

2860.4500 FALSE, FRAUDULENT, AND DECEPTIVE PRACTICES.

In connection with an offer, grant, or sale of a franchise in this state, any person authorizing, aiding in, or causing such offer, grant, or sale of franchises shall be deemed to be engaging in a "false, fraudulent, or deceptive practice" within the meaning of Minnesota Statutes 1973 Supplement, sections 80C.12 and 80C.13, without limiting the authority of the commissioner under Minnesota Statutes 1973 Supplement, section 80C.12, if such person:

A. applies, authorizes, or causes to be applied any material part of the proceeds from the grant or sale of such franchises in any way contrary to the purpose specified in advertising or oral representations utilized in connection with the offer, grant, or sale of such franchise or in the public offering statement required to be utilized in connection with the offer, grant, or sale of the franchises;

B. makes or causes to be made any statement or representation:

(1) that is contrary to any disclosure made in the public offering statement;

or

(2) with regard to:

(a) industrywide total income representations or a portion thereof applicable to the prospective franchisee, whether actual or projected, for the product or service marketed by the franchisor without written disclosure of the relationship of such representations to the actual income experiences of the franchisor's existing franchised businesses;

(b) projections of operations or of income or gross or net profits capable of being obtained from operation of the franchise by the franchisee without written disclosure of the number of the franchisor's existing franchised businesses that have, to the franchisor's knowledge, actually attained that projected level;

(c) the income experiences or net worth of the franchisor or its franchisees without written disclosure whether certified audited financial statements are available and, if so, from what source;

(d) the date by which a prospective franchisee's business will be totally operational without written disclosure of the basis on which the date has been determined;

(e) recovery of a portion or all of a franchisee's fee or other investment from the franchisor without written disclosure whether such fee or investment is secured or guaranteed, and, if so, in what manner; or

(f) the nature and number of the locations appropriate for the franchisee's enterprise, whether or not to be obtained by the franchisor, without disclosing in writing by whom such sites are to be secured, the manner by which their procurement

is to be financed, the relationship between such site procurement and the execution of a franchise agreement, and with whom the franchisor has a binding obligation for the procurement of such locations;

C. fails to make the following representations:

(1) when a relationship exists between the franchisor and any affiliate that has offered, is offering, or will offer a franchise program substantially similar to that being offered, granted, or sold, to state in writing the nature of such relationship and to disclose the similarity, if any, of the tradename, trademark, service mark, logotype, advertising, commercial symbol, or production or marketing plan of the affiliate to that of the franchise being offered, granted, or sold;

(2) to state in writing the qualifications and experience that the prospective franchisee should possess in order to successfully operate the business that is the subject of the franchise offered or the additional personnel that will be required for the operation of the business if such qualifications and experience are not possessed by the prospective franchisee; or

(3) any representation required to be made in the public offering statement;

or

D. misrepresents:

(1) the number of similar franchises of the franchisor that are conducting business or have conducted business within a given area at any time;

(2) that the franchise agreement and all of its obligations is or are embodied in one or several documents presented to, made available to, or executed by the prospective franchisee when, in fact, the execution of additional documents or the giving by the franchisee of additional consideration is required to obtain the franchise or that execution of some of the documents is not related to or necessary for the acquisition of the franchise;

(3) any element of a franchise agreement or the business of a franchisor or any material disclosures required to be made in the public offering statement; or

(4) the date upon which the franchisee signed the franchise agreement or the receipt of the public offering statement.

Statutory Authority: *MS s 45.023; 80C.18*

History: *14 SR 2631*

Published Electronically: *September 14, 2007*