2020 Petroleum Marketing Year in Review & Look Ahead to 2021
PMPA Updates

Preemption

Anabi Oil Corp. v. Highland Park Oil, Inc. (Cal. Ct. App. Aug. 15, 2019)

- Facts: A distributor entered into a retail sales agreement to supply fuel to a dealer. After the dealer's station was closed and foreclosed upon, the distributor sued for breach of contract, seeking both liquidated damages and actual damages.

- Result: The PMPA notice requirements preempted California state law, which allowed for termination of an agreement by repudiation. Therefore, the distributor could not claim liquidated damages under the contract arising from a termination of the agreement, where the agreement was not terminated in compliance with the PMPA because no notice of termination was provided, notwithstanding the dealer's permanent closure.

Timelines of PMPA Claim

Scottsdale Gas Co. v. Tesoro Refining & Marketing Co. (D. Ariz. Oct. 11, 2019).

- Facts: Franchisee had a history of late rent and tax payments. Tesoro issued notice of termination.

- Result: The federal court denied the franchisee's motion to preliminarily enjoin termination of its franchise agreement under the PMPA because it was untimely as the motion was made more than ninety days after Tesoro issued its notice of termination. The court also declined to issue a preliminary injunction based on the operator's failure to show that it was likely to succeed on the merits because the operator had repeatedly failed to remit payments and its argument that its late payments had been historically accepted was unavailing.

Validity of Termination

LLB Convenience & Gas, Inc. v. Southeast Petro Distributors, Inc. (M.D. Fla.)

- Facts: A Shell-branded dealer disputed its termination by its wholesaler. The dealer charged significantly higher prices at the Florida station, above $6/gallon at some points. Motiva, the wholesaler's supplier, had received an enormous amount of customer complaints about the pricing at the station—at times hundreds of complaints in a few months. As a result, Motiva notified the wholesaler that it would no longer allow the marks to be used at that station and the station must debrand. The wholesaler and supplier unsuccessfully explored alternative suppliers.

- Result: Two decisions were issued by the Court:

  (1) January 7, 2020 Order:
  The court denied the plaintiff's motion for summary judgment and as to the PMPA found that:

  - The wholesaler had the right to debrand and rebrand the station under the terms of the dealer agreement because the wholesaler no longer had permission to use Shell identifications and distribute Shell fuel to the station;
  - The evidence did not show that the wholesaler failed to secure a replacement brand for the station;
  - There was an indication, to be determined at trial, that the dealer continued to receive fuel supply and use the associated trademark, and if so, there was no termination subject to the PMPA.

  (2) June 12, 2020 Order:
  After a bench trial, the court entered a judgment for the wholesaler. The wholesale agreement between Motiva and the wholesaler allowed Motiva to debrand the station. The franchise agreement between the wholesaler and the dealer could not be continued because, although the wholesaler attempted to find a replacement supplier, the dealer made it impossible as a result of its high pricing and associated customer complaints and the dealer's refusal to be subject to a minimum gallonage requirement. As a result, the court found that the wholesaler did not violate the PMPA. The court found for the wholesaler on all counts and awarded fees to the wholesaler.

Four S Shell, LLC v. PMG, LLC (D.N.J.)

- Facts: The franchisee operated a Shell-branded station supplied by PMG. The franchisee acquired the station by assignment. Previously, because the business operating the station had become distressed, PMG agreed to charge rent outside and lower than its guideline rent formula. Prior to acquiring the site, the franchisee met with PMG and discussed that the station was in a highly competitive area, a tough site, and was a risky purchase. When the franchise agreement was up for renewal, PMG provided the franchisee with a proposed renewal agreement. When the dealer never responded, PMG issued a notice of termination/nonrenewal.

  The franchisee alleged that the new rent in its renewal franchise agreement, which increased by 83%, was excessively high and set in bad faith. When PMG nonrenewed the dealer for not entering into the renewal franchise agreement, the dealer brought a claim under the PMPA challenging the termination/nonrenewal. The franchisee claimed that PMG failed to renew the franchise agreement as required by the PMPA. The case examined the section of the PMPA pertaining to a franchisee's rejection of terms at renewal that are changes or additions to the franchise agreement (Section 2802(b)(3)(A)). The franchisee asserted that PMG did not meet the requirement that the changes or additions in the renewal franchise agreement be in good faith and in the normal course of business, not to convert the station to direct operation.

- Result: Two decisions were issued by the Court:

  (1) July 11, 2019 Order:
  The court denied summary judgment on the PMPA claim. The court identified disputed facts including PMG's formula for rent increases and whether PMG had another motive for not renewing the franchise agreement. Notably, the court stated that "the substantial increase in rent [ ] is not conclusive of bad faith on the part of Defendant but is nonetheless relevant." The court dismissed the state law claims as preempted by the PMPA because the court found those claims were all inextricably intertwined with the termination or nonrenewal of the franchise.

  (2) September 22, 2020 Order:
  The Court issued a decision following a bench trial in the case. PMG's witnesses testified that its rental formula calculated rent as 12% of the value of the land improvements, and equipment plus taxes and maintenance. PMG "dampened" down rent where it was significantly off from the current rent, which PMG did for the franchisee's site.

  At trial, the central issue considered by the court was PMG's determination of the value of the property in setting the new rent. In reaching its decision, the court evaluated PMPA case law pertaining to rent increases based on two considerations under the renewal provision of the PMPA: (1) if the changes or additions were made in good faith and (2) if they were made in the normal course of business. Notably, the court observed the line of cases that hold that a mere increase in rent is not relevant to the good faith inquiry under the PMPA so long as a rent formula is applied in a non-discriminatory manner to all applicable franchisees, and that rent increases of 100% to 300% had been upheld by courts where rent increases were not to selectively terminate a particular franchisee.

  The court concluded, however, that the facts before it did not demonstrate that PMG was acting in good faith or the normal course of business. These facts highlighted by the court include, among others:
  - Information relied on by PMG for valuing the station to set the rent appeared misplaced and arbitrary;
  - Nothing in the franchise agreement referenced reliance on the rent formula and there was no fair notice to the franchisee of the increase in rent based on the rent formula, and indicated a lack of good faith; and
  - Other conduct by PMG that did not demonstrate good faith in its relationship with the franchisee.

  Finding for the franchisee, the court awarded the franchisee funds that had been withheld by PMG, payment for installation of bullet-proof glass at the station, and attorney's fees. (The court observed that the franchisee did not seek lost profits or compensatory damages, so they could not be awarded.)

Pham v. Tesoro Ref. & Mktg. Co. LLC (C.D. Cal. Sept. 24, 2019)

- Facts: The plaintiffs sought a temporary restraining order related to assignment of an ARCO station to a new franchisee. According to the allegations, Tesoro terminated the franchisee, accepted payment for supply, ceased supply, and withheld debit card payments made at the station. Tesoro identified the following grounds for termination in the notice of termination: (1) insufficient funds from returned checks; and (2) 8 dates when the station was out of fuel (which the court noted were not consecutive so could not be a basis for termination under the PMPA).

- Result: The court granted the franchisee's request for an injunction and found that there were serious questions going to the merits as to whether these grounds gave rise to a lawful basis for termination under the PMPA. The parties subsequently settled.

BP Products North America, Inc. v. Grand Petroleum, Inc., et al. (N.D. Cal. Apr. 27, 2020)

- Facts: BP terminated its franchisee in California when it failed to implement two required marketing programs. After termination, the franchisee continued to operate a gas station and convenience store on its properties in violation of the deed restrictions on those properties. In response to BP's request for preliminary injunctive relief, the franchisee claimed the termination was invalid under the PMPA, that BP did not have good cause for termination as required by the California Franchise Relations Act, and that the two marketing programs were illegal "material modifications" of the franchises for which BP did not provide disclosures required by the California Franchise Investment Law.

- Result: The court rejected BP's request for preliminary injunctive relief finding a legal and factual question as to whether the two marketing programs materially modified the franchise and, therefore, whether there was a valid basis to terminate for a dealer's refusal to participate. The case remains pending.

Constructive Termination Claims

Hopkinton Friendly Serv., Inc. v. Glob. Companies LLC (D. Mass.)

- Facts: A franchisee brought claims against its franchisor alleging violations of the PMPA and state law claims for increased rent related to redevelopment at the station.

- Result: Two decisions were issued by the Court:

  (1) June 4, 2019 Order:
  The court found that the franchisee had not shown any actual abandonment of its franchise because it continued to operate the c-store and motor fuel station, received fuel from its supplier and continued to use the trademark. The court held that, "[w]hile defendants' conduct in dramatically increasing the monthly rent arguably leaves plaintiff no reasonable alternative but to abandon the franchise, no court has held that such conduct constitutes constructive termination." The court found that a letter to the franchisee providing notice of increase rent was not a notice of termination under the PMPA.

  As a result, the court granted the franchisor's motion to dismiss the PMPA claim and contract claim. The court, however, did allow claims for breach of the implied covenant of good faith and

fair dealing, a claim under Massachusetts' unfair and deceptive practices statute (Chapter 93A), and for fraud in the inducement to proceed for allegedly misleading it on costs for redevelopment to mislead the franchisee to renew the agreement.

(2) September 29, 2020 Order (on appeal):
The court granted summary judgment for the franchisor on the remaining claims: breach of the implied covenant of good faith and fair dealing, a claim under Massachusetts' unfair and deceptive practices statute (Chapter 93A), and for fraud in the inducement claims because the defendant's actions were consistent with the terms of the agreement and good faith actions.

Scope of PMPA

M.O. Dion & Sons, Inc. v. VP Racing Fuels, Inc. (C.D. Cal. Sept. 27, 2019)

- Facts: The plaintiff purchased racing fuels from the defendant. Among other claims, the plaintiff asserted claims under California's False Advertising Law and Unfair Competition Law related to the products involved in manufacturing the fuels and the product specifications and documentation, specifically disclosing on the canister label whether the product contained MTBE or ETBE. The defendants argued that those claims were preempted by the PMPA.

- Result: The PMPA question pertained to octane disclosures required in Section 2822. The court determined that some claims were preempted because the octane disclosure requirements stated that ""[n]o marks or information other than that called for by this rule may appear on the labels" and preempted state regulations that are not the same as the PMPA requirements. As a result, the court's ruling was mixed: claims were preempted to the extent they related to disclosures on the canister as to the contents, but not preempted to the extent that the claims were based on an alleged misrepresentation of the actual octane rating.

Nevada DeAnza Family Ltd. P'ship v. Tesoro Ref. & Mktg. LLC (N.D. Cal. July 27, 2020)

- Facts: A lessor and lessee agreed that hydrogen fuel dispensers would be installed at the station. Tesoro agreed to supply the station and rebrand it as a Mobil station. Later, Marathon (Tesoro's successor) informed the franchisee that it would not allow the installation of the hydrogen dispensers under the canopy, and later terminated the franchise agreement because of the construction of them. The lessee asserted a claim under the PMPA.

- Result: The court granted Tesoro's motion to dismiss on the PMPA claim. Addressing a section of the PMPA not litigated very often, Section 2807, the court found that hydrogen fuel does not fall within the PMPA's Section 2807 pertaining to certain renewable fuels. As a result, the court could not grant declaratory relief because Marathon was not violating the PMPA by refusing to allow installation of the hydrogen fuel dispensers.