Petroleum Marketing Practices Act: Federal District Court Addresses Branded Retailers Challenge to Franchise Termination

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A United States District Court (Northern District California) ("Court")addressed in a January 3rd Order a retail motor fuel franchisee's request for a preliminary injunction against an oil company's termination of its franchise. See *S.A. Mission Corporation v. BP Westcoast Products LLC* 2019 WL 99042 (Jan. 3, 2019).

The franchisee alleged a violation of the federal Petroleum Marketing Practices Act ("PMPA").

The PMPA prohibits a branded refiner/oil jobber from terminating or failing to renew a lease/motor fuel supply contract with a retailer without complying with notice provisions and unless termination/nonrenewal is based on certain statutory grounds. Generally, the federal statute regulates the relationship between any two parties in the marketing chain of branded motor fuel, including refiners, oil jobbers, wholesale distributors, and retailers. Note that the PMPA is only applicable if it involves a "branded" relationship – i.e., authorization to use a refiner's trademark.

Once it is determined the particular branded retail motor fuel outlet fits within the scope of the PMPA, a nonrenewal or termination will require PMPA notice and grounds to terminate/non-renew. The statutory grounds available are outlined in the statute itself. An example of one of the statutory grounds is:

- A failure of the franchisee to comply with a reasonable material provision of the franchise

The Court in its January 3rd Order stated that Plaintiff S.A. Mission Corporation ("SA") owns and operates an ARC-branded retail motor fuel outlet and am/pm mini market in San Francisco, California. SA and Defendant BP West Coast Products ("BP") were parties to two franchise agreements:

- a contract dealer gasoline agreement ("gas agreement")
- an am/pm mini market agreement ("mini market agreement")

These agreements required that SA meet certain "image standards." The requirements included maintaining the premises in good repair and maintaining the mini market according to standards found in BP's store systems manuals.

BP was entitled to perform periodic inspections. Repeated failure or poor performance constituted grounds for termination or nonrenewal of the agreement.

The Court references BP's enforcement of the image standards beginning in 2013 for both the gas station and am/pm mini market. This enforcement was undertaken pursuant to what is referred to as a unified

Consumer and Operations Retail Excellence Core program. The standards are set forth in BP's store systems manual.

Quarterly inspections were taken of franchisee's stations. Under BP's Core program, franchisees had to obtain an inspection score of at least 70 percent to be considered in compliance with the franchise agreements.

BP subsequently instituted what is characterized as a "more muscular" program containing a default escalation process. SA failed a fourth Core inspection. It was therefore was sent a 90-day notice of termination and demand for payment. A termination date of July 2, 2018, was set.

SA filed a motion to preliminarily enjoin BP from terminating the franchises. A temporary stay was granted, further BP inspections were allowed, and additional evidentiary hearings were held.

BP argued that the termination of the franchise agreements was proper based on the failure of consecutive Core inspections. It further argued that termination based on the Core default escalation process was valid pursuant to the pertinent provisions of the agreement.

SA responded that the Core inspections were arbitrary and pretextual for BP's alleged true motive of purchasing its station at a "cheap price" in order to increase BP's "company-owned/operated" portfolio.

The Court noted in analyzing the issue that once a franchisee establishes a franchise relationship has been terminated or that has not been renewed, the franchisor bears the burden of going forward with the evidence to establish as an affirmative defense that such termination of non-renewal was permitted under one of the statutorily enumerated grounds. It further notes that to rebut the franchisor's showing that the franchisee need show only the existence of a sufficiently serious question as to the propriety of the determination under the PMPA to present a fair ground for litigation.

The Court in its Order initially finds that SA met a four-factor test for granting a preliminary injunction. It held that SA had shown that there was a "reasonable chance" that BP would be unable to prove that the termination of both franchises was permissible under the agreements. Note that there is a continuing dispute as to whether the am/pm mini agreement is subject to the PMPA. The Order addresses:

- the Core inspection regime
- balance of hardships
- irreparable harm
- public interest

Based on an analysis of the relevant factors for granting the preliminary injunction the Court preliminarily enjoined BP from terminating SA's gas and am/pm market agreements on condition of a bond in the amount of $60,000 being posted by SA. A subsequent trial will be held on the merits.

A copy of the Order can be found here.