

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

NO.

DUNKIN' DONUTS FRANCHISING,
LLC AND BASKIN-ROBBINS
FRANCHISING LLC ASSURANCE
OF DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General (the "Attorney General"), and Eric S. Newman, Assistant Attorney General, files this Assurance of Discontinuance ("AOD") pursuant to RCW 19.86.100.

I. PARTIES

1.1 In February 2018, the Attorney General initiated an investigation into Dunkin' Donuts Franchising LLC, including its affiliates, ("Dunkin'") relating to certain provisions in its franchise agreement.

1.2 Dunkin' is a Delaware limited liability company with its principal offices or place of business in Canton, Massachusetts. Dunkin' is a franchisor and its franchisee-operated locations are in the business of offering coffee and baked goods, among other food and beverage products for sale to consumers. Baskin-Robbins Franchising LLC ("Baskin-Robbins") is an affiliate of Dunkin's. Baskin-Robbins is a Delaware limited liability company with its principal offices or place of business in Canton, Massachusetts. Baskin-Robbins is a franchisor and its

1 franchisee-operated locations are in the business of offering ice cream and other food and
2 beverage products to consumers. Neither Dunkin' nor Baskin-Robbins owns or operates any
3 Dunkin' Donuts or Baskin-Robbins restaurants in the State of Washington or elsewhere in the
4 United States.

5
6 1.3 For purposes of this AOD, Dunkin' and Baskin shall include its directors,
7 officers, managers, agents acting within the scope of their agency, and employees as well as its
8 successors and assigns, controlled subsidiaries, and predecessor franchisor entities.

9 II. INVESTIGATION

10 2.1 There are no Dunkin' Donuts restaurants currently located in the State of
11 Washington. There are currently 80 Baskin-Robbins restaurants located in the State of
12 Washington as of the date hereof.

13
14 2.2 Alpenrose Dairy, Inc. was an area franchisor pursuant to a Territorial Franchise
15 Agreement (TFA) with Baskin-Robbins dated December 8, 1965. Alpenrose's territory under
16 the TFA included the State of Washington. Prior to December 8, 2014, all Baskin-Robbins
17 franchisees in the State of Washington operated under franchise agreements between themselves,
18 Alpenrose Dairy, Inc. ("Alpenrose"), and Baskin-Robbins (the "Alpenrose Franchise
19 Agreements").

20
21 2.3 The Alpenrose Franchise Agreements provided that the franchisees subject to
22 such agreements would not "employ or seek to employ any person who is at that time employed
23 by Alpenrose or Baskin-Robbins or by any other franchisee of Alpenrose, or otherwise directly
24 or indirectly induce such person to leave his or her employment;" (the "Alpenrose No-Hiring
25 Provision"). The TFA expired on December 8, 2014.

1 2.4 After December 2014, all 96 Baskin-Robbins then-current franchisees in the State
2 of Washington became direct franchisees of Baskin-Robbins. From December 2014 to the date
3 hereof, Baskin-Robbins has entered into new franchise agreements with 73 of the Baskin-
4 Robbins franchisees in the State of Washington. These new franchise agreements do not include
5 a provision that prohibits the franchisees subject thereto from soliciting or hiring the employees
6 of any other Baskin-Robbins franchisee, but continue to provide that "Neither Party will, during
7 the Term of this Agreement, directly or indirectly solicit or employ any person who is employed
8 by the other or any of their affiliated companies" (the "Direct No-Hiring Provision"). 16 Baskin-
9 Robbins restaurants have closed in the period from December 2014 to the date hereof. 7 Baskin-
10 Robbins franchisees in the State of Washington are currently operating under an Alpenrose
11 Franchise Agreement that contain the Alpenrose No-Hiring Provision as of the date of this
12 Agreement.
13

14
15 2.3 The Attorney General asserts that the foregoing conduct of Baskin-Robbins
16 and its franchisees constitutes a contract, combination, or conspiracy in restraint of trade in
17 violation of the Consumer Protection Act, RCW 19.86.030.

