Puerto Rico's Dealer and Franchise Statute Adapts to the Latest Developments in Law, Commerce, and Technology

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Puerto Rico's Dealer's Contract Law, commonly known as Law 75,[1] protects dealers and franchisees against the termination, nonrenewal, or impairment of their agreements without just cause. The statute defines *just cause* to include a dealer's failure to perform "any of the essential obligations" of the agreement, as well as "any action or omission . . . that adversely and substantially affects the interests of the principal or grantor in the marketing or distribution of the merchandise or service."[2]

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Law 75 was enacted forty-six years ago after intense lobbying from Puerto Rican dealers who were frustrated with suppliers that unilaterally terminated distribution agreements so that they could supply clients directly after dealers had developed local markets for their products.[3] The statute has withstood constitutional attacks[4]; intense lobbying from manufacturers and suppliers that want it abolished; and several amendments attempting to conform it to federal laws, such as an amendment regarding the validity of arbitration clauses in distribution agreements.[5] Still, the interpretation of Law 75 and the impact of the statute are constantly evolving in light of current developments in law, commerce, and technology—from mergers and acquisitions to the integration of the global markets, from the nuances of constructive termination to the scope of protection afforded by federal trademark and copyright law. This article focuses on how each of these commercial and legal issues affects or is affected by the protections that Law 75 provides to dealers and franchisees in Puerto Rico.[6]

TRANSFERS, ASSIGNMENTS, OR ACQUISITIONS

Law 75 provides that a principal or franchisor does not have "just cause" for terminating a distribution or franchise agreement merely because a dealer or franchisee violates an agreement provision that restricts its rights to sell, transfer, or otherwise assign its license or distribution rights to another party or to change its capital structure, management, or financing. To avoid liability under the statute, a principal or franchisor must prove that any such change has or will substantially hurt the development of the market, the distribution of merchandise, or the rendering of services.[7]

No judicial opinions have addressed this provision of Law 75. Nevertheless, the broad discretion that Law 75 affords dealers to assign their distribution rights appears to conflict with Article 1065 of the Puerto Rico Civil Code, which provides that "[a]ll the rights acquired by virtue of an obligation are transmissible, subject to law, should there be no stipulation to the contrary."[8] Put differently, an agreement that carries a nontransferable clause is valid and binding upon the parties under the Puerto Rico Civil Code.

In addition, even in cases where the franchise agreement does not contain a transfer clause, to the extent that the principal-dealer relationship can be classified as a creditor-debtor relationship, Law 75 may be at odds with Article 1159 of the Puerto Rico Civil Code, which provides that "[n]ovation, consisting in the substitution of a debtor in the place of the original one, may be made without the knowledge of the latter, but not without the consent of the creditor."[9]

Thus, the Puerto Rico Civil Code may afford principals broader rights to terminate for just cause than does Law 75. But the apparent conflict between a dealer's right to transfer a distribution agreement under Law 75 and a principal's right to prohibit such a transfer under the Puerto Rico Civil Code probably would be decided in favor of the dealer under the settled principle that when the terms of a specific statute (Law 75) and the terms of a general law conflict, the specific statute controls.[10] Still, the Puerto Rico Civil Code's provisions can be influential in a situation in which a franchisee transfers its rights without notice and consent of the franchisor because Law 75 creates a sufficiently close relationship between the franchisor and franchisee such that there is a legitimate interest in approving the transfer and substitution of a third party.

In other contexts, the U.S. Court of Appeals for the First Circuit and the U.S. District Court for the District of Puerto Rico have upheld the terms of a distribution contract if those terms are clear and unambiguous, even if they are inimical to the letter of Law 75. For example, with respect to forum selection clauses, Law 75 provides that any contractual requirement for dealers to litigate any contract-related

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controversy that arises outside of Puerto Rico or under foreign law or rule of law shall be deemed to violate public policy and thus be null and void.[11] Despite this provision, however, courts routinely have enforced forum selection clauses that mandate litigation outside Puerto Rico.[12]

