



American Association of Franchisees & Dealers *The Center for Total Quality FranchisingSM*

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April 18, 2023

Shannon Lane
Office of Policy Planning
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Washington, DC 20580
Submitted electronically

Non-Compete Clause Rulemaking, Matter No. P201200

Dear Ms. Lane,

The American Association of Franchisees and Dealers (AAFD) submits its strong support of the FTC's proposed rule to ban noncompetition agreements and urges that the rule also apply to franchise and distributor agreements.

AAFD is the oldest and largest national not for profit trade association advocating the rights and interests of franchisees and independent dealer networks. The AAFD supports more than 40 independent franchisee associations and trademark specific chapters, representing thousands of franchisee operated business outlets. Since our establishment in 1992, the AAFD has focused on its mission to define, identify and promote collaborative franchise cultures that respect the legitimate interests of both franchisors and franchisees, cultures we describe as embracing our vision of *Total Quality FranchisingSM*. The AAFD came into existence in response to a franchising community that has been evolving towards increasingly one-sided and controlling franchise agreements and cultures whereby franchisee equity and business ownership has been continually eroding such that many modern franchise systems have lost all vestiges of business ownership.

A major criticism of non-competition agreements is that they inhibit an overarching public goal of a full employment economy whereby citizens are able to perform the job functions for which they have been trained. Many states have adopted 'right to work laws' that ban the ability of employers to restrict the right of citizens to work in the jobs for which they have been trained. The AAFD applauds the Commissions' intent to promulgate a Rule banning the use of non-competition clauses that would restrain workers – both employees and contractors – from plying the trades and occupations for which they have been trained.

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We contend that post termination noncompetition agreements are even more egregious in the context of franchising. Unlike the typical employment relationship whereby the employee has been trained at the expense of the employer, franchisees pay for their training as part of their franchise fees AND make substantial investments in their franchised businesses. To restrain a franchisee from continuing in the business or profession for which they have invested, as well as have been trained, is a greater penalty than in a typical employment relationship.

The primary purpose of franchisors using strict non-competes is really as a tool of power in which the franchisor keeps the franchisee continuing in business while offering new contract that often significantly contains worse terms and bears little resemblance to the original franchise agreement. Franchisors have also used the non-compete clause to force franchisees to sell, dissolve and/or prevent renewal of franchise agreements, often making unsubstantiated claims of that the franchisee has been competing with the franchisor. In this scenario, the franchisee is forced to either accept the claim of the franchisor and sell the franchise(s) back to the franchisor -- often at a sub-market level price -- or fight a potentially costly legal battle which the franchisor can afford to pursue, but that the franchisees typically cannot.

Upon the organization of the AAFD, our founders adopted the attached Franchisee Bill of Rights in 1992. It should be noted that the 2nd right asserted, right after the recognition that franchisees should be recognized to have equity ownership in their franchised business, is the right to continue in business after the franchise is terminated – “The right to engage in a trade or business, including a post-termination right to compete.”

Moreover, the FTC’s proposed rule is supported by the AAFD’s Fair Franchising Standards, a body of collectively negotiated standards among prominent franchisors, franchisees, and franchise attorneys over a 15-year period between 1994 and 2005. We are attaching Chapter 13 of the AAFD Standards which agrees that non-competition agreements should only be enforceable in very narrow circumstances involving either breach of contract or the sale of a business including the seller’s goodwill.

Additionally, we reference chapter 7 of the book, The Franchise Fraud: How to Protect Yourself Before and After You Invest, [Wiley, 1994] by AAFD founding Chairman, Robert Purvin, entitled “You Can Never Leave” where the entire chapter discusses the inequities provided by noncompetition clauses in franchise agreements.

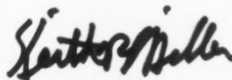
Respectfully submitted,



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