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A "Good Reason" for Getting Out of the Business May Not Be "Good Cause" for Termination

As they ride out the current economic storm, many suppliers are thinking about eliminating some of their struggling brands and product lines. As they do, they also may consider ending or altering relationships with their dealers or franchisees for those products and brands. But before actually taking these steps, suppliers should take into account those state dealer and franchise laws that may limit their ability to terminate or substantially alter dealerships and franchises. These laws can come into play even when the supplier's reason for the change is to stem the flood of economic losses.

Many dealer and franchise laws prohibit termination or substantial change without prior notice and a showing of good cause. There is no uniform definition of "good cause." Some laws specifically say that good cause exists if the supplier leaves the market or discontinues a product line, but others define "good cause" primarily in terms of dealer or franchisee defaults and say nothing about a supplier's economic challenges. As a result, if a supplier decides to stop making a product or marketing a brand, it may have good cause to terminate its dealers and franchisees in some states, but not others, even if the reason is the same for all.

Several recent decisions show how the law varies from state to state. The Arkansas Supreme Court recently ruled that a supplier's decision to discontinue a particular brand of farm equipment was not good cause to terminate its franchisees under an Arkansas franchise law. *Larry Hobbs Farm Equipment, Inc. v. CNH America, LLC, 2009 WL 153357 (Ark., Jan. 22, 2009)*. The Fourth Circuit came to the same conclusion at the end of 2007 when Volvo decided to stop selling its Champion brand of earth moving equipment in *Volvo Trademark Holding AK v. Clark Machinery Co.,* 510 F.3d 474 (4th Cir. 2007). In those cases, the suppliers planned to continue to sell similar products under different brand names, and both courts noted that the statute's definition of good cause did not say anything about a supplier's decision to stop selling a product line.

On the other hand, last month the Seventh Circuit Court of Appeals found that a supplier had good cause to terminate its Samsung dealers under Maine law when it stopped selling the Samsung brand of construction equipment, even though it sold similar equipment through Volvo dealers under its Volvo brand name. *FMS,*

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Inc. v. Volvo Construction North America, Inc., 557 F.3d 758 (7th Cir. 2009). The Maine law specifically said that good cause included product discontinuation.

While recent cases focused on whether the state law specifically mentioned a supplier's decision to discontinue a product line, prior courts have found that a supplier's financial problems can be considered in the good cause analysis, even if the statute does not explicitly say it. For example, in *Morley-Murphy Co. v. Zenith Electronics Corp.*, 142 F.3d 373 (7th Cir. 1998), the Seventh Circuit held that a supplier would have good cause to terminate its Wisconsin dealers as part of its overall effort to change its distribution system to stem large financial losses, even though Wisconsin's Fair Dealership Law defined good cause only as a dealer's contract breach or bad faith and said nothing about a supplier's financial circumstances. That court said that the good cause requirement would be met so long as the termination is part of a system-wide change and there is an objective need for the change, a proportionate response to the need and the change is implemented in a nondiscriminatory manner.

Courts often seem influenced by the reasons for the market withdrawal and whether the supplier is *really* getting out of that business. If a supplier decides to get out of the business for its convenience (rather than economic necessity), or if it continues to sell the same products under a different brand name, there is more of a risk that a court will find that the supplier does not have good cause to terminate its dealers. But if the supplier is truly exiting the market in an effort to stay afloat or deal with deepening financial loss, it is less likely that a court will find good cause to be lacking or that it will award substantial damages to former franchisees or dealers.

Suppliers should plan carefully as they decide how to restructure their distribution system as part of a decision to withdraw products or brands from a market. A supplier should consider state dealer and franchise laws and any other relevant special industry laws in each state in which an affected dealer operates or sells the product. In addition, individual dealer agreements and individual circumstances must be taken into account. Good preparation will help avoid expensive disputes and protracted litigation.

Reinhart's Commercial and Competition Law Group can help navigate the various state dealer laws and related issues. This is especially important during tough economic times, when expensive litigation is something few can afford. Please contact a team member if you have questions about your rights and responsibilities in connection with market withdrawal issues or related

distribution questions.