

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING  
PROVISIONS

(FLOORS TO GO, LLC)

NO. 19-2-24814-9

FLOORS TO GO, LLC  
ASSURANCE OF  
DISCONTINUANCE

12           The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney  
13 General, and Justin Wade, Assistant Attorney General, files this Assurance of Discontinuance  
14 (AOD) under RCW 19.86.100.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**I. PARTIES**

1.1. In August 2019, the Attorney General initiated an investigation into Floors to Go, LLC (FTG) relating to certain provisions in its franchise agreement.

1.2. FTG is a Florida limited liability company with its principal office or place of business in Bonita Springs, Florida. FTG is in the business of granting franchisees for the right to use the FTG marketing and merchandising system for selling floor covering and window treatment products to consumers.

1.3. For the purposes of this AOD, FTG includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, and controlled subsidiaries. FTG does not include independent franchise operators.

## II. INVESTIGATION

1  
2 2.1. FTG has four (4) stores in Washington. Four (4) of these stores are owned and  
3 operated by franchisees and none are owned and operated by FTG.

4 2.2. FTG has included language in its franchise agreements that restricted a  
5 franchisee's ability to solicit or hire workers from FTG or another franchisee (no-recruiting  
6 provision). Specifically, the standard FTG franchise agreement stated that a franchisee agrees  
7 that during the original term and any renewal term of the franchise agreement, a franchisee will  
8 not, within their territory or anywhere outside their territory, either directly or indirectly,  
9 individually or as a shareholder, director, officer, partner, lender, consultant, representative,  
10 agent or employee of any firm, partnership, corporation or business entity "recruit, hire, assist  
11 others in recruiting or hiring, discuss employment with, or refer to others concerning  
12 employment, any person who is, or within the preceding twelve (12) months was, an employee  
13 of ours, one of our subsidiaries or one of our affiliates or any of our members or attempt to induce  
14 any such employee to terminate his/her employment." The no-recruiting provision restricted  
15 franchisees from hiring both employees from a competing franchisee and from FTG.

16 2.3. The Attorney General asserts that the foregoing conduct constitutes a contract,  
17 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
18 RCW 19.86.030.

19 2.4. FTG expressly denies the no-recruiting provision constitutes a contract,  
20 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
21 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes  
22 a contract, combination, or conspiracy in restraint of trade. FTG believes that the no-recruiting  
23 provisions were adopted to encourage franchisees to make the investments necessary to develop  
24 well-trained, high quality, and stable workforces in their locations, which in turn strengthened  
25 FTG's brand and individual FTG locations' ability to compete against other branded companies,  
26 among other reasons. Nonetheless, FTG enters into this AOD to avoid protracted and expensive

1 litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an  
2 admission of law, fact, liability, misconduct, or wrongdoing on the part of FTG.

### 3 III. ASSURANCE OF DISCONTINUANCE

4 3.1. Subject to paragraph 2.4 above, FTG agrees:

5 3.1.1 It will no longer include no-recruiting provisions in any of its future  
6 franchise agreements;

7 3.1.2 It will no longer enforce no-recruiting provisions in any of its existing  
8 franchise agreements, and will not seek to intervene or defend in any way the legality of any no-  
9 recruiting provision, provided such action is brought in accordance with, and consistent with,  
10 the provisions of this AOD;

11 3.1.3 Within 60 days after the entry of this AOD, it will make all of its  
12 franchisees aware of this agreement with the State of Washington, and provide them a copy of  
13 the AOD upon request;

14 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a  
15 franchisee in Washington to enforce any existing no-recruiting provision.

