

1
2
3
4
5
6
7 **STATE OF WASHINGTON**
8 **KING COUNTY SUPERIOR COURT**

9 IN RE: FRANCHISE NO POACHING
10 PROVISIONS

11 (EWC FRANCHISE, LLC)
12

NO. **19-2-23508-0SEA**

EWC FRANCHISE, LLC
ASSURANCE OF
DISCONTINUANCE

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

16 **I. PARTIES**

17 1.1 In September 2018, the Attorney General initiated an investigation into EWC
18 Franchise, LLC (“EWC”), franchisor of European Wax Centers, relating to restrictions contained
19 in its franchise agreements on a franchisee’s solicitation or hiring of another EWC franchisee’s
20 employees or employees of EWC.

21 1.2 EWC is a Florida limited liability company with its principal office or place of
22 business in Hallandale Beach, Florida. EWC is in the business of offering franchise agreements
23 authorizing franchisees to use EWC’s trademarks in connection with the operation of a European
24 Wax Center within a defined geographical territory.
25
26

1 1.3 For the purposes of this AOD, EWC includes its directors, officers, and managing
2 agents acting within the scope of their agency, as well as its successor, assigns, and controlled
3 subsidiaries. EWC does not include any franchisee or franchise operator.

4 II. INVESTIGATION

5 2.1 To date, EWC has entered into 8 franchise agreements with franchisees operating
6 or soon to be operating a European Wax Center in the state of Washington, which are located in
7 Vancouver, Spokane Valley, University Place, Renton, Federal Way, Bellevue, and Bothell,
8 Washington, respectively. EWC does not own or operate any European Wax Centers in the state
9 of Washington.

10 2.2 Since before it first entered into a franchise agreement in Washington State in
11 2016, EWC has included language in its franchise agreements nationwide that restrict a
12 franchisee's ability to solicit workers from another franchisee or EWC. Specifically, the
13 standard EWC franchise agreement has included the following Non-Solicitation provision in
14 Paragraph 7.3.4 of its franchise agreements, which provides in pertinent part as follows:

15 7.3. . . . Therefore, during the Term, and for a period of two (2) years after the
16 expiration or termination of the Term, regardless of the cause of expiration or
17 termination, neither Franchisee nor any holder of a legal or beneficial interest in
18 Franchisee, nor any officer, director, executive, manager or member of the
19 professional staff of Franchisee, either directly or indirectly, for themselves, or
through, on behalf of or in conjunction with any person, partnership, corporation,
limited liability company or other business entity, shall:

20 * * *

21 *7.3.4. Solicit or otherwise attempt to induce or influence any employee or other business*
22 *associate of Franchisee, Franchisor or any other European Wax Center franchisee or*
23 *Area Representative to compete against, or terminate or modify his, her or its*
employment or business relationship with, Franchisee, Franchisor or any other
European Wax Center or any Area Representative.

24 EWC has never enforced this provision.

25 2.3 To the extent that EWC has entered into a franchise agreement that contains the
26 above described Section 7.3.4, which purports to restrict a franchisee's ability to hire or recruit

1 now used in Section 7.3.4 of its franchise agreements (and quoted above in paragraph 2.2), as
2 well as any other language having the same or substantially similar meaning.

3 3.1.3. EWC will not act to enforce any Non-Solicitation provision in any of its
4 existing franchise agreements for any outlets operating, and will not seek to intervene or defend
5 in any way the legality of any such provision in any litigation in which a franchise location may
6 claim third-party beneficiary status rights to enforce an existing Non-Solicitation provision.

7 3.1.4. EWC will within 21 days after entry of this AOD notify all of its
8 franchisees in of the entry of this agreement, and provide them a copy of the AOD upon request.

9 3.1.5. EWC will notify the Attorney General's Office if it learns of any effort
10 by a franchisee in Washington to enforce any Non-Solicitation provision.

11 3.2 Within 60 days of entry of this AOD, EWC will exercise all reasonable
12 commercial efforts to amend all existing franchise agreements with outlets located in the state
13 of Washington to remove the Non-Solicitation provision set forth above in paragraph 2.2 from
14 its existing franchise agreements as presented above, though EWC shall be under no obligation
15 to offer any franchisee any monetary or non-monetary consideration to induce them to accept
16 the proposed amendment of the franchise, and it shall be under no obligation to take any coercive
17 action against a franchisee that may refuse or decline to agree to any amendment of its franchise
18 agreement. If any franchise owner is unwilling to consent to the change to its franchise
19 agreement within the 60-day deadline, EWC shall provide the name and address of the resisting
20 franchisee to the Office of the Attorney General.

21 3.3 Going forward, EWC will not include the Non-Solicitation provision set forth above
22 for any franchisee, including for (a) new franchisees signing franchise agreements for the first
23 time, (b) existing franchisees whose franchise agreements have expired and/or are otherwise
24 required to sign a new franchise agreement in the event, as applicable, of a renewal,
25 rebuild or relocation, and (c) franchisees who sign new franchise agreements in the event, as
26 applicable, of an acquisition of a EWC location or franchise agreement for operations in the

1 state of Washington (*i.e.*, assignment or transfer).

2 3.4 Within 30 days of the conclusion of the time periods referenced in this Section
3 III, EWC will submit a declaration to the Attorney General's Office signed under penalty of
4 perjury stating that it has complied with all provisions of this AOD or, if circumstances beyond
5 EWC's control prevent compliance with any paragraph within the specified time frame, EWC
6 will describe its efforts to satisfy the paragraph's requirements and the relevant extenuating
7 circumstances.

8 IV. ADDITIONAL PROVISIONS

9 4.1 This AOD is binding on, and applies to EWC, including each of its respective
10 officers and managing agents acting within the scope of their agency, as well as EWC's
11 successors and assigns, controlled subsidiaries, divisions, or other entities through which EWC
12 may now or hereafter act with respect to the conduct alleged in this AOD.

13 4.2 This AOD shall not be construed as an admission of law, fact, liability,
14 misconduct, or wrongdoing on the part of EWC and in fact, EWC expressly denies any
15 wrongdoing or misconduct. By entering into this AOD, EWC neither agrees nor concedes that
16 the claims, allegations and/or causes of action which have or could have been asserted by the
17 Attorney General have merit and EWC expressly denies any such claims, allegations, and/or
18 causes of action. However, proof of failure to comply with this AOD shall be *prima facie*
19 evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of
20 defending against imposition by the Court of injunctions, restitution, costs and reasonable
21 attorney's fees, and appropriate civil penalties under the Washington Consumer Protection Act.
22 This AOD shall not be deemed an admission of any liability or as evidence of any violation of
23 Washington or any other law with respect to any private action maintained by any franchisee,
24 any of its employees, or any other party and shall not be deemed admissible in any such
25 proceeding.

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 Rahul.Rao@atg.wa.gov

10

11 Agreed to and approved for entry by:
12 EWC Franchise, LLC

12

13 By 

13

14 Its Authorized Signatory

14

15 Agreed to as to form

16

17 

18 Douglas C. Berry (WSBA# 12291)
19 Miller Nash Graham & Dunn LLP
20 2801 Alaskan Way Suite 300
21 Seattle, WA 98121

20

21 Attorneys for EWC Franchise, LLC

21

22

23

24

25

26