

RECEIVED
KING COUNTY, WASHINGTON
SEP 09 2019
DEPARTMENT OF
JUDICIAL ADMINISTRATION

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

(WETZEL'S PRETZELS, LLC)

NO. 19-2-23504-7 SEA

WETZEL'S PRETZELS, 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 Wetzel's Pretzels, LLC ("Wetzel's") relating to its hiring practices.

1.2 Wetzel's is a limited liability company with its principal office or place of business at 35 Hugus Alley, Suite 300, Pasadena, California 91103. Wetzel's is in the business of granting franchised businesses for the operation of one or more bakeries specializing in hand-rolled fresh-baked pretzels.

1.3 For the purposes of this AOD, Wetzel's 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 Currently, there are 11 Wetzel's bakeries in Washington. All 11 bakeries are
3 owned and operated by franchisees; Wetzel's does not own and/or operate any bakeries in
4 Washington.

5 2.2 For years, Wetzel's has included language in its franchise agreements that
6 restricted a franchisee's ability to solicit or hire workers from another Wetzel's (the "No-
7 Poaching Provision"). Specifically, Wetzel's standard form of franchise agreement stated that a
8 franchisee "During the term of this Agreement and for two (2) year after its Termination,
9 you may not disrupt, damage, impair, or interfere with our business or any of our other
10 franchisees by directly or indirectly soliciting their employees to work for you or for any
11 individual or company then in competition with the Franchise Network. You may not employ
12 any employee of Wetzel's Pretzels or a franchisee while he or she is still so employed or
13 within one (1) year after he or she leaves this employment without the employer's prior
14 written consent. Violation of this clause is a material breach of the franchise agreement
15 and may result in Termination of the franchise." The Attorney General asserts that a no-
16 poaching provision, such as the above referenced No-Poaching Provision, restricts franchisees
17 from hiring both employees from a competing franchisee and from Wetzel's corporate-owned
18 bakeries.

19 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,
20 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
21 RCW 19.86.030.

22 2.4 Wetzel's expressly denies that the conduct described above constitutes a
23 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
24 Protection Act, RCW 19.86.030, or any other law, and expressly denies that it has engaged in
25 conduct that constitutes a contract, combination, or conspiracy in restraint of trade. Moreover,
26 Wetzel's denies enforcing or seeking to enforce the No-Poaching Provision since its inclusion

1 in Wetzel's standard form of franchise agreement. Further, there is no proof or evidence that
2 the conduct described above resulted in a restraint of trade in violation of the Consumer
3 Protection Act, RCW 19.86.030, or any other law. Notwithstanding the above, Wetzel's enters
4 into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100,
5 neither this AOD nor its terms shall be construed as an admission of law, fact, liability,
6 misconduct, or wrongdoing on the part of Wetzel's.

7 III. ASSURANCE OF DISCONTINUANCE

8 3.1 Subject to paragraph 2.4 above, Wetzel's agrees:

9 3.1.1. It will no longer include the above referenced No-Poaching Provision, or
10 a similar provision, in any of its future franchise agreements;

11 3.1.2. It will refrain from enforcing the above referenced No-Poaching
12 Provision, or a similar provision, in any of its existing franchise agreements, and will not seek
13 to intervene or defend in any way the legality of the above referenced No-Poaching Provision,
14 or a similar provision, in any litigation in which a franchisee may claim third-party beneficiary
15 status rights to enforce the above referenced No-Poaching Provision, or a similar provision,
16 except that nothing herein shall prohibit Wetzel's from intervening, defending or asserting its
17 legal rights in a proceeding as to the aspects of the proceeding which are unrelated to the
18 legality of the above referenced No-Poaching Provision, or a similar provision;

19 3.1.3. It will notify all of its franchisees of the entry of this agreement with the
20 State, and provide them a copy of the AOD upon request;

21 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
22 franchisee in Washington to enforce any existing no-poach provision.