16 3.2. Within 120 days of entry of this AOD, FTG will endeavor to amend all existing  
17 franchise agreements with franchisees in the State of Washington to remove any no-recruiting  
18 provisions in those franchisees' existing franchise agreements. In furtherance thereof, FTG will  
19 provide its written request to amend the franchise agreement, and its proposed form of  
20 amendment for the franchisee's signature, to all existing franchisees in the State of Washington.  
21 FTG will respond promptly to any inquiries from such franchisees regarding FTG's request to  
22 amend the terms of the franchise agreement and will encourage its current franchisees in the  
23 State of Washington to sign the proposed amendment. FTG is under no obligation to offer any  
24 franchisee any monetary or non-monetary consideration to induce them to accept the proposed  
25 amendment of the franchise, and it shall be under no obligation to take any coercive action  
26 against a franchisee that may refuse or decline to agree to any amendment of its franchise

1 agreement. If any franchise owner is unwilling to consent to the change to its franchise  
2 agreement, prior to the 120-day deadline, FTG shall provide the name and address of the resisting  
3 franchisee and the name and address of the franchisee's registered agent to the Office of the  
4 Attorney General. Once FTG complies with this paragraph, it shall have no further obligation to  
5 seek to amend any existing franchise agreement with franchisees in Washington to remove any  
6 no-recruiting provisions.

7 3.3. As they come up for either renewal or renegotiation during the ordinary course  
8 of business, FTG will amend all of its existing franchise agreements on a nationwide basis to  
9 remove any no-recruiting provision.

10 3.4. Within 30 days of the conclusion of the time periods referenced in this section  
11 III, FTG will submit a declaration to the Attorney General's Office signed under penalty of  
12 perjury stating that Sections 3.1 and 3.2 of this AOD have been satisfied.

#### 13 IV. ADDITIONAL PROVISIONS

14 4.1. This AOD is binding on, and applies to FTG, including each of its respective  
15 directors, officers, managers, agents acting within the scope of their agency, and employees, as  
16 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,  
17 affiliates, partnerships, and joint ventures, or other entities through which FTG may now or  
18 hereafter act with respect to the conduct alleged in this AOD.

19 4.2. This is a voluntary agreement and it shall not be construed as an admission of  
20 law, fact, liability, misconduct, or wrongdoing on the part of FTG. By entering into this AOD,  
21 FTG neither agrees nor concedes that the claims, allegations and/or causes of action which have  
22 or could have been asserted by the Attorney General have merit and FTG and its current and  
23 former franchisees expressly deny any such claims, allegations, and/or causes of action.  
24 However, proof of failure to comply with this AOD shall be *prima facie* evidence of a violation  
25 of RCW 19.86.030, thereby placing upon the violator the burden of defending against imposition  
26

1 by the Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate  
2 civil penalties under the Consumer Protection Act.

3 4.3. FTG will not, nor will it authorize any of its officers, employees, representatives,  
4 or agents to state or otherwise contend that the State of Washington or the Attorney General has  
5 approved of, or has otherwise sanctioned, the language described in Paragraph 2.2 above with  
6 respect to the no-recruiting provision in FTG's franchise agreement.

7 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust  
8 Division of the Attorney General's Office under the Consumer Protection Act and any other  
9 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have  
10 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject  
11 to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's  
12 Office shall not file suit or take any further investigative or enforcement action with respect to  
13 the acts set forth above that occurred before the date of entry of this AOD or against independent  
14 FTG franchisees in Washington who agree to the amendment described in paragraph 3.2 above  
15 within 90 days of the entry of this AOD with respect to acts that occurred before the date of such  
16 amendment.


17 APPROVED ON this \_\_\_\_ day of \_\_\_\_\_, 2019.

18  
19  
20 \_\_\_\_\_  
21 JUDGE/COURT COMMISSIONER  
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

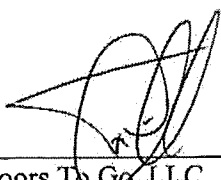
  
JUSTIN WADE, WSBA #41168  
Assistant Attorney General  
Antitrust Division  
Office of the Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
(206) 464-7030  
Justin.Wade@atg.wa.gov

*Attorneys for State of Washington*

Agreed to and approved for entry by:  
Floors To Go, LLC

  
SHANNON ARMSTRONG, WSBA #45947

Holland & Knight LLP  
2300 U.S. Bancorp Tower  
111 S.W. Fifth Avenue  
Portland, OR 97204  
(503) 517-2924  
[shannon.armstrong@hkclaw.com](mailto:shannon.armstrong@hkclaw.com)  
*Attorneys for Floors To Go, LLC*

  
Floors To Go, LLC  
TED DLUGOKIENSKI  
Chief Financial Officer, Executive Vice  
President of Operations and Secretary