



## GENERAL COUNSEL CORNER

By Peter H. Gunst, Esquire

### ***Employing Illegal Aliens Can Result in Loss of Station***

A recent decision by a federal court in Georgia, *Karimi v. BP Products North America, Inc.*, brings home the risk to a dealer of employing illegal aliens.

On September 13, 2005, the dealer pled guilty to the misdemeanor offense of continuing to employ unauthorized aliens. Within 120 days – the window for retaliatory action permitted franchisors under the Petroleum Marketing Practices Act – BP sent out its notice terminating the dealer’s lease.

The dealer filed suit and sought a preliminary injunction permitting him to continue to operate his service station pending a full trial on the merits.

One of the prime benefits of the PMPA for dealers is the relaxed standard that must be satisfied to obtain a preliminary injunction. A dealer threatened with termination need not show a substantial likelihood that he or she will ultimately prevail in litigation. All that needs be shown is that “there exists sufficiently serious questions going to the merits to make such questions a fair ground for litigation.” PMPA, 15 USC § 2805(b)(2)(A)(ii).

The terminated dealer’s principal argument was that the punishment did not fit the crime. He argued that the provision of the franchise agreement upon which BP relied to justify

termination – that the dealer comply with all laws and ordinances governing the conduct of his business at the station – was too draconian when applied to his misdemeanor infraction.

The judge disagreed. Honing in on the PMPA standard that the provision of the franchise agreement and the circumstances of its breach be of “reasonable and material significance to the franchise relationship” (15 USC § 2802(b)(2)(A)), the court concluded that the dealer’s conviction was indeed significant because it “detract[ed] from and disparage[d] the franchisor’s public image.”

The court continued:

Potential customers might well avoid a gas station whose owner has been convicted of employing illegal aliens. [BP’s] associations with a franchisee whom [BP] knows to have been convicted of utilizing illegal aliens in the franchisee’s business could suggest to the public that [BP] sanctions such illegal conduct, thereby undermining [BP’s] reputation of conducting an upstanding and law-abiding business.

The court’s summary rejection of the dealer’s effort to minimize his misconduct as a mere misdemeanor is significant. It signaled zero tolerance for

violations of the prohibition against employing illegal aliens.

The decision's impact could be far reaching. Should a similar case arise elsewhere, you can be sure that the supplier will raise the *Karimi* decision as strong precedence for the proposition that any dealer who employs illegal aliens should be summarily terminated.

The warning is clear: be careful who you employ.

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