23 3.2 Within 60 days of entry of this AOD, Wetzel's will exercise all reasonable
24 commercial efforts to amend all existing franchise agreements with entities in Washington to
25 remove the above referenced No-Poaching Provision, or other similar provision, in its existing
26 franchise agreements. Wetzel's is under no obligation to offer any franchisee any monetary or

1 non-monetary consideration to induce them to accept the proposed amendment to the franchise
2 agreement, and it shall be under no obligation to take any coercive action against a franchisee
3 that may refuse or decline to agree to any amendment of its franchise agreement. If any
4 franchise owner is unwilling to consent to the change to its franchise agreement, prior to the
5 60-day deadline, Wetzel's shall provide to the Office of the Attorney General the name and
6 address of the resisting franchisee and the name and address of the franchisee's registered
7 agent.

8 3.3 As they come up for either renewal or renegotiation during the ordinary course
9 of business, Wetzel's will seek to amend all of its existing franchise agreements on a
10 nationwide basis to remove and/or not include any no-poach provision.

11 3.4 Within 30 days of the conclusion of the time periods referenced in this section
12 III, Wetzel's will submit a declaration to the Attorney General's Office signed under penalty of
13 perjury stating that all provisions of this agreement that set forth obligations on Wetzel's to
14 date have been satisfied.

15 IV. ADDITIONAL PROVISIONS

16 4.1 This AOD is binding on, and applies to Wetzel's, including each of its
17 respective directors, officers, managers, agents acting within the scope of their agency, and
18 employees, as well as their respective successors and assigns, controlled subsidiaries,
19 divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which
20 Wetzel's may now or hereafter act with respect to the conduct alleged in this AOD.

21 4.2 This is a voluntary agreement and it shall not be construed as an admission of
22 law, fact, liability, misconduct, or wrongdoing on the part of Wetzel's. By entering into this
23 AOD, Wetzel's neither agrees nor concedes that the claims, allegations and/or causes of action
24 which have or could have been asserted by the Attorney General have merit and Wetzel's
25 expressly denies any such claims, allegations, and/or causes of action. However, proof of
26 failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW

1 19.86.030, thereby placing upon the violator the burden of defending against imposition by the
2 Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate civil
3 penalties under the Consumer Protection Act.

4 4.3 Wetzel's will not, nor will it authorize any of its officers, employees,
5 representatives, or agents to state or otherwise contend that the State of Washington or the
6 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
7 Paragraph 2.2 with respect to the No-Poaching Provision in Wetzel's franchise agreement.

8 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
9 Division of the Attorney General's Office under the Consumer Protection Act and any other
10 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have occurred
11 before the date of entry of this AOD and concludes the investigation thereof. Subject to paragraph
12 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not
13 file suit or take any further investigative or enforcement action with respect to the acts set forth
14 above that occurred before the date of entry of this AOD.

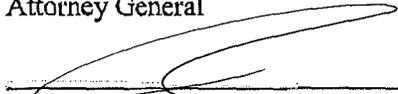
15 APPROVED ON this ____ day of _____, 2019.

16
17
18
19
20
21
22
23
24
25
26

JUDGE/COURT COMMISSIONER

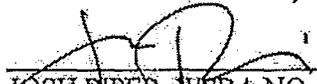
1 Presented by:

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 Agreed to and approved for entry by:
15 WETZEL'S PRETZELS, LLC

16 
17 JOSH PIPER, WSBA NO. 38365
18 Miller Nash Graham & Dunn LLP
19 Pier 70
20 2801 Alaskan Way, Suite 300
21 Seattle, WA 98121
22 (206) 777-7451
23 Josh.Piper@MillerNash.com

24 And

25 
26 RICHARD BAYER
27 Einbinder & Dunn, LLP
28 112 Madison Ave., 8th Floor
29 New York, NY 10016
30 (212) 391-9500
31 rb@ed-lawfirm.com

32 *Attorneys for Wetzel's Pretzels, LLC*


WETZEL'S PRETZELS, LLC Rep.
By: Vincent Montanelli
Its: COO