As another example, the court in *Nike International Ltd. v. Athletic Sales, Inc.* gave full force and effect to the renewal clause of a distribution agreement stating that the agreement would be automatically canceled if the dealer did not provide express notice of renewal within a prescribed time. The court did so despite the provision in Law 75 that "[n]otwithstanding the existence in a dealer's contract of a clause reserving to the parties the unilateral right to terminate the existing relationship, no principal or grantor may . . . refuse to renew said contract on its normal expiration, except for just cause."[13] In holding the clause enforceable, the court relied on an article of the Puerto Rico Civil Code providing, "If the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its stipulations shall be observed."[14] The court reasoned that "the legislature did not intend that Law 75 be a safe-haven for dealers to avoid the express terms of the contracts to which they willingly subscribed."[15] Thus, although Law 75 prohibits a principal from acting unilaterally or subjectively to terminate its agreement with a dealer without just cause, the statute does not necessarily prohibit a principal from terminating an agreement when the dealer has breached the agreement's literal terms.

The Puerto Rico Supreme Court also has made clear that Law 75 does not afford dealers the right to act arbitrarily with respect to their sales policies or to transform dealerships into "interminable relationships."[16] In *Medina & Medina v. Country Pride Foods, Ltd.*, the court, examining the "history, sources, and raison d'être" of the statute, concluded that there is no bond between dealers and principals created by agreement or by a relation of dependency that subordinates one to the other. The court added thus:

> We cannot possibly construe the statute in such a way that the dealer would govern—by imposing his conditions—the principal's sales policies, or vice versa, with the inevitable loss of the financial and legal autonomy of both. Such interpretation would be contrary to public order because it would place an unreasonable restriction on man's free will.[17]

In sum, an argument can be made that, despite Law 75's language, a principal can unilaterally terminate its relationship with a dealer if the dealer assigns its distribution rights to another contrary to the "literal terms" of their distribution agreement because prohibiting termination in that circumstance would place an unreasonable restriction on the principal's right to choose the dealer that will resell its products. Nevertheless, in light of the language of Law 75, principals often find themselves hard-pressed to refuse to consent to a transfer of their dealers' distribution rights absent just cause.

On the other hand, Law 75 is silent as to whether a principal may assign, transfer, or sell its brand to another supplier without a dealer's consent. Yet the statute's clause protecting a dealer from direct or indirect termination, impairment, or nonrenewal of its distribution agreement upon its express expiration date without just cause certainly has a bearing on this issue.[18] In *Goya de Puerto Rico, Inc. v. Rowland Coffee*,[19] the Puerto Rico district court concluded that the former owner of a brand name of coffee distributed in Puerto Rico by an exclusive dealer was not liable under § 278a for an improper termination of the dealership agreement that allegedly occurred after the former owner assigned or transferred its rights and obligations under the dealership agreement to a third-party principal. For many years, Goya de Puerto Rico, Inc. was the exclusive distributor in Puerto Rico for Café Bustelo coffee, a brand that had been owned by Tetley USA, Inc. Eventually, however, Tetley sold its Café Bustelo brand to Rowland Coffee Roasters, Inc., which "'assumed Tetley's obligations to [Goya] as exclusive distributor for Café Bustelo brand coffee'" in Puerto Rico as well as certain Caribbean countries. After Goya's and Rowland's relationship soured and Rowland began to sell coffee directly to customers in Puerto Rico, Goya sued both Rowland and Tetley for unjust impairment and termination under Law 75. Among other things, Goya alleged that Tetley breached its exclusive distribution rights by selling them to Rowland without compensating Goya.[20] Relying on civil law, the court held that Tetley was not liable because Goya consented to the assignment to Rowland, which assumed all of the obligations under the distribution agreement, and therefore released Tetley from any liability stemming from the agreement for acts occurring after the assignment.[21]

One year later, in *V. Suárez & Co., Inc. v. Dow Brands, Inc.*,[22] the First Circuit addressed the question of whether assignments without dealer consent constitute improper terminations under Law 75. In that case, manufacturer Dow terminated its distributor of household cleaning supplies in Puerto Rico after selling its product line to another company. The dealer sued Dow for termination without just cause under Law 75 after it was informed that Dow would no longer be able to provide it products for distribution because of the sale. Analyzing Law 75's definition of *just cause*, the court stated thus:

> From a plain reading of the statute, it may appear that only action or inaction on the part of the dealer would provide just cause to allow a principal to terminate the relationship. But a plain reading of Act 75 would produce, in some situations, absurd and constitutionally suspect results. As a consequence, the courts have filled in other readings.[23]

The First Circuit upheld Dow's right to terminate, relying on two decisions by the Puerto Rico Supreme Court, *Medina*[24] and *Borg Warner International Corp. v. Quasar Co.*[25]

In *Medina*, the court concluded that market withdrawal may constitute just cause, reasoning that Law 75 does not bar a principal from withdrawing from the Puerto Rican market when its action is not aimed at usurping the goodwill or clientele established by the dealer and when the withdrawal, which constitutes just cause for terminating the

relationship, occurs because the parties have bargained in good faith but have not been able to agree on price, credit, or some other essential element of the dealership. In any case, the court held that the withdrawal must be preceded by a previous notice term, depending on the nature of the franchise, the characteristics of the dealer, and the nature of the pretermination negotiations.[26]

In *Borg Warner*, the court went a step further. There, the court "found just cause even when the product line continued to be distributed in Puerto Rico" and "dispensed" with the requirement for "prior notice in circumstances where the principal's legitimate business reasons, totally independent of the . . . dealer, made giving notice to the dealer unreasonable."[27]

The court in *Dow* concluded that not all situations warrant negotiations prior to market withdrawals, especially where, as in that case, the dealer's performance had declined steadily over time, the dealer had considered divesting itself of its distribution responsibilities, and the dealer had already stopped reselling several products in the line. The court reasoned that requiring the principal to negotiate with the dealer in these circumstances would not serve the primary interest of Law 75, i.e., preventing the principal from unfairly usurping the distributor's hard-won clientele and goodwill, and, indeed, would undermine the statute's stated goal of encouraging a level playing field. The court stated,

> Here, either negotiation would be meaningless or the plaintiff dealer would acquire leverage it would not otherwise possess. This latter effect would create a new imbalance of power, making the entirely legitimate and unrelated corporate interests of the principal in divesting itself of a product line subject to the interests of dealers. To read the Act to require such a result could discourage national and multinational companies from entering into distributorship agreements subject to Act 75 in Puerto Rico.[28]

The *Dow* court also determined that because there was "little reliance by [the dealer] on [the principal's] line of business, and there was little [the dealer] could have done to prepare for [the] termination," even with advance notice, it was reasonable to dispense with the prior notice requirement.[29]

The First Circuit's opinion in *Dow*, together with the Puerto Rico Supreme Court's opinions in *Medina* and *Borg Warner*, support the proposition that a manufacturer or supplier can sell or transfer its product lines without a dealer's consent and, in some circumstances, even without prior notice. It remains to be seen, however, whether the Puerto Rico Supreme Court will dispense with the negotiation and notice requirements altogether.

PRODUCT SALES DIVERSION

Law 75 does not operate to grant exclusivity,[30] but it does protect dealers that have been granted exclusivity from the impairment of that right absent just cause. Specifically, the statute states that "no principal or grantor may directly or indirectly perform any act detrimental to the established relationship . . . except for just cause."[31] Thus, if a principal grants a dealer exclusivity and then, without just cause, sells directly to the trade or through another Puerto Rican dealer, the principal's actions constitute an "impairment" under Law 75.[32] That determination is straightforward. Others, however, are more complex.

In today's global economy, market integrations and technological advances threaten the grant of exclusivity that principals may have given to dealers for a determined geographic area. For example, a distributor's rights to exclusivity in a specific market may be impaired when consumers in that market purchase products over the Internet, either from the principal or another distributor. Such exclusive rights also may be impaired when consumers purchase from an out-of-state national wholesaler or from another distributor that can sell at a lower price than a Puerto Rican dealer presumably could. Several cases have addressed these more complicated scenarios.

