Conn. Gen. Stat. § 42-133k

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133k. Definitions.

For the purposes of sections 42-133j to 42-133n, inclusive:

(1) "Franchise" means any contract (A) between a refiner and a distributor; (B) between a refiner and a retailer; (C) between a distributor and another distributor; or (D) between a distributor and a retailer, under which a refiner or distributor, as the case may be, authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such use.

(2) "Franchise" includes (A) any contract under which a retailer or distributor, as the case may be, is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such occupancy; (B) any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed (i) under a trademark owned or controlled by a refiner; or (ii) under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned or distributed under a trademark owned or controlled on such date by a refiner; and (iii) the unexpired portion of any franchise, as defined by the preceding provisions of this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provision of state law which permits such transfer or assignment without regard to any provision of the franchise.

(3) "Franchise relationship" means the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

(4) "Franchisor" means a refiner or distributor, as the case may be, who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(5) "Franchisee" means a retailer or distributor, as the case may be, who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

History

P.A. 77-493, S. 2; P.A. 91-195.

Annotations

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 91-195 replaced the previous definitions with the definitions in the Federal Petroleum Marketing Practices Act, 15 U.S.C. 2801.

End of Document

Conn. Gen. Stat. § 42-133l

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133l. Franchise agreements. Termination. Good cause. Notice required. Prohibited conduct. Terms.

(a) No franchisor shall, directly, or through any officer, agent or employee, terminate, cancel or fail to renew a franchise, except for good cause shown which shall include, but not be limited to the franchisee's refusal or failure to comply substantially with any material and reasonable obligation of the franchise agreement except such obligations under subsection (e) of this section or for the reasons stated in subsection (d) of this section. The franchisor shall give the franchisee written notice of such termination, cancellation or intent not to renew, at least sixty days in advance of such termination, cancellation or failure to renew with the cause stated thereon; provided, in the event the franchisor elects not to renew a franchise pursuant to subsection (d) of this section, the franchisor shall give the franchisee written notice of such intent not to renew at least six months prior to the expiration of the current franchise agreement. The provisions of this section shall not apply (1) where the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship, in which event, such notice may be given fifteen days in advance of such termination, cancellation or failure to renew, or (2) where the alleged grounds are the conviction of the franchisee in a court of competent jurisdiction of an offense punishable by a term of imprisonment in excess of one year and directly related to the business conducted pursuant to the franchise, in which event, such notice may be given at any time following such conviction and shall be effective upon delivery and written receipt of such notice, subject to the requirements of subdivision (10) of subsection (f) of this section.

(b) Upon termination of any franchise for whatever cause or reason, except voluntary relinquishment or abandonment of the franchise by the franchisee, the franchisor shall fairly compensate the franchisee or the franchisee's estate for the fair market value, at the time of termination of the franchise, of the franchisee's inventory, supplies, equipment and furnishings purchased by the franchisee from the franchisor or its approved sources and good will, if any, exclusive of personalized items which have no value to the franchisor and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchise business; provided that compensation need not be made to a franchisee for good will if (1) the franchisee has been given one year's notice of nonrenewal, and (2) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor, and provided further, that a franchisor may offset against amounts owed to a franchisee under this subsection any amount owed by such franchisee to the franchisor.

(c) Notwithstanding the provisions of section 52-550, no franchise entered into or renewed on or after October 1, 1973, whether oral or written, shall be for a term of less than three years and for successive terms of not less than three years thereafter unless cancelled, terminated or not renewed pursuant to subsections (a) and (d) of this section.

(d) A franchisor may elect not to renew a franchise which involves the lease by the franchisor to the franchisee of real property and improvement, in the event the franchisor (1) sells or leases such real property and improvements to other than a subsidiary or affiliate of the franchisor for any use; or (2) sells or leases such real property to a subsidiary or affiliate of the franchisor, except such subsidiary or affiliate shall not use such real property for the operation of the same business of the franchisee; or (3) converts such real property and improvements to a use not covered by the franchise agreement; or (4) has leased such

real property from a person not the franchisee and such lease from such person is terminated or not renewed.

(e) No franchisor shall terminate, cancel or fail to renew a franchise for the failure or refusal of the franchisee to do any of the following: (1) Refusal to take part in promotional campaigns of the franchisor's products; (2) failure to meet sales quotas suggested by the franchisor; (3) refusal to sell any product at a price suggested by the franchisor or supplier; (4) refusal to keep the premises open and operating during those hours which are documented by the franchisee to be unprofitable to the franchisee or to preclude the franchisee from establishing the franchisee's own hours of operation beyond the hour of ten o'clock p.m. and prior to six o'clock a.m.; (5) refusal to give the franchisor or supplier financial records of the operation of the franchise which are not related or necessary to the franchisee's obligations under the franchise agreement. Subdivisions (1) to (5), inclusive, of this subsection shall not be deemed material and reasonable obligations, substantial failure to comply with franchise terms, or good cause under subsection (a) of this section.

(f) No franchisor, directly or indirectly, through any officer, agent or employee, shall do any of the following: (1) Require a franchisee at the time of entering into an agreement to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by sections 42-133j to 42-133n, inclusive; (2) prohibit, directly or indirectly, the right of free association among franchisees for any lawful purpose; (3) prohibit the transfer by will of any franchise and the rights of any franchisee under any franchise agreement to a spouse or child of such franchisee; (4) require or prohibit any change in management of any franchise unless such requirement or prohibition of such change shall be for good cause, which cause shall be stated in writing by the franchisor; (5) impose unreasonable standards of performance upon a franchisee; (6) fail to deal in good faith with a franchisee; (7) sell, rent or offer to sell to a franchisee any product or service for more than a fair and reasonable price; (8) impose on a franchisee by contract, rule or regulation, whether written or oral, any standard of conduct unless the franchisor, his agents or representatives sustain the burden of proving such to be reasonable and necessary; (9) discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless (A) any such type of discrimination between franchisees would be necessary to allow a particular franchisee to fairly meet competition in the open market, or (B) to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable, is based on franchises granted at materially different times and such discrimination is reasonably related to such difference in time or on other proper and justifiable distinctions considering the purposes of sections 42-133j to 42-133n, inclusive, and is not arbitrary; (10) notify the franchisee of a claimed breach of franchise agreement for good cause later than one hundred eighty days from the date said good cause arises or one hundred eighty days after the franchisor knew or in the exercise of reasonable care should have known of said claimed good cause; or (11) require or coerce a gasoline franchisee to sell gasoline at a specific price or in a specific price range.

(g) Any franchisee or franchisor, upon request, shall have the right to have the question of good cause submitted to arbitration in accordance with the rules of the American Arbitration Association. Any franchisee or franchisor, upon the rendering of a decision in arbitration, shall have the right to apply to the superior court in the county wherein such franchisee or franchisor is doing business or resides for confirmation, modification, correction or vacation of any arbitration decision.

(h) Every franchisor shall protect and save harmless its franchisee from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of defect in merchandise or methods or procedures prescribed by the franchisor and performed by such franchisee, except for alleged negligence or wilful misconduct of such franchisee.

(i) Every franchisor shall reimburse its franchisee at the prevailing retail price for any services rendered or parts supplied by such franchisee in satisfaction of any warranty issued by such franchisor, and no franchisor shall restrict a franchisee from rendering services or providing parts in accordance with standards of good workmanship in satisfaction of any such warranty.

(j) Any waiver of the rights of a franchisee under sections 42-133m, 42-133n and this section which is contained in any franchise agreement entered into or amended on or after October 1, 1977, shall be void.

History

P.A. 77-493, S. 3; June Sp. Sess. P.A. 98-1, S. 70, 121; P.A. 04-70, S. 1; P.A. 06-196, S. 167.

Annotations

LexisNexis® Notes

Case Notes

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview

Constitutional Law: Supremacy Clause: General Overview

Energy & Utilities Law: Oil Industry: Franchising & Marketing

Energy & Utilities Law: Oil Industry: Petroleum Marketing Practices Act: General Overview

Real Property Law: Landlord & Tenant: Lease Agreements: Commercial Leases: General Overview

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

15 U.S.C.S. § 2806(a) of the Petroleum Marketing Practices Act, 15 U.S.C.S. § 2801 et seq., manifests a congressional intent to treat state laws which govern petroleum franchises as severable, which supports the conclusion that the preemption of other parts of the Connecticut Franchise Act, Conn. Gen. Stats. § 42-133e et seq., does not indicate preemption of Conn. Gen. Stat. § 42-133l(c). Lasko v. Consumers Petroleum of Connecticut, Inc., 547 F. Supp. 211, 1981 U.S. Dist. LEXIS 10144 (D. Conn. 1981), disapproved, Freeman v. BP Oil, Inc., Gulf Products Div., 855 F.2d 801, 1988 U.S. App. LEXIS 12872 (11th Cir. Fla. 1988).

Although it is clear that Conn. Gen. Stat. § 42-133l(a), (d), and (e) of the Connecticut Franchise Act, Conn. Gen. Stat. § 42-133e et seq., are preempted by 15 U.S.C.S. § 2806(a) of the Petroleum Marketing Practices Act, 15 U.S.C.S. § 2801 et seq., Conn. Gen. Stat. § 42-133l(c), which simply sets minimum terms for gasoline franchises, is not preempted. Lasko v. Consumers Petroleum of Connecticut, Inc., 547 F. Supp. 211, 1981 U.S. Dist. LEXIS 10144 (D. Conn. 1981), disapproved, Freeman v. BP Oil, Inc., Gulf Products Div., 855 F.2d 801, 1988 U.S. App. LEXIS 12872 (11th Cir. Fla. 1988).

Conn. Gen. Stat. § 42-133l(c) of the Connecticut Franchise Act, Conn. Gen. Stat. § 42-133e et seq., applies to the duration or one of the substantive terms of a franchise agreement, and not to the grounds for termination or nonrenewal, nor to the kinds of notice which a franchisor must afford a franchisee. Lasko v. Consumers Petroleum of Connecticut, Inc., 547 F. Supp. 211, 1981 U.S. Dist. LEXIS 10144 (D. Conn. 1981), disapproved, Freeman v. BP Oil, Inc., Gulf Products Div., 855 F.2d 801, 1988 U.S. App. LEXIS 12872 (11th Cir. Fla. 1988).

Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview

Pursuant to Conn. Gen. Stat. § 42-133l(c) of the Connecticut Franchise Act, Conn. Gen. Stat. § 42-133e et seq., an existing lease between a franchisor and its franchisee was renewed for a three-year term on October 1, 1977, and was renewed automatically on October 1, 1980, for another three-year term because of the franchisor's failure to give proper notice of nonrenewal as required by 15 U.S.C.S. § 2804(a)(2) of the Petroleum Marketing Practices Act, 15 U.S.C.S. § 2801 et seq. Lasko v. Consumers Petroleum of Connecticut, Inc., 547 F. Supp. 211, 1981 U.S. Dist. LEXIS 10144 (D. Conn. 1981), disapproved, Freeman v. BP Oil, Inc., Gulf Products Div., 855 F.2d 801, 1988 U.S. App. LEXIS 12872 (11th Cir. Fla. 1988).