18 2.4 Baskin-Robbins expressly denies that the conduct described above constitutes a
19 contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection
20 Act, RCW 19.86.030, or any other law or regulation, and expressly denies that it has engaged in
21 conduct that constitutes a contract, combination, or conspiracy in restraint of trade, or violates
22 any other law or regulation. Baskin-Robbins enters into this AOD to avoid protracted and
23 expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be
24 construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of
25 Baskin-Robbins or any of its current or former franchisees.
26

1 letter will enclose either a new franchise agreement or an amendment to an existing franchise
2 agreement that it is requesting each of its franchisees in the State of Washington enter into with
3 Baskin-Robbins that eliminates either the Alpenrose No-Hire Provision or the Direct No-Hire
4 Provision. The proposed new franchise agreement that will be included with each letter will
5 include General Terms & Conditions substantially in the form attached hereto as Exhibit B.
6

7 3.3 In addition to sending the letter to its current franchisees in the State of
8 Washington pursuant to Paragraph 3.2 above, Baskin-Robbins will respond promptly to any
9 inquiries from such franchisees regarding the request to enter into the new franchise agreement
10 or an amendment to an existing franchise agreement and will encourage its current franchisees
11 in the State of Washington to enter into the new franchise agreement or an amendment to an
12 existing franchise agreement. However, for the avoidance of doubt, Baskin-Robbins is under no
13 obligation to offer its franchisees any consideration—monetary or otherwise—in order to induce
14 them to sign the new franchise agreement or an amendment to an existing franchise agreement,
15 or take any adverse action against such franchisees if they refuse to do so. Within 120 days of
16 entry of this AOD, Baskin-Robbins will provide copies of all executed new franchise agreements
17 or amendments to existing franchise agreements it has obtained with its current franchisees in
18 the State of Washington to the Attorney General's Office. A decision by a franchisee not to enter
19 into a new franchise agreement or an amendment to existing franchise agreements, or not to do
20 so within 120 days of this AOD, shall not mean that Baskin-Robbins has not complied with its
21 obligations under this AOD.
22
23

24 3.4 If Baskin-Robbins learns that a current franchisee in the State of Washington
25 intends in good faith to sign a new franchise agreement or an amendment to an existing franchise
26 agreement but is unable to do so within the time period specified in Paragraph 3.3, Baskin-

1 their affiliates expressly deny any such claims, allegations, and/or causes of action. However,
2 proof of failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW
3 19.86.030, thereby placing upon the violator the burden of defending against imposition by the
4 Court of injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up to
5 \$2,000.00 per violation.

6
7 4.3 Baskin-Robbins and Dunkin', and any other of their affiliates will not, nor will
8 they authorize any of their officers, employees, representatives, or agents to, state or otherwise
9 contend that the State of Washington or the Attorney General has approved of, or has otherwise
10 sanctioned, the conduct described in Paragraph 2.2 – 2.4 with respect to the Alpenrose No-Hire
11 Provision and the Direct No-Hire Provision.

12
13 4.4 This AOD resolves all issues raised by the State of Washington and the
14 Antitrust Division of the Attorney General's Office under the Consumer Protection Act and
15 any other related statutes pertaining to the acts of Baskin-Robbins, Dunkin' and its current and
16 former franchisees as set forth in Paragraph 2.1 – 2.3 above that may have occurred before the
17 date of entry of this AOD, or that occur between the date of the entry of this AOD and the
18 conclusion of the 120 day period identified in Paragraph 3.3 above, and concludes the
19 investigation thereof. Subject to Paragraph 4.2, the State of Washington and the Antitrust
20 Division of the Attorney General's Office shall not file suit or take any further investigative or
21 enforcement action with respect to the acts set forth above that occurred before the date of
22 entry of this AOD, or that occurs between the date of the entry of this AOD and the conclusion
23 of the 120 day period identified in Paragraph 3.3 above, against Baskin-Robbins, Dunkin',
24 their affiliates, or any of its current franchisees in the State of Washington that sign the
25 proposed amendment described in Section III, any of its former franchisees in the State of
26

1 Washington, or any of its current or former franchisees located outside the State of
2 Washington. The Attorney General reserves the right to take further investigative or
3 enforcement action against any current franchisee in the State of Washington identified
4 pursuant to Paragraph 3.1.4 or any current franchisee in the State of Washington that does not
5 enter into the proposed amendment described in Section III.
6

7
8 APPROVED ON this _____ day of _____, 2018.
9

10
11 _____
12 JUDGE/COURT COMMISSIONER

13 Presented by:

14 ROBERT W. FERGUSON
15 Attorney General

16 
17 _____
18 ERIC S. NEWMAN, WSBA #31521
19 Assistant Attorney General
20 Chief Litigation Counsel
21 Antitrust Division
22 Attorneys for State of Washington
23 Office of the Attorney General
24 800 Fifth Avenue, Suite 2000
25 Seattle, WA 98104

26 Agreed to and approved for entry by:

27 
28 _____
29 BRYCE SINNER, WSBA #42471
30 Landerholm
31 805 Broadway Street, Suite 1000

