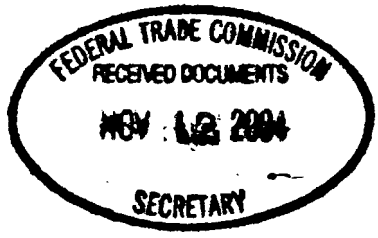
Kimberly Hunter-Turner
Vice President
Federal Government Relations

CENDANT

November 12, 2004

Secretary
Federal Trade Commission
Room H-159 (Annex W)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580



RE: Franchise Rule Staff Report. R511003

Dear Sir or Madam:

Cendant Corporation ("Cendant") appreciates the opportunity to submit these comments on the Federal Trade Commission's ("FTC" or "Commission") Staff Report of the Proposed Revised Franchise Rule, 16 CFR Part 436.

Cendant Corporation is a diversified global provider of business and consumer services within the hospitality, real estate, vehicle, financial and travel sectors. Cendant's hotel group is the world's leading franchisor of hotels through ownership of brand names that include Ramada®, Days Inn®, Howard Johnson®, Travelodge®, Knights Inn®, Super 8 Motel®, Wingate Inn®, and AmeriHost®. Cendant's Real Estate Franchise Group, represents approximately 13,000 residential and commercial franchised real estate offices and more than 265,000 sales associates affiliated with the Century 21®, Coldwell Banker®, Coldwell Banker Commercial®, ERA® and Sotheby's International Realty® brand names. Cendant Car Rental Group franchises and operates the Avis® and Budget® car and truck rental networks, as well.

Cendant applauds the Commission staff's efforts in drafting a balanced revision to the Franchise Rule that attacks potential fraud in the franchise sales marketplace and enables prospective franchisees to make informed investment decisions. Cendant recognizes and supports the Commission's hard work and effort in arriving at what is generally a balanced and fair revision of the Rule. We continue to actively support the staff approach in this regulatory review and rulemaking proceeding.

I am writing to draw your attention to several issues raised by the proposed revised Franchise Rule. We hope that the Commission or the Staff will clarify the issues raised in this letter.

Cendant Corporation. 101 Constitution Avenue, NW, Suite 800, Washington, DC 20001. Tel: 202 742-4272. Fax: 202 742-4271. kimberly.hunter@cendant.com

I. Financial Performance Representations – General Media Claims

Under the current and proposed revised FTC Franchise Rule, any financial performance representations made in the general media compel the franchisor to prepare an Item 19 financial performance disclosure (Part 436.9(c)). General media claims are deemed to include not only advertising but also statements made in speeches or press releases (see *Staff Report* at 30-31 and f.n.120 and *Final Interpretative Guides* at 49,984-85).

We believe that the definition of "general media" is overly broad and thwarts the franchisors ability to address business audiences, give speeches or grant interviews to various media outlets. For it subjects the franchisor and their executives to liability for financial performance information disseminated to the general media, unless such information appears in the company's disclosure document.

Such a prohibition may be inconsistent with the obligations of a franchisor that files reports under the Securities Exchange Act of 1934, as amended, and the regulations of the Securities & Exchange Commission promulgated thereunder. Such a franchisor, commonly called a "public company", must engage in robust, public disclosure and avoid "selective disclosure". Information that might constitute an earnings claim, or be understood as an earnings claim that a public company franchisor previously was able to disclose to analysts and others on a non-public basis to avoid violating Item 19 violations yet allow fair valuation of the franchisor's business must now be the subject of "full and fair disclosure". See Regulation FD, 17 CFR Parts 240, 243 and 249; Release Nos. 33-7881, 34-43154, IC-24599, File No. S7-31-99.

It is reasonable to assume that when a franchisor's executive addresses the general media their statements of future financial performance are often vague and indefinite; essentially advertising promised actions in the future or mere opinion. These types of comments accomplishes little more than the type of puffery one anticipates or should reasonably expect in any open competitive media environment. Given the totality of the circumstances, it would be unreasonable to assume that those forward looking financial statements are clear and unequivocal terms and promises made to a specific prospective franchisee.

Consider whether the policy instead should be that such information should only be characterized as "financial performance representations" if it appears in oral or written statements given by the franchisor executives that are specifically or primarily designed to influence a prospective franchisee's investment decision (i.e., by means of the franchisor duplicating and utilizing the published or broadcast representations as part of its franchise marketing effort).

II. Liability for Contents of Disclosure Documents

The revised Rule's liability for content disclosure documents language is overly broad and inadvertently imposes liability on all corporate officers as opposed to those that

directly participated in the document content violation (i.e. omissions, misstatements, or failure to follow Rule instructions). The revised rule specifically addresses who is liable for the contents of a franchise disclosure document. Section 436.2(d) states:

"In connection with the offer or sale of a franchise to be located in the United States of America...it is unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act: (d) For any franchisor to fail to include the information and follow the instructions in (the revised FTC Franchise Rule) when preparing the disclosure document to be furnished to a prospective franchisee. Any other franchise seller will be liable for the violations of (the disclosure document preparation and contents requirements of the Rule) if they either directly participated in them or had the authority to control them."

This definition if retained in the final Franchise Rule will inadvertently subject franchisor executives to be held jointly and severally liable for economic harm suffered due to an incomplete disclosure document.

Specifically, all senior executives of a corporate franchisor could technically be deemed to have the "authority to control" the contents of their company's frnchise disclosure document and under the quoted revised Rule language could automatically assume liability for disclosure content failures that they were never aware of, did not know of, or should not have known about.

We suggest that the revised Rule's "authority to control" language be modified. The last sentence I of Section 436.2(d) of the revised Rule should state:
"Any other franchise seller will be liable for the violations of these Subparts (the disclosure document preparation and contents requirements of the Rule) if he or she directly participated in preparation of the disclosure document." Therefore, liability is imposed upon corporate franchisor's officer for directly participating in a disclosure document violation without frivolously subjecting or imposing upon corporate officers, directors and senior management team for disclosure document errors, omissions, misrepresentations or format failures which they did not participate in, do not know anything about; and given their rank and duties, probably should not have known about.

III. Item 3 of the Disclosure Document

We believe that the expansion of Item 3 litigation disclosures to include virtually all suits filed by the franchisor against franchisees will result in expanded disclosure documents that provide little additional meaningful information to prospective franchisees. There is no definition of "material" in the text of the proposed Rule that was readily present. The present draft leaves open the questions of "material to whom" and what financial standard should be applied. Increased scrutiny of loss contingencies under Statement of Financial Accounting Standards No. 5 has produced more meaningful disclosures of litigation for all franchisors who must produce annually audited "GAAP" financial statements, when a loss is "estimable" and "probable". The Staff may wish to draw upon

this body of interpretive literature to avoid inconsistency between Item 3 disclosure and Financial Statement disclosure in the same disclosure document, with the resulting reader confusion.

Thank you, for your consideration of our views. As always we are happy to meet with Staff to discuss ways in which Cendant can be supportive during this rulemaking.

Sincerely,