

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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16
17
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OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. R511003

TITLE FRANCHISE RULE ANPR MEETING

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FRANCHISE RULE ANPR MEETING

OPEN PUBLIC FORUM

FEDERAL TRADE COMMISSION

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

<u>STATEMENT OF :</u>	<u>PAGE :</u>
Dianne Mousley	3
David W. Raymond, Esq.	18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
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20
21
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FEDERAL TRADE COMMISSION

In the Matter of:)
Franchise Rule ANPR) Matter No. R511003
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The following transcript was produced from a live
tape provided to For The Record, Inc. on July 31, 1997.

APPEARANCES:

ON BEHALF OF THE FEDERAL TRADE COMMISSION :

STEVEN TOPOROFF, ESQUIRE
Federal Trade Commission
Division of Marketing Practices
6th & Pennsylvania Avenue, N.W.
Washington, D.C.
(202)326-3135

For The Record, Inc.
Waldorf, Maryland
(301) 870-8025

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P R O C E E D I N G S

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MR. TOPOROFF: My name is Steve Toporoff. I'm an attorney in the Division of Marketing Practices at the Federal Trade Commission. It is July 29, 1997, and we're meeting today in a open public forum to allow all interested parties the opportunity to meet and discuss issues involving the Commission's Franchise Rule, as well as the Commission's Advance Notice of Proposed Rule making that was published in the Federal Register this past Friday -- this past February.

Today, we have one member of the public who wishes to make a statement on the record, and I'd ask her to introduce herself and to state her name for the record and also to begin her statement, please.

MS. MOUSLEY: My name is Dianne Mousley and I am a former franchisee with the Mike Schmidt's Philadelphia Hoagies franchise, and they were a franchise that was based in Treehouse (phonetic), Pennsylvania, with about eight stores in the Philadelphia area.

Our -- my store was in Lancaster, Pennsylvania, and we entered into an agreement with them three years ago. So that would have been 1994, we signed an agreement in March and opened our store in August of 1994

1 and have had a series of setbacks with them right from
2 the beginning.

3 The construction was done by a company that
4 they recommended. And they came in, helped us choose the
5 site where we were to be, and they came in, started
6 construction, were three-quarters of the way through the
7 construction -- now, this is with their company that had
8 built all their other stores -- three-quarters of the way
9 through the construction, the building inspector came in
10 from the township and said, where's your building
11 permits. And they had not obtained any building permits
12 at all.

13 So there was a stop-work warrant until they
14 could secure the proper permits. Then, the township made
15 them get a demolition permit, so they had to demolish
16 everything that they had built and start over again. So,
17 this put us behind in our schedule of about six weeks to
18 two months. However, I had already signed a lease and
19 was paying for rent on this building or on this space and
20 was not able to open for business and was behind in two
21 months.

22 Therefore, the training that we were to receive
23 was also pushed back, and we got maybe two weeks -- two
24 to three weeks' worth of training which was done at my

1 own home, very little training done at our site, because
2 it was still under construction.

3 So when we opened -- now, this is a cheese
4 steak and hoagie franchise, a sandwich shop -- we did not
5 really have the proper training that we were told that we
6 were going to have. And they -- they did supply us with
7 two people that came and worked with us. However -- and
8 they stayed for several weeks. However, they were going
9 to charge us their hourly rate, and we were to pay for
10 them to be there.

11 We disputed that, we had a dispute with our
12 lawyer and their lawyer, and they finally agreed that
13 they would pay for that cost since it -- the construction
14 was delayed and we didn't get the proper training. Then
15 a series of really bizarre events took place.

16 They were opening other stores and came to us
17 with promises of how this was going to be a growing
18 franchise. They were going to have a fairly large
19 support staff to be there to help us. Help is only a
20 phone call away. All kinds of marketing was going to
21 take place. Mike Schmidt was going to come, which he
22 did.

