

North American Securities Administrators Association, Inc. (NASAA)
Corporation Finance Section/ Franchise and Business Opportunities Project Group
750 First Street, N.E., Suite 1140
Washington, D.C. 20002
Attn. Dale Cantone,

December 21, 2021

Re: Request for Public Comment on NASAA's Proposed SOP on Questionnaires & Acknowledgements in FDDs

Dear Administrators:

I appreciate the invitation to comment on NASAA's proposed statement of policy ("SOP") regarding franchisors' use of questionnaires and acknowledgements to defraud trusting franchise prospects with impunity.

In support of the proposed S.O.P., I offer the following examples – using my own direct experience - of how franchisors bypass the intended protections of the Franchise Rule and mislead prospective franchisees.

I Have Four Decades of Experience as a Top Franchisee of Two International Brands

My name is Jim Lager. I am currently the independent owner of Dallas-based Texas Hose Pro, a mobile hydraulic hose service and repair business I opened in January, 2020.

Prior to January, 2020, I was a successful and high-profile franchisee of a national franchise brand.

Franchisors Plant Earnings Claims in Phony Business Publications... Then Share Them as Legitimate Press Coverage

The UnhappyFranchisee.Com website documents the proliferation of phony pay-for-play publications that will publish glowing articles for franchisors that include undisclosed, illegal earnings claims. Franchisors cleverly issue reprints of the articles or direct the prospect to these seemingly impartial publications where they see the earnings claims.

In 2014, my former franchisor paid one such publication (*1851 Magazine*) to publish a story highlighting my military service and my success as their franchisee. My unprecedented sales of \$1M and \$2M in the first two years respectively were planted in that story and have been promoted for the past 7 years. During that period, the franchisor declined to disclose an FPR in Item 19 of their FDD. When the company disclosed its first FPR in 2020, average sales in year 1 & 2 were roughly half of what's promoted in the 1851 Magazine story:

In his first year of opening, Lager's sales were over \$1 million, and over \$2 million in the second...

Due to his consistent success, Lager has developed a workbook that is implemented at struggling centers, and has assisted centers across the nation in improving their operations and sales. He has also hosted workshops to help franchisees and technicians. Currently, Lager has 16 vans servicing the area, which is significantly more than any of his competitors.

If asked in a questionnaire if the company had provided an earnings claim and whether they relied on one, a prospective franchisee would likely answer no. **How would they know the articles they read in business publications were planted by the franchisor?**

How Franchisors Block Information the Franchise Rule Intended Prospective Franchisees to Have
More than a dozen of these misleading promotional stories give the false impression that I was successful, happy and endorse the franchise program.

The master franchise that controlled my franchise agreement was sold, and overnight the company I endorsed was gone. The new owner became enraged when I brought my longtime African American girlfriend to a company function. He made a number of disparaging comments about me, my girlfriend and our interracial relationship. Their Franchise Poster Boy no longer projected the desired image of the 100% (or close to it) Caucasian franchise chain. Despite my status as a top producer and award-winning mentor, I was informed that my franchise agreements would not be renewed.

After I was forced out of the system, the territories that I spent years developing were given to a Caucasian franchisee with an all-white family.

In the end, my relationship with this company was not positive and my business under this franchisor was not, for me, a success. I do not endorse this franchise and find the current management's business practices and racial prejudice reprehensible and likely illegal. I object to the deceptive use of my sales numbers, as they are not attainable by most prospective franchisees.

However, because of the non-disclosure agreement (NDA) I was forced to sign, I must remain silent as this company uses my success story and my outdated endorsement to mislead prospective franchisees, including my veteran brothers and sisters.

Without the adoption of the proposed S.O.P. on Questionnaires & Acknowledgements, franchisors will continue to be given tacit approval to circumvent The Franchise Rule and state anti-fraud laws... as long as they get their victims – before they realize they're victims - to state they *aren't* victims.

Thank you for your consideration,

James Lager

CEO, Texas Hose Pro

Former Franchisee

Honorably Discharged Veteran, U.S. Army

PS. This circumvention of The Franchise Rule by seemingly reputable franchisor attorneys and arbitrators has become so extreme that franchisees, like myself, are being deprived of our First Amendment rights and the right to participate in public discussions and discourse related to franchise legislation. This overreach is being maintained and enforced even by arbitrators who are supposed to be impartial – not serve as enforcers for repressive franchisors.

On October, 11, 2020 I answered the FTC's invitation for public comment during its official review of The Franchise Rule. My carefully written and documented letter contained no confidential information nor even the name my former franchisor. However, I was forbidden from submitting my letter to this official government proceeding by arbitrator David Kauffmann.

As I answer NASAA's request for public input with THIS letter, I fully expect Mr. Kauffman to prohibit me from sharing my opinions or views with NASAA in this public discussion.

When I signed a franchise contract, I did not abdicate my rights as an American veteran who honorably served our country and defended our right to free speech.

I did not sign over my voice nor my identity to the franchisor, as Mr. Kauffman seems to believe.

Other than narrowly protecting trade secrets, processes & recipes, NDAs should be banned in franchising as they deprive prospective franchisees & the marketplace at large of valuable information and insights... no matter what franchisor questionnaires have to say.