



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

Sports Clips, Inc.

NO.

18-2-55212-5 SEA

SPORTS CLIPS, INC.
ASSURANCE OF
DISCONTINUANCE

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

I. PARTIES

1.1 In January 2018, the Attorney General initiated an investigation into Sport Clips, Inc. relating to its hiring practices.

1.2 Sport Clips, Inc. ("SCI") is a Texas corporation with its principal office or place of business in Georgetown, Texas. SCI is in the business of owning and franchising hair salons.

1.3 The term "SCI" 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.

1 II. INVESTIGATION

2 2.1 There are approximately 40 Sport Clips stores in the state of Washington. All of
3 these stores are owned and operated by franchisees and none are owned and operated by SCI.

4 2.2 In the past, SCI has included language in its franchise agreements that restricted
5 a franchisee’s ability to solicit or hire workers from another Sport Clips store (“no-poaching
6 provision”). Specifically, the standard Sport Clips franchise agreement in Article XIV stated that
7 a franchisee could not:

8 Employ or seek to employ any person who is at that time employed by the
9 Franchisor or by any other Sport Clips franchisee or Area Developer of the
10 Franchisor, or otherwise directly or indirectly induce such person to leave his or
11 her employment, whether that person is employed directly or through a Professional
Employer Organization (PEO), commonly referred to as ‘employee leasing’.

12 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,
13 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
14 RCW 19.86.030.

15 2.4 SCI expressly denies the conduct described above constitutes a contract,
16 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
17 RCW 19.86.030, or any other law, and expressly denies that it has engaged in conduct that
18 constitutes a contract, combination, or conspiracy in restraint of trade, or violates any other law
19 or regulation. SCI enters into this AOD to avoid protracted and expensive litigation, and
20 because it has already removed the no-poaching provision from its standard franchise
21 agreement. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as
22 an admission of law, fact, liability, misconduct, or wrongdoing on the part of SCI.

23 //

24 ///

25 ////

26

1 **III. ASSURANCE OF DISCONTINUANCE**

2 3.1 Subject to paragraph 2.4 above, SCI agrees:

3 3.1.1. It has removed the no poaching provision from its standard franchise
4 agreement and it will no longer include no-poaching provisions in any of its future franchise
5 agreements;

6 3.1.2. It has never enforced any no-poaching provisions in any of its past or
7 existing franchise agreements, and it will not in the future seek to intervene in any action
8 involving a current SCI franchisee to defend a no-poaching provision, including any litigation
9 in which an SCI franchisee may claim third-party beneficiary status rights to enforce a
10 no-poach provision;

11 3.1.3. It will notify all of its franchisees, nationwide and in writing, of SCI's
12 policy and commitment to not enforcing any anti-poaching language in franchise agreements
13 which contain the language, as well as provide notice of entry of this AOD and a copy thereof.
14 It will further notify all of its franchisees that, to the extent that the anti-poaching language is
15 present in existing Franchise Agreements, SCI unilaterally deletes the anti-poaching language
16 from the Franchise Agreement as SCI is authorized to do under Article XIV.H of the Franchise
17 Agreements. SCI will notify the Attorney General's Office if it learns of any effort by a
18 franchisee to enforce any existing no-poach provision. SCI's notice to franchisees under this
19 paragraph may be provided electronically.

20 3.2 Within 30 days of entry of this AOD, SCI will have sent notice to all of its
21 franchisees of SCI's deletion of the anti-poaching language in Franchise Agreements. If any
22 franchise owner objects to the deletion of the anti-poaching language, SCI shall provide the
23 name and address of the resisting franchisee and the name and address of the franchisee's
24 registered agent to the Office of the Attorney General.

25 3.3 As Franchise Agreements come up for either renewal, or if a franchise is sold
26 to a new owner, it is SCI's practice, and a requirement under all Franchise Agreements, that

1 upon renewal or transfer, the renewing franchisee or new franchise owner must sign a new
2 Franchise Agreement. At this time, SCI will tender to the franchisee its current franchise
3 agreement on a nationwide basis that has a no-poaching provision.

4 3.4 Within 30 days of the conclusion of the time periods referenced in this section
5 III, SCI will submit a declaration to the Attorney General's Office signed under penalty of
6 perjury stating that all provisions of this agreement have been satisfied.

7 IV. ADDITIONAL PROVISIONS

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

13 4.2 This is a voluntary agreement and it shall not be construed as an admission of
14 law, fact, liability, misconduct, or wrongdoing on the part of SCI. By entering into this AOD,
15 SCI does not agree or concede that the claims, allegations and/or causes of action, which have
16 or could have been asserted by the Attorney General, have merit and SCI expressly denies any
17 such claims, allegations, and/or causes of action. However, proof of failure to comply with this
18 AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the
19 violator the burden of defending against imposition by the Court of injunctions, restitution,
20 costs and reasonable attorney's fees, and civil penalties of up to \$2,000.00 per violation.

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

25 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
26 Division of the Attorney General's Office under the Consumer Protection Act and any other

1 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have occurred
2 before the date of entry of this AOD and concludes the investigation thereof. Subject to
3 paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
4 Office shall not file suit or take any further investigative or enforcement action with respect to the
5 acts set forth above that occurred before the date of entry of this AOD.

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

APPROVED ON this ____ day of _____, 2018.

JUDGE/COURT COMMISSIONER

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



RAHUL RAO, WSBA #53375
Assistant Attorney General
Antitrust Division
Attorneys for State of Washington
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 442-4499
rahulr@atg.wa.gov

Agreed to and approved for entry by:

SPORT CLIPS, INC.

Phillip Haberthur / *with express permission*

Phillip Haberthur, Attorney
805 Broadway Street, Suite 1000
P.O. Box 1086
Vancouver, WA 98666-1086
(360) 816-2520
philh@landerholm.com

Deborah L. Taylor

Deborah L. Taylor
Attorney at Law
3730 Kirby Drive, Suite 1200 #277
Houston, TX 77098
(713) 650-3000
deborah@dlynnetaylor.com