W-7: States’ Rights – Multi-state Franchise Relationships And The Application Of Multiple States’ Franchise Relationship Law

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Types of Multi-State Cases

• Single Franchisee – Single Franchisor – Different States

• Single Franchisee – Multi-State Territory

• Multiple Franchisees – Different States

• Group Actions

• Class Actions
Right To Appear – Pro Hac Vice

• Federal Courts

• State Courts

• Arbitration Forums
Application of Franchise Relationship Statutes

- Franchise business “is or has been” operated in the state
- Franchisee domiciled in state
- Sale made in state
Dormant Commerce Clause

• Commerce among the States in our national economic union

• *Instruction Systems, Inc. v. Computer Curriculum Corp.*
Risk of Extraterritorial Application/Differing standards among the states

• Which states apply their statutes beyond their territory?

• What are the important differences among state statutes?
Default and termination

• Some states require “good cause”.

• Some mandate cure periods.

• Others have non-discrimination provisions.
Good cause

• Nineteen states require “good cause” to terminate.

• Puerto Rico— “just cause” constitutes non-performance of any of the “essential obligations of the contract.

• Iowa—“good cause” includes a legitimate business reason including specifically the failure to comply with any material lawful requirement of the agreement, provided the termination is not arbitrary or capricious.
Good cause

• *Hacienda Mexican Restaurant of Kalamazoo v. Hacienda Franchise Group* (Ind. Ct. App. 1991)—Defaults of three times under the franchise agreement do not prohibit a unilateral termination of the franchise agreement.

• *Seven-Eleven, Inc. v. Sodhi* (D.N.J. May 31, 2016)—court found failure to pay taxes to be a material breach and therefore good cause.
Century 21 Real Estate LLC v. All Professional Realty (E.D. Cal. 2012)

- Franchisees in Hawaii and California
- New Jersey choice of law.
- What law applies
- Was there good cause
Cure periods

• States which require a “reasonable opportunity to cure”: California, Hawaii, Illinois, Michigan and Washington.

• Others have a 30 day cure requirements—Arkansas, Maryland and Rhode Island.

• Iowa states “no less than 30 days, but no more than 90 days” to cure.

• Minnesota and Wisconsin have 60 day periods.

• No cure periods may be required for incurable defaults. *Kilt Franchise Operating LLC v. 1220 LLC* (N.D. Ill. 2016).
Anti-discrimination provisions

• Unfair trade practice to discriminate between franchisees in charges for royalties, goods, equipment and other items—Hawaii, Illinois.
  • Defenses include differences based on material different times, providing assistance to financially troubled franchisees, and regional marketing programs.
• Illinois—franchisee must show that discrimination will cause it competitive harm or competes with the franchisee who receives the benefits.
Anti-discrimination

• Other states with anti-discrimination provisions—Indiana, Washington, Arkansas and Wisconsin.

• Wisconsin and Arkansas--Franchisee cannot discriminate against franchisees regarding the conditions required for renewal.
Renewal notices

• States with minimum notice requirements for non-renewal: Arkansas, California, Connecticut, Delaware, Illinois, Indiana, Iowa, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Rhode Island, Washington and Wisconsin.

• These vary between 60 days and 1 year.
Renewal notices

• Some states impose good cause restrictions for non-renewal as well as purchase of the franchisee’s equity.

• States with additional renewal requirements: Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Nebraska, New Jersey, Rhode Island, Virginia, Washington and Wisconsin.
Transfers

• States requiring “good cause” for refusing to consent to a transfer: Arkansas, California, Hawaii, Indiana, Iowa, Michigan, Minnesota, Nebraska, New Jersey and Washington.

• Failure to permit a transfer without good cause could constitute a deceptive trade practice.
Covenants not to compete

- Illinois, Michigan—failure to renew a franchisee bound by a non-compete requires payment of compensation.

- Indiana—post term non-compete can’t be greater than three years or for a territory greater than the franchisee’s exclusive territory.

- California—unenforceable except in very limited circumstances
First to file rule

• Dueling actions by same parties in different federal courts.

• Substantially similar, nor necessarily identical, claims for relief.

• District court in first filed action may order claims heard in first filed forum.
Group and Class Actions

- Group actions and permissive joinder.
- CAFA and class actions.
Venue Provisions


• Frango Grille USA, Inc. v. Pepe’s Franchising Ltd. (2014).
Choice of Law

Mandatory Arbitration


• *AT&T Mobility, LLC v. Concepcion* (2011).

• *9 U.S.C. Section 2.*