23 He did come to our store twice. However, the
24 one time, I was responsible for getting him there. The

1 first time, they saw to it that he got there. They then
2 began letting people go in their organization and hired
3 one person who was to be in charge of training and
4 running the franchise. He did come out and he seemed to
5 know what he was doing.

6 He came out to see us maybe once a week or once
7 every other week and would sit down with our numbers,
8 help us figure out our profit and loss, show us all the
9 business aspect of the franchise, which we really had not
10 been trained in at all. We basically knew how to order
11 food, how to prepare the food and that was it.

12 But this person did seem to know what he was
13 doing, and we were quite shocked when -- he was hired in
14 February, and in August we got a notice out of the clear
15 blue that said he had been let go, no reason why, no
16 explanation as to what was going to happen next, he was
17 gone. And then, right after that, the rest of their
18 staff was gone. So, we had no support staff.

19 We had one memo that came out and said we've
20 moved our offices. This is the new address, new phone
21 number. We would call the phone number and we would get
22 an answering machine. Then, several weeks later, it was
23 now a new address and now we had a pager number, and we
24 would try to page and no one would return the page.

1 The only time we ever heard from them was when
2 they wanted their royalty, which was six percent a month.
3 And, we began withholding our royalty payments because we
4 said, where are you? You know, what are you doing for
5 us? There's no marketing. There's no contact with you.
6 There's not even a phone number.

7 Well, that's not your concern. You signed an
8 agreement. You're to pay six percent royalty. We never
9 really promised you anything. And when you look at the
10 agreement, it is very nebulous as to what the franchisor
11 is responsible for.

12 So, we began withholding royalty, and, at that
13 point, I started contacting the other franchisees just
14 saying, you know, how are you guys doing? Because,
15 whenever we did hear from the franchisor, where's your
16 royalty, and we would say, where are you? Well all the
17 other stores are doing great, what's your problem?

18 So, then I started calling the other stores,
19 and they weren't doing great. They were also withholding
20 royalty. They were on the verge of collapse. They were
21 in worse shape than I was. So we, the franchisees, got
22 together. I would say three or four of us became very
23 close. They came to Lancaster and met with me and my
24 lawyer, and we called the franchisor to this meeting.

1 So he came into this meeting as well, and we
2 confronted him at this point. Where is your support?
3 Where are all the promises? When we bought this
4 franchise from a salesman, they gave us a very nice,
5 glossy, glitzy pamphlet of how this was going to be a
6 great franchise opportunity.

7 It was not to be missed. It was different from
8 any other franchise because Mike Schmidt's name was
9 attached to it. And it was going to be kept, you know,
10 manageable and small enough that help was only going to
11 be a phone call away. And we said, where is -- where
12 are -- where's the follow up to all these promises?

13 And we were told that the President of the
14 franchise was running his own store, as well as trying to
15 be the franchisor because all the other people had been
16 let go. He told us he was now going to sell his store --
17 or not even really sell it. He told us that the shopping
18 center that his store was in wanted his space to expand
19 the grocery store. So he was getting out of his lease
20 and this was going to allow him time now to go out and
21 really be a franchisor and give us the support that we
22 needed.

23 So we basically said okay, that's what we're
24 going to expect. As soon as we start getting that help,

1 we'll begin paying royalties again. The next thing we
2 knew, we said -- at this meeting the franchisor was there
3 with his lawyer, and the lawyer -- my lawyer that was
4 representing me, plus the other three people that were
5 there, said, when can we expect to hear from you as to
6 how you're going to turn things around now?

7 And the franchisor turned to his lawyer and
8 said, when do you think we can do this? And his lawyer
9 said, how about in a week? Within a week, we will come
10 up with a plan to tell you how we're going to now turn it
11 around. One week later, I received, by certified mail,
12 and also a letter to my home, a termination notice. That
13 was it. You will be terminated within 30 days -- or I
14 forget how many days it was -- that because you've not
15 paid your royalties, your back royalties.

