

FRANCHISING LITIGATION

The American Dream of Business Ownership on Trial

by Carmen Caruso¹

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Franchising, a way to be "in business for yourself but not by yourself," is part of the American Dream of business ownership.¹ Franchising has "spread to more than seventy industries and generated more than \$1 trillion in U.S. sales annually."² But too often, the dream of business ownership is shattered by sharp disputes between franchisors and franchisees - and trial lawyers may find that their next client is a franchisee, who is eager to allege claims against the franchisor. This article will provide a brief overview of the laws applicable to franchising and review four hot areas in franchise litigation and these are as follows:

1. Claims for fraud in the sale of the franchise;
2. Claims for breach of the "implied covenant of good faith and fair dealing" (the unwritten words of a franchise agreement);
3. Claims arising from the franchisors management of the advertising fund; and
4. ***

OVERVIEW OF FRANCHISING

Three prerequisites to defining a business relationship as a franchise are: (1) The franchisor offers the right to distribute goods or services under the franchisor's trademark (or service mark, trade name etc.); (2) The franchisor exercises significant control over, and offers

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substantial assistance to the franchisee; and (3) The franchisee pays the franchisor (e.g., initial franchise fees, ongoing royalties, transfer fees on the sale of a franchise).³

In analyzing potential franchise litigation, two key documents form the basis for an initial review – the franchise agreement signed by your client, and the Uniform Franchise Offering Circular (UFOC) the franchisor provided to your client before the franchise agreement was signed.

The Franchise Agreement

Franchises are contractual relationships. With near unanimity, franchisors have defeated attempts to have the courts impose fiduciary duties upon them.⁴ Courts usually presume that franchise agreements are negotiated at arms-length, but in fact, wide disparity of bargaining power exists. Franchisees are rarely able to negotiate the terms of the binding agreement, and probably have fewer rights in the contract than an indentured servant.⁵ Nonetheless, the franchise agreement is the starting point to assess a franchise dispute. Franchise Agreements are usually long in describing what the franchisee "shall" do, and the many ways in which the franchisee may be defaulted, terminated, sued or enjoined from competition, etc. They are usually short in providing rights to the franchisee beyond the granting of the franchise itself

Franchise agreements have another distinction from most "sale of business" agreements, in that the franchisor rarely (if ever) warrants that any of its presale disclosures are true.

The Federal Trade Commission Rule and Required Disclosures

In 1987, the Federal Trade Commission (FTC) enacted a Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising And Business Opportunity Ventures" (the "FTC Rule").⁶ As stated by the FTC, "the Rule is designed to enable potential franchisees to protect themselves before investing by providing them with information essential to an assessment of the potential risks and benefits, to meaningful comparisons with other investments, and to further investigation of the franchise opportunity."⁷ The FTC Rule prohibits fraud in the initial sale of a franchise (as opposed to resales by a franchisee, or renewals or extensions by a franchisor), where the franchise affects interstate commerce.⁸ The FTC Rule states the following:

- Requires the delivery of disclosure statements, requires that registered franchise brokers make franchise sales, and prohibit untrue statements in any required report.
- Prohibits fraudulent practices, which are very broadly defined, concerning the offer or sale of a franchise -, *i.e.*, with respect to "disclosure fraud" only. Franchisors typically comply with the FTC Rule by issuing a UFOC.⁹

In a UFOC, the franchisor must disclose:

- The corporate identity of the franchisor, its predecessors and affiliates, the business experience of the franchisors officers and directors, and whether any of these persons or corporations have been a debtor in bankruptcy within ten years.

- Any litigation within ten years by franchisees against the franchisor, or other litigation where claims of fraud or franchise law violations were alleged against the franchisor.
- All fees of any kind, payable to the franchisor including royalties, marketing or advertising fees, transfer fees, audit fees, service charges, late fees, costs or attorneys' fees, indemnification obligations, rent, customer reimbursement obligations.
- The total initial investment required or expected of the franchisee and the terms of any company-sponsored financing.
- Any restrictions on sources of products and services, as well as on the products or services that the franchisee could sell.
- The franchisee's obligations during the franchise relationship, including an obligation to participate in the business personally.
- The franchisor's obligations during the franchise relationship.
- Any territorial restrictions on the franchisee's sales or the franchisor's expansion.
- The franchisor's trademarks, patents, copyrights and proprietary information.
- Renewal, termination, transfer and dispute resolution procedures in the franchise agreement.
- Whether public figures are used to promote the franchise.
- A list of all franchise outlets - including information as to transfers, cancellations, terminations, non-renewals, reacquisition by the franchisor, and departures from the system.
- The franchisor's most recent audited financial statements. Contracts that the franchisee would be required to execute, *including, e.g.*, a franchise reservation agreement, standard form of franchise agreement, lease or sublease where applicable, promissory note, confidentiality agreement.

