

At Issue..

## Troop sues organization over consolidation

### Scouting a Franchise

By Jonathan Maze

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Girl Scouts are loyal, trustworthy, honest and fair, considerate and caring, courageous and strong. They respect authority and use resources wisely and sell great cookies. Who wouldn't want to welcome them into the franchise fold?

them to fund their organization."

Applying franchise law to a nonprofit is not as odd as it may first appear. Numerous nonprofits, like the United Way, have structures that are similar to traditional, for-profit franchises. They have national organizations that control the name and the trademarks, while self-sufficient local agencies, with their own governing boards, use those trademarks to provide services.

And just like for-profits, the model can work in the nonprofit world by providing the agency with an established, recognized name that may be more likely to lure the donors and volunteers necessary for success.

What do the Girl Scouts have to do with Hilton Hotels or T.G.I. Friday's?

Enough to call it a franchise, at least according to a federal lawsuit.

The lawsuit, which is awaiting a judge's decision, reads like a typical wrongful termination complaint. In this case, a Girl Scout chapter out of Sheboygan, Wisconsin, says that a plan by the Girl Scouts of the USA to split it up and merge it with newly formed, larger chapters represents a "de-facto termination."

Much of the case depends on whether the Girl Scouts would qualify as a franchise under Wisconsin's Fair Dealership Law, a qualification that would provide the chapter the same rights as an owner of McDonald's or Aamco Transmissions.

"We meet all the criteria for a franchise," said Denise Schemenauer, CEO for the Sheboygan-based Manitou chapter. "We have a contract. We're allowed to use their trademark as part of that contract. We pay for that contract. Our memberships go to

Nonprofits do not fall under federal franchise disclosure regulations, because the FTC's franchise rule covers only profit-making corporations, said Gary Leydig, an attorney with the Chicago firm of Riordan Fulkerson Hupert & Coleman who represents the Girl Scouts' Manitou chapter. There are no such exemptions in state franchise laws, however.

"There's nothing in Maryland franchise law that expressly exempts a nonprofit company," said Dale Cantone, who heads the Franchise and Business Opportunities Unit of the Maryland Attorney General's Office.

Whether that qualifies a nonprofit as a franchise "depends on the facts of the case," he said.

It's rare that disputes between national nonprofits and their locally owned chapters spill over into franchise questions. Cantone, for one, has never seen one.

To be sure, many of the issues that generate franchise lawsuits in the for-profit world - like questions about franchisor promises and support or termination issues - aren't generally a problem among nonprofits.

Franchise laws are largely designed to protect prospective franchisees that pay large sums to buy into a concept. But Leydig



**Are the Girl Scouts** a franchise? That's a question at the center of a Wisconsin lawsuit.

said local nonprofits still need the protection of state franchise law, because they provide a public good. "There truly is a public good and a public interest that needs to be minded," he said.

The dispute involving the Girl Scouts began in 2005, when the Girl Scouts of the USA decided to reorganize its chapters and reduce them from 315 to 109. The move required the merger of numerous, smaller councils into larger ones designed to attract 10,000 members each.

That plan would have divided the Manitou chapter, which includes seven counties in Eastern Wisconsin, into three pieces. Most would be moved to one to the north created by the merger of six councils in Northern Wisconsin and the one that covers Michigan's Upper Peninsula. Most of the rest would merge with a council to the South.

Schemenauer said the Manitou chapter didn't oppose the plan from the beginning. "Our board of directors asked a lot of questions," she said. "They weren't able to articulate any good rationale for this."

The Manitou chapter's study found larger councils have fewer members and fewer donations. Its board voted against the merger. The Girl Scouts said the board had no choice, and took steps to remove Manitou's charter.

The chapter then sued.

A Girl Scouts spokeswoman in a statement would not comment on the lawsuit, but she disagreed with Schemenauer's assessment, noting that a merger of councils in Indiana resulted in increased donations and access to more benefits for girls in rural areas.

The Manitou board believes that the Girl Scouts are breaking up a strong council, which has 6,000 members, earns \$1 million a year in cookie sales and owns two camps worth \$12 million. It's uncertain what would happen with the employees.

A larger chapter, Schemenauer said, would be much weaker.

"This really is a big business," Leydig said. "It's not just a bunch of moms sitting around the table making doilies. This council has a substantial capital investment. It owns cabins, lakefront property, corporate offices and it employs scores of people. There's no reason why the law should not fully protect them as it would a for-profit."



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