CHENG COHEN

www.chengcohen.com Visit Site

Cheng Cohen LLC launches a new website!

We are excited to announce the launch of a re-designed website. Explore the new site and get to know us at www.chengcohen.com.

Noncompete Provisions Must Be Carefully Drafted

Noncompete provisions are a critical component of nearly every franchise agreement. A recent federal case from Virginia shows why such provisions must be drafted with extreme care after a franchisee was able to get out of his noncompete obligations following a judge's careful parsing of the difference between "termination" and "expiration" in the noncompete language.

In that case, *Hamden v. Total Car Franchising Corp.*, a franchisor and franchisee entered into a franchise agreement (and associated noncompetition agreement) that contained a two-year noncompete that arose upon "termination" of the franchise agreement. In the *Hamden* case, the franchise agreement expired automatically after its initial fifteen-year term ended. However, the judge found that the noncompete provisions could not be enforced because they only arose upon

"termination" of the franchise agreement, not "expiration" of the franchise agreement. Although the words seem like they could reasonably be read to be synonymous, the court refused to do so, finding instead that the words had different meanings.

The franchisor pointed to previous cases where courts had found that the words "termination" and "expiration" were interchangeable or that "termination" encompassed "expiration." These other court opinions, however, did not sway the judge in the *Hamden* case. As such, the judge refused to enforce the noncompete provision against the franchisee because the franchise agreement expired, and did not terminate.

This case illustrates the importance of having properly drafted noncompete provisions and regularly checking them for compliance with the most-recent cases and laws. For more information, contact Amy Cheng at amy.cheng@chengcohen.com or 312-243-1716.

Update on Foreign Corrupt Practices Act

On November 14, 2012, the SEC and Department of Justice issued their long-awaited Resource Guide to the US Foreign Corrupt Practices Act. The Foreign Corrupt Practices Act (FCPA) was adopted by Congress in 1977 in response to widespread bribery of foreign officials by US companies. In addition to halting those corrupt practices, the FCPA is intended to create a level playing field for honest businesses and to restore public confidence in the marketplace by prohibiting covered persons from making corrupt payments to foreign officials in order to obtain or retain business. The 120-page Resource Guide released today provides valuable insight into the federal government's interpretation of the FCPA and its attitude on enforcement. Any franchisor engaged in international franchising should be aware of the general requirements and prohibitions contained in the FCPA, and the Resource Guide is an excellent tool for that purpose. For more information, contact Michael Daigle at michael.daigle@chengcohen.com or 312-957-8366.

November 2012