In *General Office Products Corp. v. Gussco Manufacturing, Inc.*,[33] the court considered whether a principal that granted exclusivity to its Puerto Rican dealer impaired that right of exclusivity under Law 75 by failing to take action against a third-party reseller interfering with the dealer's market in Puerto Rico. The court concluded that once the exclusive dealer alerted the principal to the third party's interference, the principal impaired the dealer's right to exclusivity by failing to take action to prevent that interference. Although the principal was not required to act as a watchdog, once the dealer informed the principal of the problem, the court reasoned, the principal had a duty to act to prevent further interference.[34] The court, however, gave no indication of the nature and extent of measures that the principal would have had to take to avoid liability under Law 75.

In *Irvine v. Murad Skin Research Laboratories, Inc.*,[35] the First Circuit applied the rationale of *Gussco* in holding that a principal impaired a dealer's right to exclusivity when it failed to stop an infomercial from being aired in Puerto Rico, causing the dealer's clients to purchase the products advertised in the infomercial directly from the principal instead of from the dealer. In that case, the dealer was a corporation that sold skin care products to the trade and salons. The principal was a stateside manufacturer of those products. The principal "broadcast an infomercial on various stateside cable television stations as part of its advertising campaign." Without the principal's knowledge, a New York broadcaster relayed the infomercial to Puerto Rico, making the principal's products available locally through telemarketing. The court concluded that a reasonable fact finder could have determined that the principal failed to take timely action to correct this interference once the dealer put it on notice and thus could have determined that the principal impaired the dealer's exclusive distribution rights.[36]

Finally, in *Twin County Grocers, Inc. v. Méndez & Co., Inc.*,[37] a cooperative-based warehouse distributor from New Jersey sought a declaratory judgment that Law 75 did not require it to prevent a third-party reseller from selling its products in Puerto Rico to Puerto Rican retailers, even though a local

dealer had been granted exclusive distribution rights, as long as the third-party reseller's sales were conducted outside of Puerto Rico. The court disagreed, concluding that Law 75's protection is not limited to situations in which a grantor or third party establishes a line of distribution within Puerto Rico but also covers situations in which Puerto Rican retailers bypass local distributors purchasing goods on the mainland from stateside wholesalers. The fact that the retailers purchase the goods outside of Puerto Rico does not lessen the impairment of the dealer's exclusive agreement, the court concluded. "Whether such impairment results from a grantor or third party establishing a parallel line of distribution within the Commonwealth or from selling to Puerto Rico retailers outside of the island is not determinative," the court stated.[38] Although the court ultimately found that material issues of fact as to the existence of exclusive distribution agreements precluded summary judgment, its decision is significant because it expands the protection that Law 75 affords to dealers against purchases made from national wholesalers or distributors that conduct sales stateside for eventual resale to consumers in Puerto Rico.

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CONSTRUCTIVE TERMINATION

Even though the remedies provision of Law 75 applies to both termination and impairment causes of action, courts in impairment cases usually allow only recovery of net profits from actual lost sales rather than the more severe remedies applied in termination cases.[39] The remedies for termination may include the following:

(a) The actual value of the amount expended by the dealer in the acquisition and fitting of premises, equipment, installations, furniture and utensils, to the extent that these are not easily and reasonably useful to any other activity in which the dealer is normally engaged;
(b) The cost of the goods, parts, pieces, accessories and utensils that the dealer may have in stock, and from whose sale or exploitation he is unable to benefit;
(c) The goodwill of the business, or such part thereof attributable to the distribution of the merchandise or to the rendering of the pertinent services;
(d) The amount of the profit obtained in the distribution of the merchandise or in the rendering of the services, as the case may be, during the last five years, or if less than five, five times the average of the annual profit obtained during the last years, whatever they may be.[40]

In an effort to recover the full benefits of termination damages, however, dealers may argue that some acts of principals that generally would constitute impairment, such as violating a dealer's exclusive distribution rights, actually constitute constructive or de facto terminations instead. A dealer deprived of its right to exclusivity would argue that the exclusivity clause is the essence of the distribution agreement and that the loss of exclusivity results in a material reduction in the value of the agreement.