The FTC is currently considering amendments to its rule.¹⁰ Among the proposals under consideration are:

- Whether franchisors should be required to disclose earnings information,
- Whether to require disclosure of lawsuits filed by the franchisor against franchisees, and
- Whether to prohibit franchisors from imposing "gag orders" which prohibit current franchisees from sharing their experiences with prospective franchisees.

Statutory Claims in Franchising

Federal

The FTC Rule is currently a rule without a remedy absent FTC enforcement. No private cause of action in federal court to redress a franchisor's violations of the FTC Rule exists. Except for RICO¹¹, presently, no federal statutory cause of action is available to redress a franchisee's grievances against a franchisor. The specific requirements for establishing a RICO case are beyond the scope of this paper. However, it's worth noting that in franchise cases, the "pattern of racketeering" requirement, which is often the most difficult element to establish in RICO cases, might be readily established in cases when an alleged fraud is perpetrated on a system-wide basis.

State "Little FTC" Acts and Franchising Laws

Many states (including Illinois) have enacted "Little FTC" laws that provide state law causes of action for fraud and deceptive business practices, under which state courts may provide a forum for actions alleging a violation of the FTC rule.¹² As enacted in Illinois, the "Consumer Fraud and Deceptive Business Practices Act" proscribes:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with the intent that others rely upon the concealment, suppression or omission of such material fact ... in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. ...¹³

Little FTC Acts are intended to provide broader protection than the common-law action of fraud, and usually, the plaintiffs need not prove actual reliance to recover.¹⁴ These acts apply to the sale of franchises and, where enacted, they fill an important void created by the lack of a federal action to redress violations of the FTC Rule.¹⁵

In addition, a minority of states (including Illinois) has enacted laws that specifically regulate franchising and provide causes of action for certain violations.¹⁶ Some of these statutes merely regulate the disclosure of information to the prospective franchisee, while others extend their regulatory ambit to issues that arise during the relationship and upon termination of the franchise. The practitioner is advised carefully to review applicable state laws and to consider choice of law issues.

Proposed Federal Legislation - HR 3308

Congress is considering a bill (the Small Business Franchise Act of 1999) (HR 3308) that would regulate franchising and provide federal claims to franchisees for its violation. The merits of this bill are being hotly debated in the franchising industry.¹⁷

FRAUD IN FRANCHISING

The common law of fraud and deceit, RICO and, where available, state "Little FTC" acts and state franchising laws provide potential claims for fraud in the purchase or sale of a franchise based on the franchisor's disclosures of materially misleading facts in the UFOC. Two areas worthy of careful attention are "earnings claims" and "success rates."

Earnings Claims

Prospective franchisees want to know how much money they are likely to earn. They are very likely to rely upon the franchisor's *earnings claims* regarding how much money the other franchisees in the system have earned in recent years. False earnings claims are a typical subject of FTC actions against franchisors. The FTC has reported that from 1989-1992, 100% of the FTC's franchise enforcement cases were based on allegations that the franchisor had provided fraudulent or misleading earnings claims.¹⁸ But the FTC does not require franchisors to disclose earnings. The FTC Rule provides that if the franchisor elects to provide earnings claims, it must have a "reasonable" basis for the claims and that they must be substantiated.¹⁹ Acting defensively, most franchisors do not provide earnings claims to prospective franchisees.