16 I called my lawyer. We were both stunned.
17 This was the last thing we were expecting. We were set
18 in the meeting. His lawyer said, yeah, we're going to
19 now present a plan to you and were presented with a
20 termination notice. I was the only one that received a
21 termination notice. The other people that were at the
22 meeting got nothing, no communication at all.

23 So I called my lawyer and I said, now what are
24 we to do? And he said, we'll have to negotiate with

1 them, present a plan as to how to pay these off and how
2 we can turn things around, which we did. We contacted
3 their lawyer. Well, their lawyer, every time we tried to
4 contact them, you would get an answering machine and he
5 does not return the calls, even to my lawyer. He does
6 not return the calls. It goes for weeks and weeks before
7 he returns the calls.

8 My lawyer left messages for him, sent a letter.
9 The day before our termination notice -- we were to be
10 terminated, we still had not heard from them. I called
11 my lawyer and I said, what -- what's going to happen
12 now? He said, I don't know what to tell you. I have
13 never seen anything like this, where a lawyer does not
14 respond.

15 He said, tomorrow's the date that they gave
16 you. He said, I guess you can expect to have a sheriff
17 come in and padlock your door. And he said, certainly
18 don't do anything. They don't really have the right to
19 padlock your store, but I don't know what to tell you.
20 Well then the next day, the lawyer did call and said,
21 okay, we're now going to have someone else come in.

22 The President of the franchise was a young kid,
23 30 years old. At this point, he said, he will no longer
24 be involved. His father is now taking over and you will

1 communicate only with the father. So the father then --
2 it was decided the father would come out and sit down at
3 our store with my husband and try and work out an
4 equitable plan that we would pay part of the royalties
5 until we saw that they were going to get their act
6 together and give us the support that we needed.

7 So that happened. We started paying partially
8 for the back royalties, but we still did not hear from
9 them, nothing. We would call. We would get -- a
10 secretary from the father's main business would answer
11 the phone. And we would call with questions about the
12 business, about preparing the food or ordering, and the
13 secretary would say, he doesn't know the answer to that.
14 He knows nothing about the food business.

15 We could -- really couldn't get through to him
16 and when we did finally get through to him, he would say,
17 I don't know what to tell you. I know nothing about the
18 food business, but they still wanted to collect their
19 royalties. So again, we stopped paying. I'm still now
20 in contact with the other franchisees, several others.

21 They are now -- it's now winter time, which is
22 a very slow time to begin with. They're sliding deeper
23 and deeper into debt. They're barely holding on.
24 They're not meet -- able to meet their payroll. None of

1 them, at this point, were able to pay their rent. Their
2 electric bills were in arrears. They were getting
3 termination notices for phone bills and all kinds of
4 things, and they were still trying to hang on.

5 Yet, they were still being harassed for their
6 royalties. They were getting no contact, no help at all
7 with the franchisor. Finally, we just kept withholding
8 royalties, as did the other ones, and finally, we said,
9 this is it. We're just not -- we're just not going to
10 pay anymore, and we then started the proceedings of
11 breaking off of the franchise agreement, which is --

12 MR. RAYMOND: Somewhere in there you have a --
13 you talk about the consultant they brought in.

14 MS. MOUSLEY: Oh, right.

15 MR. RAYMOND: They did bring in a consultant.

16 MS. MOUSLEY: They did -- they did -- when we
17 had the first meeting with them, he said, okay, we're
18 going to hire a food consultant to get us back on track
19 since he knew nothing about the food industry. And they
20 had someone come out and talk to us from the May
21 (phonetic) Association in Chicago. And, they were
22 thinking of hiring this firm to come in and help my store
23 and one other store. Those were the two that they
24 selected.

1 The other stores that were failing, they
2 weren't even going to try and help. And this company was
3 going to charge an outrageous amount of money. I forget
4 what it was -- something -- several hundred dollars an
5 hour -- and, of course, they were going to charge us for
6 that.

