

**Covenants Against Competition in Franchise Agreements, 2<sup>nd</sup> Edition**

Peter J. Klarfeld, Editor

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# CONNECTICUT

by Paul D. Sanson\*

1. **Has the state addressed covenants against competition in the context of franchising?**
  - **Does the state have a franchising statute or regulations that address covenants against competition?**
  - **Does the state have a covenants statute of general applicability that would encompass franchise covenants?**
  - **Have the courts addressed covenants in the context of franchising either under a statute or under the state's common law?**

Connecticut has a general franchising statute, the “Connecticut Franchising Act,” Conn. Gen. Stat. § 42-133e et seq., but it does not address covenants against competition.<sup>1</sup> Connecticut also has a specialized petroleum franchising act, the “Connecticut Gasoline Dealers Act,” Conn. Gen. Stat. § 42-133j et seq. (“CGDA”), which limits what obligations can be imposed upon a dealer and imposes certain requirements on a franchisor relating to termination and notice. Although the CGDA does not address covenants not to compete directly, the statute does require payment for goodwill upon termination by the franchisor

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<sup>1</sup> The Connecticut Supreme Court has discussed the scope of the term “franchise” under the Connecticut Franchising Act. See Hartford Electrical Supply Co. v. Allen-Bradley, 250 Conn. 334, 347-61, 736 A.2d 824, 832-39 (1999) (finding that a franchise relationship existed between a distributor and manufacturer); Getty Petroleum Marketing, Inc. v. Ahmad, 253 Conn. 806, 812-20, 757 A.2d 494, 497-501 (2000) (finding no franchise between lessee of gasoline station and the lessor petroleum company, which owned the gasoline and bore the entrepreneurial risk; characterizing gas station lessee a “commissioned agent” rather than a franchisee under the Connecticut Franchising Act).

unless the franchisor both gives one year's notice of termination and agrees in writing not to enforce any noncompete covenant. Id. at § 42-133l(b).<sup>2</sup>

Connecticut does not have a general covenants statute; instead, Connecticut courts apply its common law to restrictive covenants. In Connecticut, the law is settled that a restrictive covenant ancillary to a lawful contract is enforceable if the restraint upon trade is reasonable. Elida, Inc. v. Harmor Realty Corp., 177 Conn. 218, 225, 413 A.2d 1226, 1229 (1979). What is reasonable will be determined by the particular facts in each case. To be reasonable, the agreement should afford a fair protection to the interests of the party in whose favor the covenant runs, and it should not interfere with the public interest. Scott v. General Iron Welding Co., 171 Conn. 132, 137, 368 A.2d 111, 114-15 (1976) (citing Cook v. Johnson, 47 Conn. 175, 176 (1879)). Five areas have been identified to evaluate the reasonableness of a restrictive covenant such as the nonsolicitation and the noncompetition provisions of the agreement. These areas are:

- (1) The length of time the restriction operates;
- (2) The geographical area covered;
- (3) The fairness of the protection accorded to the employer;
- (4) The extent of the restraint on the employee's opportunity to pursue his or her occupation; and
- (5) The extent of interference with the public's interest.

Robert S. Weiss & Assoc. v. Wiederlight, 208 Conn. 525, 529, 546 A.2d 216, 219, n.2 (1988).

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<sup>2</sup> See Bellmore v. Mobil, 783 F.2d 300 (2d Cir. 1986); but see Jiminez v. B.P. Oil, Inc., 853 F.2d 268 (4th Cir. 1988), *cert. denied* at 490 U.S. 1011, 109 S. Ct. 1654 (1989), *rehearing denied* at 490 U.S. 1095, 109 S. Ct. 2443 (1989).

A plethora of case law exists in Connecticut regarding the enforceability of restrictive covenants in the context of the employer-employee relationship. The Connecticut Supreme Court has recognized the legitimate right of an employer to protect its business interests, stating:

[w]hen the character of the business and the nature of employment are such that the employer requires protection for his established business against competitive activities by one who has become familiar with it through employment therein, restrictions are valid when they appear to be reasonably necessary for the fair protection of the employer's business or rights.

Id. at 533, 546 A.2d at 221. To be binding, the agreement “must be partial and restricted in its operation ‘in respect either to time or place, . . . and must be reasonable.’” Scott, 171 Conn. at 137, 368 A.2d at 114 (citing Cook v. Johnson, 47 Conn. 175, 176 (1879)).

