

Is it important to pick the RIGHT attorney if you own and operate a Service Station in Connecticut?

By Michael J. Fox, Executive Director, GASDA, Inc.

The simple answer is YES, YES, YES!! Now here are the reasons why. If one were to ask the average experienced, qualified lawyer in the State of Connecticut what is a franchise, the answer would probably be: "McDonalds, Burger King or Dunkin Donuts". If you were to ask what is a petroleum marketing franchise, they might surmise that it is a gasoline station, but they really do not know what makes up or qualifies a gasoline service station as a petroleum marketing franchise. The definition of "franchise" as it relates to service stations is found in two laws: specifically the Connecticut Gasoline Fair Conduct in Franchise Act and the Federal Petroleum Marketing Practices Act and it is different than other traditional franchises.

A petroleum marketing franchise is where a retailer is provided gasoline by a distributor or a refiner to sell under a trademark owned or controlled by a refiner. Although many service station operators believe that they must be a lessee dealer in order to be a franchise, this is not true. The essence of the franchise is the purchase by the retailer of trademarked petroleum product and then the sale by the retailer of said trademarked petroleum product. If the dealer were inclined to actually read the specific laws, he would see that after each of the sections of the law, the State or the Federal courts set forth some case history which gives an insight into these laws. Connecticut Statutes provide cites to cases such as *Lyons v. Mobil Oil Corporation*; *Aurigemma v. Arco Petroleum Products*; *Consumers Petroleum of Connecticut v. Duhan*; *Ackley v. Gulf Oil Corporation*; *Darling v. Mobil Oil Corporation*; *Herman v. Charter Marketing*; *Mobil Oil Corporation v. Karbowski*; *Bellmore v. Mobil Oil Corporation*; *Gager v. Mobil Oil Corporation*; and *Lasko v. Consumers Petroleum of Connecticut*.

A review of the Federal Petroleum Marketing Practices Act (which applies to all 50 States of the United States) cites cases such as *Ceraso v. Motiva*; *Pruitt v. New England Petroleum*; *Ackley v. Gulf Oil Corporation*; *Bellmore v. Mobil*; *Darling v. Mobil*; *Escobar v. Mobil*; *Lyons v. Mobil*; *Mobil v. Karbowski*; *Palmieri v. Mobil*; *Ross v. Shell*; *Aurigemma v. Arco*; *Automatic Comfort v. D & R*; *Lasko v. Consumer Petroleum*; *Luchina v. Mobil*; *Star Enterprises v. Papadopoulos*; and *Tolland Getty v. Getty*.

What is the one factor under the Connecticut Franchise Act or the Petroleum Marketing Practices Act that all these cases have in common? The answer is that they were all litigated by the firm of Barr & LaCava, or its predecessor, Farrell & Barr. Simply put, the most experienced and successful law firm when it comes to service station/franchised gasoline dealers rights is Barr & LaCava.

One of the authors of the original Connecticut Franchise Act was Richard Farrell, formerly of Farrell & Barr. Amendments to the Connecticut Franchise Act adopted in 1991 and 2000 were also written by Albert J. Barr and the Gasoline and Automobile Service Dealers Association. Since 1982, Albert Barr, in conjunction with his former partner, Richard Farrell, and since 1997 in conjunction with his present partner, John Morgan, has represented service station dealers in Connecticut and in other states. Although the firm has been approached by distributors to represent them, Barr & LaCava has held steadfast to the concept that you cannot serve two masters at the same time. That is, you cannot be representing the retailers and at the same time be representing the distributors who supply the retailers.

Although Barr & LaCava is a full service law firm, providing many legal areas, it has recognized experience in franchise law (representing only franchisees), immigration and personal injury. A dealer may ask: "What does this experience gain me?" The answer is that instead of having to research the law and see *if* it applies to the dealer, Barr & LaCava knows the law and how it would apply to specific situation. This is because Barr & LaCava has been in the forefront of making and applying the law, not just reading the law.

The complexity of the franchise relationship, the environmental ramifications, and the numerous laws that go into running a service station make it very complicated and unique. Your local attorney's, although they may be fine, may simply not be the proper people to turn to regarding your franchise issues.

The simple reality is that Barr & LaCava knows the answers to those questions and many more. In addition, they know whom to talk to resolve issues with the oil companies. They are not simply stuck talking to a marketing representative's answering machine. They know the people who get the issues resolved. A perfect example of this has occurred over the past several months. One of the major oil companies in the State

of Connecticut has been in the process of selling their service stations. A series of contracts went out stating that the dealer would pay the conveyance taxes, both city and state. Since this can range from 1.25% to 1.5% of the selling price, **(\$30,000 of cost on a \$2 million dollar purchase)** obviously it is not an insignificant figure when stations are being sold for millions of dollars. Although the conveyance tax is a tax on the seller, there is nothing in the law that would prohibit the seller and the buyer from negotiating that the buyer would have to pay this. Nevertheless, based upon Attorney Barr's knowledge of past practices, he approached the oil company concerning this issue, demanding that it pay the conveyance tax. They declined at first, stating their position was not subject to change. After further discussion, the stand changed and the dealers no longer to pay the conveyance tax saving in some cases, tens of thousands of dollars. We believe this oil company may have even gone to some of the dealers with signed contracts agreeing to pay the conveyance tax, and now told them they did not have to pay. This is all because of the work of Barr & LaCava.

In making decisions which literally involve millions of dollars, we urge you to give serious thought to who is representing you. Is it someone who says "I have always wanted to do a service station closing or litigate against an oil company" or is it someone who has done hundreds of service stations transactions; represented numerous dealers in negotiating franchises; and litigated almost every case decided under the Connecticut Franchise Act? Is it someone who is steadfast in their representation of the retailers, or is it someone who has been representing distributors, but who now decides to play both sides of the street and represent both dealers and distributors? Is it someone you can call and speak to a real "live" attorney, or is it someone whom you call and leave a message on an answering machine, and you may or not get a call back? Is it someone who may not even know that there is an environmental component to a service station, or is it Albert J. Barr who is currently Vice Chairman of the Connecticut Leaking Underground Storage Tank Fund, and is the only person who has been on this Committee since its inception in 1988?

We would urge you to be fair to yourself by getting the proper representation to protect **your** interest now and in the future on your valuable franchise.

Attorneys Albert Barr and John Morgan can be reached at (203) 356-1595 or e-mail to ajbarr@infolaw.com or jmorgan456@aol.com.

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A.J. BARR has proudly represented Connecticut Service Station Dealers and Service Station Dealers Nationwide Since 1982, and is Available to Work with You Regarding Any Service Station Legal Questions, or Any of Your Legal Questions. The First Hour of Consultation is FREE to Members of GASDA.