

NIXON PEABODY



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Services

- Trade Secrets
- Class Actions
- Intellectual Property
- Intellectual Property Litigation
- Franchising & Distribution
- Complex Commercial Litigation

Education

- Temple University, J.D.
- University of Pennsylvania, B.A.

Admissions

- Massachusetts
- New York
- Pennsylvania
- U.S. Supreme Court
- U.S. Court of Appeals, First Circuit
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Third Circuit

ARTHUR L. PRESSMAN

For more than twenty-five years, Arthur L. Pressman has been recognized as a leading franchise lawyer with a nationwide practice, focusing on the representation of franchisors. Arthur is a member of an international franchising practice that represents world leaders in franchising and retail distribution, and numerous hotel, real estate, and consumer services systems. The group has handled litigation and transactions for clients in more than seventy countries on six continents, including the United States and its territories.

In addition to his current admissions, Arthur has appeared *pro hac vice* in approximately twenty jurisdictions.

Representative Experience

- *KFC Corporation v. Iowa Department of Revenue*, No. 10-1340, United States Supreme Court.
Representation of International Franchise Association in *amicus* brief filing in connection with KFC Corporation's petition for Supreme Court review of Iowa's taxation of its in-state royalty revenue.
- *FSRO Association Ltd v. Fantastic Sams Franchise Corporation*, American Arbitration Association Claim No. 11 114 01221, and *Fantastic Sams Franchise Corporation v. FSRO Association Ltd.*, USDC (MA 2011, Civ. No 1-2011-011485).
Representation of franchisor in court action to limit franchise association's ability to bring consolidated arbitration proceeding on behalf of multiple association members. Trial court orders 2/3 of association members to bring individual arbitrations and refers issue as to remaining 1/3 of members to arbitrators. Appeal pending at First Circuit as to remaining 1/3 of members.
- *Pinnacle Pizza Co. v. Little Caesar Enters.*, No. 08-3999, 2010 U.S. App. LEXIS 5801 (8th Cir. Mar. 22, 2010).
Representation of franchisor against franchisee's \$600M claim for contract breach, trademark misappropriation and additional business torts. In March 2010, Eighth Circuit affirmed summary judgment in franchisor's favor, dismissing all claims. Franchisee contended that Little Caesar misappropriated its "Hot-N-Ready" advertising based on language in the franchise agreement giving franchisees ownership of all "original advertising material." Without reaching the contract language relied on by the trial court in its grant of summary judgment, the Circuit accepted Little Caesar's alternate argument (rejected by the trial court) that the claims were untimely. In so ruling, the Circuit clarified that the "continuing wrong" theory relied upon by the trial court did not apply under Michigan law to a franchise agreement breach. The Circuit also affirmed summary judgment on Little Caesar's counterclaim for breach of the franchise agreement's no-suit covenant. The franchisee had argued that public policy required an implied "good faith" exception to the no-suit covenant. The Circuit and trial court both disagreed, and held that the franchisee had breached the franchise agreement by bringing its claims to invalidate Little Caesar's trademark.
- *Barkan v. Dunkin' Brands, Inc.*, No. 05-ca-050L (D.R.I. 2010).
Representation of franchisor in defense of \$13 M fraud and breach of contract claims by former franchisee. Jury trial in December 2009 ended in mistrial for juror misconduct, and retrial in January 2010 ended in directed verdict for franchisor after the court barred

- U.S. Court of Appeals, Eighth Circuit

Recognition

Arthur has been recognized as one of the leading franchise trial lawyers in the nation in *Chambers USA: America's Leading Lawyers for Business* for the past several years. In its 2011 edition, *Chambers USA* wrote that Arthur is "one of the top litigators," according to peers. He brings to the team nearly 30 years of litigation experience and an impressive expertise in distribution issues, consumer service systems and mediation." The 2010 edition noted: "Clients describe him as 'a tremendous litigator and a fantastic counselor and adviser—his results speak for themselves.'"

Regularly featured as one of the top lawyers worldwide in *International Who's Who of Business Lawyers*, Arthur has also been named as one of the top 100 franchise lawyers in the country by *Franchise Times* every year since its inception. He has been selected by his peers as a Massachusetts *Super Lawyer* every year since 2005. He has been selected for inclusion in the peer-rated *The Best Lawyers in America* since 2007, and in 2011, he was chosen as "Lawyer of the Year" among Boston franchise lawyers.

franchisee's expert witness from testifying. Judgment for franchisor affirmed in *per curiam* opinion in December 2010. 637 F.3d 634 (1st Cir. 2010).