This argument has not been tested in Puerto Rico, however, since the U.S. Supreme Court issued its opinion earlier this year in *Mac's Shell Service, Inc. v. Shell Oil Products Co. LLC*.[41] The Court held that substantial changes in rental terms imposed by a franchisor did not constitute constructive termination under the Petroleum Marketing Practices Act (PMPA) because the franchisees were not compelled to abandon their franchises but instead continued to occupy the same premises, receive the same fuel, and use the same trademarks. The Court was careful to limit its holding to constructive termination claims under the PMPA, stressing that "franchisees can still rely on state-law remedies to address wrongful franchisor conduct that does not have the effect of ending the franchise."[42] Yet principals undoubtedly will argue that where the dealer continues reselling the principal's product, the same reasoning should apply to constructive termination claims under Law 75; that is, any constructive termination claim under state law should require an actual abrogation of the franchise, especially in light of the fact that the statute provides relief for impairment claims.

Dealers, on the other hand, may argue that even if an agreement is not literally terminated, actions by a principal that affect the essence of the agreement or are materially adverse to the operations, distribution value, or financial well-being of a Puerto Rican dealer can constitute constructive termination. Such actions may include, among others, realigning a dealer's sales territory[43] or divesting a dealer of the exclusivity that it enjoyed under its agreement with the principal.[44] The only Puerto Rico decision touching on this issue, *Eliane Exportadora, Ltda. v. Maderas Alfa, Inc.*, is unreported and contains no discussion of constructive termination.[45] The appellate court did conclude, however, that the principal's impairment of the dealer's exclusive distribution rights constituted a de facto termination. In doing so, the appellate court provided no analysis or reasoning for its conclusion, but it is worth noting nonetheless given that no other Puerto Rican case has addressed the issue.

PREEMPTION UNDER FEDERAL COPYRIGHT AND TRADEMARK LAWS

The Puerto Rico courts have not yet had occasion to analyze whether Law 75 is preempted by federal copyright

or trademark laws. Arguments can be made both for and against preemption.

With respect to copyright, the question is whether Law 75 governs an exclusive distributorship relationship between a Puerto Rico dealer and a manufacturer that holds copyrights in a work, or whether § 301 of the Copyright Act preempts the application of Law 75 in that case.

Law 75 affords dealers and franchisees the right to distribute or sell the product of a principal without impairment or termination of their rights under their distribution or franchise agreements, absent just cause. Thus, the right of distribution that Law 75 protects belongs to the reseller, not to the copyright holder.

By contrast, the U.S. Copyright Act in § 106 affords copyright owners exclusive rights to distribute copies of their own copyrighted works to the public by sale or other transfer of ownership.[46] Section 301 of the Copyright Act, in turn, provides that "all legal or equitable rights equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106" are governed exclusively by the Copyright Act; and, thus, "no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State."[47]

The right of distribution that Law 75 protects belongs to the reseller, not to the copyright holder.

Thus, a dealer or franchisee may argue that Law 75 is not statutorily or expressly preempted by the federal Copyright Act because the rights that each law protects are not equivalent. Section 106 of the Copyright Act protects the right of distribution of the copyright holder. The right of distribution that Law 75 protects, on the other hand, belongs to the dealer as a reseller and not as a copyright holder.

Whether the Copyright Act preempts Law 75 under a conflict preemption theory in the context of a dispute involving intellectual property rights is a different matter. Under conflict preemption, "state law is 'preempted to the extent it actually conflicts with federal law, that is, when compliance with both state and federal law is impossible, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"[48] This analysis depends on the purposes and objectives of Congress in granting the copyright holder exclusive rights to distribute and authorize others to distribute copies of copyrighted works to the public by sale or other transfer of ownership.[49]

Arguably, Law 75 may be preempted by the Copyright Act in the context of a dispute involving intellectual property rights. If, for example, the Copyright Act permits a principal to enter into an exclusive distribution contract with a dealer of its choice but Law 75 subsequently subjects the principal to liability if it refuses to renew its contract with that dealer upon expiration absent just cause, then Law 75 may be preempted on the theory that it imposes obligations contrary to federal law.[50]

On the other hand, it may be argued that Law 75 does not divest copyright holders of their ownership rights because they maintain control over the decision of whether to enter into distribution contracts in Puerto Rico. In other words, Law 75 does not obligate a copyright holder wishing to license its product in Puerto Rico to do so through a dealer or to grant exclusivity. Instead, Law 75 merely protects dealers from termination without just cause once the copyright holder has decided to sell its products through the dealer rather than directly to the trade.[51] Dealers arguing against preemption might rely on this reasoning given that Law 75 is essentially regulating market distribution practices by imposing a just cause requirement on principals.

