

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

(STARCYLE FRANCHISE, LLC)

NO. 19-2-25510-2

STARCYLE FRANCHISE, LLC
ASSURANCE OF
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Eric Newman, Assistant Attorney General, files this Assurance of Discontinuance (AOD) under RCW 19.86.100.

I. PARTIES

1.1. In September 2019, the Attorney General initiated an investigation into Starcycle Franchise, LLC relating to its hiring practices.

1.2. Starcycle Franchise, LLC is a Washington corporation with its principal office or place of business in the State of Washington. Starcycle Franchise, LLC is in the business of franchising a system for fitness studios providing indoor cycling exercise classes utilizing music and choreography, as well as the retail sale of exercise merchandise and other related services and products.

1.3. For the purposes of this AOD, Starcycle Franchise, LLC 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

1
2 2.1. Starcycle Franchise, LLC has two (2) studios in Washington. Both of these
3 studios are owned and operated by franchisees. None of the Washington studios are owned and
4 operated by Starcycle Franchise, LLC. Additionally, there is a franchisee in Washington that has
5 signed a franchise agreement but has not yet opened for business.

6 2.2. For years, Starcycle Franchise, LLC has included language in its franchise
7 agreements that restricted a franchisee's ability to solicit or hire workers from another Starcycle
8 Franchise, LLC (no-poaching provision). Specifically, the standard Starcycle Franchise, LLC
9 franchise agreement stated the following: "During the Term of this Agreement and for a period
10 of 2 years thereafter, Franchisee shall not attempt to attain an unfair advantage over other
11 franchisees or Franchisor or any Affiliates thereof by soliciting for employment any person who
12 is, at the time of such solicitation, employed by Franchisor, other franchisees or any Affiliates,
13 nor shall Franchisee directly or indirectly induce or attempt to induce any such person to leave
14 his or her employment." A no-poaching provision restricted franchisees from hiring both
15 employees from a competing franchisee and from Starcycle Franchise, LLC's corporate-owned
16 studios.

17 2.3. The Attorney General asserts that the foregoing conduct constitutes a contract,
18 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
19 RCW 19.86.030.

20 2.4. Starcycle Franchise, LLC expressly denies the conduct described above
21 constitutes a contract, combination, or conspiracy in restraint of trade in violation of the
22 Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies it has engaged
23 in conduct that constitutes a contract, combination, or conspiracy in restraint of trade. Starcycle
24 Franchise, LLC enters into this AOD to avoid protracted and expensive litigation. Pursuant to
25 RCW 19.86.100, neither this AOD nor its terms shall be construed as an admission of law, fact,
26 liability, misconduct, or wrongdoing on the part of Starcycle Franchise, LLC.

1 **III. ASSURANCE OF DISCONTINUANCE**

2 3.1. Subject to paragraph 2.4 above, Starcycle Franchise, LLC agrees:

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

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

9 3.1.3 It will notify all of its franchisees of the entry of this agreement with the
10 State, and provide them a copy of the AOD upon request;

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

13 3.2. Within 60 days of entry of this AOD, Starcycle Franchise, LLC will exercise all
14 reasonable commercial efforts to amend all existing franchise agreements with entities in
15 Washington to remove any no-poaching provisions in its existing franchise agreements.
16 Starcycle Franchise, LLC is under no obligation to offer any franchisee any monetary or non-
17 monetary consideration to induce them to accept the proposed amendment of the franchise, and
18 it shall be under no obligation to take any coercive action against a franchisee that may refuse or
19 decline to agree to any amendment of its franchise agreement. If any franchise owner is unwilling
20 to consent to the change to its franchise agreement, prior to the 60-day deadline, Starcycle
21 Franchise, LLC shall provide the name and address of the resisting franchisee and the name and
22 address of the franchisee'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, Starcycle Franchise, LLC will amend all of its existing franchise agreements on a
25 nationwide basis to remove any no-poach provision.

26 3.4. Within 30 days of the conclusion of the time periods referenced in this section III,

1 Starcycle Franchise, LLC will submit a declaration to the Attorney General's Office signed
2 under penalty of perjury stating that all provisions of this agreement have been satisfied.

3 IV. ADDITIONAL PROVISIONS

4 4.1. This AOD is binding on, and applies to Starcycle Franchise, LLC, including each
5 of its respective directors, officers, managers, agents acting within the scope of their agency, and
6 employees, as well as their respective successors and assigns, controlled subsidiaries, divisions,
7 groups, affiliates, partnerships, and joint ventures, or other entities through which Starcycle
8 Franchise, LLC may now or hereafter act with respect to the conduct alleged in this AOD.

9 4.2. This is a voluntary agreement and it shall not be construed as an admission of
10 law, fact, liability, misconduct, or wrongdoing on the part of Starcycle Franchise, LLC. By
11 entering into this AOD, Starcycle Franchise, LLC neither agrees nor concedes that the claims,
12 allegations and/or causes of action which have or could have been asserted by the Attorney
13 General have merit and Starcycle Franchise, LLC expressly denies any such claims, allegations,
14 and/or causes of action. However, proof of failure to comply with this AOD shall be *prima facie*
15 evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of
16 defending against imposition by the Court of injunctions, restitution, costs and reasonable
17 attorney's fees, and appropriate civil penalties under the Consumer Protection Act.

18 4.3. Starcycle Franchise, LLC will not, nor will it authorize any of its officers,
19 employees, representatives, or agents to state or otherwise contend that the State of Washington
20 or the Attorney General has approved of, or has otherwise sanctioned, the conduct described in
21 Paragraph 2.2 with respect to the No-Poach Provision in Starcycle Franchise, LLC's franchise
22 agreement.

23 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust
24 Division of the Attorney General's Office under the Consumer Protection Act and any other
25 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have
26 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject

1 to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
2 Office shall not file suit or take any further investigative or enforcement action with respect to
3 the acts set forth above that occurred before the date of entry of this AOD.

4 APPROVED ON this _____ day of _____, 2019.

5
6
7 JUDGE/COURT COMMISSIONER
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Presented by:

ROBERT W. FERGUSON
Attorney General



ERIC NEWMAN, WSBA #31521
Assistant Attorney General
Antitrust Division
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 442-4498
eric.newman@atg.wa.gov

Attorneys for State of Washington

Agreed to and approved for entry by:
STARCYCLE FRANCHISE, LLC



RYAN D. SMITH, WSBA #51902
Peak Law Group, LLC
PO Box 1112
Sherwood, OR 97140
(503) 332-4556
ryan@peakfranchiselaw.com

Attorney for Starcycle Franchise, LLC



DIONNE DEL CARLO, its Managing Member