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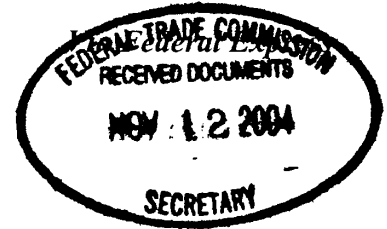
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November 10, 2004

Secretary
Federal Trade Commission
Room H-159 (Annex W)
600 Pennsylvania Ave. NW
Washington, DC 20580



Concerning: Franchise Rule Staff Report

Dear Sir or Madam:

I am a business and business litigation attorney practicing in Raleigh, North Carolina. I have been in practice since 1981 and have substantial experience litigating on behalf of franchisees and representing franchisees in their negotiations with franchisors.

In my opinion, one of the biggest and most disturbing trends in franchising is the ever increasing one-sidedness and burdensomeness of franchise agreements. Franchisor attorneys generate increasingly sophisticated franchise agreements that are uniformly non-negotiable. These agreements are typically drafted in a mass of legalese that is virtually impenetrable. It is essential for prospective franchisees to be provided with meaningful, understandable disclosures separate from the franchise agreement itself.

Among the areas in which I see abuse and the need for additional regulation are: encroachment issues; inappropriate use of advertising funds; items that are committed to the franchisors "sole discretion" are consistently determined in favor of the franchisor; and restrictions on the sources of products or services, especially the channeling of purchases to affiliates or to entities providing a rebate to the franchisor.

In particular, I have the following specific comments concerning the proposed rule changes:

1. I heartily endorse retaining the Franchise Rule as recommended by the Staff.
2. Proposed Section 436.5(s), Item 19, Financial Performance Representation. I strongly recommended disclosure of financial performance, including earnings claims.

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3. Proposed Section 436.5(t), Item 20, Outlets and Franchisee Information; (2)(b), Confidentiality Clauses and (2)(c), Franchisee Associations. I endorse the Staff's recommendation of disclosure of the use of confidentiality, or, "gag clauses" with outgoing franchisees.

4. Proposed Section 436.8(a)(5), Sophisticated investor exemptions. The FTC should focus on the capabilities of the investor as opposed to the size of the investment.

5. Proposed Section 436.9(B)(2); Disclaimers and Contract Negotiations: Integration clauses and waivers. It is a matter of common experience that sales staff puff, exaggerate and outright misrepresent the terms of the agreement that the franchisee is being asked to sign. This is combined with high pressure sales techniques that rush the franchisee to sign "just our standard contract." Such conduct may, in fact, be fraudulent under state law but proving fraud may be a practical impossibility. Appropriate protection by the FTC from such abuses is essential.

6. Proposed Section 436.5(c), Item 3, Litigation. I specifically endorse the Staff's recommendation of including franchisor-initiated lawsuits against franchisees.

Sincerely,

JOHNSON, HEARN, VINEGAR,
GEE & MERCER, PLLC

M. Blen Gee, Jr.

MBG/klc

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