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Client Alert

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Missouri Court Decision Denies Lost Future Royalties Claim By Franchisor

The United States District Court for the Eastern District of Missouri recently issued an opinion that could potentially have adverse implications for franchisors seeking future license fees upon early termination of a franchise agreement. In *Medicine Shoppe Int'l, Inc. v. TLC Pharmacy, Inc.*, 2010 WL 2757328 (E.D. Mo., July 12, 2010), a franchisee prematurely terminated her franchise agreement after only six years into a 20-year term. The franchisor sued, seeking damages for past due license fees and lost future license fees for the full extent of the 20-year term.

The Court noted that Missouri state courts have not yet decided whether lost future royalties are recoverable from the early termination of a franchise agreement. However, the Court recognized that under Missouri law generally, lost profits are recoverable "provided the loss is the natural and proximate result of the breach, is ascertainable with reasonable certainty, is not speculative or conjectural, and was within the contemplation of the parties when the contract was made."

Applying Missouri law to the facts in *Medicine Shoppe*, the District Court predicted that a Missouri court would decide that the franchisor would not be entitled to recover future license fees. This expectation is based on the fact the franchise agreement between the parties did not specifically state that the franchisor could collect future license fees after an early termination due to the franchisee's breach.

While the *Medicine Shoppe* decision is not definitive on the issue under Missouri law (as it was issued by a federal court), the decision does provide some guidance to franchisors that employ Missouri choice-of-law provisions in their franchise agreements. Franchisors should ensure that their franchise agreements include an acknowledgement by the parties that early termination of the agreement for breach by the franchisee will result in a damages claim for lost future royalties. Missouri-based franchisors in particular should stay tuned to how other courts will interpret *Medicine Shoppe* in the future.

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