- *G.L.M. Security & Sound, Inc. v. LoJack Corporation*, No. CV-10-4701-LJS (E.D. N.Y. 2010).
Representation of former distributor of after-market, auto security systems in various contract and tort claims. Case pending.
- *Williams et al v. Kahala Corp.*, Case No. 10-L-166, Circuit Court, Madison County, IL (2010).
Defense of Blimpie® franchisor in putative class action based on alleged false advertising of amount of meat in "double portion" Blimpie sandwich. No class certified. Settled for *de minimis* food pantry donation.
- *Pohlmann et al v. Fiducial Franchises, Inc. et al.*, Cause No. 08SL-CC02849, 21st Judicial Circuit, St. Louis County, MO (2010).
Defense of financial services franchisor in class action alleging agency and direct liability for franchisee's sale of fraudulent tax credits. Motion for class certification denied by trial court in July 2010. MO Court of Appeals affirmed denial of class certification in July 2011.
- *Planetarium Travels, Inc. v. American Express Travel Related Services Company, Inc.*, Index No. 600794/10, Supreme Court, New York County, NY (2010).
Defense of franchisor in action for injunction to compel renewal of franchise agreement and damages. Preliminary injunction denied after hearing; affirmed on appeal. Case pending.
- *Kiddie Academy Domestic Franchising LLC v. Faith Enterprises DC, LLC*, 2009 U.S. Dist. LEXIS 61989 (D. Md. 2009).
Representation of franchisor in defense of multimillion-dollar fraud and breach of contract claims by franchisee. Summary judgment in favor of franchisor on all claims, including award of attorneys' fees.
- *DeGiovanni v. Jani-King of Boston, Inc. et al.*, Civil Action No. 07-10066 (D. Mass. 2007); *Myers v. Jani-King of Philadelphia, Inc. et al.*, Civil Action No. 09-1738 (E.D. Pa. 2009).
Defense of putative class actions alleging violation of state wage payment laws, misclassification of franchisees as employees, and unfair and deceptive trade practices. Additional issues include enforcement of forum selection clause, choice of law clause, and inherent "fairness" of royalty and other fees disclosed in FDD and contained in franchise agreement.
- *Hamilton-Dutt et al. v. Pla-Fit LLC*, No. 1:09-cv-10560 (D. Mass. 2009); *HD Fit, Inc. v. Pla-Fit, LLC*, No. 13-C-09-076764 (Maryland Cir. Ct. 2009); *HD Fit, Inc. et al v. Pla-Fit, LLC et al.*, American Arbitration Association (Boston 2009).
Defended franchisor against franchisee claims in multiple proceedings for \$10 million in antitrust, civil conspiracy and fraud damages based on franchisor's sale of development rights to third party. Litigated in multiple proceedings, including successful action to compel arbitration; settled on extremely favorable and confidential terms.
- *In Re Fein, Debtor*, Bankr. Case No. 08-30185, U.S. Bankruptcy Court for the District of Massachusetts (Western Division), CCH Business Franchise Guide 2008-2009, ¶13,951.
Defense of franchisor in adversary proceeding for relief from automatic stay to assert claim for violation of post-termination covenant against competition. In granting relief to franchisor, court held that franchisee-debtor was entitled to "fresh start" under bankruptcy laws, but not "head start."
- *Monster Cable Products, Inc. v. Monster Mini Golf, LLC*, No. 2:08-cv-01037-LKK-EFB (E.D. Cal. 2008).
Defended franchisor of monster-themed mini-golf course concept and its franchisee in federal trademark infringement and unfair competition claims by owner of various MONSTER trademarks who contended that it had trademark rights to exclusive use of the word "monster" in connection with various business applications. Settled on favorable terms. Reported in *Wall Street Journal*, page one, April 4, 2009, "The Scariest Monster of All Sues for Trademark Infringement."

