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Navigating the Hazards of US Litigation: Lessons from Recent Decisions Involving Korean Companies

Client Alerts

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Notwithstanding recent political turmoil, Korean companies have been expanding into the United States at a fast clip, continuing a trend of investment beneficial to businesses in both countries.[1] As Korean brands increasingly become players in the US market, however, these companies also face new risks of litigation in US courtrooms. Three recent cases involving Korean companies highlight the types of legal issues that might arise when doing business in the United States and offer valuable lessons to companies looking to understand their position as they continue to grow in the American market.

Understanding the Risk of Being Hauled into US Court – *Stampley v. LG Chem America, Inc.*

Personal jurisdiction refers to the power of a particular US court to adjudicate a case against a particular defendant. In many cases, a threshold ruling on issues such as personal jurisdiction can define the course of the litigation, helping to determine whether the plaintiff gets their choice of forum or not. In *Stampley v. LG Chem America, Inc.*, the Korean corporation LG Chem risked being forced to defend a lawsuit in the state of Arkansas—notwithstanding headquarters and principal offices in Seoul and minimal operations in the United States—simply because the plaintiff purchased one of LG Chem's products, a lithium battery, in a store there.[2] The plaintiff, an individual consumer, sued LG Chem after the battery exploded in his pocket during a visit to nearby Tennessee, injuring him.[3] The plaintiff argued that Arkansas state court was an appropriate forum for the lawsuit because "LG Chem intended to serve the entire United States market" for rechargeable lithium batteries and thus "could reasonably foresee" litigating in Arkansas.[4]

The Arkansas Court of Appeals rejected the argument that LG Chem's placement of lithium batteries "into the stream of commerce" was sufficient to subject LG Chem to personal jurisdiction in Arkansas.[5] Specifically, the court found that LG Chem did not "purposefully avail[]" itself of the state of Arkansas, because "LG Chem has no licensed dealers or retailers in Arkansas, does not authorize or advertise consumer repair or replacement services in Arkansas, and its batteries are not

manufactured in Arkansas."[6] In fact, LG Chem had not even designed or marketed its batteries "as standalone, replaceable consumer batteries to be sold through retailers."[7] The Arkansas store where the battery was sold purchased its stock from its franchisor in Tennessee, who in turn had purchased the batteries from a wholesaler in Illinois—a chain of events that led the court to conclude that the sale in Arkansas was a "random, isolated, or fortuitous event[] based on the actions of third-party wholesalers."[8] The court similarly found that the plaintiff's claims did not sufficiently "arise out of or relate to" LG Chem's contacts with the forum state,[9] especially given that "Stampley's injury occurred in Tennessee, not Arkansas."[10] Without a "fundamental connection" between plaintiff's claims of negligence and LG Chem's contacts with Arkansas, the court concluded that an Arkansas court could not exercise personal jurisdiction over LG Chem.[11]

While LG Chem narrowly avoided having to litigate in a remote US state in this instance, just one or two different facts could have changed the outcome of this case. For example, if LG Chem had sold the lithium batteries to a distributor based in Arkansas, the court might have reached a different result. Alternatively, but for the fortuitous circumstance that the plaintiff was injured while traveling out-of-state, the court might have concluded that the underlying controversy was sufficiently affiliated with the state of Arkansas. Korean companies selling products in the United States should evaluate which states are the targets of their manufacturing, distribution, and marketing efforts, and work with US counsel to understand and minimize the risk of being subject to personal jurisdiction for lawsuits in those states and nearby courts.

