Syllabus -- Franchise and Distribution Law/Professor Devlin/Fall 2006

Meets Monday and Tuesday 1:00 – 2:30 p.m. Room TBD


The course is designed to provide a kaleidoscopic view of franchise and product distribution law. The syllabus is ambitious because the subject is quite broad and is governed by both federal and state statutes as well as common law. The areas of the law involved include, among others, contract, intellectual property, antitrust, and constitutional law. We will devote time to motor fuel franchises and touch on environmental issues relevant to motor fuel distribution. The assignments may appear extensive, but we will be as flexible as possible both in timing and material covered during the semester to assure that we can cover as much as possible tempering ambition with reasonable limits.

I expect the final exam to consist of two fact pattern/essay type questions and a group of objective questions. Class participation will also be considered in final grading.

I will let you know of my on-the-premises availability during our initial classes, and I plan to make myself available on a fairly regular basis.

My hope and intention is that we will have an enjoyable time together exploring an interesting, timely, and relevant subject.

August 21 and 22
Introduction and Overview; Brief History of Franchising
What is a Franchise?
Laws governing relationships and registration and/or disclosure
Significant Control and Community of Interest Issues
Distinguish “Business Opportunities” and Sales Representative

Assignment for 08/21-22 – pp. 3-40 and Texas Business Opportunity Act, Texas Business & Commerce Code - Chapter 41; Wisconsin Fair Dealership Law (Chapter 135, Wisconsin Laws; and Wisconsin Franchise Investment Law, Chapter 553, Wisconsin Laws)
August 28
Trademarks Briefly
Trade Dress
Licensing and Enforcement

Assignment for 08/28 -- pp. 41-97 (read Two Pesos decision on 75-81, Fotomat on 81-91, and Jiffy Lube on 91-97)

August 29 and September 5
Registration and Disclosure Laws
FTC Rule
State Franchise Investment Laws
Enforcement and Penalties

Assignment for 08/29 -- pp. 277-79; Appendix A (“FTC Rule”) (pp. 471-82); FTC cases (pp. 284-90 and 304-10)
Assignment for 09/05 – pp. 280-84; Appendix B (“UFOC”) (pp. 483-543); State cases (pp. 290-304, and pp. 310-13)

September 11
Franchise Relationships and Relationship Laws - Overview
Transfers of Franchises and Contract Prohibitions; Inheritance
“Blue Sky” on franchise sales

Assignment for 09/11 -- pp 99 and 197; pp 198-204 (Creamland and DQ cases on 198-200 and 202-04) and 152-61;

September 12
Franchise Relationships and Relationship Laws
Encroachment – common law and statutory
Forum Selection and Choice of Law
Arbitration and Mediation Provisions

Assignment for 09/12 -- pp. 245-67 and 140-44 and Minnesota law (Minnesota Rule 2860.4440.C) on encroachment; pp. 216-33 on forum selection; pp. pp. 233-42 on choice of law and jurisdiction; pp. 204-16 on arbitration

September 18 and 19
Termination and Nonrenewal
Constructive Termination and Nonrenewal

Assignment for 09/18 and 09/19 -- pp. 99-140 and 152; New Jersey Franchise Practices Act, § 56:10-5 of NJ Statutes
**September 25**
Discrimination Among Franchisees
Repurchase and Compensation
Rights of First Refusal
Remedies


**September 26**

UCC and Other Contract Issues Issues – Overview
Duty of Competence and Due Care
Implied Covenant of Good Faith and Fair Dealing
Pricing (Open Price Terms)
Integration Clauses

Assignment for 09/26 – On implied covenant, Texas Business & Commerce Code §§1-203, 1-201(19), and 2-103(1). On Open Price Terms - Texas Business & Commerce Code §2-305; Mathis v. Exxon Corp., 302 F.2d 448 (5th Cir. 2002); Shell Oil Co. v. HRN, Inc., 144 S.W.3d 429 (Tex. 2004). On integration clauses, casebook pp. 267-75.

**October 2**
No-Compete Agreements

Assignment for 09/26 – Texas Business & Commerce Code §§ 15.50-.52;

**October 3**
Vicarious Liability

Assignment for 10/02 - pp. 451-471

**October 9 and 10**
International Franchising Materials to be assigned

**October 16 and 17**
Industry-Specific Franchise Laws (ex-PMPA)

October 23, 24, and 30
Petroleum Marketing Industry

Assignment for 10/23 – Petroleum Marketing Practices Act (15 U.S.C §§ 2801-06; Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978). Legislative History and additional cases and statutes to be assigned

October 31
Introduction to Distribution Law and Antitrust
Brief History of Antitrust Law
Competition Principles (Competition v. Competitors; Inter v. Intra-brand)
Federal and State Laws and their Relationship


November 6
Rule of Reason v. Per se Treatment
Horizontal/Vertical
Development of Vertical Price and Non-Price Restraints Jurisprudence


November 7 and 13

Tying

November 14 and 20
Price Discrimination
Robinson-Patman Act
Fred Meyer Guides
Slotting Allowances


November 21
Predatory Pricing
State Below-Cost Selling Statues
Price Gouging Legislation

Assignment for 11/21 – Sherman Act § 2; on below-cost selling, see Florida Motor Fuel Marketing Practices Act, Florida Statutes, Chapter 526, §§ 526.301 et seq.; on price gouging, see Fla. Stat. § 501.601(1) and Code of Ala. § 8-31-3; see also proposed post-Hurricane Katrina Federal legislation – Energy Emergency Consumer Protection Act of 2005 (S. 1735) and Prohibiting Reprehensible Increases in Costs of Essential (PRICE) Act of 2005 (HR. 3808); Testimony of Chairman of the FTC before U.S. Senate Committee on November 5, 2005 (http://www.ftc.gov/os/testimony/051109gaspricetest3.pdf)

November 27
International Antitrust issues - materials to be assigned

November 28
Wrap-up