

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

CHICK-FIL-A, INC.,

Plaintiff,

-vs-

Case No. 5:07-cv-501-Oc-10GRJ

CFT DEVELOPMENT, LLC, PANDA
RESTAURANT GROUP, INC., PANDA
EXPRESS,

Defendants.

ORDER

On June 15, 2009, the Court made the following oral rulings during the Bench Trial in this case which are hereby confirmed:

(1) The United States Magistrate Judge has issued a report (Doc. 136) recommending that the Defendants' Motion (Doc. 98) to Exclude the Plaintiff's Witness Robert J. Taylor, IV be DENIED. The Magistrate Judge also issued a report (Doc. 139) regarding the Plaintiff's Motion (Doc. 75) to Exclude Defendants' Expert Witness Robert T. Patterson and Motion (Doc. 77) to Exclude Defendants' Witness Charles E. Rawley, III. According to the report (Doc. 139), the Magistrate Judge recommends that Plaintiff's Motion to Exclude Defendants' Expert Witness Robert T. Patterson (Doc. 75) should be GRANTED to the extent Mr. Patterson's opinions regarding perceived ambiguities in the restrictive covenant at issue in this case, and opinion that Chick-Fil-A and Panda Express are not highly competitive concepts should be excluded and the Motion should otherwise

be DENIED. The report also recommends that Defendants' Motion (Doc. 77) to Exclude Defendants' Expert Witness Charles E. Rawley, III should be GRANTED to the extent Mr. Rawley's opinion that Panda Express is not a direct competitor of Chick-Fil-A because Panda Express is an Asian concept restaurant and not a chicken concept restaurant, and opinion with regard to how to interpret the restrictive covenant and how to define chicken should be excluded and the Motion should otherwise be DENIED.

The Parties have filed Objections (Docs. 149, 150) to the Reports and Recommendations. The Parties' Objections are OVERRULED. The Magistrate Judge's Reports and Recommendations (Docs. 136, 139) are adopted, confirmed, and made a part hereof;¹ and

(2) The Plaintiff's Motion for Summary Judgment (Doc. 79) and the Defendants' Motion for Summary Judgment (Doc. 82) are DENIED as genuine issues of material fact exist in this case.²

¹Also pending before the Court are the Plaintiff's Requests (Docs. 76, 78) for Oral Argument Regarding Motion for Miscellaneous Relief, Specifically to Exclude Defendants' Expert Witnesses Robert T. Patterson and Charles E. Rawley, III, and the Defendants' Request (Doc. 100) for Oral Argument Regarding the Motion for Miscellaneous Relief, Specifically to Exclude Plaintiff's Expert Witness Robert J. Taylor, IV, and the Defendants' Request (Doc. 103) for Oral Argument Regarding Memorandum in Opposition to Motion to Exclude Expert Witness Robert T. Patterson, IV. The Requests (Docs. 76, 78, 100, and 103) are DENIED AS MOOT.

²Also pending before the Court are the Plaintiff's Request (Doc. 81) for Oral Argument Regarding Motion for Summary Judgment, the Defendants' Request (Doc. 88) for Oral Argument Regarding Motion for Summary Judgment, the Defendants' Request (Doc. 130) for Oral Argument Regarding Memorandum in Opposition to Motion for Summary Judgment. The Requests (Docs. 81, 88, 130) are DENIED AS MOOT.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 17th day of June, 2009.

W. Penell Hodges

UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record