Often, however, the UFOC states that the franchisor does not publish earnings claims. Yet despite that statement, a franchise salesperson tells the franchisee (usually verbally) how much the franchisee can expect to earn based on the experience of other franchisees. In other words, an oral earnings claim is made that contradicts the statement in the UFOC. Typically, the evidence might be that the oral earnings claim was accompanied by a statement that "the law won't let me put this in writing, but just between you and me ...". There is plenty of authority rejecting fraud claims by the franchisee in these circumstances.²⁰

However, there is hope for the franchisee. In Federal Trade Commission v. Minuteman Press et al (Oct. 02, 1998),²¹ the federal district court held that a printing franchisor and its wholly-owned sign shop affiliate violated the "FTC Act" by making unsubstantiated and false earnings claims to prospective franchisees. The franchisor argued unsuccessfully that the FTC had failed to establish reasonable reliance on the oral earnings claim by any franchisees. The franchisor contended the oral earnings claim had to be viewed with a "disclaimer in the applicable UFOC's, coupled with the franchisee's acknowledgment in the franchise agreement that no such representations had been made by the franchisor." The court in Minuteman Press held that the disclaimer of earnings claims was not controlling in FTC enforcement proceedings as opposed to private actions, because actual reliance is not an element of the FTC's claim. The court held that in an action by the FTC under the federal FTC Act:

While a conflict between UFOC disclaimers and an oral representation may be germane to the issue of reliance, it is the "common-sense net impression," ... which controls. Here, a reasonable consumer could legitimately conclude that he or she was being furnished important specific earnings information, subrosa, to assist in the decision-making process notwithstanding the general disclaimers in the UFOC. ... (citations omitted)

Based on Minuteman, franchisees may now argue under state law Little FTC Acts (where actual reliance is also not required) that oral earnings claims are actionable if they were likely to subrosa influence the decision-making process despite the general disclaimer of earnings claims in the UFOC. This author has made this claim successfully in arbitration proceedings.

Success Rates

Another key disclosure issue is a franchisor's claim that X percent (usually a high percentage) of its stores have been successful, *i.e.*, have remained in continuous operation from opening day to the present. But what if, undisclosed to the franchisee, the same store has been sold a number of times – and in each sale, the old franchisee sold the store back to the franchisor, which resold it to a new franchisee? Would that additional information be material to the prospective franchisee? Would failure to disclose that information amount to fraud? The FTC Rule does not require franchisors to disclose resales or turnovers from one franchisee to the next. Nonetheless, the claim may be made that this practice of "franchise flipping" is highly deceptive and misleading under state law Little FTC Acts and the common law.

The Problem of Integration Clauses

Franchisors and their lawyers seek to preempt the possibility of fraud suits by including in the written franchise agreement a "no reliance" or "integration" clause that says something like this:

Franchisee acknowledges that this Agreement is the entire agreement of the parties, and that in entering into this Agreement, he or she is not relying upon any statements or representations that may have been made on or before the date of this Agreement, which are not expressly made a part of this Agreement.

Often, these clauses have been upheld and the franchisee's claim of fraud was defeated – in effect, because the contract language negates the element of reliance – due to the franchisors deliberate absence of warranties in the agreement as to the truthfulness of its pre-sale disclosures. Confronted with an integration clause, the franchisee's attorney must read it carefully – for example, sometimes the franchisor fails to address "prior representations" as part of the merger. Keep in mind that an alleged written contradiction of an alleged oral misrepresentation must be unambiguous before a claim of reliance will be negated.²² Further, it is unclear whether an integration clause would defeat the claim of subrosa "net impression" fraud as presented in Minuteman that should be actionable under state Little FTC Acts.

THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Franchisees suing for breach of express contract terms confront the obstacle that the language was drafted by the franchisor and for the franchisor. In many jurisdictions, a franchisee's best claim is for breach of the implied covenant of good faith and fair dealing which is implied as a matter of law in every contract (in states that recognizes this doctrine). The implied covenant of good faith and fair dealing has been described as a "clever chameleon," as it applies in myriad factual settings, *e.g.*, quality, service and cleanliness (QSC) testing, and renewal, termination and encroachment questions.²³ As a matter of law, where a party to a contract retains discretion as to performance of contract terms, the covenant requires that party

not exercise his discretion arbitrarily, capriciously, or in any manner inconsistent with his co-party's reasonable business expectations.²⁴ Good faith is "the duty to avoid taking advantage of gaps in a contract in order to exploit vulnerabilities that arises during performance."²⁵

Another way of looking at this covenant is that the test for whether a contracting party has acted with good faith is whether that party's *discretionary* act was "commercially reasonable."²⁶ In effect, this holding can make the trial of a "good faith" case the functional equivalent of a commercial negligence case, although, most franchisors would contest the viability of any claims of commercial negligence.

