

FILED
KING COUNTY, WASHINGTON

AUG 20 2018

EXP07

SUPERIOR COURT CLERK

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

18-2-20769-0SEA

IHOP FRANCHISOR LLC
ASSURANCE OF
DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General, and Eric S. Newman, 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 an investigation into IHOP Franchisor LLC and IHOP Restaurants LLC ("IHOP") relating to its franchise agreement provision that placed restrictions on the hiring of certain franchisor and franchisee employees.

1.2 IHOP is a Delaware corporation with its principal office or place of business in Glendale, California. IHOP enters into franchise agreements with franchisees who operate independently owned and managed restaurants under the IHOP brand name.

1.3 IHOP 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.

II. INVESTIGATION

2.1 IHOP does not currently operate any restaurants in Washington. Independent franchise operators own and operate 31 branded IHOP restaurants.

2.2 IHOP previously included language in its franchise agreements that restricted a franchisee's ability to solicit or hire certain franchisor or franchisee employees ("no-poaching provision"). Specifically, the standard franchise agreement for IHOP stated that "Franchisee shall not, without the prior written consent of Franchisor, directly or indirectly: (a) employ or attempt to employ any person who at that time is employed by Franchisor, an Affiliate of Franchisor, or any other Franchisee or area developer of Franchisor, including, without limitation, any manager or assistant manager; (b) employ or attempt to employ any person who within six (6) months prior thereto had been employed by Franchisor, an Affiliate of Franchisor, or any other Franchisee or area developer of Franchisor; or (c) induce or attempt to induce any person to leave his or her employment with Franchisor, an Affiliate of Franchisor, or any franchisee or area developer of Franchisor."

2.3 A no-poaching provision restricted franchisees from hiring both employees from a competing franchisee and from IHOP's corporate-owned stores as well.

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

2.5 IHOP expressly denies the conduct described in the above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030, or any other law, and expressly deny they have engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade. IHOP enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of IHOP.

1 **III. ASSURANCE OF DISCONTINUANCE**

2 3.1 Subject to paragraph 2.5 above, IHOP agrees:

3 3.1.1. It will no longer include no-poach provisions in any of its future
4 franchise agreements nationwide;

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

9 3.1.3. It will notify all of its franchise operators in Washington of the entry of
10 this AOD and provide them a copy;

11 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
12 franchise operator in Washington to enforce any existing no-poach provision.

13 3.2 Within 120 days of entry of this AOD, IHOP will endeavor to amend all
14 existing franchise agreements with IHOP franchise operators in Washington to remove any no-
15 poaching provisions in these operators' existing franchise agreements. If any franchise
16 operator is unwilling to consent to the change to its franchise agreement, prior to the 120-day
17 deadline, IHOP shall provide the name and address of the resisting franchisee and the name
18 and address of the franchisee's registered agent to the Office of the Attorney General. This
19 provision shall be deemed satisfied with regard to each Washington franchise operator by
20 either the amendment of such franchise operator's franchise agreement(s) to remove no-
21 poaching provisions or by IHOP's provision of the name and address of such franchise
22 operator and such franchise operator's registered agent to the Office of the Attorney General.

23 3.3 As they come up for either renewal or renegotiation during the ordinary course
24 of business, IHOP will amend all of its existing franchise agreements on a nationwide basis to
25 remove any no-poach provision.
26

1 3.4 Within 30 days of the conclusion of the time periods referenced in this section
2 III, IHOP will submit a declaration to the Attorney General's Office signed under penalty of
3 perjury stating that paragraphs 3.1 and 3.2 of this agreement have been satisfied, or, if
4 circumstances beyond IHOP's control prevent satisfaction of any paragraph within the
5 specified time frame, IHOP will describe its efforts to satisfy the paragraph's requirements and
6 the relevant extenuating circumstances.

7 IV. ADDITIONAL PROVISIONS

8 4.1 This AOD is binding on, and applies to IHOP, including each of its respective
9 directors, officers, managers, agents acting within the scope of their agency, and employees, as
10 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,
11 affiliates, partnerships, and joint ventures, or other entities through which IHOP may now or
12 hereafter act with respect to the conduct alleged in this AOD.

14 4.2 This is a voluntary agreement and it shall not be construed as an admission of
15 law, fact, liability, misconduct, or wrongdoing on the part of IHOP or any of its respective
16 directors, officers, managers, agents acting within the scope of their agency, and employees, as
17 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,
18 affiliates, partnerships, and joint ventures, or other entities. By entering into this AOD, IHOP
19 neither agrees nor concedes that the claims, allegations and/or causes of action which have or
20 could have been asserted by the Attorney General have merit and IHOP expressly denies any
21 such claims, allegations, and/or causes of action. However, proof of failure to comply with this
22 AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the
23 violation the burden of defending against imposition by the Court of injunctions, restitution,
24 costs and reasonable attorney's fees, and civil penalties of up to \$2,000.00 per violation.

25 4.3 IHOP will not, nor will it authorize any of its officers, employees,
26 representatives, or agents to, state or otherwise contend that the State of Washington or the

1 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
2 Paragraph 2.2 with respect to the No-Poach Provision in IHOP's franchise agreement..

3 4.4 This AOD may not be used by any third party in any other proceeding and is not
4 intended, and should not be construed, as an admission of liability by IHOP.

5 4.5 This AOD resolves all issues raised by the State of Washington and the Antitrust
6 Division of the Attorney General's Office under the Consumer Protection Act and any other
7 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have occurred
8 before the date of entry of this AOD and concludes the investigation thereof. Subject to
9 paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
10 Office shall not file suit or take any further investigative or enforcement action with respect to the
11 acts set forth above that occurred before the date of entry of this AOD.

12
13 APPROVED ON this _____ day of 8/20, 2018.

14 HENRY H. JUDSON

15 AUG 20 2018

16 COURT COMMISSIONER

17 
18 JUDGE/COURT COMMISSIONER

1 Presented by:

2 ROBERT W. FERGUSON

3 Attorney General

4 For:

WSBA # 38057

ERIC S. NEWMAN, WSBA # 31521

5 Assistant Attorney General

6 Chief Litigation Counsel

7 Antitrust Division

8 Attorneys for State of Washington

Office of the Attorney General

800 Fifth Avenue, Suite 2000

Seattle, WA 98104

10 Agreed to and approved for entry by:

11
12 Sherry L. Talton

13 Sherry L. Talton, WSBA #42780

14 Jackson Lewis P.C.

15 520 Pike Street, Suite 2300

Seattle, WA 98101

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Gregg Boryanito

Vice President

IHOP

Attorneys for IHOP Franchisor LLC;

IHOP Restaurants LLC