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November 12, 2004

VIA E-MAIL

Secretary
Federal Trade Commission
Office of the Secretary
Room H-l 59 (Annex W)
600 Pennsylvania Avenue. N.W.
Washington, DC 20580

Re: Franchise Rule Staff Report, R511003 - 16 CFR Part 436

Ladies and Gentlemen:

These comments are submitted in response to the Commission's invitation to interested parties to provide comments on the Staff Report to the Federal Trade Commission ("Staff Report") and Proposed Revised Trade Regulation Rule (16 CFR Part 435) ("Revised FTC Franchise Rule") published on August 25, 2004, 69 Fed. Reg. 170 (Sept. 2, 2004). While this firm represents a number of franchisor clients, these comments reflect the views of the authors and not this law firm or any client. The experience of each author in franchise regulatory matters ranges from over 25 to more than 35 years.

These comments respond to some of the Staff Report proposals on which comments were specifically invited and also to several other important matters that we believe deserve further attention by the Commission. These comments reference the proposed section of the Revised FTC Franchise Rule and the Section of the Staff Report discussed.

I.
Comments on Staff Report

The Commission has done an excellent job overall of addressing the policy positions of franchisors and franchisees underlying pre-sale disclosure and synthesizing the dozens of comments received to the 1999 Notice of Proposed Rulemaking. For the most part, the proposed Revised FTC Franchise Rule corrects many deficiencies in the current UFOC Guidelines and recommends appropriate modifications. However, certain proposed revisions will unduly complicate the disclosure process or the goal of uniformity at a cost to franchisors that outweighs any benefit to prospective franchisees. We urge the Commission to reconsider the following proposals in the Staff Report.

§436.1(k) [Definitions] (Staff Report §IV.I.2) - Definition of "Franchisor"

The proposed definition of "Franchisor" would include "any person who grants a franchise and participates in the franchise relationship." It is not clear whether the phrase "and participates in the franchise relationship" was intended to modify "any person who grants a franchise" or was intended to include persons other than those who grant a franchise. Because it could be read in the latter manner, we urge the Commission to revise the first sentence of the definition to limit it to the contracting party:

> "Franchisor means the person who signs the agreement granting a franchise."

This suggested revision recognizes that the "franchisor" is the party to the franchise agreement granting the franchise, and not other parties who may participate in the relationship, except for-sub franchisors would continue to be treated as franchisors.

§436.2(b) [Obligation to Furnish Documents] (Staff Report §V.C.2) - Modified Contract Review Period

We endorse the proposal to dispense with a second pre-sale waiting period when a franchisee introduces contract modifications. This proposal is expressed in proposed Section 436.2(b)' as the following exception to the new seven-day waiting period: "Changes to a franchise agreement that result solely from negotiations initiated by the prospective franchisee do not trigger this seven-day period." However, we urge the Commission to articulate a brighter line for when the exception applies.

The problem lies in the use of the word "solely" in Section 436.2(b). "Solely" unintentionally does two things. First, "solely" inappropriately suggests that all contract modifications must benefit the franchisee. In reality, regardless of who introduces contract modifications, most negotiations end up with some give and take. The Staff Report does not suggest that the exception should depend on evaluating if the contract modifications, take as a whole, favor the buyer over the seller. We concur that this would be an overly subjective standard that would be difficult to administer and that it is preferable for the exception to depend on which party initiates negotiations, which is an inherently more objective test. In view of the objective approach that the FTC seems to take, we see no purpose to retaining "solely" in the exception.

Second, "solely" inadvertently adds an extra dimension to identifying which party is the initiator. What factors would distinguish the situation where a franchisee "solely" initiates contract modifications from one in which the franchisee just plain "initiates?" In either case, the ultimate contract changes are the result of the prospect's prompting. That is all that should matter.

For these reasons, we recommend that the Staff strike the word "solely" from proposed Section 436.2(b) as it potentially confuses an exception that we believe the FTC intends to make objective.