However, this claim is often misunderstood. It does not impose a general duty of good faith, does not create an independent cause of action, or create a claim in either tort or contract for bad faith per se. The claim is derivative in nature, aimed at defining and furthering the terms of the parties' agreement. ... To be actionable, the allegedly bad faith conduct *must relate to specific terms of the contract* that the breaching party allegedly performed in bad faith.²⁷ The inquiry when a breach of this covenant is alleged is *objective*, not subjective, making proof of motive irrelevant.²⁸ Moreover, a claim for breach of the implied covenant of good faith and fair dealing is contractual in nature. Therefore, in most jurisdictions, it will not support a claim for punitive damages in franchising cases.²⁹

Territorial Encroachment

To what extent does the franchisor have a duty to refrain from opening new outlets "too close" to existing units? How close is "too close" if the license agreement is silent? In a 1997 decision that is widely hailed by attorneys representing franchisees, a the Ninth Circuit Court of Appeals in In re Vylene Enterprises held that a franchisor breached the implied covenant of good faith and fair dealing by opening new stores close to the plaintiff/franchisee's store – though the franchisee had not bargained for express territorial protection in the franchise agreement.³⁰

Franchisees complain about territorial encroachment (the franchisor's opening of a new store within the franchisees market area) more often than they complain about any other single issue.³¹ But despite Vylene, unless the franchise agreement creates express protection for the franchisee's defined territory, some courts (particularly those in the Eleventh Circuit) are increasingly reluctant to find that there was an implied duty not to encroach under the covenant of good faith and fair dealing - and regardless of whether the franchisor arguably violated an internal policy in opening the new store.

These cases remain fact intensive. In a 1979 decision, Photovest Corp. v. Fotomat, the Seventh Circuit held that territorial encroachment was actionable despite the absence of express contractual protection, where the franchisor had the goal of driving the franchisee out of business.³² Photovest was decided under California law, but should remain good in other jurisdictions.

Other Areas of Good Faith Litigation

- Training and support: Has the franchisor provided training and technical support promised?

- Control: What degree of control is the franchisor entitled to exercise over the franchisee's products, suppliers and pricing? To what extent may the franchisor derive profit from the franchisee's supplier relationships?
- New Products: To what extent does the franchisor have a duty to introduce new products to keep ahead of the competition? Once the decision to introduce new products is made, is the franchisor held to any "standard of care" to ensure that the product is successful?
- Expansion or Contraction of the System: Is the franchisor's natural desire to expand the franchise system in conflict with a franchisee's desire to maximize profits at his or her location? Conversely, what duties, if any, does a franchisor owe to franchisees in a particular market if the franchisor plans to withdraw from that market for strategic reasons?
- Expansion by the Franchisee: To what extent is an individual franchisee's desire to expand in conflict with what is best for the system as a whole?
- Reinvestment: May a franchisor require a franchisee to reinvest a portion of his revenue back into the business? Does the answer to this question depend on whether the franchisee owns or leases the real estate?

Termination Issues

The end of a franchise relationship may also provide grounds for litigation:

- Renewal: Does a franchisor have a duty to renew a franchisee beyond the initial term of his or her license agreement, if no option to renew is stated in the contract? If there is a right to renew, it probably requires the franchisee to renew under the franchisor's "then current" form of the franchise agreement that may be less favorable than the original franchise agreement.
- Early Termination: Under what circumstances may a franchisor terminate a franchise before the expiration of its contractual term?
- Sale of a Franchise: Under what circumstances may a franchisor veto a franchisee's proposed sale of his or her franchise to a third party?

ADVERTISING FUND ISSUES

What duties does the franchisor owe the franchisees when it collects advertising funds from each franchisee for system-wide marketing campaigns? In 1997, in *Broussard v. Meineke Discount Muffler Shops, Inc.*, a class of franchisees alleged that they were defrauded by Meineke concerning an advertising fund that each franchisee was required to contribute. The class of franchisee plaintiffs proved that Meineke had a contractual duty to purchase and place advertising in exchange for their advertising fees; and that the franchisor not only committed civil fraud, but also breached fiduciary duties and committed other torts when it

created a wholly-owned subsidiary "New Horizons to perform these tasks and took additional fees and commissions from the Weekly Advertising Account (WAC), negotiated volume discounts for advertising and took those discounts for itself, purchased superfluous advertising so fees could be charged against the fund, and used the WAC funds for other improper purposes such as settling a lawsuit, paying some of [the franchisor's] business expenses and using WAC funds to advertise to attract franchisees (as opposed to generating business for existing franchisees).³³

The *Meineke* jury returned a verdict in favor of the franchisees that was trebled under RICO to \$590,869,788.00, plus interest. *Meineke* was the largest reported verdict in favor of franchisees, but this large verdict was based on the application of largely settled legal principles to the facts of that case. What made the difference in *Meineke* was the old adage that there is strength in numbers. The *Meineke* franchisees formed a not-for-profit trade association that funded the plaintiffs' case, and therefore, they could pursue the discovery, which unearthed the evidence of wrongdoing that led to the verdict.

