

## Franchise & Distribution - Litigation

# Providing an edge in franchise litigation



### When you need experienced and effective help

- litigating, arbitrating, and resolving franchise and distribution disputes and claims
- litigating motor vehicle dealer disputes under state motor vehicle dealer statutes
- litigating and resolving employment, intellectual property, and business disputes
- defending against vicarious liability claims

our team has the talent and experience to offer the winning edge.

### We effectively and successfully represent franchise and distribution businesses in litigating, arbitrating, and resolving lawsuits, claims, and disputes, including

- Franchisor claims against franchisees to recover franchise fees and liquidated damages; enforce franchise terminations and enjoin trademark and trade dress infringement by holdover franchisees; and enforce restrictive covenants, trade secret rights, system standards, and other franchise agreement obligations
- Franchisee claims, including those for wrongful termination, breach of franchise agreement, fraud, franchise disclosure violations, violations of state franchise laws, encroachment claims, and unfair and deceptive trade practices
- Defending against vicarious liability claims alleged by franchisee employees or third parties against a franchisor
- Defending class action lawsuits against franchisors and distributors
- Defending premises liability claims
- Representing car, truck, and other motor vehicle manufacturers in civil and administrative litigation against motor vehicle dealers, including under state motor vehicle dealer statutes
- Employment claims
- Business disputes
- Protecting franchisor rights in bankruptcy proceedings, including litigation related to obtaining relief from the automatic stay to terminate franchise agreements,

### Related Practice Areas

[Appellate Practice & Legal Strategies](#)

[Corporate & Securities](#)

[Franchise & Distribution - Corporate](#)

### Related Industries

[Hospitality & Tourism](#)

[Transportation](#)

compelling or objecting to assumption or rejection of franchise agreements, and objecting to reorganization plans

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### **Clients and industries served**

We represent regional, national, and international franchisors, multi-unit franchisees, automobile, truck and motor vehicle manufacturers/distributors, and other distributors, in a variety of industries, including:

- Restaurants and food service
  - Hotel, resort, and hospitality
  - Automobile, truck, and motor vehicle manufacturers
  - Real estate brokerage
  - Tax preparation services
  - Health services
  - Commercial and residential cleaning businesses
  - Retail stores
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### **Our Franchise and Distribution Litigation Team has the legal and professional experience to guide you through litigation**

Attorneys on our team include litigation leaders who understand franchise and distribution businesses and systems, as well as litigation strategy, processes, and procedures. We combine that knowledge and experience to drive toward successful resolution of disputes and claims. Nelson Mullins is a member of the International Franchise Association, and our attorneys are members of the American Bar Association Forum on Franchising. Our attorneys regularly speak and write on franchise and motor vehicle dealership law issues.

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### **Our litigators employ practical and effective strategies and tactics to litigate, arbitrate, and resolve claims and disputes to meet client goals**

- **Pre-litigation strategies and counseling** – employing effective pre-litigation strategy and counseling, including appropriate notices to the opposing party, to guide and posture a dispute towards success for the client
- **Litigation readiness** – providing measures to help ensure that you are prepared for litigation
- **Litigation pursuit or defense** – through discovery, settlement negotiations, pre-trial motions, alternative dispute resolution, and—when necessary—trial and appeal
- **Witness depositions** – preparing witnesses for and defending depositions of corporate, executive, and managerial witnesses and conducting depositions of adverse and non-party witnesses
- **Expert witnesses and opinions** – identifying and hiring experts who advise and can serve as litigation witnesses (including damages and economic experts and franchise and distribution industry experts)

- **Alternative dispute resolution** – including arbitration, mediation, and other forms of ADR
- **Injunctive Relief** – guiding clients in federal and state court procedural issues, including obtaining and defending against temporary restraining orders and preliminary injunctions
- **Joint defense strategies** – providing strategic guidance to clients and co-counsel in joint defense of claims
- **Litigation plans and budgets** – providing strategic litigation plans and budgets to help "right size" the defense of matters
- **Preventive measures** – helping prevent litigation before it arises
- **Public relations strategy** – including timing, media approach, and content, when necessary

## Why Nelson Mullins?

- A practical, results-oriented mindset
- Deep knowledge of, and experience in, franchise and motor vehicle dealership laws, businesses, and systems
- Track record of successfully resolving disputes and litigation short of trial
- Substantial trial and appellate experience locally, regionally, and nationally on behalf of franchisors, multi-unit franchisees, and motor vehicle manufacturers/distributors

## Experience

Following is a selected sampling of matters and is provided for informational purposes only. Past success does not indicate the likelihood of success in any future matter.

### Franchise litigation

- Represented national restaurant franchisor in litigating and advising on intellectual property, franchise, and commercial disputes (including trademark infringement claims, claims to enforce franchise terminations and collect franchise fees and liquidated damages, and defending against franchisee claims)
- Represented national franchisor of bakery cafes in litigating and advising on franchise and commercial disputes (including suits to enforce termination of franchise, enjoin trademark and trade dress infringement, enforce restrictive covenants, and obtain transfer of leases and money damages, and to defend against franchisee claims of fraud, franchise disclosure violations, and wrongful termination)
- Served as regional litigation counsel for large multi-brand international hotel franchisor in litigation and arbitration of franchise disputes (including suits to enforce termination of franchise, enjoin trademark infringement, and collect royalties and liquidated damages, and in defense of franchisee claims) and vicarious liability claims and franchisee bankruptcy claims
- Obtained judgment and injunctive relief in defamation case for franchisor against former franchisee who posted dozens of disparaging Internet publications

- Successfully opposed class certification and obtained summary judgment on some claims in representing tax preparation service franchisor facing claims that franchisees were encouraged to prepare fraudulent tax returns to inflate customer refunds and tax preparation fees (claims included breach of contract, RICO violations, and unjust enrichment)
- Represented national restaurant franchisor on certified questions before West Virginia Supreme Court involving franchisor vicarious liability for alleged sexual harassment by franchisee's managers
- Represented national bottled water distributor in enforcement of trademark and trade secret rights, and in defense of unfair trade practices claims
- Represented regional restaurant franchisor in employment litigation
- Representing national pizza restaurant franchisor in lawsuit against former manager of franchisee for misappropriation of trade secrets to start competing pizza restaurant
- Represented large multi-brand international hotel franchisors in objecting to assumption of franchise agreement in chapter 11 plan

#### Motor vehicle manufacturer/distributor litigation and counseling

- Regularly provide legal and strategic counseling to many international auto manufacturers/distributors regarding drafting and enforcement of agreements with dealers, market representation matters (establishment and relocation of dealerships), internal policies and procedures, incentive programs, advertising and advertising associations, dealer network strategies, allocations, fleet, leads, dealership facilities, dealer performance evaluation, dealer areas of responsibility, and field training
- Served as national and multi-regional counsel for a number of international auto manufacturers/distributors in various business litigation matters involving their dealer networks and vehicle distribution
- Represented multiple auto manufacturers/distributors in various performance-based dealer termination proceedings
- Represented multiple auto manufacturers/distributors in litigation with existing dealers over the establishment of additional dealership representation and relocation of existing dealers
- Represented multiple auto manufacturers/distributors in disputes over sales reporting and challenges regarding incentives and warranty reimbursements
- Regularly represent car, truck, motorcycle, ATV, power sports, marine, ambulance, vocational vehicle, and aircraft manufacturers and distributors in dealer disputes and litigation regarding add points, relocations, terminations, post-termination obligations, dealer advertising, sales incentives, allocation systems, dealer exporting, and other dealer franchise issues