

AUTHORS

Setareh Deljo-Zargarani
George E. Constantine
Jeffrey S. Tenenbaum

RELATED INDUSTRIES

Nonprofit Organizations
and Associations

ARCHIVES

2011 2007 2003
2010 2006 2002
2009 2005 2001
2008 2004

Articles

August 3, 2011

Could Your Nonprofit's Chapters Be Considered "Franchises" under State Law?

Related Topic Area(s): Antitrust and Trade Regulation

A recent U.S. Court of Appeals for the Seventh Circuit decision held that the national Girl Scouts organization violated a Wisconsin franchise law when it attempted to take away territory from a local chapter as a part of the national organization's broader plan to reorganize local council boundaries. In this case, *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the United States of America, Inc.*, the Manitou council sought to enjoin the national organization from transferring all of its territory in Wisconsin, arguing that the local Manitou chapter (called a "council") was a "dealer" under Wisconsin law and that such action would be violating the Wisconsin Fair Dealership Law without good cause. While the transfer of all of the Manitou council's territory would not have served to dissolve the Manitou council as an entity, it would have prevented it from representing itself as a Girl Scouts organization and from otherwise using Girl Scouts trademarks, which the Court characterized as a "constructive termination."

Background

The Girl Scouts of the United States of America, Inc. is a nonprofit organization that was founded in 1912 and incorporated in 1950 by an Act of Congress. In 2004, a time when there were over 300 local Girl Scout councils across the country, the national organization determined it would cut back drastically the number of local councils and expand the surviving councils' boundaries. Each council is party to a charter agreement. According to the Court's decision, the agreement with the Manitou council did not permit the national organization to change its territory at the time the national organization attempted to take away the council's territory, though the council had agreed to be subject to a rule that allowed the national organization to have the final say over "all matters concerning jurisdictional lines."

The Court noted that the Manitou council and the national Girl Scouts organization relied heavily on the sale of cookies and other merchandise for fundraising.

Wisconsin Law

The Wisconsin Fair Dealership Law forbids a franchisor from terminating, canceling, failing to renew, or substantially changing "the competitive circumstances of a dealership agreement without good cause." A "dealer" is defined as a "grantee of a dealership" and the applicable "dealership" definition is an agreement that grants "the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising, or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services."

The Court's Decision

In response to the Manitou council's lawsuit, the national organization raised several arguments which were each dismissed by the Court, the first of which was that the national organization's first amendment right of free expression would be violated if it wasn't allowed to reorganize. The Court then disagreed with the national organization's argument that the Wisconsin law does not apply to nonprofit entities due to an absence of commercial activities; the Court said that nonprofits often engage in commercial activities and that the Girl Scouts definitely do, stating that, "[f]rom a commercial standpoint, the Girl Scouts are not readily distinguishable from a Dunkin' Donuts." The Court also rejected other arguments from the national organization attempting to show it was exempt from the state law. Ultimately, the Court held that although the national organization's board of directors had the authority in its chartering agreement with the Manitou council to make final decisions "in all matters concerning jurisdictional lines," when attempting "to use that authority to terminate the

franchise altogether,” the national organization violated the Wisconsin Fair Dealership Law which, as mentioned above, requires “good cause” to terminate a “dealership.”

The Impact of this Decision

While the facts involved in this case are somewhat unique – given how significant and recognizable the Girl Scouts’ cookie sales and other activities are – the decision of the Court was a broad one that could be construed as applying to more traditional nonprofits that may have less visible commercial activities. The contractual relationship between the Girl Scouts and its councils (which the Court viewed as akin to that of “franchisor to franchisee”) appears to be very similar to relationships that associations and other nonprofit organizations have with their state and local chapters and other affiliates. As a result, this decision may pave the way for state dealership and franchise laws to be imposed on nonprofit organizations’ relationships with their chapters and affiliates. Approximately 20 states have dealership or franchise laws that could now come into play for nonprofit organizations across the country.¹

Thus, nonprofit organizations with chapters should review their organizations structure and charter agreements as well as state dealership and franchise laws to determine whether changes to their charter agreements may be necessary.

* * * * *

¹Matthew Moloshok, *Constraints Against Termination of Dealers and Franchisees*, The Antitrust Source, (2005), 5; and ABA Section of Antitrust Law, *Franchise and Dealership Termination Handbook* (2004), App. A.

* * * * *

For more information, please contact the authors at sdeljo-zargarani@venable.com, geconstantine@venable.com, jstenenbaum@venable.com, or at 202-344-4000.

This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to a specific fact situation.