Constitutional Law: Supremacy Clause: General Overview

Conn. Gen. Stat. § 42-133l(a), (e)(2), and (e)(4) of the Connecticut Gasoline Dealers Act were preempted by the Petroleum Marketing Practices Act (PMPA), 15 U.S.C.S. §§ 2801-2806, to the extent that the Connecticut act affected a franchisor oil company's termination of a petroleum franchise relationship under the PMPA because the state provisions conflicted with the permissible grounds for franchise termination in the PMPA. Mobil Oil Corp. v. Karbowski, 667 F. Supp. 927, 1987 U.S. Dist. LEXIS 8857 (D. Conn. 1987), disapproved, Jimenez v. BP Oil, Inc., 853 F.2d 268, 1988 U.S. App. LEXIS 10730 (4th Cir. Md. 1988), aff'd, 879 F.2d 1052, 1989 U.S. App. LEXIS 10250 (2d Cir. Conn. 1989).

Energy & Utilities Law: Oil Industry: Franchising & Marketing

Conn. Gen. Stat. § 42-133l(a), (e)(2), and (e)(4) of the Connecticut Gasoline Dealers Act were preempted by the Petroleum Marketing Practices Act (PMPA), 15 U.S.C.S. §§ 2801-2806, to the extent that the Connecticut act affected a franchisor oil company's termination of a petroleum franchise relationship under the PMPA because the state provisions conflicted with the permissible grounds for franchise termination in the PMPA. Mobil Oil Corp. v. Karbowski, 667 F. Supp. 927, 1987 U.S. Dist. LEXIS 8857 (D. Conn. 1987), disapproved, Jimenez v. BP Oil, Inc., 853 F.2d 268, 1988 U.S. App. LEXIS 10730 (4th Cir. Md. 1988), aff'd, 879 F.2d 1052, 1989 U.S. App. LEXIS 10250 (2d Cir. Conn. 1989).

Energy & Utilities Law: Oil Industry: Petroleum Marketing Practices Act: General Overview

Conn. Gen. Stat. § 42-133l(a), (e)(2), and (e)(4) of the Connecticut Gasoline Dealers Act were preempted by the Petroleum Marketing Practices Act (PMPA), 15 U.S.C.S. §§ 2801-2806, to the extent that the Connecticut act affected a franchisor oil company's termination of a petroleum franchise relationship under the PMPA because the state provisions conflicted with the permissible grounds for franchise termination in the PMPA. Mobil Oil Corp. v. Karbowski, 667 F. Supp. 927, 1987 U.S. Dist. LEXIS 8857 (D. Conn. 1987), disapproved, Jimenez v. BP Oil, Inc., 853 F.2d 268, 1988 U.S. App. LEXIS 10730 (4th Cir. Md. 1988), aff'd, 879 F.2d 1052, 1989 U.S. App. LEXIS 10250 (2d Cir. Conn. 1989).

Pursuant to Conn. Gen. Stat. § 42-133l(c) of the Connecticut Franchise Act, Conn. Gen. Stat. § 42-133e et seq., an existing lease between a franchisor and its franchisee was renewed for a three-year term on October 1, 1977, and was renewed automatically on October 1, 1980, for another three-year term because of the franchisor's failure to give proper notice of nonrenewal as required by 15 U.S.C.S. § 2804(a)(2) of the Petroleum Marketing Practices Act, 15 U.S.C.S. § 2801 et seq. Lasko v. Consumers Petroleum of Connecticut, Inc., 547 F. Supp. 211, 1981 U.S. Dist. LEXIS 10144 (D. Conn. 1981), disapproved, Freeman v. BP Oil, Inc., Gulf Products Div., 855 F.2d 801, 1988 U.S. App. LEXIS 12872 (11th Cir. Fla. 1988).

15 U.S.C.S. § 2806(a) of the Petroleum Marketing Practices Act, 15 U.S.C.S. § 2801 et seq., manifests a congressional intent to treat state laws which govern petroleum franchises as severable, which supports the conclusion that the preemption of other parts of the Connecticut Franchise Act, Conn. Gen. Stats. § 42-133e et seq., does not indicate preemption of Conn. Gen. Stat. § 42-133l(c). Lasko v. Consumers Petroleum of Connecticut, Inc., 547 F. Supp. 211, 1981 U.S. Dist. LEXIS 10144 (D. Conn. 1981), disapproved, Freeman v. BP Oil, Inc., Gulf Products Div., 855 F.2d 801, 1988 U.S. App. LEXIS 12872 (11th Cir. Fla. 1988).

Although it is clear that Conn. Gen. Stat. § 42-133l(a), (d), and (e) of the Connecticut Franchise Act, Conn. Gen. Stat. § 42-133e et seq., are preempted by 15 U.S.C.S. § 2806(a) of the Petroleum Marketing Practices Act, 15 U.S.C.S. § 2801 et seq., Conn. Gen. Stat. § 42-133l(c), which simply sets minimum terms for gasoline franchises, is not preempted. Lasko v. Consumers Petroleum of Connecticut, Inc., 547 F. Supp. 211, 1981 U.S. Dist. LEXIS 10144 (D. Conn. 1981), disapproved, Freeman v. BP Oil, Inc., Gulf Products Div., 855 F.2d 801, 1988 U.S. App. LEXIS 12872 (11th Cir. Fla. 1988).

Real Property Law: Landlord & Tenant: Lease Agreements: Commercial Leases: General Overview

Plaintiff landlord was not precluded from from bringing a suit to recover possession of real property leased by defendant tenant under Conn. Gen. Stat. §§ 42-133f and 42-133l because the tenant failed to establish a franchisor-franchisee relationship and the facts indicated that the relationship was actually a landlord-tenant relationship giving rise to the claim. Consumers Petroleum of Connecticut, Inc. v. Duhan, 38 Conn. Supp. 495, 452 A.2d 123, 1982 Conn. Super. LEXIS 227 (Conn. Super. Ct. 1982).

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

(Revisor's note: In 1995 the Revisors editorially changed the numeric indicators (1) and (2) in Subsec. (f)(9) to (A) and (B) respectively for consistency with statutory usage); June Sp. Sess. P.A. 98-1 made a technical change in Subsec. (f), effective June 24, 1998; P.A. 04-70 amended Subsec. (f) by deleting a provision that "nothing under this subsection shall be construed as granting a franchisor a right that may be limited by any other state or federal statute", and by adding Subdiv. (11) prohibiting the requirement or coercion of a gasoline franchisee to sell gasoline at a specific price or price range; P.A. 06-196 made technical changes in Subsec. (e), effective June 7, 2006.

Case Notes:

Cited. 38 Conn. Supp. 495.

Conn. Gen. Stat. § 42-133m

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Sec. 42-133m. Assignment of franchise. Automatic termination.

(a) A term in any franchise agreement between a franchisor and a franchisee which prohibits the voluntary assignment of the franchise to which they are parties, or which requires the franchisor's consent to such assignment, is ineffective and void as contrary to public policy unless such term provides that consent may be or is reasonably withheld. Reasonable withholding of consent includes, but is not limited to: (1) Material and substantial change of the other party's duties; (2) material and substantial increase of the other party's contractual burden of risk; (3) material and substantial impairment of the other party's opportunity to obtain return performance.

(b) A term in any franchise agreement between a franchisor and franchisee which provides for the termination of the franchise to which they are parties upon the death of the franchisee is ineffective and void as contrary to public policy. If the franchisee at the time of death held an interest in a franchise, such interest may be passed by will or by intestacy to his spouse or child, or may be disposed of by his estate. The right of first refusal of such sale shall be granted to the franchisor. In the event of such disposition and for the purpose of avoiding or preventing such disposition, the franchisor shall be required to show that said disposition will materially and substantially prejudice such franchisor's rights under the terms of the then existing franchise agreement, as set forth in subsection (a) of this section.

History

P.A. 77-493, S. 4.

Annotations

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

Conn. Gen. Stat. § 42-133n

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Sec. 42-133n. Remedies. Effect of judgment. Limitation of actions.

(a) Any franchisee may bring an action for violation of sections 42-133l or 42-133m in the Superior Court to recover damages sustained by reason of such violation, which action shall be privileged in respect to its assignment for trial and, where appropriate, may apply for injunctive relief as provided in chapter 916. Such franchisee, if successful, shall be entitled to costs, including, but not limited to, reasonable attorneys' fees.

(b) A final judgment, order or decree heretofore or hereafter rendered against a franchisor, in any civil, criminal or administrative proceeding under any federal or state act relating to antitrust laws or to franchising, or sections 42-133j to 42-133n, inclusive, shall be regarded as and may be introduced as evidence against such franchisor in any action brought by any party against such franchisor under subsection (a) of this section.

(c) The pendency of any civil, criminal or administrative proceeding against a franchisor, its agents or representatives, brought by federal or state authorities or any of their respective agencies under any federal or state act relating to antitrust laws or to franchising, or under section 42-133l or 42-133m, shall toll the limitation of any civil action brought under sections 42-133j to 42-133n, inclusive, if the action hereunder is then instituted within one year after the final judgment or order in such proceedings, provided such limitation of actions shall in any case toll the law as long as there is actual concealment on the part of any franchisor, its agents or representatives.

History

P.A. 77-493, S. 5; P.A. 06-196, S. 270.

Annotations

Opinion Notes

OPINIONS OF ATTORNEY GENERAL

No. 2008-010, 2008 Conn. AG LEXIS 9.

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 06-196 made technical changes in Subsec. (c), effective June 7, 2006.

Conn. Gen. Stat. § 42-133r

Current through Chapter 91 of the 2022 Regular Session

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Sec. 42-133r. Definitions.

As used in sections 42-133r to 42-133ee, inclusive, unless the context indicates a different meaning:

(1) "Manufacturer" means any person who manufactures or assembles new motor vehicles, or imports motor vehicles for distribution to dealers or through distributors, or factory branches.

(2) "Distributor" means any person who offers for sale, sells or distributes any new motor vehicle to dealers or who maintains factory representatives or who controls any person, firm, association, joint venture corporation or trust, who offers for sale, sells or distributes any new motor vehicle to dealers.

(3) "Factory branch" means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, motor vehicles to a distributor or dealer, or for directing or supervising factory or distributor representatives.

(4) "Owner" means any person holding an ownership interest in a business entity operating as a dealer or under a franchise as defined in this section either as a corporation, partnership or sole proprietorship. To the extent that the rights of any owner under sections 42-133r to 42-133ee, inclusive, conflict with the rights of any other owner, such rights shall accrue in priority order based on the percentage of ownership interest held by each owner with the owner having the greatest ownership interest having first priority and succeeding priority accruing to other owners in the descending order of their percentage of ownership interest.

(5) "Dealership facilities" means real estate, buildings, fixtures and improvements which are used in the course of business under a franchise by a new motor vehicle dealer.

(6) "Dealer" means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new motor vehicles and who holds a valid sales and service agreement, franchise or contract, granted by a manufacturer or distributor for the retail sale of the manufacturer's or distributor's new motor vehicles.