The Court will apply the same five factors enumerated above to an employee restrictive covenant.

Connecticut courts treat a noncompete covenant made in connection with the sale of a business as one asset of the business purchased. As such, the courts are more willing to uphold them than noncompete covenants made in connection with an employment contract. See Mattis v. Lally, 138 Conn. 51, 54-55, 82 A.2d 155, 156 (Conn. 1951) (having sold his barbershop “together with all good will,” seller should be held to restrictive covenant in sales agreement (no barbering in that town or within one mile of the old shop for five years) because “[t]o excuse him from the performance of his agreement would amount to returning to him a large part of what he has sold.” Id. at 56, 82 A.2d at 157). See also Sagarino v. SCI Connecticut Funeral Services, Inc. (No. CV 000499737), 2000 Conn. Super. LEXIS 1384, at

\*5-6 (May 22, 2000) (upholding noncompete covenant for 15 years in a 30-mile radius around funeral home sold, where the court found strong goodwill and “brand loyalty” built up in the Italian-American community and a nine-year average lag time for “return business”); Trans-Clean Corp. v. Terrell, 21 CONN. L. RPTR. NO. 12, 420, 424 (May 4, 1998) (finding a covenant unreasonable on several grounds, one of which was that the business selling its goodwill had operated almost entirely in Connecticut, whereas the restrictive covenant against the former owner protected the buyer’s goodwill in a wider area, including New York: “While the purchase of a business entitles the buyer to protection of that business’ good will, it is hard to see why this good will should be protected in areas where it does not even exist.” Id.); Hilb, Rogal & Ham Co. v. Palwich (No. CV 940705183), 1995 Conn. Super. LEXIS 506, at \*23 (Feb. 16, 1995) (having transferred his former accounts as part of the sale of his insurance business and signed a noncompete for three years as to those accounts, an insurance salesman cannot “fairly be heard to claim a right to work them in direct contravention of the terms of the sale.” Id. at \*21).

In Connecticut, relatively few cases have arisen in the context of franchise agreements, however. In 2001, the Superior Court granted the franchisor a temporary restraining order where former franchisees continued to operate ice cream stores at former Carvel locations despite noncompete covenants in the franchise agreements. Carvel Corp. v. DePaola (No. CV 000505443), 2001 WL 528203, at \*\*1, 13 (Apr. 24, 2001). Although the court construed the covenants themselves under New York law (as provided for in the agreements), it relied on Connecticut law to analyze the imminent harm and balancing of the equities. Id., at \*\*3-6, 10-13. The court explicitly accepted the franchisor’s need to protect and maintain the integrity of

its franchise system as a valid justification for restraining the former franchisees. Id., at \*\*11-12.

In a 1992 case, the U.S. District Court for the District of Connecticut, applying Connecticut law, upheld a restrictive covenant in a franchise agreement that prohibited the former franchisee of a fast service automotive lubrication franchisor from engaging for two years in such a business within a 50-mile radius of his former franchise location. Grease Monkey International, Inc. v. Watkins, 808 F. Supp. 111, 118, 120 (D. Conn. 1992). The Court applied the Connecticut Supreme Court's test for reasonableness of restrictive covenants in employment agreements:

(1) the length of time the restriction operates; (2) the geographical area covered; (3) the fairness of the protection accorded to the employer; (4) the extent of the restraint on the employee's opportunity to pursue his occupation; and (5) the extent of interference with the public's interest.

Id. at 119-20 (citing Robert S. Weiss & Assoc. v. Wiederlight, 208 Conn. 525, 529, 546 A.2d 216, 219 [n.2] (1988), in turn relying on Scott v. General Iron & Welding Co., Inc., 171 Conn. 132, 137, 368 A.2d 111, 114 (1976)).

However, in a 1984 case, Joy of Nails v. DePaolo, the Superior Court found an employment noncompete unenforceable where the covenant sought to prohibit the former employee of a nail-sculpting franchisee from being associated in any capacity for an eight-month period with "any business which is competitive with the business of any JOY OF NAILS, INC. franchisee within the state of Connecticut." Joy of Nails v. DePaolo (No. 298413), 11 CLT No. 16 (Conn. Super. Oct. 22, 1984). The restriction was held invalid because it protected areas of the state in which Joy of Nails did not have any franchisees and did not do any business. Id. at 16. This holding suggests that the courts might have upheld a

more limited noncompete covenant that protected only the other franchisees of the franchisor from competition.