In that same vein, dealers may argue that the underlying purpose of Law 75, i.e., to protect dealers from termination by principals after the dealers have created a favorable market and goodwill for the principal's product or services, does not conflict with the underlying purpose of § 106 of the Copyright Act. This objective presupposes that the principal will have voluntarily chosen to enter into a distribution agreement with the dealer instead of, or in addition to, selling directly to the trade. On the other hand, the main purpose of § 106, as it pertains to distribution, is to protect the copyright holder's right to control the first public distribution of an authorized copy of its work, with the understanding that the copyright holder's rights in the copy may cease once it sells the copy.

These two purposes seem to be in harmony. The Copyright Act protects copyright holders' rights of distribution before they transfer ownership of their products, and Law 75 protects dealers after they enter into distribution agreements with principals. Moreover, one of the chief prerequisites for a dealer to qualify for protection under Law 75 is to acquire title of the product it distributes.[52] Thus, because copyright owners' distribution rights cease with respect to a particular copy once they no longer own it, it may be argued that there is no conflict between the distribution rights afforded to Puerto Rico dealers under Law 75 and the distribution rights afforded to copyright holders under the federal Copyright Act, at least as it relates to Puerto Rico dealers that acquire title to the product,[53] because the copyright holder is free to distribute its product in Puerto Rico directly to the trade without dealer intervention.

Similar arguments may be made regarding preemption under the Lanham Act,[54] focusing on the respective purposes of the federal trademark law and the state dealer statute. A principal or franchisor may argue that Law 75 curtails the freedom of trademark holders to dictate the terms of their licensing arrangements by restricting their ability to terminate their agreements without cause. On the other hand, a dealer or franchisee may argue that Law 75 merely carries out Puerto Rico's legitimate objective of protecting dealers and franchisees and does not undermine the Lanham Act's goals of protecting trademark holders against infringement and

ensuring that consumers will not be confused or deceived as to the source or sponsorship of products.[55]

CONCLUSION

Law 75 has evolved significantly over the past forty-five years, through the case law and through amendments to the statute. Some see Law 75 as a protectionist statute that hampers free commerce and Puerto Rico's complete integration into global markets. Others see it as a necessary source of security and stability for local dealers and franchisees, ensuring the support that they, in turn, provide to the local economy. Present-day commercial realities undoubtedly will continue to affect the ways in which Law 75 is amended by the legislature and interpreted by the courts. It remains to be seen whether those realities will weaken the protection enjoyed by Puerto Rico dealers or strengthen it.

ENDNOTES

1. P.R. Laws Ann. tit. 10, §§ 278 et seq.

2. *Id.* tit. 10, § 278.

3. *Id.* tit. 10, §§ 278 et seq. The Industry and Commerce Commission of the Puerto Rico Senate, in a May 14, 1964, report issued while the bill was pending, noted "the unseasonable act of domestic and foreign manufacturers that, without justified cause, unilaterally terminate their relations with their distributors and agents in Puerto Rico, as soon as the latter have created a favorable market for their products, thereby frustrating the legitimate expectations and interests of those who so efficiently have complied with their responsibilities." Puerto Rico Senate Industry and Commerce Commission (4th Sess. 1964).

4. *See, e.g.*, Pan Am. Computer Corp. v. Data Gen. Corp., 562 F. Supp. 693 (D.P.R. 1983) (holding that Law 75 does not violate the Due Process, Equal Protection, or Commerce Clauses of the U.S. Constitution).

