

## Court Rejects Dealers' "Unfairness" Claims Relating to Debit Card Fees, Automated Gas Delivery System, and Delayed Refunds and Reimbursements

R.N.R. Oils, Inc. v. BP West Coast Products LLC,  
B219126, 2011 Cal. App. Unpub. LEXIS 108 (Cal. App. Jan. 6, 2011)

In R.N.R. Oils, the California Appellate Court rejected a grab bag of claims by dealers of "unfair" treatment by their franchisor BP. Chief among these claims were that BP violated California's unfair competition law by failing to pay the franchisees fees generated by debit card transactions, keeping vendor rebates and promotional allowances, and delaying payment of refunds and reimbursements owed for erroneous gas charges. The dealers also claimed that BP unlawfully required them to use an automated delivery system (AIMS) that forced them to accept unnecessary fuel deliveries when fuel prices were decreasing, to experience fuel shortages when fuel prices were increasing, and to bear the cost of fuel price changes while scheduled fuel deliveries were pending.

The Appellate Court affirmed the trial court's grant of summary judgment to BP on all counts. It held that none of the alleged actions violated any applicable constitutional, statutory or regulatory provision or could be considered "immoral, unethical or unscrupulous." It rejected the dealers' claim that they were entitled to all profits derived from their premises, including the convenience fee charged to debit card customers, finding that the PayPoint administration process benefited the dealers who derived "revenue from sales that are facilitated by their customers' ability to made debit card purchases." The Court also noted that the dealers provided no evidence that the use of the AIMS gasoline delivery system injured the public and that the claimed injury to the dealers -- that they were required to accept and pay for fuel deliveries made at BP's sole discretion -- was expressly addressed in the parties' contracts. The Court also accepted BP's evidence that an automated delivery system made it easier to coordinate gasoline deliveries across a broad network of stations and to minimize shortages on a regional basis and that this benefit outweighed plaintiffs' alleged injury -- that they rather than BP bore the risk of fuel price fluctuations between fuel orders and deliveries.

The dealers claimed that BP repeatedly overcharged them for fuel deliveries and then delayed repayment for the overcharges "for weeks and months." But the dealers acknowledged that they were ultimately reimbursed for all overcharges, and the Court held that California's unfair competition law provided no remedy for the dealers' "temporary loss of use of their funds." The Court also found that the dealers had expressly assigned to BP the right to receive marketing, advertising, promotional volume and retail display allowances and provided no evidence that their assignment was "unlawful, unfair, or harmful to consumers."

**Our Comment:** This decision provides another example of the importance of well drafted franchise agreements, and is consistent with the recent rulings by the D.C. District Court in Metroil, Inc and by the Maryland District Court in Duncan Services (both reported in our September Alert) that there is nothing unfair about franchisors taking actions permitted under those agreements. Other courts, however, might view the claim alleging repeated overcharges for fuel and lengthy delays for repayment differently; in such a situation, a franchisor should be able to provide an explanation or demonstrate efforts it made to correct the problem.