7 When my husband sat down and met with the
8 father of this franchisor, my husband said to him, did
9 you get other estimates, other bids for any other
10 companies to come in, because it does seem like an
11 outrageous amount of money. And he said, no, that's a
12 good idea, maybe we should do that.

13 He said, do you have anyone in mind? And my
14 husband had just been reading the Philadelphia Magazine,
15 and there had been an article in there about a restaurant
16 doctor. He said, I just read this article, maybe you
17 should call him. And he says, oh, that's great. That's
18 a great idea. Do you have a copy of that article?

19 So my husband went home, got the article,
20 brought it back, the franchisor called and did engage
21 this other organization. So that was through us. I
22 mean, we arranged all that for him. They came in. They
23 did -- they spent one full day with us. They went over
24 all of our numbers, everything. Basically told us, you

1 know, what we needed to do to turn the business around,
2 how we were to get profitable, because we were -- we were
3 losing money. We were having to put money in of our own
4 to meet payroll, to pay the rent.

5 It was just every month, we were not even
6 breaking even, and we had no clue why, because no one had
7 taught us how to figure out the profit and loss and how
8 to turn this around. So the restaurant consultant did
9 come out. Like I said, they spent one full day. They
10 gave us some basic ideas to raise prices, which we
11 thought all along, you know, we need to raise prices.
12 That's the key issue.

13 We've been in business two years and the prices
14 are the same as when we started, yet the cost of the food
15 has gone up. We didn't know how to reprogram the cash
16 register. Several times we had said to the franchisor,
17 during all these disputes, we need to raise the prices.
18 You need to train us how to change the cash register,
19 because it's on -- it's computerized.

20 We never received that training. So we were --
21 we were helpless to do that. And they said, well, yeah
22 you do need to raise the prices and the restaurant
23 consultant said you're just going to have to hire an
24 outside computer firm to come in and you'll have to pay

1 them to teach you how to reprogram your cash register,
2 which is basically what we did.

3 We incurred that expense ourselves to learn how
4 to reprogram it, to put the new prices in, which did help
5 us then to start to turn things around. So, the food
6 consultant then completed their contracted time, which
7 was really a day, and that was it. Then the franchisor,
8 of course, tried to collect the payment from us to pay
9 for that food consultant who came in.

10 We did pay a little bit more of the royalties.
11 We never did pay the full six percent after that because
12 we didn't feel we were getting everything that we had
13 been promised. So, at one point, we -- my brother even
14 did come to the Federal Trade Commission and filed a
15 complaint with the Federal Trade Commission as to their
16 disclosure document.

17 And the FTC cited them, sent their lawyer a
18 letter citing the different violations, and, of course,
19 their lawyer then sent back a letter saying this is not
20 true. And that's -- as far as I know, that's where it
21 stands right now. The FTC has not really followed up
22 again to pursue it any further.

23 We did come to an agreement then to end our
24 franchise agreement. We decided that we would -- with

1 the franchisor, decided that we would pay them \$5,000 and
2 that would -- that would end our relationship with them.
3 A termination document was written up. We signed the
4 document. The document was sent back to them the
5 beginning of June for them to sign. We still have not
6 received it. My lawyer has not received it. We still
7 don't know whether they've signed it. We've tried to
8 call the franchisor's lawyer, no return phone calls.

9 UNIDENTIFIED MALE: He did return the call.

10 MS. MOUSLEY: To you.

11 UNIDENTIFIED MALE: No, to David.

12 MS. MOUSLEY: Oh, to -- finally, yeah --
13 finally he did return -- two weeks ago, the lawyer
14 returned my lawyer's phone call finally and said, oh
15 yeah, they did sign it, but I haven't had a secretary so
16 we haven't been able to get it sent out in the mail. As
17 of yesterday, we still have not received it. And I said
18 to my lawyer, now what do we do?

19 I have to change my name. I have to
20 redecorate. I, you know -- I have to get on with my life
21 here, and they did cash the certified check because I
22 went to the bank and said, has the check been cashed?
23 They said, yeah, the check was cashed several days after
24 it was drawn. So my lawyer's advice was, well, if they

1 cashed the check, then they've terminated the agreement.