DUNKIN' DONUTS FRANCHISING,
LLC AND BASKIN-ROBBINS
FRANCHISING LLC ASSURANCE OF
DISCONTINUANCE - I

ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

1 P.O. Box 1086
2 Vancouver, WA 98666-1086
3 Counsel for Dunkin' Donuts Franchising LLC and
4 Baskin-Robbins Franchising LLC

5 BASKIN-ROBBINS FRANCHISING LLC
6 DUNKIN' DONUTS FRANCHISING LLC

7 
8 JEFFREY L. KARLIN

9 Assistant Secretary
10 Dunkin' Brands, Inc. as manager for
11 Dunkin' Donuts Franchising LLC and
12 Baskin-Robbins Franchising LLC

13
14
15
16
17
18
19
20
21
22
23
24
25
26

Exhibit A

EXHIBIT A

Form Letter to Baskin-Robbins Franchisees in the State of Washington

Dear [Franchisee Name]

In February 2018, Dunkin Brands, Inc. received a Civil Investigative Demand from the Attorney General's Office of the State of Washington seeking information regarding whether there are any provisions in our franchise agreements that restrict the hiring or solicitation by franchisees of the employees of other franchisees (sometimes referred to as "no poaching" clauses). We understand that this is part of a broader investigation into the use of such clauses in the restaurant industry and perhaps other franchised industries. We have cooperated fully with the investigation.

Without admitting that Baskin-Robbins or its franchisees violated any law or regulation, or acted improperly in any respect, we have reached an agreement with the Attorney General's Office. This agreement provides that Baskin-Robbins will, among other things, no longer include in any U.S. franchise agreement or renewal of a franchise agreement signed after the date of our agreement with the Attorney General's Office any provisions that restrict the hiring or solicitation of employees. The agreement also provides that Baskin-Robbins will not enforce any such provisions in any of our existing franchise agreements in the U.S.

We believe the system's interests are best served by resolving the investigation quickly and cooperatively on these terms, and avoiding the uncertainty and cost of protracted litigation. Our agreement with the Attorney General's Office also includes a requirement that we request, from franchisees with locations in the State of Washington that they agree to amend their existing franchise agreements to remove the provisions, if any, that restrict the hiring or solicitation of employees. Enclosed for your signature is an amendment to your franchise agreement(s) with Baskin-Robbins to satisfy that requirement. To the extent that you agree to [this/these] amendment(s), the Attorney General has committed to not pursue any suit, or take any investigative or enforcement action against you, for conduct relating to the relevant provisions of your franchise agreement, up to and including the date you sign the amendment(s). Please sign and return the amendment(s) to Dunkin' Brands' Contracts Department as soon as possible. If you decide not to sign the enclosed amendment(s), the Attorney General's Office has indicated that it will reserve the right to investigate you and/or pursue enforcement actions against you relating to the contractual provisions described above.

Should you have any questions regarding this matter, please contact me at [email address].

If you receive any media inquiries regarding this matter, please refer them to [Dunkin' Brands Communications Department].

Sincerely,

Exhibit B

FIRST AMENDMENT TO FRANCHISE AGREEMENT

THIS _____ AMENDMENT TO FRANCHISE AGREEMENT ("Amendment") is made this _____, by and between Baskin-Robbins Franchising LLC (hereinafter referred to as "FRANCHISOR"); and _____, a _____ [State of Entity] (hereinafter referred to as "FRANCHISEE")

WITNESSETH:

WHEREAS, on _____ [FA date], FRANCHISOR did enter into a Franchise Agreement with FRANCHISEE (the "Franchise Agreement") for the premises known and numbered as _____ [Restaurant address] (the "Restaurant"); and

WHEREAS, the parties desire to amend the Franchise Agreement to remove any restriction on the hiring or solicitation of employees, as hereinafter set forth.

NOW, THEREFORE, in consideration of mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT:

1. The above recitals are true and correct and, with all instruments referenced therein, incorporated herein by reference.
2. Section 7.0.6 of the Franchise Agreement is hereby amended to delete the second sentence of that paragraph in its entirety. Specifically, the sentence that reads "Neither party will, during the Term of this Agreement, directly or indirectly solicit or employ any person who is employed by the other or any of their affiliated companies" is deleted.
3. The Franchise Agreement is hereby ratified, in full force and effect, without modification or extinction, except as expressly set forth in this Amendment. This Amendment shall be attached to and made a part of the Franchise Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE HEREUNDER SET THEIR HANDS AND SEALS THE DAY AND YEAR FIRST ABOVE WRITTEN.

(FRANCHISOR)
Baskin-Robbins Franchising, LLC

By: _____

(FRANCHISEE)

ATTEST / WITNESS:

[Entity Name]

By: _____

Print Name _____

, Individually