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That's the Way the Cookie Crumbles:

Seventh Circuit Court of Appeals Concludes that Wisconsin Fair Dealership Law Protects Local Girl Scout Council

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It is that time of year again. Girl Scouts are selling those scrumptious cookies. But did you know that the local Girl Scout council is also a “dealer” entitled to protection under the Wisconsin Fair Dealership Law (WFDL). Highlighting again the broad reach of the WFDL, that is what the United States Seventh Circuit Court of Appeals found in *Girl Scouts of Manitou (Wisconsin) Council, Inc. v. Girl Scouts of the United States of America, Inc.*, 549 F.3d 1079 (7th Cir. 2008). As a result, the Seventh Circuit issued a preliminary injunction preventing the national Girl Scout organization from merging the local Girl Scouts of Manitou into a regional organization and from reducing the territory it covers.

The case involved the decision by the national Girl Scouts Organization (Girl Scouts USA) to reorganize its local chapters. The Manitou Council was to be merged with all of the other local councils in Wisconsin and the Upper Peninsula of Michigan into a new regional council. The Manitou Council refused to merge. Girl Scouts USA then took steps to unilaterally reduce the Manitou Council’s chartered territory through the end of its contract term.

With the territory reduced, however, the Manitou Council would not have enough scouts – and enough cookie sales – to support its operations, which included two large Girls Scout camps valued at \$13 million. So the Manitou Council sought a preliminary injunction from a federal court in Wisconsin based in part on the argument it was a dealer under the WFDL. The district court refused to issue the injunction, but the Seventh Circuit reversed.

The WFDL protects “dealers” by requiring good cause to terminate them or substantially change their competitive circumstances, and by requiring that suppliers give dealers prior notice and an opportunity to cure any alleged deficiencies. The WFDL also provides that dealers may obtain injunctions preventing termination or substantial changes if the dealer establishes a potential violation of the statute.

A key issue in the *Girls Scouts* case was whether the Manitou Council qualified as a dealer under the statute. Girl Scouts USA argued that the Manitou Council could not be a dealer because it was a non-profit corporation, it did not sell or distribute anything and

did not have the required “continuing financial interest” and “interdependence” in their financial relations required by the WFDL.

And that is where the Girl Scout cookies come in. The scouts in the Manitou Council’s territory sold over \$1 million of Girl Scout cookies annually. To the Seventh Circuit, that meant that it “sold” and “distributed” products. In addition, the court found that the local council also sold and distributed services by running its two Girl Scout camps each year and providing educational and community services. The Council also used the Girl Scouts trademarks and logos in almost everything they did. Also, although they were non-profit organizations, both the Manitou Council and Girl Scouts USA earned “profits” that they retained instead of distributing them to shareholders like for-profit companies.

The Seventh Circuit considered the financial implications, the long contractual arrangement between the two parties, the Manitou Council’s large real estate investment and investment in goodwill in the community, and that all of the Council’s time and resources were dedicated to scouting, and concluded that the Manitou Council was a “dealer” entitled to the protection of the WFDL, including a preliminary injunction prohibiting the proposed changes, at least until trial.

Girl Scouts USA also argued that since its agreement with the Manitou Council permitted territory changes, the proposed territory reduction did not represent a “substantial change” in the dealership agreement. The Seventh Circuit disagreed, primarily because the agreement between Girl Scouts USA and Manitou Council was ambiguous about whether the Council was “exclusive” and whether its territory could be altered during the contract term.

The *Girl Scouts* case is another illustration of the broad reach of the WFDL, which can be a trap for the unwary. A variety of business relationships that one would not expect to be subject to dealer and franchise laws may fall within the reach of this statute or similar laws in other states. Lawyers and their clients must be aware of these laws when they establish their business relationships, when they propose to change them, and when they seek to end them.