2 The lawyer -- their lawyer claims that they've
3 signed the papers, but they're -- we still don't have
4 them. My lawyer doesn't have them and I don't have them.
5 So, that's where we stand at this point. All the other
6 stores are gone. Two of them went bankrupt. Several of
7 them just closed their doors and walked out. Their
8 things are still in there. They're in the process of
9 trying to sell off their equipment because they just
10 couldn't make it.

11 There is one store in Emmaus right now that is
12 still operating as a Mike Schmidt's Philadelphia Hoagies.
13 No one knows what their relationship is or what's going
14 on. Are they paying royalties? Are they getting away
15 with not paying royalties? No one knows, but there is
16 one store that is still a Mike Schmidt's Philadelphia
17 Hoagies. The rest of us are gone.

18 And, to me, I mean, that's -- it's outrageous.
19 It is absolutely outrageous and are they -- are they
20 collecting royalties from this one store? The one store
21 really has been ostracized by the rest of us. We sort of
22 decided not to include her because she was at the
23 original meeting at my lawyer's office in Lancaster.

24 And she said -- she voiced her complaints and

1 said, yeah, we're going to withhold our royalties along
2 with everyone else, and then we found out that she went
3 back and began paying them. So, I don't -- like I say, I
4 don't know what's happening with her, but she's still
5 trading with the Mike Schmidt's and she's the only one.
6 So that's basically the story.

7 MR. TOPOROFF: If I might, this is Steve
8 Toporoff, just to make the record clear. I'm going to
9 ask you a question if I can. Based upon your experience,
10 is there any advice that you could give the Federal Trade
11 Commission as we look at our disclosure log?

12 MS. MOUSLEY: Mm-hmm.

13 MR. TOPOROFF: Which is basically the
14 disclosure document that you got.

15 MS. MOUSLEY: Mm-hmm.

16 MR. TOPOROFF: Is there any information that
17 the franchisor could have given you early on that would
18 have been helpful to you or would have put you in a
19 better position in terms of your experience in operating
20 the franchise?

21 MS. MOUSLEY: As far as the disclosure
22 document, they -- they basically were a young company and
23 they had, I would say, grandiose ideas as to what they
24 were going to do, and we sort of believed them. I don't

1 know how, in the disclosure document, they can, as an --
2 as a young franchise, they can justify what they've done
3 or are going to do. I think it's difficult with a young
4 franchise as to what they can disclose.

5 MR. RAYMOND: They -- could you -- for the
6 record, I'm David Raymond. I'm a lawyer with Winston &
7 Strawn, but I'm also appearing here in a different
8 capacity. Dianne is not my client but my sister and I
9 was a minority investor in her franchise. So I have
10 lived through this experience as well.

11 In my review of the documents, it appeared to
12 me that this franchisor did comply with all the
13 disclosure requirements. They were also careful to make
14 the statement that they were not making any earnings
15 representations, and that no one had any authority on
16 their behalf to make any earnings representations. So
17 they -- they complied with the script letter of the FTC
18 franchise disclosure rule.

19 One problem, and the problem that we discussed
20 with the FTC staff previously, was that, in the part of
21 the disclosure document that discloses past and current
22 franchisees, they -- the situation is so fluid that the
23 number of franchisees and the identity of those
24 franchisees one month changed dramatically the next month

1 and the month after that.

2 And so the disclosure document represents the
3 facts at a particular point in time and any franchisee
4 who's looking at making a major investment will be
5 considering that over some longer period of time. Now,
6 Dianne did go out and talk to other franchisees before
7 she signed her agreement. The other franchisees did the
8 same thing.

9 But, because everybody had such a short period
10 of experience, nobody was speaking from any significant
11 amount of experience. They could only talk about what
12 was happening for that short period of time, and so an
13 awful lot of them had to make their decisions based on
14 these rosy projections of what the future was going to be
15 like, and the big part of that was the promises that they
16 were going to get support.