**2. Have the courts articulated the “legitimate interests” of the franchisor that will support enforcement of a covenant against competition contained in a franchise agreement?**

- **If so, what are they (e.g., protection of goodwill, protection of confidential information), and in what contexts did the issue arise?**
- **If not, what interests have been recognized in other contexts (e.g., employment agreements, the sale of business context)?**

Unlike other jurisdictions, Connecticut Courts have not expressly articulated a “legitimate interests” test that must be met for a restrictive covenant to be enforced. Connecticut Courts adhere to a reasonableness standard such that the “test of [a restrictive covenant’s] validity is the reasonableness of the restraint it imposes. To meet this test successfully, the restraint must be limited in its operation with respect to time and place and afford no more than fair and just protection of the party in whose favor it is to operate, without unduly interfering with the public interest.” Elida, Inc. v. Harmor Realty Corp., 177 Conn. 218, 225, 413 A.2d 1226, 1230 (1979); Mattis v. Lally, 138 Conn. 51, 54, 82 A.2d 155, 156 (1951). While no specific legitimate interests test has been expressed, Connecticut Courts will typically attempt to determine the assets to be protected when deciding whether the covenant is reasonable to protect such assets. This process often leads to the identification and protection of a company’s assets such as goodwill and confidential, proprietary and trade secret information.

In Grease Monkey, *supra*, the former franchisee, although terminated for default of its payment, continued to use franchisor’s trademark, processes, materials, signs, manuals, name

and methods. Grease Monkey International, Inc. v. Watkins, 808 F. Supp. 111, 114 (D. Conn. 1992). The Connecticut District Court upheld the two-year, 50-mile radius restriction against competition contained in the franchise agreement: “In applying the Scott factors, it was fair for [franchisor] GMI to attempt to protect its trademark and business practices, and to seek to maintain or establish relations with its present and potential customers.” Id. at 118, 120.

In the employment context, courts have recognized as legitimate interests trade secrets, customer lists, and territory. New Haven Tobacco Co. v. Perrelli, 11 Conn. App. 636, 639, 528 A.2d 865, 867 (1987). Through investing time and money in building goodwill, the employer acquires “a proprietary right to his customers which he may protect for a reasonable time.” Id. at 643, 528 A.2d at 869, n.5 (citing May v. Young, 125 Conn. 1, 7, 2 A.2d 385 (1938)). In the oft-cited Scott case, the Connecticut Supreme Court enforced a five-year statewide restrictive covenant signed by a former management employee in a welding and metals manufacturing business in connection with a promotion. Scott v. General Iron & Welding Co., Inc., 171 Conn. 132, 368 A.2d 111 (1976). The employer was entitled to protect its list of clients, built up through years of effort by the company, and other confidential information. Id. at 140, 368 A.2d at 166.

**3. What time limitations have courts recognized as reasonable in the franchise context? If no franchise cases have been decided, what time limitations have been recognized in other contexts?**

• **How have they been related to interests protected?**

The time and geographical restrictions of a restrictive covenant must be reasonable, partial and limited in scope for the covenant to be enforceable. Grease Monkey International,

Inc. v. Watkins, 808 F. Supp. 111, 119 (D. Conn. 1992) (citing Scott, 171 Conn. at 137, 368 A.2d at 114-15). Time and geographical restrictions are to be reviewed as intertwined considerations. Van Dyck Printing Co. v. Dinicola, 43 Conn. Super. 191, 197, aff'd, 231 Conn. 272 (1994) (citing Robert S. Weiss & Assoc. v. Winderlight, 208 Conn. 525, 546 A.2d 216 (1988)). “A restriction covering a large area might be reasonable if in effect for a brief time, while a restriction covering a small area might be reasonable for a longer time.” Van Dyck, 43 Conn. Super. at 197.

In Grease Monkey, the District Court upheld a restrictive covenant in a franchise agreement prohibiting the former franchisee of a fast service automotive lubrication franchisor from engaging for two years in such a business within a 50-mile radius of his former franchise location. Grease Monkey International, Inc. v. Watkins, 808 F. Supp. 111, 118, 120 (D. Conn. 1992). The franchisee did not object in particular to the time restriction, and the court found the restraint neither overbearing nor infinite. Id. at 27. The restraint was a fair attempt by the franchisor “to protect its trademark and business practices, and to seek to maintain or establish relations with its present and potential customers.” Id.