- *Hotel Associates v. Howard Johnson Franchise Systems* (D.P.R. 2003), affirmed *per curiam*, 198 Fed. Appx. 13 (1st Cir. 2006).
Summary judgment in favor of franchisor on all claims in \$22M suit for encroachment and breach of contract.
- *McDonald's Corp. v. Benito*, No. 1:04-cv-01575 (S.D.N.Y. 2004).
Representation of franchisor in contested termination of multiple-unit restaurant franchisee in New York City. After the court denied franchisee's motion for a temporary restraining order, franchisee settled by leaving the franchise system and reimbursing franchisor for all legal fees and expenses.
- *Carta v. McDonald's Corp.*, No. 1:03-cv-12237 (D. Mass. 2003).
Defense of self-insured restaurant franchisor in action for bad faith failure to settle insurance claim under state insurance statutes. Court granted franchisor's motion to dismiss, holding that franchisor could not be liable under a statute that applied only to insurance companies.
- *Superior Walls of America, Inc., v. Weaver Precast, Inc.* (E.D. Pa. 2003).
Prosecution of patent infringement action by franchisor alleging franchisee infringed upon franchisor's patent by offering proprietary business process in unauthorized channels of distribution. Case settled on terms favorable to franchisor.
- *Huntington Learning Centers, Inc., and The Association of Remedial Educators* (American Arbitration Association 2003); *Huntington Learning Centers, Inc. v. The Association of Remedial Educators* (New York County Supreme Court 2003).
Defense of franchisor against claims by 80 franchisees for \$20M in alleged lost profits arising from ad fund shortfall, including striking of consolidated damage claims in separate state court litigation; case favorably settled.
- *Andrews v. Avis Rent a Car and Cendant Car Rental*, (Florida Superior Court 2003).
Defense of franchisor against vicarious liability claims by quadriplegic plaintiff injured in one-car motor vehicle accident in Mexico. Case settled.
- *Bradley et al. v. The Arrow Corporation*, Superior Court, Connecticut, 2002.
Representation of franchisor against multiple franchisees in conflict over system expansion and Internet use: case settled by franchisee buy-out of franchise agreement obligations)
- *Hunter v. Superior Walls of America, Inc.*, No. 0:00-cv-02519 (D. Minn. 2001).
Defense of franchisor against claims by former franchisee for fraud and violation of state franchise registration law. Case included motion to dismiss and motion to disqualify plaintiff's counsel for unauthorized communications with one of franchisor's managerial employees, who was also a named defendant. Case favorably settled.
- *McDonald's Corp. v. Dat Do*, No. 00-1592-A, 2001 U.S. Dist. LEXIS 10457 (E.D. Va. 2001).
Representation of franchisor in termination of multiple-unit franchisee in "rocket docket" jurisdiction. Affirmed by 4th Circuit.
- *McDonald's Corp. v. Robertson*, 147 F.3d 1301 (11th Cir. 1998).
Representation of franchisor in action to enforce termination of long-time franchisee for failure to comply with franchisor's quality, service, and cleanliness standards. Preliminary injunction granted and affirmed on appeal.
- *McDonald's Corp. v. Michael*, No. 0:97-cv-02252 (D. Minn. 1998).
Representation of franchisor in action to enforce termination of franchisee for violation of quality, service and cleanliness standards. Temporary and preliminary injunctions granted.
- *Dunkin' Donuts, Inc., v. Mandorico, Inc.*, 181 FRD 208 (D. Puerto Rico 1998).
Representation of franchisor in termination of development rights and defense of Law 75 counterclaim. Case settled on favorable terms.
- *Specialty Bakeries, Inc. v. HalRob, Inc.*, 129 F.3d 726 (3d Cir. 1997).
Representation of franchisor in enforcement of arbitration provisions against franchisee

of competing franchise system acquired by franchisor for resolution of franchisee claims, including vacating state court injunction against arbitration proceedings.

- *Cione v. Carvel, Inc.*, (D. NJ 1995).
Representation of franchisor in defense of civil RICO and fraud claims; two-month jury trial followed by twenty-day jury deliberation; hung jury, case favorably concluded.

Affiliations

Arthur is a member of the American Bar Association Forum on Franchising, the International Franchise Association, and the International Bar Association Committee X on International Franchising. As a member of the Forum on Franchising, Arthur has spoken at annual forum meetings on a variety of franchise litigation and dispute resolution topics on multiple occasions from 1990 through 2010. Arthur has also spoken at the Annual IFA Legal Symposium on multiple occasions from 1988 through 2010. Arthur is also a member of the Boston Bar Association and the Barnstable County, MA Bar Association.

For the 2004–2005, and 2005–2006 academic years, Arthur served as Adjunct Professor at Babson College, Wellesley, MA in the Entrepreneurship Division of its MBA Program, co-teaching “Franchising: Pathway to Wealth Creation.” Previously, Arthur has taught franchising law courses at the Temple University School of Law as an adjunct faculty member.