(7) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the public highways, other than a farm tractor or other machinery or tools used in the production, harvesting and care of farm products.

(8) "New motor vehicle" means a motor vehicle which has been sold to a new motor vehicle dealer and which has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer.

(9) "Established place of business" means a permanent, commercial building easily accessible and open to the public at reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of vehicles, may be lawfully carried on.

(10) "Franchise" means a written agreement or contract between a manufacturer or distributor and a dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchise product or leases or rents the dealership premises.

(11) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(12) "Designated family member" means the spouse, child, grandchild, parent, brother or sister of an owner who, in the case of the owner's death, is entitled to inherit the ownership interest in the dealer under the terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a dealer, has been appointed by a court as the legal representative of the dealer's property.

(13) "Person" means a natural person, partnership, corporation, limited liability company, association, trust, estate or any other legal entity.

(14) "Relevant market area" means the area within a radius of fourteen miles around an existing dealer or the area of responsibility defined in a franchise, whichever is greater.

(15) "Commissioner" means the Commissioner of Motor Vehicles.

History

P.A. 82-445, S. 1, 15; P.A. 83-198, S. 1, 11; P.A. 95-79, S. 162, 189.

Annotations

LexisNexis® Notes

Case Notes

Notes to Unpublished Decisions

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Franchise Agreements

Business & Corporate Law: Distributorships & Franchises: Registration & Disclosure: Requirements

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Unpublished decision: Alleged franchisee was entitled to an injunction to prevent the alleged franchisor from terminating the parties' franchise agreement; the evidence presented was sufficient to show that the alleged franchisor exercised sufficient control over the alleged franchisee's distribution of the alleged franchisor's bread, such that, the alleged franchisee was a franchise pursuant to Conn. Gen. Stat. § 42-133r, and that the alleged franchisor failed to meet its burden of proof to show good cause for a termination of the franchise agreement. Hillegas v. V.B.C., Inc., 2007 Conn. Super. LEXIS 2694 (Conn. Super. Ct. Oct. 15, 2007).

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Franchise Agreements

Unpublished decision: Alleged franchisee was entitled to an injunction to prevent the alleged franchisor from terminating the parties' franchise agreement; the evidence presented was sufficient to show that the alleged franchisor exercised sufficient control over the alleged franchisee's distribution of the alleged

franchisor's bread, such that, the alleged franchisee was a franchise pursuant to Conn. Gen. Stat. § 42-133r, and that the alleged franchisor failed to meet its burden of proof to show good cause for a termination of the franchise agreement. Hillegas v. V.B.C., Inc., 2007 Conn. Super. LEXIS 2694 (Conn. Super. Ct. Oct. 15, 2007).

Business & Corporate Law: Distributorships & Franchises: Registration & Disclosure: Requirements

Unpublished decision: In a motor vehicles dealerships' franchising dispute, the identification by the department of motor vehicles (DMV)hearing officer of the relevant market area (RMA) as a radius of 14 miles around the proposed dealership, which conflicted with the statutory definition of a 14 mile radius around an existing dealer contained at Conn. Gen. Stat. § 42-133r(14), did not justify reversal of the DMV decision because the dealers challenging the decision did not show how the failure to consider the outer part of the combined RMA in analyzing the factors in Conn. Gen. Stat. § 42-133dd(c)(1), (5), (10) had any affect on the outcome. Mario D'Addario Buick v. Conn. Dmv, 2001 Conn. Super. LEXIS 2979 (Conn. Super. Ct. Oct. 12, 2001).

Opinion Notes

OPINIONS OF ATTORNEY GENERAL

[NO NUMBER IN ORIGINAL], 1983 Conn. AG LEXIS 50.

[NO NUMBER IN ORIGINAL], 1983 Conn. AG LEXIS 63.

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 83-198 redefined "franchise" in Subdiv. (10) to include the contractual relations between a distributor and dealer; P.A. 95-79 redefined "person" to include a limited liability company, effective May 31, 1995.

Case Notes:

Cited. 194 Conn. 129; 239 Conn. 437.

End of Document

Conn. Gen. Stat. § 42-133s

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133s. Obligations of manufacturers and distributors. Retail rate for parts and labor. Establishment, rebuttal and protest. Hearings. Dealer's claims.

(a) Each manufacturer or distributor shall specify in writing to each of its dealers licensed in this state, the dealer's obligations for predelivery preparation and warranty service on its products, and shall compensate the dealer for such preparation and service. Compensation for parts used in warranty service shall be fair and reasonable, as determined by methods described in subsection (b) of this section. Compensation for labor used in warranty service shall be fair and reasonable, as determined by methods described in subsection (c) of this section.

(b) The retail rate customarily charged by the dealer for parts shall be established by the dealer submitting to the manufacturer or distributor one hundred sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or sixty consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring the average percentage markup. The average of the markup rates shall be presumed to be fair and reasonable, however, a manufacturer or distributor may, not later than thirty days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the practices of all other franchised motor vehicle dealers in the vicinity offering the same line-make vehicles. The retail rate shall go into effect thirty days following the declaration, subject to audit of the submitted repair orders by the franchisor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the commissioner not later than thirty days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving that the rate declared by the dealer was unfair and unreasonable as described in this subsection and that the proposed adjustment of the average percentage markup is fair and reasonable pursuant to the provisions of this subsection.

(c) The retail rate customarily charged by the dealer for labor may be established by submitting to the manufacturer or distributor all nonwarranty customer-paid service repair orders covering repairs made during the month prior to the submission and dividing the amount of the dealer's total labor sales by the number of total labor hours that generated those sales. The average labor rate shall be presumed to be fair and reasonable, provided a manufacturer or distributor may, not later than thirty days after submission, rebut such presumption by reasonably substantiating that such rate is unfair and unreasonable in light of the practices of all other franchised motor vehicle dealers in the vicinity offering the same line-make vehicles. The average labor rate shall go into effect thirty days following the declaration, subject to audit of the submitted repair orders by the franchisor and a rebuttal of such declared rate. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average labor rate based on such rebuttal not later than thirty days after submission. If the dealer does not agree with the proposed

average labor rate, the dealer may file a protest with the commissioner not later than thirty days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving that the rate declared by the dealer was unfair and unreasonable as described in this subsection and that the proposed adjustment of the average labor rate is fair and reasonable pursuant to the provisions of this subsection.

(d) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work shall not be included in the calculation: (1) Repairs for manufacturer or distributor special events, specials or promotional discounts for retail customer repairs; (2) parts sold at wholesale; (3) engine assemblies and transmission assemblies; (4) routine maintenance not covered under any retail customer warranty, such as fluids, filters and belts not provided in the course of repairs; (5) nuts, bolts, fasteners, and similar items that do not have an individual part number; (6) tires; and (7) vehicle reconditioning.

(e) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost, to use in performing repairs under a recall, campaign service action or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the average markup on the cost for the part or component as listed in the manufacturer's or distributor's price schedule less the cost for the part or component.

(f) A manufacturer or distributor may not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time consuming method or by requiring information that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A dealer may not declare an average percentage markup or average labor rate more than twice in one calendar year.

(g) A manufacturer or distributor may not otherwise recover its costs from dealers within this state, including an increase in the wholesale price of a vehicle or surcharge imposed on a dealer solely intended to recover the cost of reimbursing a dealer for parts and labor pursuant to this section, provided a manufacturer or distributor shall not be prohibited from increasing prices for vehicles or parts in the normal course of business.

(h) Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed.

(i) Each manufacturer or distributor shall perform all warranty obligations, include in written notices of factory recalls to owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects and compensate dealers for repairs necessitated by such recall.

(j) All claims by dealers under this section for such labor and parts and all claims for compensation relative to any sales incentive, marketing and advertising programs shall be paid not later than thirty days after approval by the manufacturer or distributor, provided manufacturers or distributors retain the right to audit such claims and to charge-back the dealer for false or unsubstantiated claims for a period of one year following payment. A manufacturer or distributor shall not deny a claim submitted under this subsection or charge-back such a claim or payment following a timely audit based solely on the dealer's failure to comply with a claim processing procedure, a clerical error or other administrative technicality, provided such failure does not call into question the legitimacy of the claim. The manufacturer or distributor shall allow the dealer to resubmit such claim according to reasonable manufacturer or distributor guidelines not later than thirty days after the initial claim denial or charge-back. If there is evidence of fraud, the provisions of this subsection shall not limit the right of a manufacturer or distributor to audit a dealer for longer periods of time and charge-back the dealer for any fraudulent claim. Dealers shall be required to maintain defective parts for a period of not longer than ninety days following submission of claims. All such claims shall be either approved or disapproved not later than thirty days after their receipt on forms, and in the manner specified by, the manufacturer or distributor. Any claim not disapproved in writing or by means of electronic

transmission not later than thirty days after receipt shall be deemed approved and payment shall be made within thirty days.

History

P.A. 82-445, S. 2, 15; P.A. 83-198, S. 2, 11; P.A. 95-245, S. 1, 3; P.A. 09-50, S. 1; P.A. 15-191, S. 1, eff. Oct. 1, 2015.

Annotations

LexisNexis® Notes

Notes

Amendment Notes

2015 amendment, by P.A. 15-191, effective Oct. 1, 2015, in (j), inserted “marketing and advertising” and substituted “one year” for “two years” in the first sentence and inserted the second and third sentences.

Case Notes

Notes to Unpublished Decisions

Business & Corporate Law: Distributorships & Franchises: General Overview

Constitutional Law: Congressional Duties & Powers: Commerce Clause: Dormant Commerce Clause

Constitutional Law: Congressional Duties & Powers: Contracts Clause: Construction

Business & Corporate Law: Distributorships & Franchises: General Overview

Unpublished decision: Because the alliance of automobile manufacturer's complaint challenging the 2009 amendments to the Connecticut Franchise Act did not plausibly allege a substantial impairment, the district court properly dismissed its Contracts Clause claim. Alliance of Auto. Mfrs., Inc. v. Currey, 610 Fed. Appx. 10, 2015 U.S. App. LEXIS 5528 (2d Cir. Conn. 2015), cert. denied, 136 S. Ct. 1374, 194 L. Ed. 2d 359, 2016 U.S. LEXIS 1802 (U.S. 2016).

Unpublished decision: Alliance's dormant Commerce Clause claim was properly dismissed because it did not allege facts suggesting that the 2009 amendments to the Connecticut Franchise Act discriminated against interstate commerce, it could not state an undue burden claim, and the fact that sales of some vehicles to Connecticut automobile dealers might occur outside of the state was insufficient to state a claim that the 2009 Amendments, on their face, exerted unconstitutional extraterritorial control over out-of-state commerce. Alliance of Auto. Mfrs., Inc. v. Currey, 610 Fed. Appx. 10, 2015 U.S. App. LEXIS 5528 (2d Cir. Conn. 2015), cert. denied, 136 S. Ct. 1374, 194 L. Ed. 2d 359, 2016 U.S. LEXIS 1802 (U.S. 2016).