An eight-month statewide covenant in an employment contract of an employee of a nail-sculpting franchisee was found unreasonable as to area in Joy of Nails v. DePaolo (No. 298413), 11 CLT No. 16 (Conn. Super. Oct. 22, 1984). The court referred to the six-month restriction in a similar case (a noncompete against a nail service employee for a significantly narrower geographic area) as “very reasonable.” Id. at 16.

Outside the franchising context, the Connecticut Supreme Court, in Scott, upheld a five-year statewide restriction barring a former management employee of a welding and metal-

working company from working in a similar management position in any competing business. Scott v. General Iron & Welding Co., Inc., 171 Conn. 132, 368 A.2d 111 (1976). The time restriction was reasonable because the company had spent years of effort to acquire its customers. Id. at 140, 368 A.2d at 116.

In 2000, the Superior Court upheld a 15-year covenant not to compete in a 30-mile radius signed by the son of the vendor of a family-run funeral home in conjunction with its sale to a corporation which would be keeping the family name of the business. Sagarino v. SCI Connecticut Funeral Services, Inc. (No. CV 000499737), 2000 Conn. Super. LEXIS 1384 (May 22, 2000). The court determined that the nature of the business (where families would return every nine years on average), the Sagarinos' particular customer base (the Italian-American community the Sagarinos had been serving for years), and the personal nature of the services made it reasonable to hold Sagarino to the covenant in order to permit the buyer the opportunity to take advantage of the goodwill it had purchased. Id., at \*5-6, 15-18.

**4. What geographic limitations have courts recognized as reasonable in the franchise context?**

- **How have they been related to the interests protected?**
- **Have courts recognized the legitimacy of protecting other franchisees from competition?**

The time and geographical restrictions of a restrictive covenant must be reasonable, partial and restricted for the covenant to be enforceable. Grease Monkey International, Inc. v. Watkins, 808 F. Supp. 111, 119 (D. Conn. 1992) (citing Scott, 171 Conn. at 137, 368 A.2d at 114-15). Time and geographical restrictions are to be reviewed as intertwined considerations. Van Dyck Printing Co. v. Dinicola, 43 Conn. Super. 191, 197, aff'd, 231 Conn. 272 (1994)

(citing Robert S. Weiss & Assoc. v. Winderlight, 208 Conn. 525, 546 A.2d 216 (1988)). A restriction covering a large area might be reasonable if in effect for a brief time, while a restriction covering a small area might be reasonable for a longer time. Van Dyck, 43 Conn. Super. at 197.

In Grease Monkey, the District Court relied on the Scott test to judge the reasonableness of a restrictive covenant in a franchise agreement prohibiting the former franchisee of a fast service automotive lubrication franchisor from engaging for two years in such a business within a 50-mile radius of his former franchise location. Grease Monkey International, Inc. v. Watkins, 808 F. Supp. 111, 118-20 (D. Conn. 1992). Although the court noted that 50 miles “seems somewhat broad,” it nonetheless upheld the restriction. Id. at 120. The covenant was a fair attempt by the franchisor “to protect its trademark and business practices, and to seek to maintain or establish relations with its present and potential customers.” Id. at 27.

An eight-month statewide prohibition in an employment contract against employment with any competitor of a nail-sculpting franchisor was invalid. Joy of Nails v. DePaolo (No. 298413), 11 CLT No. 16, at 16 (Conn. Super. Oct. 22, 1984). All six of the Connecticut franchisees were clustered together in the center of the state and the nature of the service was local. Id. at 16. The Superior Court tacitly acknowledged the validity of using restrictive covenants to protect other franchisees by noting that a reasonable geographical restriction would have been “the six towns [where other franchises existed] in the concentrated area, perhaps extended to adjoining towns.” Id. at 15.

The Connecticut Supreme Court, in Scott, upheld a five-year statewide restriction barring a former management employee of a welding and metal-working company from working in a similar management position in any competing business. Scott v. General Iron & Welding Co., Inc., 171 Conn. 132, 368 A.2d 111 (1976). Barring competition throughout the state was not unreasonable where there was a finding that the company did business with over a thousand customers in up to 75 towns in the state. Id. at 137-38, 368 A.2d at 115. In general, restrictive covenants in Connecticut “will be confined to a geographical area which is reasonable in view of the particular situation. A restrictive covenant which protects the employer in areas in which he does not do business or is unlikely to do business is unreasonable with respect to the area.” Trans-Clean Corp. v. Terrell, 21 CONN. L. RPTR. NO. 12, 420 (May 4, 1998) at 423 (citing Scott v. General Iron & Welding Co., 171 Conn. at 138, 368 A.2d at 115.)

