

## RESOLUTION 2-03-2002

### DIGEST

#### Franchise Actions: Venue of Action by Franchisee in County of Franchise

Amends Corporations Code section 31302.5 to provide that no franchise agreement shall alter the venue of an action for violation of Corporations Code section 31220.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### Reasons:

This resolution amends Corporations Code section 31302.5 to provide that no franchise agreement shall alter the venue of an action for violation of Corporations Code section 31220. This resolution should be approved in principle because it would protect California franchisees from contractual requirements that call for disputes to be litigated in remote and inconvenient fora.

Franchise agreements often contain forum selection clauses that require disputes to be litigated in a forum outside of California. The unequal bargaining power inherent in franchise relationships usually prevents franchisees from negotiating or resisting those clauses. Those clauses are usually extremely disadvantageous to franchisees, because the franchisees are often individuals or small businesses lacking the resources to litigate in remote jurisdictions. Prohibiting the enforcement of those clauses will not unduly harm the franchisors, because they are already doing business in California. Nor will it impair the interests of the designated forum, because it bears no relation to the conduct of the franchisee's business in California.

In *Wimsatt v. Beverly Hills Weight Etc. Internat., Inc.* (1995) 32 Cal.App.4th 1511, the court held that a provision in a franchise agreement that called for disputes to be litigated in Virginia might violate the anti-waiver provisions of the California Franchise Investment Law. These provisions, which are intended to provide protections to franchisees, might be lost if the franchisee is required to litigate in another state.

Given the protective nature of the Franchise Investment Law, it could be argued that the resolution should mandate California forums in *all* franchise actions. However, the protection of the right of free association embodied in Corporations Code section 31220 is one of the most important given by the Franchise Investment Law. At least in the context of disputes over free association, the *Wimsatt* court's concern for fairness and protection should be codified to remove any doubt as to the right of California franchisees to enforce that section within this state.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Corporations Code section 31302.5 as follows:

1 §31302.5

2 (a) Any person who violates Section 31220 may be sued in the superior court in the county  
3 in which the defendant resides or where a franchise affected by the violation does business, for  
4 temporary and permanent injunctive relief and for damages, if any, and the costs of suit, including  
5 reasonable attorneys' fees. A plaintiff shall not be required to allege or prove that actual damages  
6 have been suffered in order to obtain injunctive relief. No agreement shall alter venue in an action  
7 under Section 31220.

8 (b) No action shall be maintained to enforce any liability created under Section 31220 unless  
9 brought before the expiration of two years after the violation upon which it is based or the  
10 expiration of one year after the discovery by the plaintiff of the facts constituting such violation,  
11 whichever occurs first.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

#### STATEMENT OF REASONS

Existing Law: The Franchise Law does not give franchisees the option to require venue of disputes with franchisors in the California county where they do business.

This Resolution: This resolution nullifies contractual provisions that otherwise would require venue of franchise actions out-of-state.

The Problem: Franchise agreements with out-of-state franchisors universally mandate venue of disputes with franchisees out-of-state in jurisdictions advantageous to the franchisors. It is unfair to force franchisees in California to go out of state to litigate such disputes when the multi-state nature of the franchisor's business better equips the franchisor for litigation in different states. *America Online, Inc. v. Superior Court* (2001) 90 Cal. App. 4<sup>th</sup> 1, held that mandating venue outside California may be voidable if California public policy protections for its citizens are better than those in the contractual state. This amendment furthers that public policy and eliminates the possibility of inconsistent conclusions about those protections.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

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