Constitutional Law: Congressional Duties & Powers: Commerce Clause: Dormant Commerce Clause

Unpublished decision: Alliance's dormant Commerce Clause claim was properly dismissed because it did not allege facts suggesting that the 2009 amendments to the Connecticut Franchise Act discriminated against interstate commerce, it could not state an undue burden claim, and the fact that sales of some vehicles to Connecticut automobile dealers might occur outside of the state was insufficient to state a claim that the 2009 Amendments, on their face, exerted unconstitutional extraterritorial control over out-of-state commerce. Alliance of Auto. Mfrs., Inc. v. Currey, 610 Fed. Appx. 10, 2015 U.S. App. LEXIS 5528 (2d Cir. Conn. 2015), cert. denied, 136 S. Ct. 1374, 194 L. Ed. 2d 359, 2016 U.S. LEXIS 1802 (U.S. 2016).

Constitutional Law: Congressional Duties & Powers: Contracts Clause: Construction

Unpublished decision: Because the alliance of automobile manufacturer's complaint challenging the 2009 amendments to the Connecticut Franchise Act did not plausibly allege a substantial impairment, the district court properly dismissed its Contracts Clause claim. Alliance of Auto. Mfrs., Inc. v. Currey, 610 Fed. Appx. 10, 2015 U.S. App. LEXIS 5528 (2d Cir. Conn. 2015), cert. denied, 136 S. Ct. 1374, 194 L. Ed. 2d 359, 2016 U.S. LEXIS 1802 (U.S. 2016).

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 83-198 applied provisions to distributors; P.A. 95-245 amended Subsec. (d) to require that all claims for compensation re sales incentive programs be paid within 30 days following manufacturer or distributor approval, to provide that if there is evidence of fraud, provisions shall not limit right of manufacturer or distributor to audit dealer for longer periods of time and charge-back for fraudulent claim and to allow disapproval of claims by means of electronic transmission, effective July 1, 1995; P.A. 09-50 amended Subsec. (a) to replace requirement that manufacturer and distributor provide dealer with schedule of compensation for parts and labor with provisions re fair and reasonable compensation for parts and labor, added new Subsecs. (b) to (g) re payment of compensation, redesignated existing Subsec. (b) as Subsec. (h) and amended same to delete provisions re reasonable compensation, redesignated existing Subsecs. (c) and (d) as Subsecs. (i) and (j), and made technical changes in redesignated Subsec. (j), effective May 8, 2009.

Conn. Gen. Stat. § 42-133t

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133t. Liability of manufacturers and distributors for damages. Allocation of risk of loss.

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise, manufacturers or distributors shall be liable for all damages to motor vehicles which occur prior to delivery to a carrier or transporter.

(b) If a dealer chooses the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(c) Except as provided in subsection (b) of this section, risk of loss remains with the manufacturer or distributor until such time as the dealer or his designee accepts the vehicle from the carrier.

History

P.A. 82-445, S. 3, 15; P.A. 83-198, S. 3, 11.

Annotations

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 83-198 applied provisions to distributors.

End of Document

Conn. Gen. Stat. § 42-133u

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133u. Manufacturers or dealers to indemnify franchised dealers.

Notwithstanding the terms of any franchise agreement, each manufacturer or distributor shall indemnify and hold harmless its franchised dealers against any judgment for damages, including, but not limited to, court costs and reasonable attorneys' fees of the dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty or rescission of sale to the extent that the judgment relates to alleged defective or negligent manufacture, assembly or design of motor vehicles, parts or accessories or other functions by the manufacturer or distributor, which are beyond the control of the dealer.

History

P.A. 82-445, S. 4, 15; P.A. 83-198, S. 4, 11.

Annotations

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 83-198 made distributors subject to the provisions of this section.

Conn. Gen. Stat. § 42-133v

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133v. Cancellation, termination or nonrenewal of franchise. “Good cause” requirement. Notice. Appeal.

(a) Notwithstanding the terms, provisions or conditions of any franchise agreement and notwithstanding the terms or provisions of any waiver or other agreement between the manufacturer or distributor and the dealer, no manufacturer or distributor shall cancel, terminate or fail to renew any franchise with a licensed dealer unless the manufacturer or distributor has satisfied the notice requirement of subsection (d) of this section, has good cause for cancellation, termination or nonrenewal and has acted in good faith.

(b) Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver or other agreement between the manufacturer or distributor and the dealer, good cause exists for the purposes of a termination, cancellation or nonrenewal if:

(1) There is a failure by the dealer to comply with a provision of the franchise which is both reasonable and of material significance to the franchise relationship, provided that the dealer has been notified in writing of the failure not later than one hundred eighty days after the manufacturer or distributor first acquired knowledge of such failure;

(2) If the failure by the dealer, defined in subdivision (1) of this subsection, relates to the performance of the dealer in sales or service, then good cause shall be defined as the failure of the dealer to comply with reasonable performance criteria established by the manufacturer or distributor if the dealer was apprised by the manufacturer or distributor in writing of such failure; and: (A) The notification stated that notice was provided of failure of performance under this section; (B) the dealer was afforded a reasonable opportunity, for a period of not less than six months, to comply with such criteria; and (C) the dealer did not demonstrate substantial progress towards compliance with the manufacturer’s or distributor’s performance criteria during such period.

(c) The manufacturer or distributor shall have the burden of proof under this section.

(d) Notwithstanding the terms, provisions or conditions of any franchise or other agreement between the manufacturer or distributor and the dealer, prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer or distributor shall furnish notification of such termination, cancellation or nonrenewal to the dealer as follows: (1) In the manner described in subsection (e) of this section; and (2) not less than ninety days prior to the effective date of such termination, cancellation or nonrenewal; or (3) not less than fifteen days prior to the effective date of such termination, cancellation or nonrenewal with respect to: (A) Insolvency of the dealer, or filing of any petition by or against the dealer under any bankruptcy or receivership law; (B) failure of the dealer to conduct customary sales and service operations during business hours for seven consecutive business days, except in circumstances beyond the direct control of the dealer; (C) conviction of the dealer, or any owner thereof, of any felony which is punishable by imprisonment; (D) suspension or revocation of any license which the new motor vehicle dealer is required to have to operate a dealership; or (E) a fraudulent misrepresentation by the dealer to the manufacturer or distributor which is material to the franchise; (4) not less than one hundred eighty days prior to the effective date of such termination or cancellation if the manufacturer or distributor is discontinuing the sale of the product line.

(e) Notice under this section shall be in writing, sent by certified mail or personally delivered to the dealer; and shall contain: (1) A statement of intention to terminate, cancel or not to renew the franchise; (2) a statement of the reasons for the termination, cancellation or nonrenewal; and (3) the date on which such termination, cancellation or nonrenewal takes effect.

(f) No manufacturer or distributor shall terminate, cancel or fail to renew a dealer's franchise for the failure or refusal of the dealer to do any of the following: (1) Failure to meet sales quotas suggested by the manufacturer or distributor; (2) refusal to sell any product at a price suggested by the manufacturer or distributor; (3) refusal to keep the premises open and operating during those hours which are documented by the dealer to be unprofitable to the dealer or to preclude the dealer from establishing his own hours of operation beyond the hour of 10:00 p.m. and prior to 6:00 a.m.; (4) refusal to meet unreasonable minimum standards and marketing guides, which include, but are not limited to, capital, inventory, facility and personnel requirements; (5) refusal to give the manufacturer or distributor financial records of the operation of the franchise which are not related or necessary to the dealer's obligations under the franchise agreement. Subdivisions (1) to (5), inclusive, of this subsection shall not be deemed good cause under subsection (b) of this section.

(g) If a franchisee brings an action in a court of competent jurisdiction to challenge the cancellation, termination or nonrenewal of a franchise agreement by a manufacturer or distributor under this section, such franchise agreement shall remain in full force and effect and such franchisee shall retain all rights and remedies pursuant to the terms and conditions of such franchise agreement, including, but not limited to, the right to sell or transfer such franchisee's ownership interest, until a final determination by the court of competent jurisdiction and any appeal from such determination, unless extended by the court of competent jurisdiction for good cause. This subsection shall not apply to a cancellation, termination or nonrenewal of a franchise agreement based upon any of the reasons set forth in subdivision (3) of subsection (d) of this section.

History

P.A. 82-445, S. 5, 15; P.A. 83-198, S. 5, 11; 83-304, S. 1, 2; P.A. 99-132; P.A. 09-50, S. 2.

Annotations

LexisNexis® Notes

Case Notes

Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: State Regulation

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview

Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause

Business & Corporate Law: Distributorships & Franchises: Terminations: Grounds for Termination

Business & Corporate Law: Distributorships & Franchises: Terminations: Notice Requirements

Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: State Regulation

Franchisee's filing of an unsuccessful suit against a franchisor, contending that the franchisor's termination of a franchise agreement for certain motorcycles and related products violated the Connecticut Franchise Act, Conn. Gen. Stat. § 42-133v, alone did not constitute a violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b(a), even though the franchisee's motivation was to maintain its franchise, and prevent the franchisor from contracting with another dealer. Cent. Sports, Inc. v. Yamaha Motor Corp., U.S.A., 477 F. Supp. 2d 503, 2007 U.S. Dist. LEXIS 18159 (D. Conn. 2007).

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Franchisee's filing of an unsuccessful suit against a franchisor, contending that the franchisor's termination of a franchise agreement for certain motorcycles and related products violated the Connecticut Franchise Act, Conn. Gen. Stat. § 42-133v, alone did not constitute a violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b(a), even though the franchisee's motivation was to maintain its franchise, and prevent the franchisor from contracting with another dealer. Cent. Sports, Inc. v. Yamaha Motor Corp., U.S.A., 477 F. Supp. 2d 503, 2007 U.S. Dist. LEXIS 18159 (D. Conn. 2007).

Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview

Franchisee, that operated a car dealership and that sued a franchisor for termination of their franchise agreement, was not entitled to the grace period provided by the Connecticut Franchise Act, § 42-133v(g), because this safe harbor, which allowed a franchisee to continue to operate or transfer a viable franchise during and after a legal dispute, did not apply to a franchise that had gone out of business. Chic Miller's Chevrolet, Inc. v. GMC, 352 F. Supp. 2d 251, 2005 U.S. Dist. LEXIS 586 (D. Conn. 2005).

Franchisor did not breach the Connecticut Franchise Act, § 42-133v(a), when it terminated a car dealer's franchise agreement because (1) it provided the franchisee with the requisite statutory notice, (2) it acted in good faith by granting the franchisee additional time to comply with the franchise agreement, and (3) it had "good cause" under Conn. Gen. Stat. § 42-133v(b) to terminate the franchise agreement as the franchisee did not have floor plan financing, as required by the contract, and the franchisee also breached the contract by failing to conduct normal business operations for seven consecutive days. Chic Miller's Chevrolet, Inc. v. GMC, 352 F. Supp. 2d 251, 2005 U.S. Dist. LEXIS 586 (D. Conn. 2005).

Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause

Franchisee of certain motorcycles and related products failed to establish that a franchisor violated the Connecticut Franchise Act, Conn. Gen. Stat. § 42-133v(b)(1) and (2), when the franchisor terminated a franchise agreement, because the franchisee failed to comply with a material and reasonable franchise agreement provision within 90 days of learning of that failure, and the franchisor had good cause to terminate the franchise agreement due to the franchisee's failure to maintain adequate wholesale financing. Cent. Sports, Inc. v. Yamaha Motor Corp., U.S.A., 477 F. Supp. 2d 503, 2007 U.S. Dist. LEXIS 18159 (D. Conn. 2007).

Business & Corporate Law: Distributorships & Franchises: Terminations: Grounds for Termination

Franchisee of certain motorcycles and related products failed to establish that a franchisor violated the Connecticut Franchise Act, Conn. Gen. Stat. § 42-133v(b)(1) and (2), when the franchisor terminated a franchise agreement, because the franchisee failed to comply with a material and reasonable franchise agreement provision within 90 days of learning of that failure, and the franchisor had good cause to terminate the franchise agreement due to the franchisee's failure to maintain adequate wholesale financing. Cent. Sports, Inc. v. Yamaha Motor Corp., U.S.A., 477 F. Supp. 2d 503, 2007 U.S. Dist. LEXIS 18159 (D. Conn. 2007).

Business & Corporate Law: Distributorships & Franchises: Terminations: Notice Requirements

Franchisee of certain motorcycles and related products failed to establish that a franchisor violated the notice provisions of the Connecticut Franchise Act, Conn. Gen. Stat. § 42-133v(d) and (e), because the franchisor sent the franchisee a letter by certified mail giving the franchisee 90 days' notice of termination, which the franchisee acknowledged receiving. Cent. Sports, Inc. v. Yamaha Motor Corp., U.S.A., 477 F. Supp. 2d 503, 2007 U.S. Dist. LEXIS 18159 (D. Conn. 2007).

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 83-198 subjected distributors to the provisions of this section; P.A. 83-304 added Subsec. (f) limiting manufacturer's or distributor's ability to cancel, terminate or fail to remove a dealer's franchise; P.A. 99-132 added Subsec. (g) re appeal of a cancellation, termination or nonrenewal of a franchise agreement; P.A. 09-50 amended Subsecs. (a), (b) and (d) to extend applicability of provisions re waiver and franchise to any "other agreement between the manufacturer or distributor and the dealer", amended Subsec. (g) to change time period of agreement's full force and effect following initiation of court action from 6 months following final determination by court to until final determination and any appeal from such determination, and made technical changes in Subsecs. (b)(1), (d) and (f), effective May 8, 2009.

Conn. Gen. Stat. § 42-133w

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133w. Manufacturer or distributor to compensate dealer upon termination, nonrenewal or cancellation.

(a) Upon the termination, nonrenewal or cancellation of any franchise under sections 42-133r to 42-133ee, inclusive, initiated by the manufacturer, distributor or dealer, the dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for: (1) The new current model year motor vehicles and the prior model year motor vehicles acquired not later than twelve months preceding such termination, with fewer than three hundred miles registered on the odometer, acquired from the manufacturer, distributor or a same line-make dealer, in the ordinary course of business, limited to vehicles in such inventory that are (A) unaltered, except for the addition of customary manufacturer-approved accessories, and (B) undamaged. The compensation for motor vehicles pursuant to this subdivision shall not be less than the dealer's net acquisition price, including all transportation or destination charges, less all allowances paid by the manufacturer or distributor to the dealer; (2) all new, unused and undamaged parts listed in the current parts catalog acquired from a manufacturer or distributor or its approved or recommended sources at the dealer price listed in such catalog, less applicable allowances plus five per cent of the catalog price of the part for the cost of packing and returning the parts to the manufacturer or distributor; (3) supplies and furnishings if purchased from the manufacturer or distributor or its approved sources; and (4) any special tools or equipment offered for sale during the three years preceding termination, nonrenewal or cancellation and each trademark or trade name bearing sign which was required by the manufacturer or distributor at fair market value at the time of notice of termination. The compensation required pursuant to subdivisions (3) and (4) of this subsection shall be in an amount equal to the dealer's cost less a thirty-three per cent straight-line depreciation for each year following the dealer's purchase of the items listed in said subdivisions.

(b) Compensation under subsection (a) of this section shall be paid by the manufacturer or distributor not later than ninety days after the effective date of termination, cancellation or nonrenewal if the dealer has title to the vehicle inventory and other items and is able to convey title to the manufacturer or distributor.

(c) The provisions of this section shall not apply in the event of a sale of the assets or stock of a motor vehicle dealership.

History

P.A. 82-445, S. 6, 15; P.A. 83-198, S. 6, 11; P.A. 95-245, S. 2, 3; P.A. 05-288, S. 145; P.A. 09-50, S. 3; P.A. 15-191, S. 2, eff. Oct. 1, 2015.

Annotations

Notes

Amendment Notes

2015 amendment, by P.A. 15-191, effective Oct. 1, 2015, in (a), inserted the second sentence of subdivision (1); and added the last sentence.

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 83-198 subjected distributors to the provisions of this section; P.A. 95-245 amended Subsec. (a) to insert new language as Subdiv. (2) allowing dealers to be compensated for all new, unused and undamaged parts listed in current parts catalog at dealer price with allowances and adjustments, renumbering the remaining Subdivs. accordingly, and to insert new language as Subdiv. (4) allowing dealers to be compensated for equipment offered for sale during three years preceding termination, nonrenewal or cancellation and for each trademark or trade name bearing sign at fair market value and amended Subsec. (b) to insert “vehicle” before “inventory”, effective July 1, 1995; P.A. 05-288 made a technical change in Subsec. (b), effective July 13, 2005; P.A. 09-50 amended Subsec. (a) to insert “initiated by the manufacturer, distributor or dealer”, add requirements re motor vehicles acquired not later than 12 months preceding termination of franchise and make conforming changes in Subdiv. (1) and delete “recommended or” in Subdiv. (4), made technical change in Subsec. (b) and added Subsec. (c) re exemption of sale of dealership assets or stock, effective May 8, 2009.

Conn. Gen. Stat. § 42-133x

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133x. Effects of a franchise termination, cancellation or nonrenewal.

(a) In the event of a termination, cancellation or nonrenewal under subdivision (2) of subsection (b) of section 42-133v or subsection (b) of this section:

(1) If the dealer is leasing the dealership facilities from a lessor other than the manufacturer or distributor, or owns the dealership facilities, the manufacturer or distributor shall pay a reasonable rent to the dealer in accordance with and subject to subdivision (2) of this subsection.

(2) Such reasonable rent shall be paid only to the extent that the dealership premises are recognized in the franchise and only if they are not substantially in excess of those facilities recommended by the manufacturer or distributor. If the facility is used for the operation of more than one franchise, the reasonable rent shall be paid based upon the portion of the facility utilized by the franchise being terminated, cancelled or nonrenewed.

(3) If the facilities are owned by the dealer, the manufacturer or distributor will either: (A) Locate a purchaser who will offer to purchase the dealership facilities at a reasonable price, or (B) locate a lessee who will offer to lease the premises for a reasonable term at a reasonable rent, or (C) failing the foregoing, lease the dealership facilities at a reasonable rent for one year.

(4) If the facilities are leased by the dealer, the manufacturer or distributor will either: (A) Locate a tenant satisfactory to the lessor, who will sublet or assume the balance of the lease, or (B) arrange with the lessor for the cancellation of the lease without penalty to the dealer, or (C) failing the foregoing, lease the dealership facilities at a reasonable rate for one year.

(5) The manufacturer or distributor shall not be obligated to provide assistance under this section if the dealer: (A) Fails to accept a bona fide offer from a prospective purchaser, sublessee or assignee, or (B) refuses to execute a settlement agreement with the lessor if such agreement would be without cost to the dealer, or (C) fails to make a written request for assistance under this section not later than one month after the termination, cancellation or nonrenewal.

(b)

(1) In the event of a termination, cancellation or nonrenewal due to the discontinuation of a line make, and in addition to all other compensation and repurchase obligations contained in section 42-133w and this section, the manufacturer or distributor shall pay the fair market value of the goodwill of the franchise as of the date immediately preceding the manufacturer's announcement of the action resulting in a brand being presently, or in the future, discontinued. The dealer may immediately request payment under this subsection following the announcement in exchange for cancelling any further franchise rights, except payments owed to the dealer in the ordinary course of business, or may request payment under this subsection upon the final termination, cancellation or nonrenewal of the franchise. In either case, payment under this subsection shall be made not later than ninety days after the request by the dealer.

(2) In the event of a termination, cancellation or nonrenewal under this subsection, notwithstanding the terms of any franchise, a site-control or exclusivity provision governing any or all of the dealership

facilities which operate from the location that is the subject of the site-control or exclusivity provision is void upon a termination of the franchise.

(3) In the event of a termination, cancellation or nonrenewal under this subsection, in addition to the compensation and repurchase obligations contained in section 42-133w and this section, the manufacturer or distributor shall compensate the terminated dealer in an amount equal to the amount remaining on the dealer management computer system lease or contract, or one year of lease payments, whichever is less, if (A) the dealer management system will no longer be utilized as a result of a line-make termination, and (B) the manufacturer or distributor required the dealer to use the dealer management computer system.

(c) If, in any action for damages under this section, the manufacturer or distributor fails to prove that the manufacturer or distributor has acted in good faith or that there was good cause for the franchise termination, cancellation or nonrenewal, then the manufacturer or distributor may terminate, cancel or fail to renew the franchise upon payment to the motor vehicle dealer of an amount equal to the value of the dealership as an ongoing business location as agreed by the parties or, lacking agreement, as determined by the court.

History

P.A. 82-445, S. 7, 15; P.A. 09-50, S. 4; P.A. 15-191, S. 3, eff. Oct. 1, 2015.

Annotations

Notes

Amendment Notes

2015 amendment, by P.A. 15-191, effective Oct. 1, 2015, substituted “or” for “by the manufacturer, distributor or dealer under” in the introductory language of (a); inserted the (b)(1) designation; and inserted (b)(2) and (b)(3).

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 09-50 amended Subsec. (a) to insert reference to Subsec. (b), to replace requirement re premises used solely for performance in accordance with franchise with provision re payment of reasonable rent for facilities used for operation of more than one franchise in Subdiv. (2), to reduce lease period from 2 years to 1 year in Subdivs. (3)(C)

and (4)(C) and to make a technical change in Subdiv. (5), added new Subsec. (b) re goodwill payment and redesignated existing Subsec. (b) as Subsec. (c), effective May 8, 2009.

End of Document

Conn. Gen. Stat. § 42-133y

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133y. Succession to ownership interest in dealership by family member upon owner's death or incapacity.

(a) Any owner may appoint by will, or other written instrument, a designated family member to succeed in the ownership interest of the owner in the dealer.

(b) Unless good cause exists for refusal to honor the succession on the part of the manufacturer or distributor, any designated family member of a deceased or incapacitated owner of a dealer may succeed to the ownership of the dealer under the existing franchise if: (1) The designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the dealer within sixty days of the owner's death or incapacity, and (2) the designated family member agrees to be bound by all the terms and conditions of the franchise.

(c) The manufacturer or distributor may request, and the designated family member shall provide, promptly upon such request, personal and financial data reasonably necessary to determine whether the succession should be honored.

