

Franchise Litigation

Over the past three decades, attorneys in our Franchise, Antitrust and Distribution Practice Group have been providing litigation and arbitration services to franchisors with respect to all aspects of the franchising operations. While our attorneys primarily represent franchisors, from time-to-time we will represent franchisees as to various claims. Handling claims on both sides gives our attorneys a beneficial and unique perspective regarding the needs of franchisees and franchisors.

Franchising is a specialized method for the distribution of goods and services that is widely regulated by state and federal law. These unique and expansive federal and state statutes can impose stringent disclosure, registration and relationship obligations on franchisors. If not monitored closely, failure to comply with these obligations can put franchisors in time consuming and expensive litigation.

Briggs and Morgan is a nationally recognized leader in the full-service representation and counseling of franchisors. Our experience includes representing franchisors in connection with: counseling as to contract drafting and negotiation, disclosure obligations, pre-termination and pre-nonrenewal procedures and general franchisee relationship issues. On the litigation side, our attorneys have a significant amount of experience handling claims pertaining to: wrongful termination or non-renewal; enforcement of non-compete provisions; enforcement of post-termination obligations; collection of outstanding royalties/fees; protection of trademark rights; enforcement of contractual provisions; breach of contract; breach of the implied covenant of good faith and fair dealing; violations of statutory provisions; unfair competition; trade secrets; earnings claims; misrepresentation/fraud; antitrust and encroachment.

Our attorneys are very knowledgeable about the demands and requirements of the various franchise statutes around the nation and stay current with the changes in those statutes which may radically impact the potential actions of a franchisor. One of the leaders of our practice group developed and taught a franchise law course at the Hamline Law School. We provide extensive counseling to our clients to ensure preventive measures are taken to try to avoid unnecessary, extensive and prolonged litigation. However, when litigation and/or arbitration situations arise, our team is experienced and ready to handle any claim regardless of how small or how complex. We have extensive experience enforcing arbitration clauses and successfully arguing in a number of cases FAA preemption of state statutes voiding arbitration and arbitration venue clauses.

Our attorneys have handled litigations and arbitrations throughout the United States and internationally, including cases in Minnesota, California, Colorado, Illinois, Iowa, Michigan, New Jersey, North Carolina, Ohio, Tennessee, Texas and Wisconsin. Over the years, attorneys in our group have represented franchisors in industries such as hair care, bath and body products, ice cream, fitness centers/weight loss clinics, hotels, used sporting goods equipment, delivery services, fast food, pizza and home purchasing.

Experience

- Defeated claims by three largest regional franchisors that franchisor material breached franchise agreement by losing trademark protection of franchise name. *Convenient Foods Mart Inc. v. C.F. Mrts of California, Inc.*, 1990 WL 115797, Bus Franchise Guide (CCH) 9599.
- Defended company in franchise investigation conducted by Minnesota Department of Commerce.
- Defended non-compete action in which plaintiff sought injunction preventing continued employment by competitor through enforcement of non-compete clause contained in employment agreement.

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Ecolab, Inc. v. Gartland, 537 N.W.3d 291

- Enforced a post term franchise non-compete against former franchisee who left for a competing system. *Economou v. Physicians Weight Loss Centers of America*, 756 F.Supp. 1026.
- Enforced arbitration clause in franchise agreement. *Sweet Dreams Unlimited Inc. v. Dial-a-Mattress International Ltd.*, 1 F.3d 639.
- Handled, defeated and resolved claims under the Minnesota Franchise Act, the California Franchise Investment Law, the Connecticut Franchise Act, the Illinois Franchise Disclosure Act, the Iowa Franchise Investment Act, the New Jersey Franchise Practices Act and the Wisconsin Franchise Investment Law.
- Numerous arbitrations on a variety of claims of violations of the Minnesota Franchise Act.
- Obtained AAA arbitration award dismissing franchisee's claims of fraud, negligent misrepresentation, unjust enrichment and violations of the California Franchise Investment Law and Unfair Business Practices Act. Also obtained award of incurred costs and expenses, including attorneys' fees, for franchisor. *XOMSA Corp. And Alex Kohani v. Great Clips, Inc.*
- Obtained dismissal of claimants' charges of discrimination based on sex/pregnancy under Massachusetts and federal law. (*Houle v. Great Clips, Inc. et. al* – 16C-2014-00670; *Richey vs. Great Clips, Inc., et. al* – 16C 2014-00673)
- Obtained dismissal of plaintiff's claims of sexual harassment, retaliatory harassment and constructive discharge under the New Jersey Law Against Discrimination. *Reader v. Great Clips, Inc. et al*
- Obtained dismissal on summary judgment of franchisee's claims of breach of contract, fraud, negligent misrepresentation, breach of fiduciary duty, interference with prospective business advantage, interference with contractual relations and violations of the Minnesota Franchise Act.
- Obtained full summary judgment on claims under the Minnesota and Wisconsin Franchise Act of selling an unregistered/undisclosed franchise based upon estoppel and summary judgment on earning claims for lack of reliance. *U-Bake Rochester, LLC et al v. Utecht Bakeries*, Civ. No. 12-1738 (ADM/SER), 2014 WL 223439.
- Obtained preliminary injunction enforcing non-compete provision and a final arbitration award dismissing franchisee's counterclaims for violations of Minnesota, Iowa and Nebraska franchise laws, common law fraud, negligent fraud and breach of contract. Also obtained award of unpaid royalties/ fees, plus incurred costs and expenses, including attorneys' fees, for franchisor.
- Obtained summary judgment in arbitration dismissing claims under the Michigan Franchise Investment Law. *Grand Bay Marine v. Four Winns Boats, L.L.C.*
- Obtained summary judgment on claims under the Minnesota and Wisconsin Franchise Acts on statute of limitations grounds on action in Scott County.
- Obtained summary judgment on vast majority of claims brought by former franchisee, including earnings claims, fraud claims, RICO claims arising out of franchise relationship. *Physicians Weight Loss Centers of America v. Creighton*, 1992 WL 176992, Bus. Franchise Guide (CCH) 9980.
- Obtained TRO enforcing post-term non-compete provision against franchisee.

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- Obtained TRO, preliminary injunction and ultimately a stipulation for entry of permanent injunctive relief against former employee enforcing post-term contractual obligations, including non-compete, non-solicitation and non-disclosure provisions. *Commodities Specialists Company v. Brummet*
- Represented Master Franchisee in litigation and ongoing disputes with national franchisor.

Insights & Events

News

Jim Long Published in *The Franchise Lawyer*
July 10, 2014

Jim Long to Discuss Bundled Pricing and Loyalty Discounts
May 16, 2014

Publications

Franchise, Antitrust, Distribution and Dealer Newsletter
Spring 2016

Franchise, Antitrust, Distribution and Dealer Newsletter
Winter 2016

Franchise, Antitrust, Distribution and Dealer Newsletter
Fall 2015