The Fourth Circuit Court of Appeals reversed, primarily because the class had been improperly certified, and because of an improper instruction that *Meineke* owed the franchisees a fiduciary duty.³⁴ Nonetheless, the fact allegations were proven and never refuted. It is this author's opinion that the franchisees could probably have prevailed under a good faith claim (with proper class certification).

¹ This slogan comes from the International Franchising Association (IFA), the largest franchising industry trade association.

² Podmolik, "Tailor-Made Model", Crain's Small Business "Special Report", June 12, 2000, p. SB 1.

³ 16 C.F.R. §436.2(a)(3)(iii). See the regulations for certain exceptions to these requirements, as well as for the definition of related "business opportunities" whereby the seller offers an "opportunity" to sell goods or services that the seller or its affiliate supplies, but which does not meet the three-part test for franchising. "Business opportunity" laws are beyond the scope of this Article.

⁴ In Oil Express National, Inc. v. Burgstone, (¶11, 148, (CCH) Business Franchise Guide, N.D. Ill. May 1997), the district court in Illinois held that absent evidence that the parties intended the franchise to be a confidential relationship, the franchisor does not owe a common law fiduciary duty to the franchisee. *Oil Express* states the majority view.

⁵ See, generally, Purvin, R., The Franchise Fraud 1994 (available at www.aafd.org).

6 16 C.F.R. §436 (1978), "Trade Regulation Rule and Statement of Basis and Purpose" enacted by the FTC under the Federal Trade Commission Act, 15 U.S.C. § 45 et seq.

7 See the FTC's page on the World Wide Web entitled "Guide to the FTC Franchise Rule" (<http://www.ftc.gov/bcp/franchise/netrule.htm>).

8 16 C.F.R. §436 (1978), "Trade Regulation Rule and Statement of Basis and Purpose" enacted by the FTC under the Federal Trade Commission Act, 15 U.S.C. §45 et seq.

9 Franchisors typically utilize the UFOC disclosure format that was adopted by the Midwest Securities Commissioners Association in 1975, and by its successor, the North American Securities Administrators Association (NASAA), last revised in 1993. See CCH Bus. Franchise Guide §300; and Final Guides to the Franchising and Business Opportunity Ventures Trade Regulation Rule, 44 Fed. Reg. 39,996 (1979).

10 See, Fed. Reg., vol. 62, no. 40, Friday, February 28, 1997.

11 The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq.

12 *E.g.*, the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq.

13 The Illinois franchise Disclosure Act is found at 815 ILCS 505/2. See, L. Seth Sethfeld (Ed.), Representing Franchisees: A Comprehensive Course, presented to the American Bar Association Forum on Franchising (October 16-18, 1996) (hereinafter "Sethfeld"), for all of the applicable state statutes.

14 Salkeld v. Business Brokers, 192 Ill.App.3d 663, 548 N.E.2d 1151,1160 (2nd Dist. 1989). In Martin v. Heinhold Commodities, Inc., 163 Ill.2d 33,643 N.E.2d 734 (1994), the Illinois Supreme Court held that: "to recover under the Consumer Fraud Act, a plaintiff need only show: '(1) a deceptive act or practice, (2) intent on the defendant's part that plaintiff rely on the deception, and (3) that the deception occurred in the course of conduct involving trade or commerce.' ... Of note, the Consumer Fraud Act does not require actual reliance, an untrue statement regarding a material fact, or knowledge or belief by the party making the statement that the statement was untrue." 163 Ill.2d at 66 (internal citations omitted).

15 See, Bixby's Food Systems's Inc. v. McKay, 985 F.Supp. 802, 807 (N.D. Ill. 1997), quoting from People ex rel. Scott v. Cardet International, 24 Ill.App.3d 740 (1st Dist. 1974).