History

P.A. 82-445, S. 8, 15.

Annotations

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

Conn. Gen. Stat. § 42-133z

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133z. Refusal to honor succession by family member. Notice.

(a) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession by a family member of a deceased or incapacitated owner under the existing franchise agreement, the manufacturer or distributor may, not more than sixty days following receipt of notice of the designated family member's intent to succeed and receipt of such personal or financial data, serve upon the designated family member notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer not earlier than ninety days from the date such notice is served.

(b) The notice must state the specific grounds for the refusal to honor the succession.

(c) If notice of refusal and discontinuance is not timely served upon the family member, the franchise shall continue.

History

P.A. 82-445, S. 9, 15.

Annotations

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

Conn. Gen. Stat. § 42-133aa

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133aa. Burden of proof for succession refusal on manufacturer or distributor.

In determining whether good cause for the refusal to honor the succession exists, the manufacturer or distributor has the burden of proving that the successor is not of good moral character or does not meet the franchisor's existing and reasonable standards and uniformly applied minimum business experience standards in the market area. The provisions of sections 42-133y, 42-133z and this section do not preclude a new motor vehicle dealer from designating any person as his successor by written instrument filed with the manufacturer or distributor and in the event there is a conflict between such written instrument and the provisions of these sections, the written instrument shall govern.

History

P.A. 82-445, S. 10, 15; P.A. 83-198, S. 7, 11.

Annotations

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 83-198 applied provisions to distributors.

End of Document

Conn. Gen. Stat. § 42-133bb

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133bb. Prohibited acts by manufacturer or distributor re dealer.

Notwithstanding the terms, provisions or conditions of any franchise agreement or other agreement between a manufacturer or distributor and a dealer, no manufacturer or distributor shall require that a dealer:

(1) Order or accept delivery of any new motor vehicle, part or accessory, equipment or any other commodity not required by law in connection with warranty service or a recall campaign or voluntarily ordered by the dealer, except that the provisions of this subdivision shall not affect terms or provisions of a franchise requiring dealers to market a representative line of motor vehicles which the manufacturer or distributor is publicly advertising;

(2) Order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor;

(3) Pay all or part of the cost of an advertising campaign or contest, or purchase any promotional materials, training material, showroom or other display decorations or materials at the expense of the new motor vehicle dealer without the consent of the new motor vehicle dealer;

(4) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the dealer under threat of termination or cancellation of a franchise or agreement between the dealer and the manufacturer or distributor, except that this subdivision shall not preclude the manufacturer or distributor from insisting on compliance with the reasonable terms or provisions of the franchise or agreement, and notice in good faith to any dealer of the dealer's violation of such terms or provisions shall not constitute a violation of sections 42-133r to 42-133ee, inclusive;

(5) Change the capital structure of the dealer or the means by which the dealer finances the operation of the dealership provided the dealer meets reasonable capital standards established by the manufacturer or distributor in accordance with uniformly applied criteria, and provided further that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor and such consent shall not be unreasonably withheld;

(6) Refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicles or related products, provided this subdivision shall not apply unless the dealer maintains a reasonable line of credit for each line make of new motor vehicle, the dealer remains in compliance with any reasonable facilities requirements of the manufacturer or distributor, and no change is made in the principal management of the dealer;

(7) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by sections 42-133r to 42-133ee, inclusive, or require any controversy between a dealer and a manufacturer or distributor, to be referred to any forum other than the Superior Court or the United States District Court;

(8) Construct, renovate or make substantial alterations to the dealer's facilities unless the manufacturer or distributor can demonstrate that such construction, renovation or alteration requirements are reasonable and justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, availability of additional vehicle allocation and such dealer's market for the sale of vehicles.

History

P.A. 82-445, S. 11, 15; P.A. 83-198, S. 8, 11; P.A. 09-50, S. 5; P.A. 13-247, S. 70, eff. June 19, 2013; P.A. 13-298, S. 65, eff. July 8, 2013.

Annotations

Notes

Amendment Notes

2013 amendment, by P.A. 13-298, added (9), which read: "(9) Purchase goods or services including, but not limited to, vehicle battery charging stations, from a vendor chosen by the manufacturer or distributor if substantially similar items of like appearance, function and quality are available from other sources, provided the provisions of this subdivision shall not be construed to (A) allow a dealer to impair or eliminate the intellectual property rights of the manufacturer or distributor, or (B) permit the dealer to erect or maintain signs that do not conform to the intellectual property usage guidelines of the manufacturer or distributor." 2013 amendment, by P.A. 13-247, as amended by P.A. 13-298, deleted the (9) that was added by P.A. 13-298.

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 83-198 subjected distributors to the provisions of this section; P.A. 09-50 amended introductory language to notwithstand terms of any agreement between manufacturer or distributor and dealer, made a technical change in Subdivs. (5) and (6), and added Subdiv. (8) re changes to dealer's facilities, effective May 8, 2009; P.A. 13-247 deleted Subdiv. (9) added by P.A. 13-298, S. 65, re purchasing goods or services including vehicle battery charging stations, effective June 19, 2013; P.A. 13-298 added Subdiv. (9) re purchasing goods or services including vehicle battery charging stations, effective July 8, 2013.

End of Document

Conn. Gen. Stat. § 42-133cc

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133cc. Prohibited acts by manufacturer or distributor.

Notwithstanding the terms, provisions or conditions of any franchise agreement or other agreement between a manufacturer or distributor and a dealer, no manufacturer or distributor shall:

(1) (A) Delay, refuse or fail to deliver new motor vehicles or parts or accessories in a reasonable time, and in reasonable quantity relative to the dealer's facilities and sales potential in the dealer's relevant market area, after acceptance of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new motor vehicle, parts or accessories for new vehicles as are covered by such franchise, if such vehicle, parts or accessories are publicly advertised as being available for delivery or actually being delivered; (B) withhold any new motor vehicle from distribution except a vehicle which is part of a demonstration fleet or withhold or delay distribution of new motor vehicles to induce dealers to order additional parts or accessories, to order new motor vehicles that are difficult to sell, to relocate the dealer's place of business or to construct a new building. This subdivision shall not apply to a failure caused by acts or causes beyond the control of the manufacturer or distributor;

(2) (A) Refuse to disclose to any dealer, handling the same line make, the manner and mode of distribution of that line make within the relevant market area, or (B) if a line make is allocated among dealers, refuse to disclose to any dealer, handling the same line make, the system of allocation, including, but not limited to, a complete breakdown by model, color, equipment and other items or terms, a concise listing of dealerships and an explanation of the derivation of the allocation system, including its mathematical formula in a clear and comprehensible form;

(3) Obtain money, goods, service or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and such other person, other than for compensation for services rendered, unless such benefit is promptly accounted for, and transmitted to, the dealer;

(4) Increase prices of new motor vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order, provided such vehicle is in fact delivered to such private retail consumer. In the event of manufacturer or distributor price reductions or cash rebates paid to the dealer, the amount of any such reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new models or series shall not be considered a price increase or price decrease. Price changes caused by (A) the addition to a motor vehicle of required or optional equipment, (B) revaluation of the dollar, in the case of foreign-make vehicles or components, or (C) an increase in transportation charges due to increased rates imposed by common carriers or transporters shall not be subject to the provisions of this subdivision;

(5) Offer refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the state or any political subdivision thereof without making the

same offer available upon request to all other dealers in the same line make within the relevant market area;

(6) Release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or distributor or dealer, any business, financial or personal information which may be from time to time provided by the dealer to the manufacturer or distributor, without the express written consent of the dealer;

(7) Deny any dealer the right of free association with any other dealer for any lawful purpose;

(8) Unfairly compete with a dealer in the same line make operating under an agreement or franchise from such manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not, however, be deemed to be competing when operating a dealership for a temporary period not to exceed one year, or such additional period of time as may be permitted by the Commissioner of Motor Vehicles, in accordance with the provisions of section 14-52b, or in a bona fide retail operation which is for sale to any qualified person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions;

(9) Unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement;

(10) Unreasonably withhold consent to the sale, transfer or exchange of the franchise to a qualified buyer capable of being licensed as a dealer;

(11) Fail to respond in writing to a request for consent under subdivision (10) of this section not later than sixty days after receipt of all information reasonably and customarily required by the manufacturer or distributor. Such failure to respond shall be deemed to be consent to the request;

(12) Unfairly prevent a dealer from receiving fair and reasonable compensation for the value of its dealership;

(13) Engage in any predatory practice against a dealer;

(14) Terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer or distributor relied in the granting of the franchise;

(15) Withhold payment of money which the franchisor owes to a dealer for more than thirty days after the date of approval of the request for reimbursement;

(16) Own, operate or control, either directly or indirectly, a facility for the performance of motor vehicle warranty service work. Nothing contained in this subsection shall prohibit a motor vehicle manufacturer, factory branch, distributor or distributor branch from performing service for reasons of compliance with an order of a court of competent jurisdiction;

(17) Provide in any franchise agreement that in any administrative or judicial proceeding arising from any dispute with respect to such agreement, the prevailing party shall be entitled to recover its costs, reasonable attorney's fees and other expenses of litigation from the other party;

(18) Unreasonably prevent or refuse to approve the relocation of a dealership to another site within the dealership's relevant market area, including a refusal by either the manufacturer or distributor for the relocation of the dealership or a refusal by the manufacturer or distributor for any franchise currently located at such proposed new location. The dealer shall provide written notice to the manufacturer or distributor that shall include the address of the proposed new location and a reasonable site plan of the proposed facility. The manufacturer or distributor shall, not later than sixty days after receipt of such reasonably requested information, grant or deny the dealer's relocation request. Failure to deny such request within such sixty-day period shall be deemed consent to the relocation;

(19) Sell or offer to sell any new motor vehicle to a dealer at a lower actual price than the actual price offered to any other franchised motor vehicle dealer for the same model vehicle similarly equipped, or

to utilize any device, including, but not limited to, sales promotion plans, funds or financing to upgrade facilities, discounts or programs that result in such lesser actual price, provided the provisions of this subdivision shall not apply to sales to a dealer for: (A) Resale to any unit of government; or (B) donation or use by said dealer in a driver education or other special events program. This subdivision shall not be construed to prevent the offering of sales incentives or discount programs, provided such incentives or discounts are reasonably and practically available to all dealers in this state on a proportionally equal basis;

(20) Withhold directly, or through the loss of, any benefit made available to other same line-make dealers in this state because of a dealer's refusal to engage in conduct or take action unrelated to the benefit;

(21) Fail to begin the accrual of any express warranty for a new motor vehicle by the date of the original delivery to the consumer, provided, if the warranty is expressed in terms of time, such time frame shall begin on such original delivery date, or, if expressed in terms of number of miles, the mileage, not exceeding five hundred miles, shall be the mileage on the vehicle's odometer on such original delivery date;

(22) Exercise a right of first refusal or other right to acquire a franchise from a dealer unless the manufacturer or distributor:

(A) Notifies the dealer and the proposed transferee in writing that it intends to exercise its right to acquire the franchise not later than sixty days after the manufacturer's or distributor's receipt of a notice of the proposed transfer from the dealer or the proposed transferee and all information and documents reasonably and customarily required by the manufacturer supporting such proposed transfer, as required pursuant to subdivision (11) of this section, and the proposed transfer is not to (i) a child, spouse, grandchild, parent or sibling, (ii) a current owner of the dealership that is the subject of the transfer, (iii) a dealership manager employed continuously by the dealer in the dealership for a period of not less than four years prior to the date of the proposed transfer and who is otherwise qualified as a dealer operator according to the usual standards of the manufacturer or distributor, or (iv) a partnership, trust or corporation controlled by, or for the benefit of, any of the types of individuals described in this subparagraph. For the purpose of this subparagraph, the "proposed transferee" means the person to whom the franchise would have been transferred to, or was proposed to be transferred to, had the right of first refusal or other right to acquire the franchise not been exercised by the manufacturer or distributor;

(B) Will pay to the dealer the same or greater consideration as such dealer has contracted to receive in connection with the proposed transfer or sale of all or substantially all of the dealership assets, stock or other ownership interest, including the purchase or lease of all real property, leasehold or improvements related to the transfer or sale of the dealership. Upon exercise of the right of first refusal or such other right, the manufacturer or distributor shall have the right to assign the lease or to convey the real property;

(C) Assumes all of the duties, obligations and liabilities contained in the agreements that were to be assumed by the proposed transferee and with respect to which the manufacturer or distributor exercised the right of first refusal or other right to acquire the franchise;

(D) Reimburses the proposed transferee for all reasonable expenses incurred in evaluating, investigating, negotiating and pursuing the acquisition of the dealership prior to the manufacturer's or distributor's exercise of its right of first refusal or other right to acquire the dealership. For purposes of this subparagraph, reasonable expenses include the usual and customary legal and accounting fees charged for similar work, as well as expenses associated with the evaluation and investigation of any real property on which the dealership is operated. The proposed transferee shall submit an itemized list of its expenses to the manufacturer or distributor not later than thirty days after the manufacturer's or distributor's exercise of the right of first refusal or other right to acquire the motor vehicle franchise. The manufacturer or distributor shall reimburse the proposed transferee for its expenses not later than thirty days after receipt of the itemized list.

History

P.A. 82-445, S. 12, 15; P.A. 83-198, S. 9, 11; 83-264, S. 1, 2; P.A. 93-234, S. 1; P.A. 97-196, S. 1, 2; P.A. 99-268, S. 26; P.A. 00-169, S. 22, 36; P.A. 02-70, S. 33; P.A. 09-50, S. 6; P.A. 15-191, S. 4, eff. Oct. 1, 2015; P.A. 16-55, S. 21, eff. May 31, 2016.

Annotations

LexisNexis® Notes

Notes

Amendment Notes

2015 amendment, by P.A. 15-191, effective Oct. 1, 2015, added (22).

2016 amendment, by P.A. 16-55, effective May 31, 2016, substituted “manufacturer's” for “manufacturer” in the first sentence of (A) and in the first and third sentences of (D).

Case Notes

Notes to Unpublished Decisions

Business & Corporate Law: Distributorships & Franchises: Causes of Action: Good Faith & Fair Dealing

> *Unpublished decision:* Automobile manufacturer was entitled to summary judgment on franchise applicants’ cause of action for an alleged violation of Conn. Gen. Stat. § 42-133cc(10) because under Conn. Gen. Stat. § 42-133ee only the following persons could bring such action: consumers, parties to a franchise, and any person injured because he refused to accede to a proposal for an arrangement which, if consummated, would be in violation of Conn. Gen. Stat. §§ 42-133r -- 42-133ee. Trans-Oceanic Motors, Ltd. v. Mercedes-Benz of North America, Inc., 1993 Conn. Super. LEXIS 305 (Conn. Super. Ct. Jan. 29, 1993).

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 83-198 and P.A. 83-264 subjected distributors to the provisions of this section; P.A. 83-264 also amended Subdivs. (1) and (2) to prohibit the withholding of a new motor vehicle from distribution, with certain exceptions, and to prohibit manufacturers and distributors from refusing to disclose to dealers of line makes the system of allocation of those line makes; P.A. 93-234 added Subdiv. (16) prohibiting the ownership, operation or control of a facility for the performance of motor vehicle warranty service work; P.A. 97-196 added Subdiv. (17) prohibiting the provision in any franchise agreement that in any proceeding arising from any dispute re such agreement, prevailing party is entitled to recover legal expenses incurred, effective June 24, 1997; P.A. 99-268 amended Subdiv. (8) by clarifying the time deemed to be competing when operating a dealership from “temporarily for a reasonable period” to “for a temporary period not to exceed one year”; P.A. 00-169 revised effective date of P.A. 99-268 but without affecting this section; P.A. 02-70 amended Subdiv. (8) to provide that a manufacturer or distributor shall not be deemed to be competing when operating a dealership for such additional period of time as permitted by the Commissioner of Motor Vehicles in accordance with Sec. 14-52b; P.A. 09-50 amended introductory language to notwithstand terms of any agreement between manufacturer or distributor and dealer, made technical changes in Subdivs. (1), (2) and (4), amended Subdiv. (11) to make written response requirement subject to receipt of information and added Subdivs. (18) to (21) re additional prohibitions, effective May 8, 2009.

End of Document

Conn. Gen. Stat. § 42-133dd

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133dd. Establishment of new franchises within a market area. Notice of intention. Protests. Procedure. Hearing.

(a) In the event that a manufacturer or distributor seeks to enter into a franchise establishing a new dealer or relocating an existing dealer within or into a relevant market area where the same line make is then represented, the manufacturer or distributor shall in writing, by certified mail, first notify the commissioner and each dealer in such line make in the relevant market area of its intention to establish a new dealer or to relocate an existing dealer within or into that market area. Within twenty days of receiving such notice or within twenty days after the end of any appeal procedure provided by the manufacturer or distributor, any such dealer may file with the commissioner a protest concerning the proposed establishment or relocation of such new or existing dealer. When such a protest is filed, the commissioner shall inform the manufacturer or distributor that a timely protest has been filed, and that the manufacturer or distributor shall not establish or relocate the proposed dealer until the commissioner has held a hearing, nor thereafter, if the commissioner determines that there is good cause for denying the establishment or relocation of such dealer. In any hearing held pursuant to this section, the manufacturer or distributor has the burden of proving that good cause exists for permitting the proposed establishment or relocation. This section shall not apply to the sale, lease or transfer of ownership of an active, existing dealer, nor shall any provision of this section prohibit a manufacturer from entering into a franchise arrangement with a successor dealer at the same location.

(b) This section shall not apply to (1) the relocation of an existing dealer within that dealer's area of responsibility under its franchise, provided that the relocation shall not be at a site within six miles of a licensed dealer for the same line make of motor vehicle, (2) the appointment of a dealer in the same relevant market area, within one year, at either the same location or within a two-mile radius from a predecessor dealer who ceased operations, or (3) the sale of new or used motor vehicles by a licensed new motor vehicle dealer at a public display of motor vehicles sponsored by an association of licensed new motor vehicle dealers representing more than seventy-five per cent of such dealers in the state. Such display shall be permitted annually, for a period not exceeding four consecutive days.

(c) In determining whether good cause has been established for not entering into a franchise establishing a new dealer or relocating an existing dealer for the same line make, the commissioner shall take into consideration the existing circumstances, including, but not limited to: (1) The permanency and size of investment made and the reasonable obligations incurred by the existing new motor vehicle dealers in the relevant market area; (2) growth or decline in population and new car registrations in the relevant market area; (3) effect on the consuming public in the relevant market area; (4) whether it is injurious or beneficial to the public welfare for a new dealer to be established; (5) whether the dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the line make in the market area including the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel; (6) whether the establishment of a new dealer would increase or decrease competition; (7) the effect on the relocating dealer of a denial of its relocation into the relevant market area; (8) whether the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and marketing conditions pertinent to dealers competing in the community or territory, including anticipated future

changes; (9) the reasonably expected market penetration of the line-maker motor vehicle for the community or territory involved, after consideration of all factors which may affect said penetration, including, but not limited to, demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers of the community or territory; (10) the economic impact of an additional franchise or relocated motor vehicle dealership upon the existing motor vehicle dealers of the same line make in the relevant market area to be served by the additional franchisee or relocated motor vehicle dealership; and (11) the retail sales and service business transacted by the existing dealers of the same line make in the market area to be served by the proposed new or relocated dealer as compared to the business available to them during the three-year period immediately preceding notice.

(d) The commissioner shall conduct the hearing and render his final determination within one hundred eighty days after a protest is filed. Unless waived by the parties, failure to do so shall be deemed a determination that good cause does not exist for refusing to permit the proposed new or relocated dealer, unless such delay is caused by acts of the manufacturer or distributor or the relocating or new dealer.

(e) Any parties to a hearing by the commissioner concerning the establishing or relocating of a dealer may appeal any decision or order of the commissioner in accordance with section 4-183.

History

P.A. 82-445, S. 13, 15; P.A. 83-198, S. 10, 11; P.A. 84-463; P.A. 93-234, S. 2; P.A. 02-70, S. 45; P.A. 10-110, S. 32.

Annotations

LexisNexis® Notes

Case Notes

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Elements

Judgment of the trial court dismissing companies' appeal was affirmed because the Department of Motor Vehicles decision to allow a manufacturer to establish a new car dealership was neither incomplete nor inconsistent and was supported by substantial evidence. Northwest Hills Chrysler Jeep, LLC v. DMV, 201 Conn. App. 128, 2020 Conn. App. LEXIS 319 (Conn. App. Ct. 2020).

Notes to Unpublished Decisions

Administrative Law: Agency Adjudication: Hearings: General Overview

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Business & Corporate Law: Distributorships & Franchises: Registration & Disclosure: Requirements

Administrative Law: Agency Adjudication: Hearings: General Overview

Unpublished decision: A decision of the Commissioner of the Department of Motor Vehicles to allow a sports car dealer to establish or relocate a dealership was overturned where the Commissioner did not hold

a hearing on the application. Crest Pontiac Cadillac, Inc. v. Goldberg, 1992 Conn. Super. LEXIS 1548 (Conn. Super. Ct. May 21, 1992).

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Unpublished decision: A decision of the Commissioner of the Department of Motor Vehicles to allow a sports car dealer to establish or relocate a dealership was overturned where the Commissioner did not hold a hearing on the application. Crest Pontiac Cadillac, Inc. v. Goldberg, 1992 Conn. Super. LEXIS 1548 (Conn. Super. Ct. May 21, 1992).

Business & Corporate Law: Distributorships & Franchises: Registration & Disclosure: Requirements

Unpublished decision: In a motor vehicles dealerships' franchising dispute, the identification by the department of motor vehicles (DMV)hearing officer of the relevant market area (RMA) as a radius of 14 miles around the proposed dealership, which conflicted with the statutory definition of a 14 mile radius around an existing dealer contained at Conn. Gen. Stat. § 42-133r(14), did not justify reversal of the DMV decision because the dealers challenging the decision did not show how the failure to consider the outer part of the combined RMA in analyzing the factors in Conn. Gen. Stat. § 42-133dd(c)(1), (5), (10) had any affect on the outcome. Mario D'Addario Buick v. Conn. Dmv, 2001 Conn. Super. LEXIS 2979 (Conn. Super. Ct. Oct. 12, 2001).

