

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

(MRS. FIELDS FRANCHISING, LLC)

NO. 19-2-24791-6

MRS. FIELDS FRANCHISING, LLC
ASSURANCE OF
DISCONTINUANCE

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

I. PARTIES

1.1. In July 2019, the Attorney General initiated an investigation into Mrs. Fields Franchising, LLC (Mrs. Fields) relating to its hiring practices.

1.2. Mrs. Fields is a Delaware limited liability company with its principal office or place of business at 8001 Arista Place, Suite 600, Broomfield, Colorado 80021. Mrs. Fields is in the business of granting franchises and supporting franchisees that operate Mrs. Fields®-branded retail outlets that sell Mrs. Fields-branded cookies and related products.

1.3. For the purposes of this AOD, Mrs. Fields 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.

1 **II. INVESTIGATION**

2 2.1. Mrs. Fields has two (2) stores in Washington, both of which are owned and
3 operated by third-party, unaffiliated franchisees.

4 2.2. For years, Mrs. Fields has included language in its franchise agreements that
5 restricted a franchisee’s ability to solicit or hire workers from Mrs. Fields and other
6 franchisees without the prior consent of the workers’ employer (no-poaching provision).
7 Specifically, the standard Mrs. Fields franchise agreement stated that a franchisee will not
8 “recruit or hire any employee who, within the immediately preceding six (6) month period,
9 was employed by us or any Stores operated by us, our Affiliates or another franchisee or
10 licensee of us, without obtaining the prior written permission of us or the franchisee or
11 licensee.” A no-poaching provision restricted franchisees from hiring both employees from
12 a competing franchisee and from Mrs. Fields’ corporate-owned stores without the prior
13 written consent of the employee’s employer.

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

17 2.4. Mrs. Fields expressly denies the conduct described above constitutes a
18 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
19 Protection Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in
20 conduct that constitutes a contract, combination, or conspiracy in restraint of trade. Mrs.
21 Fields enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW
22 19.86.100, neither this AOD nor its terms shall be construed as an admission of law, fact,
23 liability, misconduct, or wrongdoing on the part of Mrs. Fields.

24 **III. ASSURANCE OF DISCONTINUANCE**

25 3.1. Subject to paragraph 2.4 above, Mrs. Fields agrees:
26

1 3.1.1 It will no longer include no-poach provisions in any of its future
2 franchise agreements;

3 3.1.2 It will no longer enforce no-poaching provisions in any of its existing
4 franchise agreements, and will not seek to intervene or defend in any way the legality of any
5 no-poach provision in any litigation in which a franchisee may claim third-party beneficiary
6 status rights to enforce an existing no-poach provision;

7 3.1.3 It will notify all of its franchisees of the entry of this agreement with
8 the State, and provide them a copy of the AOD upon request;

9 3.1.4 It will notify the Attorney General's Office if it learns of any effort by
10 a franchisee in Washington to enforce any existing no-poach provision.

11 3.2. Within 60 days of entry of this AOD, Mrs. Fields will exercise all reasonable
12 commercial efforts to amend all existing franchise agreements with entities in Washington
13 to remove any no-poaching provisions in its existing franchise agreements. Mrs. Fields is
14 under no obligation to offer any franchisee any monetary or non-monetary consideration to
15 induce them to accept the proposed amendment of the franchise, and it shall be under no
16 obligation to take any coercive action against a franchisee that may refuse or decline to agree
17 to any amendment of its franchise agreement. If any franchise owner is unwilling to consent
18 to the change to its franchise agreement, prior to the 60-day deadline, Mrs. Fields shall
19 provide the name and address of the resisting franchisee and the name and address of the
20 franchisee's registered agent to the Office of the Attorney General.

21 3.3. As they come up for either renewal or renegotiation during the ordinary
22 course of business, Ms. Fields will amend all of its existing franchise agreements on a
23 nationwide basis to remove any no-poach provision.

24 3.4. Within 30 days of the conclusion of the time periods referenced in this section
25 III, Mrs. Fields will submit a declaration to the Attorney General's Office signed under
26 penalty of perjury stating that all provisions of this agreement have been satisfied.

1 **IV. ADDITIONAL PROVISIONS**

2 4.1. This AOD is binding on, and applies to Mrs. Fields, including each of its
3 respective directors, officers, managers, agents acting within the scope of their agency, and
4 employees, as well as their respective successors and assigns, controlled subsidiaries,
5 divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which
6 Mrs. Fields may now or hereafter act with respect to the conduct alleged in this AOD.

7 4.2. This is a voluntary agreement and it shall not be construed as an admission of
8 law, fact, liability, misconduct, or wrongdoing on the part of Mrs. Fields. By entering into
9 this AOD, Mrs. Fields neither agrees nor concedes that the claims, allegations and/or causes
10 of action which have or could have been asserted by the Attorney General have merit and
11 Mrs. Fields expressly denies any such claims, allegations, and/or causes of action. However,
12 proof of failure to comply with this AOD shall be *prima facie* evidence of a violation of
13 RCW 19.86.030, thereby placing upon the violator the burden of defending against
14 imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and
15 appropriate civil penalties under the Consumer Protection Act.

16 4.3. Mrs. Fields will not, nor will it authorize any of its officers, employees,
17 representatives, or agents to state or otherwise contend that the State of Washington or the
18 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
19 Paragraph 2.2 with respect to the No-Poach Provision in Mrs. Fields' franchise agreement.

20 4.4. This AOD resolves all issues raised by the State of Washington and the
21 Antitrust Division of the Attorney General's Office under the Consumer Protection Act and
22 any other related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that
23 may have occurred before the date of entry of this AOD and concludes the investigation
24 thereof. Subject to paragraph 4.2, the State of Washington and the Antitrust Division of the
25 Attorney General's Office shall not file suit or take any further investigative or enforcement
26

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

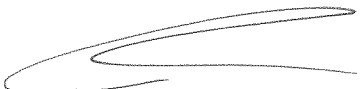
action with respect to the acts set forth above that occurred before the date of entry of this
AOD.

APPROVED ON this _____ day of _____, 2019.

JUDGE/COURT COMMISSIONER

1 Presented by:


2 ROBERT W. FERGUSON
3 Attorney General

4 
5 RAHUL RAO, WSBA No. 53375
6 Assistant Attorney General
7 Antitrust Division
8 Office of the Attorney General
9 800 Fifth Avenue, Suite 2000
10 Seattle, WA 98104
11 (206) 442-4499
12 rahul.rao@atg.wa.gov

13 *Attorneys for State of Washington*

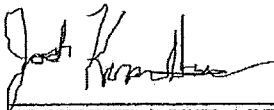
14

15 Agreed to and approved for entry by:
16 MRS. FIELDS FRANCHISING, LLC

17 
18 JOHN R. POTTER, WSBA No. 6834
19 Henflin, Potter, Jahn, Leatham, Holtman &
20 Stoker, P.S.
21 211 E. McLoughlin Boulevard, Suite 100
22 Vancouver, WA 98663
23 (360) 750-7547
24 jrp@hpl-law.com

25 *Attorneys for Mrs. Fields Franchising LLC*

26



JOSH KIRSCHBAUM
Interim Acting Chief Executive Officer
Mrs. Fields Franchising LLC