§436.5(a)(l) [Item 1] (Staff Report §VI.C.2.a) - Disclosure of Parents

Proposed revised Item 1(1) will require disclosure of the name and principal business address of "any parent." As defined in proposed Section 436.l(m), "Parent means an entity that controls the franchisor directly, or indirectly through one or more subsidiaries." The Staff Report indicates that franchisors would have to identify in Item 1 all non-affiliate parents, including all intermediate parents, not just the ultimate parent. The Staff Report describes the duty to identify all non-affiliate parents as "at most a minor burden that is outweighed by the potential benefit to prospective franchisees." We disagree that the burden is minor.

Many companies, public and private, have corporate structures in which there are a number of subsidiaries in between the ultimate parent and the franchisor subsidiary. In some cases, the corporate structure may be quite elaborate. While franchisees will benefit by knowing the identity of the ultimate parent and any intermediate parent (i.e., affiliate) that may guarantee the franchisor's performance, we see little benefit to requiring franchisors to disclose the names and addresses of all intermediate subsidiaries that are technically parents of a franchisor. The information is irrelevant to the franchisee and may have the unintended consequence of implying that each parent is financially responsible for the activities of all downstream subsidiaries, including the franchisor. We suggest that the Item 1 disclosure be limited to the one parent (direct or indirect) that ultimately controls the franchisor and to any intermediate parent (i.e., affiliate) that guarantees the franchisor's obligations to franchisees. This leaves untouched the UFOC's current requirement that a franchisor disclose the identity of all affiliates (including parents) that provide services or products to franchisees.

Accordingly, we suggest that §436,5(a)(l) be amended by deleting the words "any parent" and substituting the following;

> "the parent (direct or indirect) that ultimately controls the franchisor and any intermediate parent that guarantees the franchisor's obligations to franchisees;"

When no parent or affiliate guarantees the franchisor's obligations to franchisees, we recommend that franchisors be permitted to disclose the following:

> "Identification of our ultimate parent does not mean that our ultimate parent or any intermediate parent or affiliate of ours guarantees the performance of our obligations to you,"

§§436.5(c)(1) and (2) [Items 3(1) and (2)] (Staff Report §VI.E.2.a) - Disclosure of Parent Litigation

Proposed revised Items 3(1) and (2) would extend litigation disclosure to "a parent who guarantees the franchisor's performance." This substantially increases the disclosure cost for franchisors that rely on a parent guarantee especially burdening large established franchisors that are subsidiaries of major corporations.

As the Staff Report itself recognizes, "litigation involving a parent (which may be sizeable in the case of a publicly-traded parent) may have little bearing on the operations of the franchise system itself." Then why require this additional information? First, the disclosure of parent litigation will complicate, the disclosure document and confuse prospective franchisees who will not know what to make of the extraneous information. Indeed, in the case of a sizeable publicly-traded parent, the parent's litigation disclosures could far outnumber the franchisor's own litigation disclosures, potentially overwhelming the prospect with information having no relevance lo the franchise, the franchisor or the value of any guarantee given.

Second, the Staff Report does not cite any enforcement data indicating that franchisees who bought franchises from a franchisor that relied on a parent guarantee (or an affiliate guarantee for that matter) have suffered greater losses than their counterparts who bought franchises with no parent (or affiliate) guarantee. There is nothing in the record suggesting that franchisees who relied on a parent guarantee have been thwarted in their efforts to recover against the parent guarantor. Without enforcement data or evidence of abuse, there is no justification for increasing franchisor compliance burdens beyond the current UFOC Guidelines.

Third, the Staff Report rationalizes the need for parent litigation disclosures in situations "where a parent induces franchise sales by promising to back the franchisor financially or otherwise guarantee performance." In this circumstance, the Staff Report concludes "the parent's prior litigation history is material and should be disclosed." The policy rationale appears to be that parent litigation directly bears on the parent's ability to make good on the guarantee.