**5. What limitations on activities have courts recognized as reasonable in the franchise context?**

In the two cases based on restrictive covenants in franchise agreements (Grease Monkey and Carvel, supra), the courts have enjoined former franchisees from continuing to operate substantially the same business from their former franchise locations. See Grease Monkey International, Inc. v. Watkins, 808 F. Supp. 111, 118-20 (D. Conn. 1992) (enforcing covenant against operating similar business for two years within a 50-mile radius of his former franchise location) and Carvel Corp. v. DePaola (No. CV 000505443), 2001 WL 528203, at \*\*1, 5 (Apr. 24, 2001) (enforcing a covenant prohibiting the former franchisees from operating an ice cream store for three years within two miles of their former franchise locations as reasonable

under New York law and finding injunctive relief warranted on an analysis of the facts under Connecticut law (questions of imminent harm, adequate remedy at law, and balancing of equities)).

**6. Does the state recognize a difference between in-term and post-term covenants?**

Because the vast majority of Connecticut cases dealing with covenants are for post-term, rather than in-term, covenants, it is difficult to generalize about differences between the two. It appears, however, that Connecticut applies the same test to both. In 1979, the Connecticut Supreme Court held that the correct test to apply to a restrictive covenant in a mall lease preventing the landlord from leasing space to another bakery was “the rule of reason by which the factfinder weighs all of the circumstances of the case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on trade.” Elida, Inc. v. Harmor Realty Corp., 177 Conn. 218, 231, 413 A.2d 1226, 1232 (1979) (internal citation omitted). The court overturned the lower court’s decision that the restrictive covenant was “per se” an unreasonable restraint on trade and remanded the case for an examination of reasonableness, delineated as “limited in its operation with respect to time and place and afford[ing] no more than a fair and just protection to the interests of the party in whose favor it is to operate, without duly interfering with the public interest.” Id. at 226, 413 A.2d at 1230.<sup>3</sup>

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<sup>3</sup> In 1984 the Connecticut Supreme Court upheld in relevant part the lower court’s decision to enforce a restrictive covenant in lessee bakery’s mall lease preventing the bakery from operating as a restaurant. Gino’s Pizza v. Kaplan, 193 Conn. 135, 475 A.2d 305 (1984). A restaurant lessee in the same mall sued the landlord for specific performance on its own lease, which provided that the landlord would not permit other restaurants in the complex. Id. at 136-37, 475 A.2d at 306. The Court did not undertake any analysis of the reasonableness of these restrictive covenants. Id.

In 1993, the Superior Court upheld a restrictive covenant signed by family members in conjunction with a lease contract with purchase option for an airport valet service, which prohibited the family of the lessor/vendor from operating an airport valet service within a five-mile radius of the airport for five years from the date of the contract. PRF of Connecticut, Inc. v. Gosselin (No. CV93-0703860S), 1993 WL 512430, at \*\*4-5 (Dec. 1, 1993). The Superior Court analyzed the reasonableness under Elida using the Scott factors as “a useful framework.” Id., at \*\*4-5. The court characterized the lease contract with purchase option as a sale of a business, noting that the courts view covenants in the context of the sale of a business with “greater indulgence” than those in the employment context. Id. at \*\*5.

**7. Has the state allowed enforcement of covenants against nonsignatories (e.g., family members, newly formed corporations)?**

In 2000, the Superior Court explicitly enforced a noncompete provision in an employment agreement against both the signatory, Nardi, a former employee of plaintiff, Custard Insurance Adjusters (Custard), and a nonsignatory, the competing new employer, Mark Adjusters (Mark). Custard Insurance Adjusters, Inc. v. Nardi (No. CV980061967S), 2000 WL 562318, at \*\*56 (Conn. Super. 2000). The court’s injunction enforced the covenant prohibiting Nardi from working within 50 miles of Orange, Connecticut, for two years [although the court lowered this to six months in light of the delay in adjudicating the case], and also enjoined both Nardi and Mark from servicing the clients Nardi took from Custard for six months. Id. Determining Nardi had colluded with Mark while still employed by Custard to lure away employees and customers as a precondition of Nardi’s future employment with Mark, the court found against Nardi for breach of contract, common-law breach of loyalty,

tortious interference with business relationships, and violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §42-110a et seq. (CUTPA) and against Mark for tortious interference and violation of CUTPA. Id., at \*\*50-51.