Steering Clear of the "Accidental Franchise" – *OTG New York, Inc. v. Ottogi America, Inc.*

Many US states have their own sets of laws governing the relationships between a company and its franchisees, including varying definitions of what constitutes a "franchise."[12] This can lead to surprises like the one faced by Korean food manufacturer Ottogi in a recent case in a federal district court in New Jersey.[13] OTG New York (OTG), a distributor, sued Ottogi's American subsidiary for terminating the agreement under which OTG distributed Ottogi's products.[14] In addition to alleging breach of contract, OTG also brought claims under the New Jersey Franchise Act,[15] which "prohibits franchisors from terminating a franchise relationship without good cause and without providing the franchisee a reasonable opportunity to remediate alleged deficiencies."[16]

Ottogi moved to dismiss, pointing to an explicit stipulation in the parties' agreement that they were independent contractors and no franchise relationship existed between them.[17] The parties' agreement was for an indefinite term and was "based on mutual trust" between OTG's principal and Ottogi.[18] However, the court denied the motion, finding that under New Jersey law, "the parties' own definition of their relationship is not dispositive."[19] Rather, determining whether a franchise relationship exists under the relevant New Jersey law requires analysis of the "entire course of dealings" between the parties, including the granting of a trademark license or the formation of a

"community of interest" wherein the franchisee invests in goods or skills that will benefit the franchisor but pose limited utility outside of the franchise.[20] In this case, OTG sold only Ottogi's products, making the use of Ottogi's brand "essential to its operations" and in turn making OTG "wholly economically dependent on Ottogi."[21] Based on these and other factors, the court determined that a franchise relationship existed and allowed OTG's claims to go forward.[22]

In addition, the court found that Ottogi was required to litigate in federal district court in New Jersey and that it was subject to New Jersey law even though the parties' agreement had a forum selection clause providing for litigation in Los Angeles and a choice-of-law clause providing that the contract would be governed by California law.[23] Because the New Jersey Franchise Act applied, those agreed-upon provisions were presumptively invalid.[24]

Like Ottogi, many Korean companies do business in the United States through distributors or other partners. Forming a franchise—even unintentionally, as occurred between Ottogi and OTG—comes with new obligations that could subject a company to liability in the United States. It is important to understand the various laws that govern such relationships, which vary from state to state. Allowing another business to use your company's name or logo, inviting it to invest in tangible assets such as manufacturing equipment specific to your company, or exercising control over its method of operation are all factors that a court might use to find that a foreign company created an implicit franchise arrangement.[25] In addition, while often times parties can select their preferred forum or governing law in a contract, this case demonstrates that those agreements will not always be upheld where important public policy grounds of the forum state dictate a different result. Stakeholders should review not just their company's written agreements with affiliates but also the substance of its interactions to ensure they do not find themselves faced with a surprise franchise relationship.

Drafting to Avoid an Inefficient Arbitration Clause – *HD Hyundai Construction Equipment North America, Inc. et al. v. Southern Lift Trucks, LLC*

The US legal system has a strong policy in favor of allowing parties to agree to arbitrate disputes rather than going to court, but the specific language of an arbitration clause can complicate the resolution process. In 2019 and 2020, subsidiaries of the Korean conglomerate Hyundai entered into two agreements with an American heavy equipment dealer, Southern Lift Trucks, LLC.[26] In both agreements, Southern agreed to arbitrate "'all' disputes relating to or arising out of the agreement."[27] In 2022, Southern sued HD Hyundai Construction Equipment North America, Inc. and HD Hyundai Heavy Industries Co., Ltd (collectively, "HD Hyundai") alleging breach of contract in Alabama state court.[28] HD Hyundai moved to compel arbitration based on the clause in the agreements, and in 2023 the Alabama Supreme Court held that all of Southern's claims against HD Hyundai should be sent to arbitration except for "any portions of Southern's declaratory-judgment claim relating to the 'enforceability of any provision' of the agreements."[29] This was based on a portion of the arbitration clause that read as follows:

> "The parties hereby submit to the exclusive personal jurisdiction of such arbitrators for all matters unless such matters are required by law to be submitted to a court or other venue; provided that either party may apply to any court of competent jurisdiction to seek an order compelling arbitration or a declaratory judgment with respect to the enforceability of any provision of this Agreement."[30]