Even is the policy rationale is sound, the proposed solution is overbroad. The parent's audited financial statements are a far better source of information for evaluating the worth of a parent guarantee than the parent's litigation history. The FTC's real concern seems to be in wanting prospective franchisees to have more information about the parent than disclosed by the parent's financials so that the prospect can evaluate the value of the parent guarantee. However, disclosing a parent's litigation says little about the value of the parent's guarantee. The franchisor is not being asked to opine on whether the parent litigation materially impairs the guarantee. While the FTC would prefer that prospects draw their own conclusions about the .parent's financial viability, logically, the more voluminous the parent disclosures, the more likely prospects will negatively judge the franchise, the franchisor and the guarantee. Based on

the sheer volume of information, prospects may draw inappropriate inferences about the franchise that are unjustified. While the FTC would prefer that prospects draw their own conclusions about the parent's financial viability, logically, the more voluminous the parent disclosures, the more likely prospects will negatively judge the franchise, the franchisor and the guarantee. Based on the sheer volume of information, prospects may draw inappropriate inferences about the franchise.

Furthermore, a parent's concluded litigation history should have no bearing whatsoever on a parent's current ability to perform on a guarantee. The parent's current audited financial statements would have already absorbed any adverse outcome of concluded litigation.

If parent litigation is at all material, it should be confined to the parent's pending litigation which, if adversely decided against the parent, could materially impair the parent's ability to cover the franchisor's obligations, Logically, if this is the FTC's real concern, then all pending parent litigation regardless of subject matter — indeed, all parent contingent liabilities, whether they be contractual, litigation or otherwise -- should be disclosed since all potentially threaten a parent's ability to perform on a guarantee. The FTC rightfully has not proposed this as the materiality standard. We submit that adequate auditing standards already exist for when and how to disclose contingent liabilities to address the FTC's real concern; complicating Item 3 with a parent's litigation history is the wrong approach.

Accordingly, we suggest that §436.4(c)(l) and (2) be amended by deleting from each subsection the phrase, "a parent who guarantees the franchisor's performance."

As the policy reason for requiring parent litigation disclosures, the FTC cites the situation "when a *parent induces* franchise sales by promising to back the franchisor financially or otherwise guarantee performance." (Emphasis supplied.) The reference to *the parent* inducing a sale casts the parent guarantor in the role of a franchise seller. Typically, a guarantor has no direct involvement in a franchise sale. The reference to *parent* inducing a sale also may falsely suggest that franchisors must disclose parent litigation only when the parent actively participates in a sale, which does not appear to be the FTC's intent. It may be more accurate to rephrase the passage to read: "when the franchisor induces franchise sales by promising (hat its parent will back the franchisor financially or otherwise guarantee performance."

If our recommendation to delete parent litigation disclosures is not accepted, we would propose a compromise. If the proposed change has merit, it is where the franchisor relies on a guarantee from a low net worth parent. In that case, the parent's pending litigation history may expose contingent liabilities that potentially could impinge on the guarantee's future viability. Even in this circumstance, however, we see no value in requiring disclosure of a parent's concluded litigation since adverse outcomes would be reflected in the parent's current financial condition.

However, where the franchisor relies on a guarantee from a high net worth parent, the parent litigation information has no real value. The prospect's ability to enforce the parent guarantee is not at great risk.

As support, we draw an analogy to the "large franchisor" exemption from registration which all but five of the registration states recognize. A franchisor qualifies for the "large franchisor" exemption based on its (or its parent's) net worth and experience. The exemption expresses the state's cost-benefit assessment that registration by high net worth, experienced franchisors is unnecessary to protect prospective franchisees. Underlying this cost-benefit assessment is the view that franchisees who buy from franchisors with substantial assets (or from subsidiaries of companies with substantial assets that guarantee the franchisor's obligations) are not at great risk and do not require the extra agency protection afforded by registration. The policy rationale is borne out by the lack of any enforcement data at the state level suggesting that prospective franchisees who buy a franchise from an exempt "large franchisor" suffer greater losses than their counterparts who buy a franchise that has been registered after undergoing detailed examination by state regulators.

