

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. **18-2-56307-1 SEA**
BATTERIES PLUS, LLC'S
ASSURANCE OF DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General, and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance (AOD) pursuant RCW 19.86.100.

I. PARTIES

1.1 In January 2018, the Attorney General initiated the "In re Franchise No Poaching Provisions Investigation," which included investigation of the hiring practices of franchisors and franchisees in the state of Washington, including Batteries Plus, LLC.

1.2 Batteries Plus, LLC ("Batteries Plus") is a Wisconsin Limited Liability Corporation with its principal office or place of business in Hartland, WI. Batteries Plus is in the business of franchising battery and light bulb replacement businesses under the "Batteries Plus Bulbs®" trademark.

1.3 Batteries Plus includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures. Batteries Plus does not include independent franchise operators.

1 II. INVESTIGATION

2 2.1 Batteries Plus currently has 13 independently owned and operated franchise
3 locations in Washington. No locations are owned or operated by Batteries Plus.

4 2.2 Batteries Plus previously included language in its franchise agreements that
5 restricted a franchisee's ability to solicit or hire employees from Batteries Plus or other
6 franchisees. In March 2018, Batteries Plus modified the language in the franchise agreement
7 so franchisees were only limited from hiring store managers or repair technicians from
8 Batteries Plus or another franchisee ("Paragraph 14(A) and (D)") because of the cost and time
9 necessary to train these individuals. Specifically, the Batteries Plus franchise agreement states
10 in Paragraph 14(A) and 14(D):

11 14. COVENANTS

12 A. Non-Solicitation Of Customers/Employees. Franchisee covenants
13 that, during the term of this Agreement, and for a period of two (2) years
14 thereafter, Franchisee will not, directly or indirectly: ... (2) employ or seek to
15 employ any person employed by Franchisor, or any other person who is at that
time operating or employed by or at any other Batteries Plus Bulbs® store as a
store manager or repair technician, or otherwise directly or indirectly induce such
persons to leave their employment.

16 D. Store Manager Covenant Not To Compete. If a Store manager or
17 operating manager is not a Principal Owner and is not required to sign a Guaranty
18 Agreement (as described in Section 15(G) below), Franchisee will require the
19 Store manager or operating manager to sign a non-competition agreement in a
form Franchisor approves and that Franchisee ensures complies with applicable
state law.

20 2.3 The Attorney General asserts that the foregoing contract language constitutes a
21 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
22 Protection Act, RCW 19.86.030.

23 2.4 Batteries Plus expressly denies that the contract provisions described above
24 constitutes a contract, combination, or conspiracy in restraint of trade in violation of the
25 Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies it has
26 engaged in any conduct that constitutes a contract, combination, or conspiracy in restraint of

1 trade. Batteries Plus believes that the contract provisions were adopted to encourage
2 franchisees to make the investments necessary to develop well-trained, high quality, and stable
3 workforces in their locations, which in turn strengthened Batteries Plus' brand and individual
4 Batteries Plus locations' ability to compete against other branded companies, among other
5 reasons. Batteries Plus enters into this AOD to accelerate removal of the provisions from its
6 Washington franchise agreements and avoid protracted and expensive litigation that could be
7 brought by the State if it does not enter into this AOD. Pursuant to RCW 19.86.100, neither
8 the existence of this AOD nor any of its terms shall be construed as an admission of law or
9 fact, or any liability, misconduct, or wrongdoing on the part of Batteries Plus.

10 III. ASSURANCE OF DISCONTINUANCE

11 3.1 Subject the paragraphs above, Batteries Plus agrees:

12 3.1.1. It will no longer include Paragraph 14(A) and (D), or other similar
13 provisions that purport to restrict a franchisee's ability to solicit or hire employees from
14 Batteries Plus or other franchisees, in any of its future franchise agreements nationwide;

15 3.1.2. It will not enforce Paragraph 14(A) and (D) in any of its existing
16 franchise agreements, and will not seek to intervene or defend in any way the legality of
17 Paragraph 14(A) and (D) in any litigation in which a franchisee may claim third-party
18 beneficiary status rights to enforce Paragraph 14(A) and (D) in an existing Batteries Plus
19 franchise agreement;

20 3.1.3. Within 14 days after the entry of this AOD, it will make all of its
21 franchisees aware of this AOD and make a copy available if requested;

22 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
23 Washington Batteries Plus franchisee to enforce Paragraph 14(A) and/or (D).

