

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO
POACHING PROVISIONS

(THE UPS STORE INC.)

NO. 19-2-20766-8 SEA

THE UPS STORE INC.
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 of 2018, the Attorney General initiated an investigation into The UPS Store Inc. ("TUPSS") relating to its hiring practices.

1.2 TUPSS is a Delaware corporation with its principal office or place of business in San Diego, California. TUPSS operates as a franchisor to franchisees that operate retail service businesses which offer mail and parcel receiving, packaging and shipping services and a wide range of other business services.

1.3 For the purposes of this AOD, TUPSS 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 Currently there are 124 The UPS Store centers operating in Washington. All of
3 these stores are owned and operated by franchisees. None of these stores are operated by TUPSS.

4 2.2 TUPSS previously included language in its franchise agreements that restricted a
5 franchisee's ability to solicit workers from one franchisee to another franchisee, but such
6 language was discontinued by TUPSS prior to the initiation of the State of Washington's
7 investigation. Specifically, the standard TUPSS franchise agreement stated that a franchisee
8 must not "persuade, entice, or attempt to persuade or entice, any employee of any Center to
9 discontinue their employment with such Center" (hereafter, the "non-solicitation language") but
10 did not restrict the hiring of employees of one franchisee by a different franchisee.

11 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,
12 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
13 RCW 19.86.030.

14 2.4 TUPSS expressly denies the conduct described above constitutes a contract,
15 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
16 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes
17 a contract, combination, or conspiracy in restraint of trade. TUPSS enters into this AOD to avoid
18 protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms
19 shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part
20 of TUPSS.

21 **III. ASSURANCE OF DISCONTINUANCE**

22 3.1 Prior to the investigation initiated by the Attorney General, TUPSS had
23 voluntarily removed the non-solicitation language from its franchise agreements nationwide and
24 agreed not to introduce similar language in the future. Further, TUPSS permanently and
25 irrevocably released all Washington state franchisees from any obligations arising from the non-

1 solicitation language. Pursuant to these commitments, and subject to Paragraph 2.4 above,
2 TUPSS agrees:

3 3.1.1. It will no longer include non-solicitation language in any of its
4 future franchise agreements;

5 3.1.2. It will no longer enforce non-solicitation language in any of its
6 existing franchise agreements, and will not seek to intervene or defend in any way the
7 legality of any non-solicitation language in any litigation in which a franchisee may
8 claim third-party beneficiary status rights to enforce an existing no-poach provision;

9 3.1.3. It will notify the Attorney General's Office if it learns of any
10 effort by a franchisee in Washington to enforce any existing non-solicitation language;

11 3.1.4. It will notify all affected franchisees of this agreement, and will
12 provide a copy upon request.

13 3.2 For those Washington franchisees who still have non-solicitation language in an
14 active franchise agreements, TUPSS will endeavor within 60 days of this AOD to amend those
15 franchise agreements to remove the non-solicitation language. If any franchise owner is
16 unwilling to consent to the change to its franchise agreement, prior to the 60 day deadline,
17 TUPSS shall provide the name and address of the franchisee's registered agent to the Office of
18 the Attorney General. TUPSS is under no obligation to provide any monetary or non-monetary
19 consideration to a franchisee to induce its acceptance of the proposed amendment of the franchise
20 agreement, and TUPSS shall be under no obligation to take any coercive action against a
21 franchise that may refuse or decline to agree to amend its franchise agreement. A franchisee's
22 refusal or failure to amend its franchise agreement is not a violation of this AOD.

23 3.3 Within 30 days of the conclusion of the time periods referenced in this section
24 III, TUPSS will submit a declaration to the Attorney General's Office signed under penalty of
25 perjury stating that all provisions of this agreement have been satisfied.

1 IV. ADDITIONAL PROVISIONS

2 4.1 This AOD is binding on, and applies to TUPSS, including each of its respective
3 directors, officers, managers, agents acting within the scope of their agency, and employees, as
4 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,
5 affiliates, partnerships, and joint ventures, or other entities through which TUPSS may now or
6 hereafter act with respect to the conduct alleged in this AOD.

7 4.2 This is a voluntary agreement and it shall not be construed as an admission of
8 law, fact, liability, misconduct, or wrongdoing on the part of TUPSS. By entering into this AOD,
9 TUPSS neither agrees nor concedes that the claims, allegations and/or causes of action which
10 have or could have been asserted by the Attorney General have merit and TUPSS expressly
11 denies any such claims, allegations, and/or causes of action. However, proof of failure to comply
12 with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030.

13 4.3 TUPSS will not, nor will it authorize any of its officers, employees, representatives,
14 or agents to state or otherwise contend that the State of Washington or the Attorney General has
15 approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to
16 the non-solicitation language in TUPSS's former franchise agreements.


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

24 APPROVED ON this ____ day of _____, 2019.

25
26 _____
JUDGE/COURT COMMISSIONER

1 Presented by:


2 ROBERT W. FERGUSON
3 Attorney General

4 
RAHUL RAO, WSBA #53375
5 Assistant Attorney General
6 Antitrust Division
7 Office of the Attorney General
8 800 Fifth Avenue, Suite 2000
9 Seattle, WA 98104
10 (206) 442-4499
11 Rahul.Rao@atg.wa.gov

12 *Attorneys for State of Washington*

13 Agreed to and approved for entry by:

14 The UPS Store Inc.

15 
ANTHONY TODARO, WSBA No. 30391
16 DLA Piper LLP
17 701 Fifth Avenue, Suite 6900
18 Seattle, WA 98104
19 206.839.4800
20 anthony.todaro@us.dlapiper.com

21 *Attorneys for The UPS Store*


The UPS Store Inc.

By: Don Higginson

Its: SENIOR VICE PRESIDENT