The policy rationale underlying the "large franchisor" exemption is not only sound, it is relevant to our proposal to excuse franchisors from disclosing parent litigation when the parent guarantor meets an objective net worth test. While we recommend setting the net worth test at $5 Million, which is the net worth threshold that a majority of the states with "large franchisor" exemptions use, we would not be opposed if it were a multiple of even the highest net worth threshold of any "large franchisor" exemption state. A net worth test establishes a valid "bright line" test for assessing when parent litigation should be disclosed. The FTC should set the net worth threshold according to its own risk assessment; however, there should be some threshold that gives the FTC adequate comfort that franchisees will not be at risk if parent litigation is not disclosed. If the policy rationale for requiring parent litigation is that the disclosure bears on the parent's ability to make good on the guarantee, then franchisors should be excused from having to make the disclosure when their parent meets the FTC's high net worth threshold. Just as the states recognize that the cost-benefit equation does not tip in favor of requiring large franchisors to register, so, too, the cost-benefit equation does not tip in favor of requiring franchisors to disclose litigation about their high net worth parents.

Ironically, a high net worth parent is more likely to have more litigation to disclose than a parent that does not meet the high net worth threshold. By not adopting our proposal, high net worth parents that are financially more capable of performing on a guarantee would end up having to disclose more extraneous litigation information than parents with fewer assets. Such an anomalous result should be avoided.

Accordingly, as an alternative, we recommend that the Commission exempt parents with a substantial net worth (such as 55 Million) from this disclosure requirement. The Ff C may prefer a higher net worth threshold, such as $10 Million, to which we would have no objection,

as long as the threshold remains a "bright line." The alternative proposal would be to amend this provision by adding a new subsection (4) to read as follows:

> "(4) The requirement in subsections (1) and (2) relating to a parent who guarantees the franchisor's performance shall not apply to a franchisor that has a net worth of $5 Million or more according to its most recent audited financial statements."

§436.5(1) [Item 6] (Staff Report §VI.H) - Payments to Third Parties

Proposed Item 6 would require a franchisor to list required payments that the franchisee "is required to pay directly to a third party" and then state either the amount of the fee or that the amount is "unknown and may vary depending upon factors, such as the third-party supplier selected."

As the Staff Report rightfully acknowledges, in most cases, the franchisor is not likely to know the amount of the fees payable to a third party. If the payment is not being made to the franchisor or an affiliate of the franchisor, we believe that it would be better simply to add a note at the end of Item 6 to that effect, such as:

> "We require you to buy certain services or products from the following third parties and urge you to contact them to determine the current prices and terms of sale: **[List names of suppliers]"**

§§436.5(q) and (t)(2)(ii)(F) [Items 17 and 20] (Staff Report C§§VI.S.2. and V.2.a) - Disclosures regarding Renewal and Non-Renewal

For a variety of reasons, some franchisors do not grant any renewal option. To avoid any misimpression that all franchisors grant their franchisees some type of option to continue the franchise after the term expires or must do so as a matter of law, we recommend that the Commission define "renewal" in a way that explains that applicable law does not compel a franchisor to grant a renewal right and that this is a matter left to private contract. For purposes of Item 20, a franchisor that does not grant any renewal right should be able to say so by footnote to explain why there are no reported non-renewals in Table 3, Column 6. Proposed §436.5(t)(2)(ii)(F), or the Staff Report or the proposed Compliance Guides, should offer an alternative renewal explanation for franchisors that do not grant any renewal option. Something to the following effect would suffice:

> 'The franchise agreement does not give you an option to continue the relationship when the term expires. Upon expiration, we may decide whether we want to continue the relationship with you and,

if we do, the terms and conditions of our relationship going forward,"

§436.5(u)(l) [Item 21(1)] (Staff Report §VI.W.2) - Audited Financial Statements

Proposed Item 21(1) would require the disclosure document to include financial statements prepared according to U.S. generally accepted accounting principles ("GAAP") and auditing standards or as permitted by the Securities and Exchange Commission ("SEC"). (See proposed Section 436.5(u)(l) [Item 21(1)] (Staff Report §VI.W.2.b).)