16 Sethfeld, p. 35.

17 To view a complete copy of H.R. 3308 log onto <http://thomas.loc.gov/> and type in H.R. 3308.

18 See July 1993, GAO Report, [FTC Enforcement of the Trade Regulation Rule On Franchising](#).

19 As stated by Commerce Clearing House in its [Business Franchise Guide](#): The [FTC Rule] does not require that any earning claims be made. However, if such claims are made, they may be made only in accordance with the provisions of Sections 436.1(b)-(e) of the rule. Section 436.1(b) concerns claims of potential earnings; §436.1(c) concerns claims of past earnings performance; §436.1(d) concerns segments of a disclosure document which describe the earnings claims that are made and §436.1(e) concerns earnings claims made in the media. ... The term earnings claim should be interpreted as including an oral, written or visual representation to a prospective franchisee or for general dissemination in the media which states or suggests a specific level or range of potential or actual sales, income, gross or net profits. Thus, it includes claims such as "earn a \$10,000 profit" or "sales volume of \$250,000" or "earn up to \$25,000 per year income." It also includes the presentation of facts which suggests or from which a prospective franchisee easily could infer a specific level or range of income, sales or profits, such as "earn enough money to buy a new Porsche" or "100% return on investment within the first year of operation." It does not include mere puffery, such as "make big money" or "opportunity of a lifetime." The presentation of data, such as costs only, from which income or profits can be determined simply by arbitrarily selecting a sales figure, is considered to be an earnings claim subject to the provisions of the rule. All earnings claims—whether they be made directly to the prospective franchisee or in the media—must satisfy the following rule imposed standards: (1) A reasonable basis must exist to support the accuracy of the claim. (2) Material sufficient to substantiate the accuracy of the claim must be in the franchisor's possession at the time the claim is made. (3) The claim must be geographically relevant to the prospective franchisee's proposed location (except for media claims discussed [infra](#)). ... In addition, any time an earnings claim is made, an Earnings Claim Document must be furnished to the prospective franchisee at the time required by the rule. (CCH [BUSINESS FRANCHISE GUIDE](#), ¶6254)

20 See, e.g. [Carlock v. Pillsbury Co](#), 719 F. Supp. 791, 829 (D. Minn. 1989).

21 53 F.Supp. 248 (E.D. N.Y. 1998); CCH [BUSINESS FRANCHISE GUIDE](#) ¶11,516.

22 See, [Associates In Adolescent Psychiatry, S.C. v. Home Life Ins. Co.](#), 941 F.2d 561, 570 (7th Cir. 1991)

23 See, Lee N. Abrams and John A. Donovan, [Clever Chameleon: Good Faith and Fair Dealing](#), ABA Forum on Franchising, 1995 Annual Forum, Vol. 1, Tab 7.

24 [Beraha v. Baxter Health Corp.](#), 956 F.2d 1436, 1443 (7th Cir. 1992).

25 [Original Great American Chocolate Chip Cookie Co. v. River Valley Cookie, Ltd.](#), 970 F.2d 273, 280 (7th Cir. 1992).

26 [Lippo v. Mobil Oil Co.](#), 776 F.2d 706, 714, fn. 14 (7th Cir. 1985).

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- 27 DuPage Fork Lift Service, Inc. v. Machinery Distribution, Inc., 1995 U.S. Dist. LEXIS 3290 *9 (N.D. Ill. March 14, 1995) (citations omitted).
- 28 Dayan v. McDonald's Corp., 125 Ill.App.3d 972 (1984).
- 29 See, Avedas, Inc. v. Intouch Group, Inc., 1995 U.S. Dist LEXIS 5135 *9 (N.D. Ill. April 18, 1995)(Illinois law) ("Although Illinois courts have recognized that a breach of an obligation of good faith and fair dealing may give rise to a tort action, the courts have expressly refused to recognize such tort actions outside the limited fields of insurance law and employment law. Numerous courts have rejected attempts by plaintiffs to expand the tort beyond these limited areas of law") (citations omitted).
- 30 90 F.3d 1472 (9th Cir. 1997).
- 31 Murphy, "Close Quarters Irk Franchisees", Crains Small Business "Special Report", June 12, 2000, p. SB 8.
- 32 606 F.2d 704, 727-29 (7th Cir. 1979), cert. denied, 445 U.S. 917 (1980).
- 33 958 F.Supp. 1087,1092 (W.D.N.C. 1997)
- 34 Broussard v. Meineke Discount Muffler Shops, Inc., 155 F.3d 331 (4th Cir. 1998).