Unpublished decision: Plaintiffs, an automobile dealer discontinuing an automobile manufacturer's line, and a proposed dealer, lacked standing to challenge a decision by defendant, the Department of Motor Vehicles (DMV), which denied a manufacturer's petition to change the dealership of one of its automobile lines, because the dealers were not parties to a hearing before the DMV as required by Conn. Gen. Stat. § 42-133dd(e). Valenti Auto Sales v. Department of Motor Vehicles, 1994 Conn. Super. LEXIS 2396 (Conn. Super. Ct. Sept. 20, 1994).

Unpublished decision: Under Conn. Gen. Stat. § 42-133dd(a), when a manufacturer or distributor seeks to enter into a franchise establishing a new dealer, or relocating an existing dealer within or into a relevant market area where the same line make is then represented, the manufacturer or distributor shall first notify the commissioner and each dealer in such line in the relevant market area in writing, of its intention to establish a new dealer or to relocate an existing dealer within or into that market area. Valenti Auto Sales v. Department of Motor Vehicles, 1994 Conn. Super. LEXIS 2396 (Conn. Super. Ct. Sept. 20, 1994).

Unpublished decision: Under Conn. Gen. Stat. § 42-133dd(c), the commissioner of motor vehicles, in considering a petition by a manufacturer to enter into a franchise establishing a new dealer or relocating an existing dealer within a relevant market area, the commissioner shall consider : (1) permanency or the investment of both the existing and proposed new motor vehicle dealers; (2) growth or decline in population and new car registrations; (3) effect on the consuming public; (4) whether it is injurious or beneficial to the public welfare; (5) whether there is already adequate competition and convenient customer care; (6) whether the establishment of a new dealer would increase competition; and (7) the effect on the relocating dealer of a denial of its relocation into the relvant market area. Valenti Auto Sales v. Department of Motor Vehicles, 1994 Conn. Super. LEXIS 2396 (Conn. Super. Ct. Sept. 20, 1994).

Unpublished decision: Under Conn. Gen. Stat. § 42-133dd, the Commissioner of the Department of Motor Vehicles was required to hold a hearing because competing car dealers filed a protest of the Commissioner's decision to issue a dealer's license to a sports car center. Crest Pontiac Cadillac, Inc. v. Goldberg, 1992 Conn. Super. LEXIS 686 (Conn. Super. Ct. Mar. 10, 1992).

Opinion Notes

OPINIONS OF ATTORNEY GENERAL

[NO NUMBER IN ORIGINAL], 1983 Conn. AG LEXIS 50.

[NO NUMBER IN ORIGINAL], 1983 Conn. AG LEXIS 63.

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 83-198 subjected distributors to the provisions of this section; P.A. 84-463 changed reference from additional dealerships to new dealerships and excluded franchise agreements and transfers of existing dealerships from the provisions of this section; P.A. 93-234 made technical changes, required that notice requirement in Subsec. (a) be sent by certified mail, amended Subsec. (b) to exclude from applicability of section dealers appointed within one year at same location or within two-mile radius of predecessors who ceased operations and added Subsec. (c)(8) to (11) requiring commissioner to consider additional factors when determining if good cause exists for refusing to allow establishment or relocation of dealership; P.A. 02-70 amended Subsec. (a) to provide that the manufacturer or distributor has the burden of proving that good cause exists for permitting a proposed establishment or relocation of a motor vehicle franchise in any hearing held pursuant to section; P.A. 10-110 amended Subsec. (b) by adding Subdiv. (3) re sale of motor vehicles by dealer at public display.

Case Notes:

Cited. 192 Conn. 558; 239 Conn. 437.

Conn. Gen. Stat. § 42-133ee

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133ee. Civil action for injunction and damages.

Notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, any consumer who is injured by a violation of sections 42-133r to 42-133ee, inclusive, or any party to a franchise who is so injured in his business or property by a violation of said sections relating to that franchise, or any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of said sections, may bring a civil action in the Superior Court to enjoin further violations, and to recover the actual damages sustained by him together with the cost of the suit, including a reasonable attorney's fee.

History

P.A. 82-445, S. 14, 15.

Annotations

LexisNexis® Notes

Case Notes

Notes to Unpublished Decisions

Business & Corporate Law: Distributorships & Franchises: Causes of Action: Good Faith & Fair Dealing

Business & Corporate Law: Distributorships & Franchises: Remedies: Injunctive Relief

Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause

Business & Corporate Law: Distributorships & Franchises: Causes of Action: Good Faith & Fair Dealing

Unpublished decision: Automobile manufacturer was entitled to summary judgment on franchise applicants' cause of action for an alleged violation of Conn. Gen. Stat. § 42-133cc(10) because under Conn. Gen. Stat. § 42-133ee only the following persons could bring such action: consumers, parties to a franchise, and any person injured because he refused to accede to a proposal for an arrangement which, if consummated, would be in violation of Conn. Gen. Stat. §§ 42-133r -- 42-133ee. Trans-Oceanic Motors, Ltd. v. Mercedes-Benz of North America, Inc., 1993 Conn. Super. LEXIS 305 (Conn. Super. Ct. Jan. 29, 1993).

Business & Corporate Law: Distributorships & Franchises: Remedies: Injunctive Relief

Unpublished decision: Alleged franchisee was entitled to an injunction to prevent the alleged franchisor from terminating the parties' franchise agreement; the evidence presented was sufficient to show that the alleged franchisor exercised sufficient control over the alleged franchisee's distribution of the alleged franchisor's bread, such that, the alleged franchisee was a franchise pursuant to Conn. Gen. Stat. § 42-133r, and that the alleged franchisor failed to meet its burden of proof to show good cause for a termination of the franchise agreement. Hillegas v. V.B.C., Inc., 2007 Conn. Super. LEXIS 2694 (Conn. Super. Ct. Oct. 15, 2007).

Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause

Unpublished decision: Alleged franchisee was entitled to an injunction to prevent the alleged franchisor from terminating the parties' franchise agreement; the evidence presented was sufficient to show that the alleged franchisor exercised sufficient control over the alleged franchisee's distribution of the alleged franchisor's bread, such that, the alleged franchisee was a franchise pursuant to Conn. Gen. Stat. § 42-133r, and that the alleged franchisor failed to meet its burden of proof to show good cause for a termination of the franchise agreement. Hillegas v. V.B.C., Inc., 2007 Conn. Super. LEXIS 2694 (Conn. Super. Ct. Oct. 15, 2007).

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Case Notes:

Cited. 10 Conn. App. 22.

Conn. Gen. Stat. § 42-133mm

Current through Chapter 91 of the 2022 Regular Session

LexisNexis® Connecticut Annotated Statutes > Title 42 Business, Selling, Trading and Collection Practices (Chs. 731 — 743ii) > Chapter 739 Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions (§§ 42-126 — 42-133mm)

Sec. 42-133mm. Sale, transfers or assignment of franchisor's interest.

(a) When a franchisor intends to sell, transfer or assign to another person the franchisor's interest in a single marketing premises that is not part of two or more marketing premises marketed as a package to sell, transfer or assign more than a single marketing premises, that the franchisee has occupied under a lease, sublease or other grant of authority to occupy such premises, such franchisor shall first: (1) Make a bona fide offer to sell, transfer or assign to the franchisee such franchisor's interests in such single marketing premises; or (2) if applicable, offer the franchisee a right of first refusal of a bona fide offer made by another acceptable to the franchisor, to purchase such franchisor's interest in such single marketing premises. The franchisee shall have forty-five days in which to accept or reject such offer made under subdivision (1) or (2) of this subsection.

(b) When a franchisor sells, transfers or assigns the franchisor's interest in two or more marketing premises marketed as a package to a successor owner, any change in the terms and conditions of the franchise agreement in effect at the time of the sale, transfer or assignment shall be by mutual agreement of the franchisee and the successor owner. Such successor owner shall, at the expiration of the franchise agreement in effect at the time of the sale, transfer or assignment, renew the franchise agreement of each franchisee for the same number of years as the agreement in effect at the time of the sale, transfer or assignment, provided such renewal shall not exceed five years. Any changes to the franchise agreement shall be submitted in good faith by the successor owner and negotiated in good faith by the successor owner and the franchisee. The successor owner shall not require the franchisee to do the following: (1) Take part in promotional campaigns of the successor owner's products; (2) meet sales quotas; (3) sell any product at a price suggested by the successor owner or supplier; (4) keep the premises open and operating during hours which are documented by the franchisee to be unprofitable to the franchisee or during the hours after ten o'clock p.m. and prior to six o'clock a.m.; or (5) disclose to the successor owner or supplier financial records of the operation of the franchise which are not related or necessary to the franchisee's obligations under the franchise agreement. Nothing in this subsection shall affect the successor owner's ability to terminate, cancel or fail to renew a franchise agreement for good cause shown.

(c) If such successor owner intends to sell, transfer or assign to another person such successor owner's interest in the marketing premises that the franchisee has occupied under a lease, sublease or other grant of authority to occupy such premises, the new owner shall first (1) make a bona fide offer to sell, transfer or assign to the franchisee such successor owner's interest in the marketing premises; or (2) if applicable, offer the franchisee a right of first refusal of a bona fide offer made by another acceptable to the successor, to purchase such successor owner's interest in such marketing premises. The franchisee shall have forty-five days in which to accept or reject such offer made under subdivision (1) or (2) of this subsection.

(d) For the purposes of this section, "marketing premises" means premises which, under a franchise agreement, are to be employed by a franchisee in connection with the sale, consignment or distribution of motor fuel.

(e) The provisions of this section shall apply to any franchise agreement in effect on or after July 1, 2000.

History

P.A. 00-176, S. 1, 2; P.A. 01-195, S. 95, 181; P.A. 06-196, S. 168.

Annotations

LexisNexis® Notes

Case Notes

Notes to Unpublished Decisions

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Unpublished decision: In plaintiff's summary process action pursuant to Conn. Gen. Stat. § 47a-23 against defendant, which had a sub-sublease on the commercial property, defendant failed to establish any equitable defenses, including a defense that it had a right of first refusal based on Conn. Gen. Stat. § 42-133mm; rather, defendant did not provide any factual or legal basis for the application of the defense to the present action. NECG Holdings Corp. v. 331 West Ave. Gas Station, LLC, 2013 Conn. Super. LEXIS 1028 (Conn. Super. Ct. May 3, 2013), aff'd, 315 Conn. 387, 107 A.3d 931, 2015 Conn. LEXIS 4 (Conn. 2015).

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 42

State Notes

Notes

History Notes:

P.A. 00-176 effective July 1, 2000; P.A. 01-195 made technical changes in Subsec. (b), effective July 11, 2001; P.A. 06-196 made technical changes in Subsec. (b), effective June 7, 2006.