A large number of Canadian franchisors are entering the U.S. market and vice versa. While we are not accountants, we understand that U.S. GAAP and Canadian GAAP and U.S. auditing standards and Canadian auditing standards are essentially equivalent and that any differences between the two are not significant to a prospective franchisee.

We urge the Commission to reach an accommodation with the Minister responsible for administration of the Arthur Wishart Act (Franchise Disclosure) 2000 in Ontario, and with the federal and provincial authorities in Canada, as appropriate, to allow audited financial statements prepared in accordance with Canadian GAAP to be used by Canadian franchisors or their Canadian or U.S. subsidiaries which are selling franchises in the U.S., in exchange for which U.S. franchisors or their U.S. or Canadian subsidiaries selling franchises in Canada would be able to use U.S. audited financials in Ontario and other provinces of Canada, Alberta already has taken positive steps in this direction. Alberta allows the use of financial statements prepared under auditing standards and review standards and reporting standards that are at least "equivalent" to financial statements prepared in accordance with Canadian generally accepted auditing standards or review standards and reporting standards. See Alberta Franchises Regulation §3(3), Bus, Franchise Guide (CCH) f 7030.

§436.5(u)(1)(iv) [Item 21(1)(iv)] (Staff Report §VI.W.2) - Additional Financial Statements

Proposed revised Item 21(l)(iv) would require inclusion of "separate financial statements for the franchisor, subfranchisor and any parent or other entity that commits to perform post sale obligations for the franchisor or guarantees the franchisor's obligations," (Emphasis supplied.) Implicit in this requirement is that all those statements be audited.

As written, this provision would require a franchisor to include its own financial statements even if it uses an affiliate's financials as permitted by §435.5(u)(1)(ii) (Item 21(1)(ii). This is because the provision requires financial statements from any entity that performs post sale obligations, which most likely captures the franchisor in every case. Item 21(1)(iv) appears to be inconsistent with Item 21(l)(ii) and, we suggest, this may be unintentional.

With respect to the post sale obligations criteria, we also are mystified by the reference to "or other entity. " Many franchisors arrange third parties or other affiliated companies to provide post sale services to franchisees. Why do their financials need to be attached? The franchisee is not relying on the financial condition of these other entities or affiliates when it buys a franchise. Many entities may not have audited financial statements, or, if they do, may be unwilling to provide them to a franchisor for inclusion in the disclosure document.

Furthermore, this suggested provision seems to require that even when the franchisor has its own set of audited financials, the audited financials of its parent or other entities and the franchisor's should be attached (not one or the other). Why is that necessary?

Historically, many companies have set up wholly-owned subsidiaries to engage in franchise activities. Sometimes these subsidiaries have their own audited financials and sometimes they use the parent's or art affiliate's financials. Oftentimes the parent or an affiliate provides post sale services to the franchisees. If the Staff Report's recommendation is accepted and parent's financials have to be attached, there would be little reason for a franchisor to prepare its own audited financials (unless, as noted above, the Staff is seeking to mandate that the franchisor always have separate audited financials). Why incur the cost of two audited financial statements? Wouldn't the franchisee be most interested in the franchisor's financial condition or, in the case where the franchisor relies on a parent or affiliate guarantee, in the guarantor's financial condition? How does the proposed revision benefit franchisees by providing audited financial information of entities having no relationship to the franchisor's ability to perform?

For foreign parents of franchisors, this disclosure obligation may be a particularly onerous burden because each of the added financial statements would have to be prepared in accordance with U.S. GAAP and auditing standards, or as permitted by the SEC. (See proposed Section 436.5(u)(1) [Item 21(1)] (Staff Report §VI.W.2.b).)

