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PMPA Franchise Agreement Disavowing Plaintiff's Claim to an Exclusive Market and Geographic Territory Trumps Alleged Oral Commitment

Partner v. ExxonMobil Oil Corp., 08-1590 (6th Cir. May 4, 2009)

In 2000, plaintiff Partner & Partner, Inc. entered into a lease/franchise agreement with ExxonMobil to operate a Mobil-branded gasoline station. The lease was pursuant to an ExxonMobil Petroleum Marketing Practices Act (PMPA) franchise agreement, 15 USC Sections 2801-2806. The agreement expressly provided that it did not grant plaintiff an exclusive market or geographic area to sell branded gasoline, or to conduct related businesses. ExxonMobil expressly reserved the right to open or continue stations, franchises, or related businesses at locations of its choice.

In 2004, however, ExxonMobil exited the "direct serve" market and moved to a "distributor served" model. It planned to terminate its direct dealer relationships, including its franchise agreement with plaintiff. It offered to allow its direct-served dealers, including plaintiff, to purchase the leased gasoline stations, and to continue to sell branded gasoline under a new PMPA agreement with one of three approved distributors. Plaintiff purchased the leased station, and entered into a 2004 "sales agreement" with ExxonMobil, and executed a new PMPA Motor Fuels Dealer Franchise Agreement with the ExxonMobil approved distributor, McPherson Oil Company. The PMPA agreement between ExxonMobil and plaintiff's distributor included ExxonMobil's expressed reservation of the right to approve or not approve the branding of a new station at locations of its choice.

Plaintiff's station competed with a gasoline station named "Fast Track" located within one mile, but which sold unbranded gasoline. After plaintiff purchased the formerly leased station from ExxonMobil, ExxonMobil approved the re-branding of the "Fast Track" station as an Exxon-branded station, to be supplied under a PMPA agreement with another of its approved distributors. Plaintiff brought an action in the district court alleging a litany of claims, including breach of contract, antitrust, unjust enrichment, tortuous interference with advantageous business relationships, and violation of the Michigan Franchise Investment Law, MCLA Section 445-1508.

The district court granted ExxonMobil's motion for summary judgment on all claims, and the Court of Appeals for the Sixth Circuit affirmed.

Plaintiff claimed that at a meeting of dealers, after the ExxonMobil decision to move to a "distributor served" market in the area, assurances were given that newly branded stations would not be located within one mile of an existing station. Thus, plaintiff claimed that the relevant product market was Exxon-branded gasoline, and that the relevant geographic market, which plaintiff claimed ExxonMobil "monopolized," was the "stretch of Fenkell road served by plaintiff's franchise". (Id. at p. 14).

Citing Queen City Pizza, Inc. v. Dominos Pizza, Inc., 124 F.3d 430 (3rd Cir. 1997), and not uttering the "K" word (see Eastman Kodak Co. v. Image Technical Services, Inc., 504 U.S. 451 (1992)), the court held that:

> "Relevant markets are generally not limited to a single manufacturer's products, but are composed of products that have reasonable interchangeability," citing Brighton Optical, Inc. v. Vision Serv. Plan, 422 F. Supp. 2d 792, 807 (E.D. Mich. 2006).

The court continued

> "If this were not the case, virtually every exclusive distributor relationship would be illegal." Id.

From the principle that the relevant market must include all products that would have been reasonably interchangeable (here, all gasoline that was substitutable with Exxon-branded gasoline), it was but a short drive to the conclusion that plaintiff could not allege "antitrust injury", as the allegations of the complaint were only susceptible of a claim that there was an injury to a competitor, and not to competition in the market as a whole.

Of significance was the clear language, including an integration clause in the PMPA franchise agreement, that ExxonMobil retained the discretion to appoint dealers at its discretion, within any geographic location of its choosing. The court held that the clear language of the franchise agreement, coupled with the integration clause, invoked the application of the Michigan parole evidence rule, thus excluding the claim that there had been an oral commitment to preclude "incumbent dealers from "encroachment." See American Bar Association Section of Antitrust Law Monograph 17, "Franchise Protection: Laws Against Termination and the Establishment of Additional Franchises" (1990).

Authored by:

Don T. Hibner, Jr.

(213) 617-4115

DHibner@sheppardmullin.com