24 3.2 Within 60 days of entry of this AOD, Batteries Plus will endeavor to amend all
25 franchise agreements with Washington Batteries Plus franchisees to remove Paragraph 14(A)
26 and (D) in its existing franchise agreements. However, for the avoidance of doubt, Batteries

1 Plus is under no obligation to offer its franchisees any consideration, monetary or otherwise, in
2 order to induce them to sign the proposed amendment, nor will Batteries Plus be required to
3 take, or threaten to take, any adverse action against any such franchisees if they refuse to do so.
4 If any Washington franchise owner declines to amend its franchise agreement within seven
5 days prior to the 60-day deadline, Batteries Plus shall provide the name and address of any
6 such franchise owner to the Office of the Attorney General. A decision by a Batteries Plus
7 franchisee not to amend its franchise agreement, or not to do so within 60 days of this AOD,
8 shall not mean that Batteries Plus has not complied with its obligations under this AOD. This
9 provision shall be deemed satisfied with regard to each Washington Batteries Plus franchisee
10 by either the amendment of such franchisee's franchise agreement(s) to remove Paragraph
11 14(A) and (D) or by Batteries Plus providing the name and address of such franchisee to the
12 Office of the Attorney General.

13 3.3 Batteries Plus will not include Paragraph 14(A) and (D) in its franchise
14 agreements for all franchisees nationwide, including for (a) new franchisees signing franchise
15 agreements for the first time after the date of this AOD, (b) existing franchisees whose franchise
16 agreements have expired and/or are otherwise subject to renewal, rebuild or relocation, and (c)
17 franchisees who are acquiring a Batteries Plus business or another franchisee's business (*i.e.*,
18 assignment) assuming they sign a new franchise agreement as part of the transaction.

19 3.4 Within 30 days of the conclusion of all time periods referenced in this section
20 III, Batteries Plus will submit a declaration to the Attorney General's Office signed under
21 penalty of perjury stating that it has complied with all provisions of this AOD or, if
22 circumstances beyond Batteries Plus' control prevent compliance with any paragraph within
23 the specified time frame, Batteries Plus will describe its efforts to satisfy the paragraph's
24 requirements and the relevant extenuating circumstances.

1 Batteries Plus with respect to the acts set forth above that occurred before the date of entry of this
2 AOD, or against independent Batteries Plus franchisees in Washington who agree to the
3 amendment described in Paragraph 3.2 above within 60 days of the entry of this AOD with
4 respect to acts that occurred before the date of such amendment.

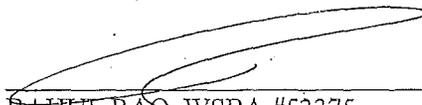
5 APPROVED ON this ____ day of _____, 2018.

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

JUDGE/COURT COMMISSIONER

1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

4 
5 RAHUL RAO, WSBA #53375
6 Assistant Attorney General
7 Antitrust Division
8 Attorneys for State of Washington
9 Office of the Attorney General
10 800 Fifth Avenue, Suite 2000
11 Seattle, WA 98104
12 206.442.4499
13 rahulr@atg.wa.gov

11 Agreed to and approved for entry by:
12 BATTERIES PLUS, LLC

13 
14 Daniel J. Oates, WSB No. 39334
15 MILLER NASH GRAHAM & DUNN LLP
16 2801 Alaskan Way, Suite 300
17 Seattle, WA 98121
18 Tel. (206) 777-7537
19 Fax (206) 340-9599
20 Dan.Oates@millernash.com


Tom O'Hare
Interim CEO

Batteries Plus, LLC

19 and

20 Michael R. Gray, MN No. 175602
21 GRAY PLANT MOOTY MOOTY & BENNETT PA
22 80 South Eighth Street, Suite 500
23 Minneapolis, MN 55402
24 Tel. (612) 632-3078
25 Fax (612) 632-4078
26 mike.gray@gpmlaw.com

Attorneys for Batteries Plus, LLC

GP:4830-4454-0032 v1

BATTERIES PLUS, LLC
ASSURANCE OF DISCONTINUANCE