How much extra information is needed in order for a franchisee to make an informed decision? Overwhelming a franchisee with useless additional information makes the disclosure document less effective.

Accordingly, we suggest that the first sentence of §435.5(u)(l)(iv) be revised to read as follows:

> "(iv) Include separate financial statements for the subfranchisor and any parent or non-parent affiliate that guarantees the franchisor's obligation."

§§436.6(d), 436.10(c) (Staff Report §§VII.C.4 and XI.B.2) - Preemption

We disagree with the Staff Report's position on preemption for the reasons set forth in our letter of December 21, 1999. We regret that the FTC did not seize the opportunity to bring ultimate uniformity to the disclosure practice. Accepting that the FTC is only willing to exercise limited preemption, we believe additional preemption is needed to achieve greater levels of uniformity with state regulations.

The Staff Report refused to preempt state risk factors or otherwise restrict their use to a state-specific addendum. Instead, the Staff Report would permit the states and franchisors the greatest flexibility concerning how to include state-specific information, be it in an addendum, separate cover page or otherwise.

To reduce the cost burden to franchisors and achieve a greater level of uniformity, any state-specific information, including additional risk factors, should only be allowed to be included in a state specific addendum. It would also be useful to add a clarification in the Revised FTC Franchise Rule or the proposed Compliance Guide that a state-specific requirement does not, in and of itself, constitute a material change that would require an amendment of the disclosure document.

Accordingly, we recommend that §436.6(d) be amended by deleting the words:

"in the text of the disclosure document or".

We further recommend that §436.10(c) be amended by deleting the period at the end of the section and adding:

"in Exhibits attached to the disclosure document."

§436.9(f) [Additional Prohibitions] (Staff Report §XB.4.b.) - Furnishing Existing Disclosures to a Prospective Purchaser of an Existing Outlet Upon Request

The Staff Report at page 66 appropriately excludes transfers from the definition of "sale of a franchise" where the franchisor has had no significant involvement in the sale. The Staff Report recognizes that there are circumstances, such as where a franchisor stops selling franchises, when it would be unreasonable to compel a franchisor to make disclosures to a transferee. When a franchisor stops selling franchises and no longer maintains a current disclosure document, the franchisor must still honor its existing franchise agreements. Existing franchisees have a right to sell their business as long as the buyer fulfills the seller's contract obligations. A franchisor that has stopped selling new franchises when a franchisee applies for transfer approval may not condition its approval upon the buyer accepting material contract changes unless the franchisor fulfills pre-sale disclosure duties to the buyer. Thus, a franchisor

that no longer has a current disclosure document at the time the selling franchisee applies for consent to transfer may do no more than approve the buyer's qualifications even if the selling franchisee's contract gives the franchisor the right to insist that the buyer sign a new contract or accept material modifications.

However, the Staff Report confuses all of this in proposed Section 436.9(f) by making it a deceptive act or practice for a franchisor to "(f)ail to furnish existing disclosures to a prospective purchaser of an existing franchise outlet, upon reasonable request." A prospective transferee's desire to receive a disclosure document may be perfectly reasonable, but has no bearing on the fairness of requiring disclosure when a franchisor has previously stopped selling franchises, The circumstances justifying excluding transfer from the definition of "sale of a franchise" are no less compelling because a transferee may request disclosure.

Furthermore, we urge the Commission to elucidate in the Compliance Guides the circumstances when it would be unreasonable to compel a franchisor to make disclosures to a transferee. For example, what if, at the time of the proposed transfer, the franchisor has stopped selling new franchises in the state where the franchisee seller's business is located, but not elsewhere in the United States? What if the franchisor has changed its businesses model and is no longer selling new franchises of the type owned by the selling franchisee, but is selling another type of franchise? As long as the franchisor does not compel material contract changes and is involved in the transfer only for purposes of approving the buyer's qualifications, a transfer should safely be beyond the scope of "sale of a franchise."

