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Federal Trade Commission
Office of Secretary
600 Pennsylvania Ave., NW
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Re: Franchise Rule, 16 CFE part 436, Comment, Matter No. R511003

First, I want to give thanks to the FTC and the staff that have worked on this Franchise Rule Review. This is an important topic to ensure the franchise industry can survive and thrive. I also appreciate the opportunity to have participated in the November 10 Workshop as a panelist. My comments below are to highlight and expand on some of the points I made during the workshop. I have also attached my 2019 comments made to the FTC on the Franchise Rule Review, as those comments remain accurate.

- When looking at false or unsubstantiated claims outside of the FDD, I think we first have to understand that no prospective franchisee is going to buy a franchise without understanding some revenue and cost information. Franchises that put nothing in the Item 19 makes me assume that franchisees of these brands are getting this information outside of the FDD. Of course, that doesn't make the information they receive false. It also doesn't mean that franchises giving Item 19 data aren't also giving information beyond what's in their FDD. We have to accept the fact that franchise ARE receiving financial representations outside of the FDD!
- The franchisor side of the industry points to the success in the growth of franchising, and the small number of complaints filed with the FTC. However, if you look at the numbers, I think it shows real concern, and lack of oversight into the franchise industry. In 2019, Franchise Grade released a study based on the years 2010-2018, nine years of data, using FDD data from 2,489 franchises. Starting with 397,491 outlets and ending with 476,369, for a net growth of 78,878, or about 20% over the nine years. However, during that time 353,685 units opened, or about 90% additional, with an estimated investment of \$459.6B. That means 274,807 outlets closed, more than half the total outlets in existence. I would NOT call that a high level of success, except that the franchisor collects franchise fees on each of those opening, likely a broker/consultant is paid a commission, but the franchisee often has lost their investment, and potentially all their assets, including their home. I believe we can, and should, do better than this.
- Let's not forget the intent of the Franchise Rule, it's to protect the consumer, the prospective franchisee. Yet, discussions on the Rule seem to often be steered towards protecting the franchisor and not costing the franchisor too much money. We seem to be succeeding at protecting the one with all the resources and leverage. A franchise investment may be the biggest investment a person ever makes and is certainly much riskier than buying a home.

- Financial representations need to be mandatory. No franchisee buys a franchise without some understanding of revenue projections, and associated costs. It's foolish to think otherwise. Those undisclosed are getting it from some source, from third party brokers/consultants, improperly from someone inside the franchise, even loan brokers working on financing. And while some would say due diligence comes from contacting franchisees, the franchisor is most likely giving them a list of top performers, skewing that information. If they are trying to get them from past franchisees, the contact information is often wrong, and ones that exit badly often have nondisclosure agreements or fear being sued in violation of non-disparagement agreements.
- Providing basic data for Financial Representations should be minimal, and frankly, be a cost of doing business as a franchisor. People buy a franchise because it is a tested and proven business model. If the franchisor can't disclose the numbers that prove that, then I don't believe they should be franchising. I will note, that doesn't guarantee success for all, but there should be a reasonable likelihood of success.
- Improper disclosure may come from third-party unlicensed and unregulated franchise brokers or consultants who have no fiduciary duty to the prospective franchisee and get paid from the franchisor when a sale occurs. As far as I know, there are no requirements for someone to call themselves a broker. In fact, I believe I could deem myself a franchise broker tomorrow. There needs to be some level of licensing requirement, required disclosure on commissions, and a fiduciary responsibility to the prospective franchisee. There are many hardworking consultants and brokers that do practice ethically, but there is really nothing in place to stop the bad actors, and there needs to be.
- Improper disclosure may also come from a loan broker working on financing. It's amazing how much false information franchisees receive while filling out loan applications, because some loan consultants understand the numbers to qualify, which may have no reality to actuals. But franchisees are putting these numbers on loan applications, including government guaranteed SBA 7(a) loans, and taking out debt based on these often unsubstantiated numbers. In the end, it is the franchisee is held liable for the loan.
- Let's also look at those that would say due diligence comes from contacting franchisees. The franchisor is most likely giving them a list of top performers, skewing that information. If they are trying to get information from past franchisees, the contacts given are often wrong, and ones that exit badly often have nondisclosure agreements. Finally, troubled existing franchisees fear being sued in violation of non-disparagement agreements. I don't believe these can be looked at as reliable sources because it's hard to get the full picture.
- Some of the basic information required should be gross revenue, but that should be given for multiple looks. Gross revenue for the first 12 months of operation should be required. This is needed for SBA loans, for example. Gross revenue, for the all franchised outlets, should be given for the last 3 years, much like the structure of Item 20. The requirements should follow the NASAA FPR commentary. I would also like to see a requirement that discloses outlets closed within 12 months of opening since those numbers would never hit the gross revenue requirement.
- While EBTDA type data of course would be great, that's a bigger step. However, I think prospective franchisees could get closer to figuring that out if costs were beefed up and tightened down in Item 6. I think

we can best, and most easily accomplish more, by improving these other areas without giving franchisors an excuse to opt out on Item 19. For example, Item 6 doesn't include rebates/markups on franchisee purchases going to the franchisor, which are buried in Item 8, yet in reality, are an ongoing cost paid by the franchisee. These are nothing more than additional indirect royalties. These rebates/markups should also be capped at what they are disclosed at. Franchisors substantially increasing these can drastically change the business model. And most importantly, Item 6 doesn't include expected material or labor costs. I also believe it should include estimates for debt service based on varying levels of debt. This is often missed when prospective franchisees calculate their break even.

- Item 7, the initial investment needs to be tightened up, not showing such huge ranges. It should also show an average and median amount. If a range is \$100k-\$500K, but only one was \$100K and most are in the \$400k-\$500k, the disclosure is misleading. I see many franchisees undercapitalized based on expected opening costs. This puts them under water from the start with little chance of succeeding.
- And finally, the FTC needs to look at franchise complaints differently. One thousand complaints on a \$20 item is a total of \$20,000. A single franchise complaint probably has a minimum of \$15,000 at issue and may have a \$1 million impact on the person filing the complaint. Yet, it has been years since the FTC has taken any action against a franchisor. This lack of action has emboldened some bad actors, because they know they are safe. Priorities need to change.