17 At the time Dianne signed her agreement, there
18 was somewhat of an organization behind this franchisor.
19 They had a small staff. They had enough people to send
20 out to train Dianne's staff. And so there was a reason
21 to believe that this was a start-up organization that had
22 a good concept, and they also had a major sports
23 celebrity behind them.

24 Now, we knew that he wasn't actively

1 participating, but you would expect anybody in that kind
2 of stature and public image that have done some kind of
3 due diligence before he allowed somebody to use his name.
4 So you at least thought that the people that were behind
5 the franchise were at least experienced businessmen, even
6 if they weren't experienced franchisors.

7 And there were disclosures about everybody that
8 was involved in the organization, but again, within the
9 next several months, most of those people were no longer
10 associated there. And so the snapshot in time the
11 disclosure document represented when Dianne got the
12 disclosure documents changed dramatically in a year and
13 two months later.

14 And I can't say that they intended that to
15 happen. I assume that they wanted this to be a success,
16 too. But at some point in time, somebody decided not to
17 support it any longer when they started eliminating
18 employees, closing down offices, moving offices and phone
19 numbers. At some point in time, somebody decided to no
20 longer support this, but they still kept calling the
21 franchisees every month asking for royalties.

22 And so it really became a contract dispute,
23 which the FTC's Rule really doesn't address what happens
24 after the relationship is entered into. And so that's

1 the tragedy in this particular situation. One thing the
2 Rule doesn't address is, is there some practical way the
3 franchisees can address disputes after the contract's
4 been entered into?

5 A lot of these franchise agreements are now
6 putting arbitration clauses into the agreement, but
7 arbitration is still a clearly formal and formidable and
8 somewhat expensive process for franchisees who don't have
9 a lot of assets. And I understand there's a mediation
10 program that's been set up recently by the franchise
11 industry and that may be something that should be
12 encouraged.

13 I don't know if there's anything the FTC can do
14 in the course of its Rule to encourage alternative
15 dispute resolution separate from arbitration, but that
16 might be something that could be helpful to people like
17 this. The other impression I have from this experience
18 that I've had with this is, when you compare the
19 disclosures that the SEC requires to be made about
20 investments, in spite of my good mutual funds and other
21 forms of investments, in the place of disclosures the
22 franchisors have to make, the franchisees, in many
23 cases, are investing a significant portion of their net
24 worth.

1 Because franchisees are, in some -- there are
2 some cases where you got major corporations that are
3 franchisees of big franchisors, but an awful lot of them
4 happen to be people like Dianne and her colleagues in
5 this franchise that are taking out loans on their homes,
6 home equity loans, that are taking out major loans maybe
7 from the SBA or from the bank, that represent a
8 significant portion of their net worth.

9 And for those people, they're putting much more
10 of their own assets on the line and their financial
11 future on the line than somebody investing in a mutual
12 fund. And it seems to me that these kind of people ought
13 to have as much protection in terms of disclosures as the
14 investor does. And, in that regard, by allowing
15 franchisors to say, we're not going to make any earnings
16 claims and nobody has any authority to make any earnings
17 claims, I think is a disturbance to franchisees.

18 A mutual fund investor makes more disclosures
19 than that. Now, true, they say past performance is not
20 an indication of future performance, but you don't even
21 get that with a franchisor. Most of them will say
22 nothing about earnings. They say, it's up to you to
23 check it out. Now if -- in a normal business
24 relationship, that's true.

1 A major business making an investment decision
2 or a decision to make an acquisition or a decision to
3 enter into a joint venture, will do a lot of due
4 diligence. But you're talking about major corporations
5 that have those kinds of resources available. You're
6 talking about people who have never run a business before
7 who are putting their own net worth on the line and,
8 in many cases, making lifestyle changes as a result of
9 that.

10 It seems that there's got to be something more
11 that can be available to them and, if it doesn't come
12 from the franchisor, it may mean in terms of some sort of
13 advice or advisor services, I don't think really there's
14 much of that available either.

