

## **E-ALERT: MELT FRANCHISING V. PMI ENTERPRISES, INC.**

*MulcahyReeves* obtains for franchisor-client a preliminary injunction and an order from the Court granting the franchisor management of the terminated franchisee's store following its breach of the franchise agreement.

---

MulcahyReeves, LLP recently obtained a preliminary injunction on behalf of its client Melt Franchising, LLC against a Melt franchisee in Massachusetts in the case entitled *Melt Franchising v. PMI Enterprises, Inc.* in the United States District Court, Central District of California (Case No.08-cv-04148-PSG-MAN).

Defendants John Flannery and PMI Enterprises, Inc. were operating a Melt gelato italiano franchise in Braintree, Massachusetts. After repeated notices of default and failures to correct, Melt Franchising terminated the Defendants' franchise agreement. The Defendants ignored the termination and continued operation in violation of the franchise agreement for several months.

"When my firm was retained by the client, a significant amount of time had passed since the initial termination of the franchise agreement," said James M. Mulcahy, the managing partner at MulcahyReeves. "I knew that we were facing an uphill battle obtaining a Temporary Restraining Order. But, I also knew that given the egregiousness of the franchisees' conduct, even if the TRO was denied, the Court might set an immediate hearing for a preliminary injunction," said Mulcahy.

The strategy worked. Judge Philip Guterrez denied the TRO, citing the lack of emergency (due to the lengthy passage of time between the termination and the request for the TRO), but set a quick hearing date for a preliminary injunction. A few weeks later, the Court granted the preliminary injunction. "The client's primary goal was to get the store back, and we were able to achieve that goal in a much quicker fashion than we would have by filing a formal noticed motion." Mulcahy warned "This is a cautionary tale to franchisors. When you terminate a franchise agreement, be prepared to hire counsel and seek immediate Court assistance enforcing the termination. Otherwise, you might be stuck dealing with a former franchisee operating on his or her terms without any immediate recourse."