

[Click to print](#) or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/therecorder/2020/11/18/franchise-groups-want-out-of-ab5-according-to-lawsuit/>

Franchise Groups Want Out of AB5, According to Lawsuit

DLA Piper and Bryan Cave Leighton Paisner are representing the International Franchise Association in a lawsuit arguing that federal trademark and franchising laws preempt the state employment classification law.

By Alaina Lancaster | November 18, 2020



Dunkin' Donuts location in Baltimore. Aug. 11, 2020. Photo: Diego M. Radzinski/ALM

Several franchise groups argue that a California law dictating the test for classifying workers as employees threatens to destroy the franchisor model, according to a new lawsuit.

Franchise associations join a growing list of industries that argue that they ought to be exempt from the state's AB5 law, which requires employers to use the ABC test to determine if workers are independent contractors or employees.

DLA Piper and Bryan Cave Leighton Paisner are representing the International Franchise Association in the complaint against the state filed in the U.S. District Court for the Southern District of California.

The complaint, surfaced by **Law.com Radar** ([//www.law.com/radar](http://www.law.com/radar)) on Tuesday, alleges that the ABC Test is “irreconcilable” with federal laws regulating trademark licensing and franchising, including the Federal Trade Commission’s Franchise Rule.

Under current federal law, franchisors have the right to require franchisees to adhere to a set of standards to maintain consistency and control of a brand. However, the ABC test takes into account whether workers are free from the control and direction of employers.

“As such, the ABC Test, if strictly interpreted to apply to a franchisor-franchisee relationship, would have the perverse effect of converting all franchise relationships, which necessarily require some element of control as defined by the FTC Franchise Rule, into employment relationships despite those relationships being arms’ length and governed by contract,” the attorneys wrote. Grant Nigolian of Grant Nigolian P.C. in Costa Mesa and Justin Klein and Andrew Bleiman of Marks & Klein in Red Bank, New Jersey, represent the other named plaintiffs in the suit: The Asian American Hotel Owners Association, Supercuts Franchisee Association, and The DD Independent Franchise Owners Association, made up of Dunkin’ franchisees.

The organizations contend that lawmakers did not intend for AB 5, which sought to ensure workers have access to workers compensation and unemployment benefits, to apply to franchisees. “These kinds of employee benefits are not appropriate for franchisees who, by definition, are owners granted the “right to operate a business,” they wrote. “Instead, as independent business owners, franchisees keep their businesses’ profits, can sell their businesses, can access tax benefits like business-related deductions, and are eligible for programs for business owners, like the Paycheck Protection Program, that employees cannot access.”

SEE IT FIRST ON
LAW.COM RADAR

Sign up for Law.com Radar ([//www.law.com/radar](http://www.law.com/radar)) to keep up with the latest news and lawsuits in a personal news feed. Track employment cases and who’s getting the work by industry, practice area, law firm, company and region.

Copyright 2020. ALM Media Properties, LLC. All rights reserved.