Show Me the Money!
Maximizing Monetary Recovery in Franchise Cases
This could be Huge!
Carrot Top® Franchise System

Franchisor

OF THE

SAME COIN

Franchisee

TWO SIDES
Carrot Top® Franchisor
I guess some obsessions become realities ...

She sees the value in our system!

Everything Carrots!®
The Problem

- Stopped paying royalties
- They were “profitable”
- Still using Carrot Top® & Everything Carrots®
- Owes a HUGE amount
- Threatening to sue
- 8 years left on agreement
Termination Election?

Tried the carrot … time for the stick!
Damage Solutions

• Past due royalties

• Lost profits/LDs

• Lanham Act/trade secrets

• Collectability – personal/spousal guaranties?

Who terminated?

Counterfeiting?
Mitigation/Reduction

- Replacement franchisee?
- Saved expenses?
- Use of marks not willful?
- LDs/lost profit issues/discounting
Missing Information
OVERVIEW

• Expectation damages

• Termination v. abandonment

• *Postal Instant Press, Inc. v. Sealy or American Speedy Printing Centers, Inc. v. AM Marketing*?
OVERVIEW

• Lost profits or LDs?
• No double recoveries
• Experts
Carrot Top® Franchisee
The Problems

• Stopped paying royalties – no revenue
• Not “profitable” - Halwa terrible
• Still using Carrot Top® & Everything Carrots®
• Owe $$ but misrepresentations - fraud
• 8 years left on agreement - 1 year in operation
• Franchisor terminated – still operating
Damage Solutions

- Rescission – restitution
- Statutory damages
- Lost profits or fair market value
- Punitive damages
- Attorney fees

Were there statutory violations?

New business – too speculative?
Damage Challenges

• Contract damage limitations/American Rule

• No duplicative recovery (e.g., lost profits vs. fmv)

• Discount to present value

• No speculation - expert?
Damage Defenses

• Rebut/attack franchisor damage theories and calculation – rebuttal damage expert?

• Challenge personal liability/spousal guaranty

• Lanham Act – not willful?
OVERVIEW
Questions