

# Franchise, Dealer & Distributor Disputes

## Creating Value For Our Clients

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Franchisors, manufacturers, and distributors face unique legal and economic challenges. In addition to the intense product and service competition, there are complex and often overlapping state and federal laws that regulate the conduct of their businesses, from the recruiting of franchisees and dealers to the termination of those relationships.

With franchising growing at an unprecedented pace, litigation is also on the rise. The number and intensity of disputes between franchisors and franchisees has grown, and franchise agreements have come under increased scrutiny by the courts.

In addition, franchisors must comply with the Federal Trade Commission (FTC) Franchise Rule, which governs all franchises offered or sold after July 1, 2008. The rule's disclosure requirements, exemptions, and prohibitions impact the franchise litigation climate nationwide.

Our attorneys are dedicated to staying on top of industry trends and factors affecting the competitive marketplace in order to provide the most strategic, efficient, and cost-effective dispute resolutions to our clients.

### Seyfarth Shaw LLP Service Offerings

Seyfarth Shaw's Franchise, Dealer & Distributor Disputes team includes accomplished litigators who are skilled in effectively and efficiently representing franchise and distribution companies at both the trial and appellate level. Our attorneys have experience handling a broad array of disputes, including actions for:

- Automobile Dealers' Day in Court Act
- breach of contract
- implied covenant of good faith and fair dealing

- vicarious liability
- fraud and consumer fraud
- earnings claims
- transfer issues
- enforcement of systems standards
- unpaid royalties and advertising fees
- trade secrets
- trademark and copyright infringement
- territorial disputes
- enforcement of termination rights, including restrictive covenants and registration
- disclosure and other statutory violations

Seyfarth Shaw is adept at representing franchisors in a variety of matters unique to their business relationship, for example, when one party allegedly fails to live up to the terms of the franchise/dealer agreement. For franchisors, this can occur when a franchisee fails to pay agreed

upon fees or fails to maintain the premises in satisfactory condition. Our attorneys also represent clients when a merger or corporate acquisition impacts the franchise agreement, as well as in disputes involving creditors' rights, insolvency or bankruptcy.

We are also skilled in handling franchise terminations and resolving issues that commonly arise during the process. Our team is especially experienced in instances when a franchisee continues to use the franchise name or intellectual property, or when key employees form their own business or go to work for a competitor and take with them valuable trade secrets.

To avoid such situations, we regularly advise clients regarding best practices for drafting confidentiality, non-disclosure, and non-competition agreements with key employees; training management in how to avoid disputes among employees, customers, and suppliers; and advising clients in how to retain confidentiality by limiting access to trade secrets and other intellectual property.

## EFFICIENT LITIGATION APPROACH

Our client, a national franchisor of home improvement service providers, was sued by a former franchisee who claimed that it did not make as much money as the franchisor said it would. The client faced significant monetary loss, negative press, and the loss of stature with other franchisees.

- ▶ After careful review of the issues and discussion of our client's objectives, we positioned the case for settlement early in the litigation process by seeking and receiving an order dismissing some of the claims.

**Result:** Our team successfully negotiated a minimal settlement early in the case, minimizing potentially adverse repercussions and avoiding lengthy and protracted litigation.

## HIGH-STAKES TRIAL VICTORY

Our client, a leading truck manufacturer, distributes its products through a network of about 350 dealers. Our client terminated its business relationship with an investment group that was a minority shareholder in, and acted as, our client's dealer. Our client was sued for violation of the Automobile Dealers' Day in Court Act, breach of a stock purchase agreement, and tortious interference with contract. Plaintiffs sought more than \$7 million in compensatory damages and an additional three times that amount in punitive damages.

- ▶ Following extensive fact and expert discovery, we worked with our client to develop a comprehensive trial strategy that included counterclaims for conversion and breach of fiduciary duty.

**Result:** Following extensive fact and expert discovery, we worked with our client to develop a comprehensive trial strategy that included counterclaims for conversion and breach of fiduciary duty.

## A Strategic Approach to Franchise, Dealer & Distributor Disputes

We understand that, should litigation arise, your business is on the line. For that reason, our attorneys are prepared to quickly and aggressively obtain injunctive relief in time-sensitive situations.

We also realize that not every matter belongs in a courtroom, and that dispute resolution is often a more efficient and cost-effective forum for clients. To that end, our attorneys are skilled at representing franchisors in arbitration, mediation, and other forms of alternative dispute resolution with franchisees, suppliers to the network, other franchisors and distributors, and governmental agencies. In addition, we work closely with the firm's corporate franchising practice to recommend business solutions that defuse volatile situations and help our clients avoid problems at the outset.

## Benefit to You

Our ability to match appropriate legal experience and knowledge to the needs of our clients creates a seamless experience that helps clients achieve their objectives. Our experience representing a wide variety of franchise-related clients gives us a balanced, practical approach to delivering effective solutions to our clients.

Since franchise, dealer or distributor disputes often arise as a result of events common to any trade or business, we also work closely with the firm's other practices to ensure the most comprehensive representation. Our understanding of the business issues facing companies involved in franchise, dealer or distribution relationships helps to ensure legal representation that effectively aligns the litigation approach to your objectives. ■

## ENFORCING FRANCHISE STANDARDS

We represented a large restaurant franchisor in a case against a franchisee which was maintaining a restaurant far below health code standards and was delinquent in franchise payments. Our client wanted to ensure that the franchisee did not continue to use the brand name at a sub-standard establishment.

- ▶ Our team got the franchisee to make unequivocal promises regarding cleanliness, with severe penalties for violations, and to agree to pay installments toward the outstanding amount owed.

**Result:** Our client is satisfied with the resolution of this dispute, as it was achieved without prolonged litigation.

## About Seyfarth Shaw

Seyfarth Shaw LLP (“Seyfarth”) was founded in 1945 by three lawyers and has grown to more than 800 lawyers across 13 markets in the U.S. and abroad. We handle issues for our clients in all key areas including labor and employment, litigation, construction, corporate, employee benefits, environmental, government contracts, intellectual property, commercial litigation, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies and various types of funds. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.



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