

RECEIVED
KING COUNTY WASHINGTON

SEP 09 2019

DEPARTMENT OF
JUDICIAL ADMINISTRATION

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

(ITEX CORPORATION)

NO. 19-2-23511-0SEA

ITEX CORPORATION'S
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 August 2019, the Attorney General initiated an investigation into ITEX CORPORATION relating to a provision in its franchise agreement that restricts the solicitation of franchise employees.

1.2. ITEX CORPORATION (ITEX) is a Nevada corporation with its principal office or place of business in Bellevue, Washington. ITEX is in the business of operating a marketplace in which products and services are exchanged by member businesses utilizing ITEX dollars without exchanging cash. ITEX provides record-keeping services for its members and services its member businesses through its franchise network.

1.3. For the purposes of this AOD, ITEX 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

2.1. ITEX has 3 franchises in Washington, all of which are owned and operated by franchisees.

2.2. For years, ITEX has included language in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from another ITEX franchise (no-poaching provision). Specifically, the standard ITEX franchise agreement stated that a franchisee could not "employ or seek to employ any person we employ or any other person who is at that time operating or employed by or at any of our franchises, or otherwise directly or indirectly induce these persons to leave their employment." A no-poaching provision restricted franchisees from hiring employees from both a competing franchisee and from ITEX.

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

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

III. ASSURANCE OF DISCONTINUANCE

3.1. Subject to paragraph 2.4 above, ITEX agrees:

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

3.1.2 It will no longer enforce no-poaching provisions in any of its existing franchise agreements, and will not seek to intervene or defend in any way the legality of any no-

1 poach provision in any litigation in which a franchisee may claim third-party beneficiary status
2 rights to enforce an existing no-poach provision;

3 3.1.3 It will notify all of its franchisees of the entry of this agreement with the
4 State, and provide them a copy of the AOD upon request;

5 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a
6 franchisee in Washington to enforce any existing no-poach provision.

7 3.2. Within 60 days of entry of this AOD, ITEX will exercise all reasonable
8 commercial efforts to amend all existing franchise agreements with entities in Washington to
9 remove any no-poaching provisions in its existing franchise agreements. ITEX is under no
10 obligation to offer any franchisee any monetary or non-monetary consideration to induce them
11 to accept the proposed amendment of the franchise, and it shall be under no obligation to take
12 any coercive action against a franchisee that may refuse or decline to agree to any amendment
13 of its franchise agreement. If any franchise owner is unwilling to consent to the change to its
14 franchise agreement, prior to the 60-day deadline, ITEX shall provide the name and address of
15 the resisting franchisee and the name and address of the franchisee's registered agent to the
16 Office of the Attorney General.

17 3.3. As they come up for either renewal or renegotiation during the ordinary course
18 of business, ITEX will amend all of its existing franchise agreements on a nationwide basis to
19 remove any no-poach provision.

20 3.4. Within 30 days of the conclusion of the time periods referenced in this section
21 III, ITEX will submit a declaration to the Attorney General's Office signed under penalty of
22 perjury stating that all provisions of this agreement have been satisfied.

23 **IV. ADDITIONAL PROVISIONS**

24 4.1. This AOD is binding on, and applies to ITEX, including each of its respective
25 directors, officers, managers, agents acting within the scope of their agency, and employees, as
26 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,

1 affiliates, partnerships, and joint ventures, or other entities through which ITEX may now or
2 hereafter act with respect to the conduct alleged in this AOD.

3 4.2. This is a voluntary agreement and it shall not be construed as an admission of
4 law, fact, liability, misconduct, or wrongdoing on the part of ITEX. By entering into this AOD,
5 ITEX neither agrees nor concedes that the claims, allegations and/or causes of action which have
6 or could have been asserted by the Attorney General have merit and ITEX expressly denies any
7 such claims, allegations, and/or causes of action. However, proof of failure to comply with this
8 AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the
9 violator the burden of defending against imposition by the Court of injunctions, restitution, costs
10 and reasonable attorney's fees, and appropriate civil penalties under the Consumer Protection
11 Act.

12 4.3. ITEX will not, nor will it authorize any of its officers, employees, representatives,
13 or agents to state or otherwise contend that the State of Washington or the Attorney General has
14 approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to
15 the No-Poach Provision in ITEX's franchise agreement.

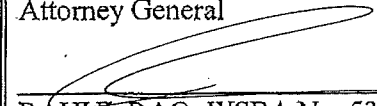
16 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust
17 Division of the Attorney General's Office under the Consumer Protection Act and any other
18 related statutes pertaining to the acts set forth in paragraph 2.1 - 2.3 above that may have
19 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject
20 to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
21 Office shall not file suit or take any further investigative or enforcement action with respect to
22 the acts set forth above that occurred before the date of entry of this AOD.

23 APPROVED ON this ____ day of _____, 2019.

24
25
26 _____
JUDGE/COURT COMMISSIONER

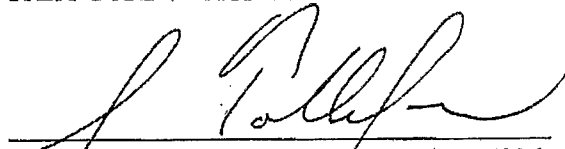
1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

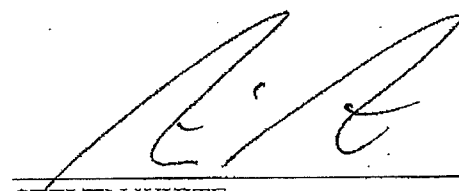
4 
5 RAHUL RAO, WSBA No. 53375
6 Assistant Attorney General
7 Antitrust Division
8 Office of the Attorney General
9 800 Fifth Avenue, Suite 2000
10 Seattle, WA 98104
11 (206) 442-4499
12 rahul.rao@atg.wa.gov

13 *Attorneys for State of Washington*

14 Agreed to and approved for entry by:
15 ITEX CORPORATION

16 
17 STEPHEN TOLLEFSEN, WSBA No. 27096
18 Tollefsen Business Law P.C.
19 5129 Evergreen Way Ste D-20
20 Everett, WA 98203
21 st@tbuslaw.com

22 *Attorneys for ITEX Corporation*

23 
24 STEVEN WHITE
25 Chief Executive Officer