



# MATT DICKSTEIN

## Business Attorney

Making legal matters easy and economical for your business

39488 Stevenson Place, Suite 100, Fremont, CA 94539  
510-796-9144. matt dickstein@hotmail.com matt dickstein.com

## Newsletter, July 2011

### Legal Claims and Defenses when a Franchise Ends

Franchise relationships sometimes end badly. Depending on your perspective, a bad ending might be the franchisee quitting the system, or the franchisor terminating or refusing to renew the franchise. By this time, one or both sides have a lot invested in the bad relationship, which leads to posturing and threats and sometimes litigation.

In this article I discuss some common claims for when a franchisee and a franchisor go to war. These claims include the franchisee's fraud claim against the franchisor, plus the franchisee's claim that the franchisor encroached on his franchise, for example by putting other franchises on his border. The franchisor's primary claim is to recover liquidated damages or lost future fees and royalties from the franchisee.

#### **Franchisee's Fraud or Contract Claim**

The franchisee might have a fraud or a contract claim if the franchisor doesn't deliver the promised benefits of the franchise system. For example, the franchisor might have promised that (1) it had a unique or proprietary system when in fact it didn't, or (2) its system was proven successful when in fact it was new and unproven, or (3) its system came with training and support that never appeared, or (4) the franchisee would earn a certain level of revenue that never materialized.

#### **Encroachment Claim**

A franchisor encroaches on a franchise if it puts other franchises or sales outlets unreasonably close to a franchisee, or it sells over the internet into a franchisee's territory. A predatory encroachment claim usually turns on the extent of the franchisee's rights as granted in the Franchise Agreement and Franchise Disclosure Document (UFOC).

#### **Franchisor's Failure to Register in California**

The franchisee might have additional claims or defenses against the franchisor if it failed to register or renew its registration in California. Check with the California Dept. of Corporations whether a franchisor has registered.

## Liquidated Damages

The franchisor's primary claim is for liquidated damages that are specified in the Franchise Agreement, or the recovery of the royalties and fees that the franchisee would have paid had he stayed in the system until the end of the term.

California case law is unsettled and contradictory on the issue whether a franchisor can recover liquidated damages or future royalties from a franchisee. The big case on the issue is *Radisson Hotels International, Inc. v. Majestic Towers, Inc.*, which stands for the general proposition that if the franchisee's default causes franchisor to terminate, franchisor can recover liquidated damages / future royalties. Under *Radisson*, the Franchise Agreement's liquidated damages provision must calculate damages in a way that approximates the franchisor's actual expected losses.

## Non-Competition

The franchisor also might try to enforce a non-competition clause in the Franchise Agreement. I've written a lot on this topic, so call me if you want more data.

As always, I only glossed over the outlines of franchise litigation. Call me if you need to talk more.

## Revenge:

Ancient Chinese wisdom holds that a man need never revenge himself, the body of his enemy will be brought to his own door. But for those of us who can't wait that long...

Forgiveness is the sweetest revenge. --*Isaac Friedmann*

Nothing inspires forgiveness quite like revenge. --*Scott Adams*

Revenge is sweet and not fattening. --*A. Hitchcock*

10 years is not too long for a gentleman to wait for revenge. --*Chinese proverb.*

LOGANIMITY, n. The disposition to endure injury with meek forbearance while maturing a plan of revenge. --*Ambrose Bierce*

No more tears now; I will think upon revenge. --*Mary Stuart*

One good act of vengeance deserves another.

## Funny Papers:

