draining a Defendant of Capital

• Preventing a Defendant from Engaging in One or More Practices

• Obtaining a Monetary Windfall for Plaintiff(s)
Types of Litigants Under Little FTC Acts

• Statutes Where There Is No Private Right of Action
  * Iowa

• Statutes Where a Private Right of Action Only Exists for Consumers
  * Idaho (Lynch v. Math-U-See, Inc.)

• Statutes Where a Private Right of Action Exists for Both Consumers and Competitors
  * Louisiana (BABA Lodging Inc. v. Wyndham Worldwide Operations, Inc.)
Claims Under Little FTC Acts

• Claims for Intentional Misrepresentations
  * Yumilicious Franchise, L.L.C. v. Barrie

• Claims for Negligent Misrepresentations
  * Devayatan LLC v. Travelodge Hotels, Inc.
Claims Under Little FTC Acts

- Claims for Omissions
  * 7-Eleven, Inc. v. Spear
- Claims Among Competitors
  * Original Rex, LLC v. Beautiful Brands Int’l, LLC
Injunctive Relief Under Little FTC Acts

• Suffered Irreparable Harm

• Remedies Available at Law Inadequate

• Balance of Hardships/Remedy in Equity Warranted

• Public Interest Served
Injunctive Relief Under Little FTC Acts (continued)

• Criteria
  * State Specific

• Standing
  * State Specific

Example: Edible Arrangements Int’l v. Notaris
Proof Challenges Under Little FTC Acts

• List of Acts and/or Practices that are *Per Se* Unfair/Deceptive

• Proving the Act or Practice is Egregious

• Proving the Defendant’s Knowledge
Proving the Defendant’s Knowledge

*Depends on which statute Plaintiff proceeds under or another factor...
Proof Challenges Under Little FTC Acts (continued)

• Proving the Plaintiff’s Reliance on the Defendant’s Act/Practice
Proving the Plaintiff’s Reliance on the Defendant’s Act/Practice

*Depends on which statute Plaintiff proceeds under or another factor
Proof Challenges Under Little FTC Acts (continued)

• Proving an Impact on the Public Interest/Public Good
Proving an Impact on the Public Interest/Public Good

KEY
- Yes/No*
- No
- Yes
- N/A

*Depends on which statute Plaintiff proceeds under or another factor
Damages/Attorneys’ Fees

• Enhanced Damages

• Punitive Damages

• Attorneys’ Fees
Questions?