In 2000, the Superior Court upheld a stringent noncompete agreement signed for a fee of \$65,000 by a son, Sagarino, in conjunction with his mother's sale of the family funeral home to a corporation that wished to continue to operate the home under the family name. Sagarino v. SCI Connecticut Funeral Services, Inc. (No. CV 000499737), 2000 Conn. Super. LEXIS 1384 (May 22, 2000). The court determined that the nature of the business (where families would return every nine years on average), the Sagarinos' particular customer base (the Italian-American community the Sagarinos had been serving for years), and the personal nature of the services made it reasonable to hold Sagarino to the covenant in order to permit the buyer the opportunity to take advantage of the goodwill it had purchased. Id., at \*5-6, 15-18. The court rejected Sagarino's argument that, because he was not the seller, the covenant did not arise out of the sale of the business. The court stated:

[I]t is well settled that an agreement not to compete will be considered to have been given in connection with the sale of a business even if the covenantor is not the seller, if the covenant was reasonable necessary for the protection of the good will of the business. If the covenantor was active in the management of or intimately involved with the business, as Sagarino was, the covenant will be considered to have been given in connection with the sale of the business.

Id., at \*12-13.

**8. Will the state modify, “blue pencil,” or otherwise reduce a covenant found to be overbroad?**

Connecticut is generally referred to as a “Blue Pencil” jurisdiction. The majority of Connecticut courts will only draw a line through (“blue pencil”) an invalid, unreasonable provision as opposed to rewriting an overly broad covenant. The Connecticut blue-pencil rule is restricted in that the courts will sever an invalid provision only to the extent the covenant is “in effect a combination of several distinct covenants.” Industrial Technologies, Inc. v. Paumi (No. CV 960335925), 19 CONN. L. RPTR. NO. 17, 573, at 574-75 (Aug. 25, 1997) (discussing differences in Connecticut’s “blue pencil” rule and the broader Massachusetts approach). Furthermore, the blue-pencil rule applies only “where the contract in terms specifies several distinct areas, so by erasing the description of one or more of these areas there is left the description of an area for which the restriction is reasonable.” Gartner Group Inc. v. Mewes (No. CV 91 0118332S), 1992 Conn. Super LEXIS 38, at \*11 (Jan. 3, 1992) (citing Beit v. Beit, 15 Conn. Supp. 191, 196 (1948)). In Gartner Group the Superior Court used the blue-pencil rule, bolstered by a severability clause in the employment contract, to make an otherwise overly-broad noncompete covenant enforceable. Gartner Group, 1992 Conn. LEXIS 38, at \*11-13. The covenant restricted the former employee from competing or working for any company that competed with any currently provided or future product or service of the company anywhere the company did business during his tenure, including, but not limited to, Massachusetts, Connecticut, and New York [the company did work in many areas of the world] for one year. Id., at \*1, 4-5. The court limited the enforceability to Massachusetts, Connecticut, and New York and also to any existing or potential customers of the company in those three states. Id., at \*13. See also Trans-Clean Corp. v. Terrell, 21 CONN. L. RPTR.

No. 12, 420, at 424 (May 4, 1998) (finding an area in a 60-mile radius of plaintiff's Stratford, Connecticut, home office "is indivisible and thus cannot be rewritten by the court under the so-called "blue pencil rule") (citing Timenterial, Inc. v. Dagata, 29 Conn. Sup. 180, 184, 277 A.2d 512 (1971)).

**9. Are there additional nuances or peculiarities of the state's treatment of covenants in the franchising context?**

The five-prong test of Scott v. General Iron & Welding is meant to be "disjunctive," that is, if any one of the prongs is found unreasonable, the covenant is unenforceable. New Haven Tobacco Co. v. Perrelli, 11 Conn. App. 636, 639, 528 A.2d 865, 867 (1987).

The party raising the covenant's reasonableness has the burden of proving his claim. Riordan v. Barbosa (No. 395945), 1999 WL 124335, at \*3 (Mar. 1, 1999) (citing Scott v. General Iron & Welding Co., 171 Conn. 132, 139, 368 A.2d 111, 116 (1976) and Mattis v. Lally, 138 Conn. 51, 55, 82 A.2d 155, 156 (1951) (noting that the defendant, a former partner in an accountants' partnership, had the burden of proving a noncompete in the partnership agreement was unreasonable since he challenged it).