§436.9(i) (Staff Report §X.B.2.a) - Integration Clauses

Proposed Section 436.9(i) states that it would be an unfair or deceptive act or practice for any franchise seller to disclaim or require a prospective franchisee to waive reliance on any representation made in the disclosure document or its exhibits or amendments. The Staff Report recommends that the FTC prohibit the use of integration clauses and waivers in limited circumstances where the prospective franchisee has to waive reliance on any representation made in the disclosure documents or in its exhibits or amendments. The Staff Report concludes that the use of integration clauses or waivers to disclaim statements in the disclosure document undermines the Rule's very purpose by signaling to prospective franchisees that they cannot trust or rely upon the disclosure document. However, the proposed integration clause prohibitions do not pertain to contract negotiations.

The disclosure document is not part of the contractual relationship between the parties. If the franchise seller makes false or deceptive statements in the disclosure document that induce the franchisee to purchase a franchise, and there is a basis for concluding that a franchisee has, in fact, been misled, the Commission could take action against the franchisor. Whether the franchisee could also seek relief from a court depends on applicable precedent under state law and often involves more complex inquiries, including consideration of the extent to which the

alleged pre-contract statement is in direct conflict with the written contract, additional evidence concerning the context and nature of the claim being asserted, etc. These are not matters that can, or should, be addressed by rule. As the Staff Report acknowledges, an integration clause often does not preclude a franchisee from asserting a claim that there was fraud in the inducement (although there may be additional factors which bear on the viability of such claims). We believe that Section 436.9(i) and the FTC Staff Report could be misconstrued as attempting to legislate a change in the common law and that the result will be to inject more confusion into what, up until now, has been a well-developed and well-settled area of contract law. We believe this is a matter best left to the common law and to the application of those principles to specific contract disputes by the courts.

Accordingly, we recommend that §436,9(i) be deleted, in its entirety.

Staff Report §IX.B.5. - Exclusions

We urge the Commission to reinstate the four current Rule exclusions (general partnerships and relationships between employers/employees; member-owned cooperative associations; certification and testing services; and single trademark licenses) and not eliminate them in an effort to streamline the Rule. While the Commission feels these four clarifying exclusions are no longer necessary, it will not take long before a plaintiff argues that the change is substantive, reflecting the FTC's intention to regulate these relationships as franchises. The Compliance Guides may not drive the point home soundly enough. While streamlining is a laudable goal, the risk is too great that streamlining in this case may be misinterpreted. The risk of confusion and uncertainty to businesses looking to structure commercial relationships that safely fall outside of the Rule's purview outweighs any benefit arising from a slightly slimmer FTC Rule.

II.
Compliance Guides

Throughout the Staff Report, it is mentioned that many subject matters will be addressed in the Compliance Guides. Although the Interpretive Guides were issued by the Commission without opportunity for public input, we strongly urge the Commission to make the draft Compliance Guides available for public comment before they are finalized. The Staff Report's excellence is in part attributable to the public vetting of proposals and opportunity that franchisors, franchisees and experienced practitioners have had to comment on the FTC's proposals. The final Compliance Guides will equally benefit from input by the franchise community,

*   *   *   *   *

Thank you for the opportunity to provide comments on the proposed revisions to the FTC Franchise Rule. Simplification of the disclosure process and clarification of certain Items as discussed above would reduce costs for franchisors and make the disclosures more meaningful and useful to franchisees.

Very truly yours,

SONNENSCHEIN NATH & ROSENTHAL LLP

By:

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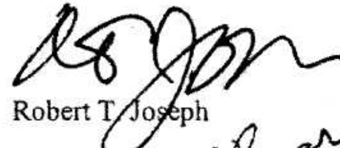

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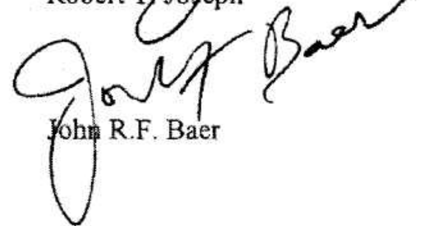

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