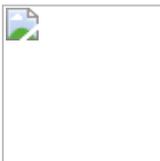


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## The Advisor, Winter 2014

### Franchise Law Series: Part One



By **Richard Stobbe**

A “Pet Valu” franchisee in Ontario claimed that sales were declining, so the owner tried to escape her franchise agreement. After termination of the agreement, her husband established a competing “Pet Stuff” business nearby. When a franchise location fails as it did in this case, what happens with the “restrictive covenants” in the agreement? Can these provisions be circumvented by the use of a separate company, or by using a friend or family member?

If you are in the franchise business, either as a franchisor or a franchisee, you will undoubtedly have to deal with “restrictive covenants.” These are the provisions in the franchise agreement that control what the franchisee can do after the termination of the agreement. Most franchise agreements contain clauses prohibiting the franchisee from establishing a competing business, soliciting customers, or using confidential information of the franchise.

The recent decision in *Pet Valu Canada Inc. v. 1381114 Ontario Limited* (2013 ONSC 5361) dealt with an ex-franchisee who established a competing business through her husband’s numbered company within a few blocks of an existing Pet Valu location. Pet Valu, the franchisor, applied to the court for an injunction to compel the ex-franchisee to stop this competition. Pet Valu sued both the Franchisee and her husband, and each of their companies. Pet Valu argued that the actions of the ex-Franchisee breached the terms of the Franchise Agreement that prohibited:

- The operation of a competing business for a period of 2 years after the end of the Franchise Agreement within a 20 km radius of any other Pet Valu store,
- The hiring of any employee of a Pet Valu franchise for 1 year after the end of the Franchise Agreement, and
- The use of customer lists, confidential information and all Pet Valu-branded signs, labels and price tags after the termination of the Agreement.

The Court in this case had no trouble looking behind the “transparent effort” on the part of the ex-Franchisee to establish a competing “Pet Stuff” business. The “Pet Stuff” business also hired a store manager who had previously worked at the Pet Valu franchise, and even made use of shelving and inventory with distinctive labels, price tags and product codes from the old Pet Valu franchise. The Court issued an interim injunction against the ex-Franchisee and her husband.

Look for Part 2 and 3 in future editions of the Advisor.

Should you require further information and advice on franchise agreements, please contact Field Law’s Business Law Group. We can assist you in negotiating franchising issues, and making choices that are appropriate for your business plan.

This email is sent on behalf of Field Law's Business Group. For more information on our services and contacts, please see our [webpage](#).