15 MR. TOPOROFF: I -- this is Steve Toporoff
16 again, and I have one question and basically a comment.
17 On the issue of whether disclosure documents are timely,
18 given that you -- a party may get a disclosure document
19 at one date, and it could be a year or more or several
20 months at least until they actually sign the contract,
21 would it, on that specific issue in your opinion, would
22 at least be helpful if the Rule, let's say, were to be
23 amended to require franchisors to give updated
24 disclosures at the time that the parties actually sign

1 their contract or an amendment or at least bring the
2 prospective franchisee up to date about any changes that
3 may have occurred since they first received the
4 disclosure document?

5 MR. RAYMOND: Yes, it would.

6 MR. TOPOROFF: Um.

7 MS. MOUSLEY: Yeah, I agree with that. This is
8 Dianne Mousley speaking again. I agree with that and I
9 agree that, even up to the day of signing, that you
10 should be given a statement as to what's happening and be
11 able, at that point, to walk away from the table and say
12 we're not going through with this.

13 At several times I did threaten to not go
14 through with the franchise agreement when we began
15 having -- of course, I did sign in March and, during that
16 summer when they started doing construction and then
17 didn't have the building permits and we were way behind
18 schedule, at that point, I threatened to not go through
19 with opening the store, and was actually harassed by the
20 franchise salesman who sold us the franchise to begin
21 with.

22 He called me, I would say for one solid week,
23 several times a day telling me it would be a big mistake
24 for me not to go forward, that I was really going to

1 regret it. Someone else would come in here and open
2 the hoagie shop, and they would be very successful, and
3 I would just be kicking myself the rest of my life that
4 I didn't take -- take advantage of this golden
5 opportunity.

6 And it was -- it got to the point where it was
7 harassment, and I finally said to him, do not call me
8 anymore. And he just basically wouldn't let go, and I
9 think that franchise salesmen is also a very integral
10 part of the whole picture. They need to be governed in
11 some way that they can't harass franchisees.

12 You need to be given the facts and that's all
13 you need from that point on to make your decision. You
14 don't need someone constantly calling you on the phone
15 and saying, you know, you really should go through with
16 this, that you're going to be very sorry if you don't.

17 I think also, if the FTC could govern --
18 periodically be able to check franchisors to see how far
19 off they are with their disclosures, with their promises,
20 whatever, so that the franchisors at least have the sense
21 that there is a watch dog, there is someone that's going
22 to keep them in line. I don't know whether that's part
23 of your jurisdiction or not, but there just really does
24 not seem to be any way to keep them in check once the

1 basic disclosure document is met.

2 MR. RAYMOND: You know, big deal if you look at
3 their investment comparisons. People that sell
4 securities have to be licensed and registered. To find
5 that these franchisors -- any businessman that decides he
6 wants to put together a franchise plan can put together
7 something, hire a broker to sell it, put out some ads and
8 start selling with these kind of representations of a
9 rosy future.

10 So I don't -- I don't know if there's any
11 possibility kind of looking at the securities regulations
12 as a model, but I think we got to look at this as a very
13 serious investment for a lot of people. It's not just
14 a straight business transaction which is what -- the way
15 I think franchisors have been treated. These are
16 business --

17 MR. TOPOROFF: Well, businesses --

18 MR. RAYMOND: -- relationships between --

19 MR. TOPOROFF: Sure.

20 MR. RAYMOND: -- two parties. But you got one
21 party, in many cases, that has many more resources and
22 knowledge, much more knowledge and sophistication than
23 the other party.

24 MR. TOPOROFF: This is Steve Toporoff again.

1 On the issue of a comparison between franchises and
2 securities, that's one that is brought to our attention a
3 number of times. And a key distinction is that
4 securities are regulated by statute, that there are any
5 number of statutes that Congress has enacted that direct
6 the Securities and Exchange Commission or other entities
7 to regulate the field.