5. P.R. Laws Ann. tit. 10, § 278b-3.

6. As a commonwealth of the United States, Puerto Rico has essentially the same legal landscape as any of the fifty states. Puerto Rico is a civil law jurisdiction. Its state judiciary is directed by a supreme court with seven judges nominated by the governor of Puerto Rico and confirmed by the senate. The state judiciary also includes a court of appeals, a superior court, and a municipal court. State court proceedings are conducted in Spanish, and state court opinions are published in Spanish. The federal judiciary in Puerto Rico consists of the U.S. District Court for the District of Puerto Rico, which is part of the U.S. Court of Appeals for the First Circuit.

7. P.R. Laws Ann. tit. 10, § 278a-1.

8. *Id.* tit. 31, § 3029; *see* Consejo de Titulares v. C.R.U.V., 1993 JTS 25, at *8 (P.R. 1993) (official translation has not been published) (recognizing that a contract that stipulates that it is nontransferable is one of the instances of nontransferability that the statute contemplates).

9. P.R. Laws Ann. tit. 31, § 3243.

10. Inst. of Innovative Med., Inc. v. Laboratorio Unidos de Bioquimica Funcional, Inc., 613 F. Supp. 2d 181, 190 (D.P.R. 2009).

11. P.R. Laws Ann. tit. 10, § 278b-2.

12. *See, e.g.*, Royal Bed & Spring Co., Inc. v. Famossul Industria e Comercio de Moveis Ltd., 906 F.2d 45 (1st Cir. 1990); Antilles Cement Corp. v. Aalborg Portland A/S, 526 F. Supp. 2d 205 (D.P.R. 2007); D.I.P.R. Mfg., Inc. v. Perry Ellis Int'l, Inc., 472 F. Supp. 2d 151 (D.P.R. 2007); Caravi Distribs., Inc. v. Hitachi Home Prods., 842 F. Supp. 1492 (D.P.R. 1994).

13. Nike Int'l Ltd. v. Athletic Sales, Inc., 689 F. Supp. 1235 (D.P.R. 1988); P.R. Laws Ann. tit. 10, § 278a.

14. P.R. Laws Ann. tit. 31, § 3471.

15. *Nike Int'l*, 689 F. Supp. at 1238.

16. *See* Medina & Medina v. Country Pride Foods, Ltd., 858 F.2d 817, 823 (1st Cir. 1988).

17. *Id.*

18. *See* P.R. Laws Ann. tit. 10, § 278a.

19. 206 F. Supp. 2d 211 (D.P.R. 2002).

20. *Id.* at 215 n.6 (internal citation omitted).

21. *Id.* at 219.

22. 337 F.3d 1 (1st Cir. 2003).

23. *Id.* at 4.

24. 22 P.R. Offic. Trans. 172 (P.R. 1988).

25. 138 P.R. Dec. 60 (P.R. 1995).

26. *Dow*, 337 F.3d at 5 (citing Medina & Medina v. Country Pride Foods, Ltd., 858 F.2d 817, 823 (1st Cir. 1988)).

27. *Id.* at 6.

28. *Id.* at 7–8.

29. *Id.* at 9.

30. Vulcan Tools of P.R. v. Makita U.S.A., Inc., 23 F.3d 564, 569 (1st Cir. 1994).

31. P.R. Laws Ann. tit. 10, § 278a.

32. *See* Casas Office Machines, Inc. v. Mita Copystar Am., Inc., 42 F.3d 668, 678 (1st Cir. 1994) (citing P.R. Laws Ann. tit. 10, § 278a-1(b)(2)).

33. 666 F. Supp. 328 (D.P.R. 1987).

34. *Id.* at 332–33.

35. 194 F.3d 313, 315 (1st Cir. 1999).

36. *Id.* at 319.

37. 81 F. Supp. 2d 276, 284 (D.P.R. 1999).

38. *Id.* at 284–85.

39. Goya de P.R., Inc. v. Rowland Coffee Roasters, 2004 WL 5459246, at *4 (D.P.R. 2004) (unreported) ("The standard to recuperate impairment and termination damages is not necessarily identical.") (citations omitted).