When HD Hyundai tried to initiate arbitration proceedings, Southern refused, arguing that the arbitrator's resolution of the claims hinged on issues pertaining to the enforceability of some provisions of the agreements, which according to Southern needed to be resolved by the trial court.[31] The dispute made its way back to the Alabama Supreme Court, which rejected Southern's argument, finding that the language of the arbitration agreement did not give the trial court "*exclusive* jurisdiction" over disputes related to the enforceability of the agreements.[32] Furthermore, the court was reluctant to disturb the terms of the parties' contract, which clearly anticipated the arbitration of "all" disputes.[33]

Additionally, the court rejected Southern's arguments that piecemeal proceedings—with proceedings concerning the enforceability of contract provisions taking place in court and all other aspects handled in arbitration—would be inefficient.[34] Though moving ahead with arbitration before the court had time to rule on the threshold issue of enforceability risked inconsistent judgments, the court maintained that inefficiency was not a basis to decline to compel arbitration where the parties' agreement required it.[35]

Litigation in the United States can be costly and unpredictable. Arbitration is often an attractive alternative to companies who want to resolve disputes on their own terms. But this case demonstrates that arbitration does not always lead to a more efficient resolution, with the parties engaged in three years of litigation primarily concerning whether the dispute belonged in court or arbitration. A well-constructed arbitration clause can be the difference between an efficient dispute resolution and protracted litigation in US courts.

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These cases offer three examples of the wide range of legal issues that Korean companies encounter when doing business in the United States. Companies selling products in the United States or transacting with US businesses should consult counsel regularly to understand their risks and obligations, which can vary from state to state. In addition, companies who do find themselves involved in litigation should seek lawyers with experience managing the ins and outs of the US courtroom in order to ensure the best chance of a favorable outcome.

Footnotes

[1] *See* Park Han-na, *Korea's Increasing US Investment Mutually Beneficial: Report*, Korea Herald (May 20, 2024), https://www.koreaherald.com/article/3397898.

[2] 2025 Ark. App. 211, *1 (2025).

[3] *Id.* at *2.

[4] *Id.* at *3.

[5] *Id.* at *4–5.

[6] *Id.* at *8.

[7] *Id.*

[8] *Id.* at *9 (internal quotation omitted).

[9] *Id.* (citing *Bristol-Myers Squibb Co. v. Superior Ct. of California*, 582 U.S. 255, 256 (2017)).

[10] *Id.* at *10.

[11] *Id.* at *11.

[12] *See generally* David J. Kaufmann, *An Overview of Federal and State Franchise Laws, Rules and Regulations*, N.Y.L.J. (Oct. 17, 2023), https://www.law.com/newyorklawjournal/2023/10/17/an-overview-of-federal-and-state-franchise-laws-rules-and-regulations/.

[13] *OTG New York, Inc. v. Ottogi Am., Inc.*, No. 2:24-CV-07209, 2025 WL 957407 (D.N.J. Mar. 31, 2025).

[14] *Id.* at *1–2.

[15] N.J. Stat. § 56:10-3(a).

[16] 2025 WL 957407, at *2.

[17] *Id.*

[18] *Id.* at *1.

[19] *Id.* at *5.

[20] *Id.* at *5–7.

[21] *Id.* at *5, *8.

[22] *Id.* at *10.

[23] *Id.* at *9–10.

[24] *Id.* at *10.

[25] *Id.* at *5–9; *see also* Tim Pickwell, *The Inadvertent or Accidental Franchise*, San Diego Bar Ass'n (Feb. 2017), https://www.sdcba.org/?pg=FTR-Feb-2017-6.

[26] *HD Hyundai Constr. Equip. N. Am., Inc. v. S. Lift Trucks, LLC*, No. SC-2023-0853, 2025 WL 225199, at *2 (Ala. Jan. 17, 2025).

[27] *Id.* (alteration omitted).

[28] *Id.*

[29] *Id.*

[30] *Id.* at *3.

[31] *Id.* at *2.

[32] *Id.* at *3–4 (emphasis added).

[33] *Id.* at *4–5.

[34] *Id.*

[35] *Id.*

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