Since 2009, Arthur has served as chairman of South Coastal Counties Legal Services, Inc., a provider of civil legal services to the elderly, disabled and working poor which serves southeastern Massachusetts, Cape Cod and the Islands.

Thought Leadership/Alerts

Webinar Recording: Incurable Defaults: What Every Franchise System Needs to Know
March 20, 2012

Massachusetts Supreme Court says workers misclassified as franchisees entitled to refund of franchise fees, royalties, attorney fees, and maybe treble damages
Franchise Law Alert | September 2, 2011

Seventh Circuit applies state franchise law to the Girl Scouts of the USA and its affiliates, raising potential issues regarding nonprofit structure and organization
Nonprofit Organizations Alert | June 8, 2011

Webinar Recording: Brand Protection 2.0: Guarding Against False or Misleading Advertising Claims
February 14, 2011

Webinar Recording: Mid-Year Franchise Case Law Round-Up: Implications For Your Franchise
August 11, 2010

Webinar Recording: The Awuah Case: Bellwether or Outlier?
May 14, 2010

Webinar Recording: Arbitration: Special Issues for Franchisors
April 8, 2010

Federal Judge Likens Franchising as Business to “Modified Ponzi Scheme” and Holds that Franchisor is Employer of Massachusetts Franchisees
Franchise Law Alert | March 31, 2010

U.S. Supreme Court clarifies test for determining a corporation’s principal place of business
Employment Law Alert | February 24, 2010

Press

Chambers Gives High Marks to Nixon Peabody LLP
June 11, 2012

Nixon Peabody Advises South Coastal Counties Legal Services in its Merger with the New Center for Legal Advocacy
August 4, 2011

Chambers Gives High Marks to Nixon Peabody LLP; 47 Attorneys Recognized As Leaders
June 20, 2011

Nixon Peabody Files Amicus Curiae Brief on Behalf of International Franchise Association; Urges U.S. Supreme Court to Recognize Franchise Business Model
June 8, 2011

Nixon Peabody Partners Earn Top Recognition from *Best Lawyers*; "Lawyers of the Year" Highlighted for Significant Efforts
November 4, 2010

Chambers USA Gives High Marks to Nixon Peabody LLP; 17 Practices and 49 Attorneys Recognized as Leaders
June 11, 2010

Nixon Peabody Partner Named Chairman of South Coastal Counties Legal Services, Inc.
March 3, 2010

Media Clips

Court Ruling Shows Risks of Acting Too Much Like a Business
Chronicle of Philanthropy | June 27, 2011

This column discusses an appeals court's decision resulting in the need for nonprofits and their affiliates to examine their structure through the lens of state franchise law—even though those statutes were constructed with decidedly commercial relationships in mind. Boston Franchise & Distribution partner Art Pressman coauthored the piece.

Pandora's Law: When franchisees are ruled employees, all bets are off
Franchise Times | May 1, 2010

This feature story discusses a recent decision regarding the employee/independent contractor issue (*Pius Awuah and others v. Coverall North America Inc.*) and notes that the decision is creating discussion and action across the franchise community. Boston Franchise & Distribution partner Art Pressman is included in the piece.

Little Caesar's 'Hot-N-Ready' Mark Valid: 8th Circ.
Law 360 | March 24, 2010

Boston Franchise & Distribution partner Art Pressman is quoted in the article and identified as counsel in this feature story discussing a federal appeals court's ruling that Little Caesar Enterprise Inc. did not breach a franchise contract.

People on the Move
Boston Business Journal | March 3, 2010

In this column featuring local area promotions and honors, Boston Franchise and Distribution partner Art Pressman is recognized as chairman of South Coastal Counties Legal Services Inc., a nonprofit corporation created to help achieve equal justice for the poor and disadvantaged through community based legal advocacy.

Events

Webinar: Incurable Defaults: What Every Franchise System Needs to Know
March 14, 2012

Webinar: Franchise Law and Nonprofit Affiliations: Structuring in the Wake of the *Manitou Council* Case

September 14, 2011

Webinar: Brand Protection 2.0: Guarding Against False or Misleading Advertising Claims

February 8, 2011

Webinar: Mid-Year Franchise Case Law Round-Up: Implications For Your Franchise

August 10, 2010

Webinar: Arbitration: Special Issues for Franchisors

April 7, 2010

Conferences/Speaking Engagements

IFA 45th Annual Legal Symposium and the 28th Annual IBA/IFA Joint Conference,
5/20/2012