

Federal Trade Commission Issues Policy Statement on Franchisors' Use of Non-Disparagement, Goodwill, and Confidentiality Clauses in Franchise Agreements

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On July 12, 2024, the Federal Trade Commission (FTC) issued a policy statement regarding franchisors' use of contract provisions such as non-disparagement, goodwill, and confidentiality clauses. This is another example of the FTC's desire to scrutinize franchising as a business practice.

According to the FTC, franchisees have raised concerns about such clauses restricting franchisees' abilities to share their business experiences and challenges openly. The FTC cited non-disparagement clauses as supposedly preventing franchisees from voicing legitimate criticisms about franchise systems and how this could obscure harmful practices and hinder transparency. Goodwill clauses could require franchisees to prioritize the franchisor's reputation at the franchisees' expense. The FTC also mentioned confidentiality clauses limiting franchisees from discussing important issues with other franchisees or regulatory bodies, restricting access to crucial support and oversight.

The FTC emphasizes that such provisions should not impede franchisees' rights to communicate openly about their experiences and the agency's focus on the importance of maintaining transparency and accountability in franchise agreements to prevent unfair practices. The policy statement urged franchisors to ensure their contracts are fair, reasonable, and compliant with trade regulations, promoting an environment where franchisees can freely express concerns and share information. By addressing these issues, the FTC's objectives are to protect franchisees from undue pressure and foster a fairer, more transparent franchising landscape that supports both franchisors and franchisees.

The policy statement, of course, noted that the statement itself did not confer rights on any person and did not operate to bind the FTC or the public. The FTC would still need to prove any challenged act violated existing statutory or regulatory prohibitions.

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