



GENERAL COUNSEL CORNER

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Reasonableness and the Petroleum Marketing Practices Act

The Petroleum Marketing Practices Act (“PMPA”), 15 U.S.C §§2801-06, has been reviled as a toothless tiger because it fails to provide a direct remedy for some of the most pressing problems encountered by independent dealers, such as high rents, uncompetitive pricing of product and the assignment of dealers’ leases and supplier agreements without their consent.

But the PMPA plays a significant role in one important area: protecting independent dealers from the unreasonable termination or non-renewal of their franchise agreements. Two recent decisions illustrate the point.

In *Chevron U.S.A. v. SSD & Associates*, 2006 WL 2053489 (N.D.Cal. July 21, 2006), Chevron had staged yet another of its lightning auditing rates on its lessee dealer.

When the dealer was unable to present a complete set of purchase journals, financial statements and income tax returns, Chevron sent a 90-day termination letter, and filed suit in federal court seeking a declaration that it could legally terminate the dealer’s lease and supply agreement.

Moving for summary judgment on its complaint, Chevron argued that termination was justified under the express terms of the lease agreement because it granted Chevron broad right “to audit all books and records relating to

Dealer’s operations of the Premises” in order to ensure that the dealer promptly paid its percentage rent obligation.

In opposing Chevron’s motion for summary judgment, the dealer conceded that it had breached the contractual audit provision, and that the contractual provision was indeed material to the overall agreement between the parties. The dealer argued, however, that the PMPA required more: that termination be reasonable under the specific circumstances applicable to the termination.

The dealer contended that termination was not reasonable under the circumstances because it had since recreated the missing documents from original source data, and had provided the requested information – although belatedly – to Chevron.

Rejecting Chevron’s argument that the dealer’s untimely and, Chevron contended, incomplete production should be ignored because it failed to satisfy the express contractual requirements, the court held that Chevron was not entitled to summary judgment because valid issues remained concerning the significance of the dealer’s breach of the lease and the reasonableness of Chevron’s extreme reaction to the dealer’s breach.

The Court held:

If the Court at trial were to conclude that Chevron suffered no significant harm, it also could conclude that the breaches were unimportant to the franchise relationship and therefore did not justify termination.

In *Al's Service Center, Inc. v. BP Products North America*, 2006 WL 1697170 (June 9, 2006 N.D. Ill.), BP had what appeared on its face to be clear contractual and statutory bases for terminating its franchise relationship with the dealer.

The state had commenced condemnation proceedings to take part of the service station property, and BP's lease with the dealer expressly permitted termination upon the condemnation "in whole or in part" of the station premises. Further, the PMPA expressly identifies as an "event" justifying termination "condemnation or other taking, in whole or in part, of the marketing premises." 15 U.S.C. §2802(c) (5).

Nevertheless, the dealer sought a preliminary injunction in federal court arguing that BP's termination was unreasonable because the partial taking would not significantly affect the day-to-day operation of the station.

Agreeing with the dealer and issuing a preliminary injunction prohibiting termination, the district court emphasized that the partial taking would totally eliminate only one of the five station driveways and convert another to a limited access driveway.

Rejecting BP's argument that it had an absolute right to terminate under its lease and under the PMPA, the court said:

We believe that such a strict interpretation is in direct conflict with the legislative history of the PMPA, which clearly shows that it was enacted to offer "franchisees meaningful protection from arbitrary or discriminatory termination and non-renewals."...Thus, we conclude that PMPA's legislative history does not support making minimal condemnations, such as the one in the instance case, grounds for termination.

But for the PMPA's reasonableness requirement, in both cases the franchiser would likely have been able to terminate the dealer in accordance with the express provisions of the parties' lease agreement. Thus, the PMPA continues to serve as an important measure of protection against overly aggressive supplier terminations and non-renewals.

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