



Lessons Learned

A continuing column drawing lessons for franchise systems from franchise litigation and other sources.

By: David E. Holmes, a founding partner of Holmes & Lofstrom, LLP

Venue Clause Enforced

As we've noted above, the "boilerplate" in the last third of a Franchise Agreement may have as much impact on the outcome of a dispute as the rest of the Franchise Agreement. An example of that is the "forum selection clause" which determines where a dispute will be heard and resolved. Obviously, a party that has to travel across the country to deal with a court case or arbitration may have to incur expenses that otherwise would not be present if the dispute was heard on their "home field." Sports fans well know the advantage that can sometimes accrue from their team playing on their "home court."

An Alabama Supreme Court decision (In Re the Lanthan Co. v. Soprema) dealt with a clause contained in an Ohio manufacturer's agreement with an Alabama roofing company that any lawsuit between them would be heard in Ohio. The court held that enforcement of the clause, requiring trial in Ohio, was not unreasonable or seriously inconvenient, as well as the fact that the dispute arose under the terms of the same contract that contained the forum selection clause, which the court felt was justification for enforcement of the clause.

While there's no guarantee that another court would have reached the same decision in other situations (disputes regarding forum selection clauses tend to be very dependent on the particular fact situation involved), the decision is a signal that in many situations courts (and, presumably, arbitrators) will enforce such provisions. Therefore, Holmes & Lofstrom generally recommends inclusion of such clauses in all franchise agreements.

David Holmes has practiced domestic and international franchise law for more than 30 years. David earned his undergraduate and law degrees from the University of Southern California. He specializes in franchise law, including structuring franchise systems, drafting registration documents, legal compliance, litigation management and negotiations. He also serves as an expert witness on franchising matters in both federal and state courts and has taught graduate level business law courses at California State University, Long Beach. He contributes to the publications and committees of the International Franchise Association, American Bar Association and California State Bar.

☐ Northern California Office

4251 S. Higuera St., Suite 401 · San Luis Obispo, CA 93401
Phone: 805.547.0697 · Fax: 805.547.0716



☐ Southern California Office

6621 E. Pacific Coast Hwy., Suite 250 · Long Beach, CA 90803
Phone: 562.596.0116 · Fax: 562.596.0416