40. P.R. Laws Ann. tit. 10, § 278.

41. 130 S. Ct. 1251 (2010).

42. *Id.* at 1260.

43. *See* Petereit v. S.B. Thomas, Inc., 63 F.3d 1169 (2d Cir. 1995) (finding it reasonable to believe that the Connecticut Franchise Act was intended to cover constructive as well as formal termination, and that "something greater than a de minimis loss of revenue" and less than "driving a franchisee out of business . . . must be shown . . . to justify a finding of constructive termination").

44. *See* Maintainco, Inc. v. Mitsubishi Caterpillar Forklift Am., Inc., 975 A.2d 510 (N.J. Super. Ct. App. Div. 2009) (holding that dealership was not required to withdraw from its agreement with a manufacturer and allow itself to be "terminated" in order to bring a constructive termination claim under the New Jersey Franchise Practices Act); *see also* Carlos v. Philips Bus. Sys., Inc., 556 F. Supp.

769, 775–77 (E.D.N.Y. 1983) (concluding that a principal's act of divesting a franchisee from the exclusivity it enjoyed under their agreement constituted termination under the New Jersey Franchise Practices Act and the Connecticut Franchise Act, two statutes with "good cause" requirements similar to those of Law 75).

45. 2007 WL 2585173, at *13 (P.R. Cir. 2007) (unreported).

46. 17 U.S.C. § 106(3).

47. *Id.* § 301.

48. Weaver's Cove Energy, LLC v. R.I. Coastal Res. Mgmt. Council, 589 F.3d 458, 472–73 (1st Cir. 2009) (citing Fitzgerald v. Harris, 549 F.3d 46, 53 (1st Cir. 2008) (quoting Good v. Altria Group, Inc., 501 F.3d 29, 47 (1st Cir. 2007))).

49. 17 U.S.C. § 106(3).

50. *See, e.g.*, Orson, Inc. v. Miramax Film Corp., 189 F.3d 377, 386 (3d Cir. 1999) (holding that "the state may not mandate distribution and reproduction of a copyrighted work in the face of the exclusive rights to distribution granted under § 106 [of the Copyright Act]").

51. *See* Allied Artists Pictures Corp. v. Rhodes, 496 F. Supp. 408, 446–47 (S.D. Ohio 1980) (holding that an Ohio statute imposing various restrictions on licensing of motion pictures in Ohio was not preempted by the Copyright Act, after concluding that Ohio did not interfere "with the legitimate rights of owners of copyrighted motion pictures by regulating the ways in which . . . producer-distributors license their product in order to achieve fair and open bargaining" (citing Watson v. Buck, 313 U.S. 387 (1941))).

52. Roberco, Inc. v. Oxford Indus., Inc., 22 P.R. Offic. Trans. 111 (P.R. 1988).

53. *But see* Re-Ace, Inc. v. Wheeled Coach Indus., Inc., 363 F.3d 51, 56 (1st Cir. 2004) (finding that a party qualified as a dealer under Law 75 even though it did not acquire title, in light of the fact that it met almost all other requirements set forth in *Roberco*, 22 P.R. Offic. Trans. at 111).

54. 15 U.S.C. §§ 1051 et seq.

55. *See* Mariniello v. Shell Oil Co., 511 F.2d 853 (3d Cir. 1975) (holding that New Jersey common law protecting franchisees from termination of their franchise agreements without cause was not preempted by the Lanham Act because operation of the state law would not erode the purpose of the federal law); Ispahani v. Allied Domecq Retailing USA, 727 A.2d 1023, 1026 (N.J. Super. Ct. App. Div. 1999) (holding that the New Jersey Franchise Practices Act was not preempted by the Lanham Act and emphasizing that "states may require more stringent standards than those designed by Congress, and may otherwise adopt law affecting the subject of a federal statute, so long as the federal purpose is not undermined"); FMS, Inc. v. Volvo Constr. Equip. N. Am., Inc., 2007 WL 844899, at *6 (N.D. Ill. 2007) (not reported) (rejecting the argument that the Lanham Act preempted the Maine Franchise Law, which required a showing of good cause to terminate a franchise relationship).