8 Whereas, for whatever reason, Congress has not
9 saw it fit to regulate franchising at this time, and
10 there is no specific franchise statute that directs the
11 Commission to get involved in the field. The only
12 statutory authority that the Commission has is its
13 general Section 5 authority, which is to do -- to make
14 unfair and deceptive business practices unlawful. So our
15 jurisdiction is pretty limited, so there is limits on
16 what we could do. So I just wanted to clarify that.

17 MR. RAYMOND: Mm-hmm.

18 MR. TOPOROFF: I do want to mention though --
19 or comment on what you said before about alternative
20 dispute resolution as a possibility. In the Federal
21 Register notice that the Commission published in
22 February, one of the proposals that we put forth is a
23 call to the industry, if you will, for the possibility of
24 creating some kind of alternative forum.

1 To be honest with you, it is focused on
2 disclosure issues because that's our primary concern, but
3 that's not to say that we wouldn't entertain other ideas.
4 And one of the proposals that has come back to us is by
5 the Franchise Mediation Group, and I can provide you a
6 copy of that if you're interested.

7 We are going to have two additional public --
8 well, all told, we're going to have six workshop
9 conferences. This is the first in the series. There is
10 going to be one in New York City on September, I think
11 it's the 17th and the 18th. And one of the issues that
12 we'll be discussing there is that specific issue of --
13 I -- of alternative law enforcement approach.

14 And in the proposal that was submitted, there
15 are ideas for putting together some kind of alternative
16 program and that's very much in its infancy. And I would
17 suggest that if you have an interest in this subject
18 matter, we're going to be discussing that issue in New
19 York and then in November in Seattle.

20 I would encourage you to get involved and, you
21 know, as, having gone through your experience, either
22 directly as a franchisee or as somebody who's been
23 involved a little bit on the side, but nonetheless, you
24 might have very valuable information to offer. So I

1 would encourage you.

2 The only -- the only prerequisite for
3 participating in our public workshop conferences as a
4 participant at a round table discussion is that you
5 submit a comment and that you let us know. I think by
6 appearing today and giving your statement on the record,
7 you certainly have offered a comment. So you qualify as
8 far as that is concerned.

9 MS. MOUSLEY: Mm-hmm.

10 MR. TOPOROFF: So really, the only thing
11 that -- if you were interested in participating in that
12 event we would love to have you, I think you could make a
13 valuable contribution. It's just a question of letting
14 us know, and I could provide you with that information
15 after we meet.

16 MS. MOUSLEY: Mm-hmm.

17 MR. TOPOROFF: I'm going to ask my colleague,
18 Carolyn Cox, if she had any questions at this point.

19 MS. COX: One thing that we were talking --
20 interested in is how franchisees use their disclosure
21 documents and whether or not they consult outside parties
22 in their evaluation of the document in trying to
23 determine if it's a feasible franchise system. So I was
24 just curious as to whether you had hired an attorney or

1 an accountant or anyone to kind of sit down with you, the
2 disclosure document and evaluate the feasibility of a
3 franchise system.

4 MS. MOUSLEY: Yes, we did do that. My brother
5 took a look at it. We hired -- well, we did not hire, we
6 had a financial analyst come in and look at it, and my
7 lawyer also looked at it. And all of them I think
8 basically felt that, well, this is a very young
9 operation, their figures did not look real good.

10 But it was because they were several years old
11 and, you know, it takes a while to get rosy-looking
12 figures that -- and, like they kept saying when they were
13 giving us the sales pitch, this is a young company and,
14 you know, we have a lot of expenses to get the business
15 up and running, so therefore, that's why the figures were
16 not great looking because they were still paying off the
17 initial debt of starting it.

18 And basically, that's what everyone came up
19 with, that yes, you know, it's a young company so
20 therefore, I guess, you're taking a risk as to getting
21 involved in a young company, as any investment you're
22 taking a risk. But when you're presented with a glitzy
23 sales package and a very high-pressured, aggressive sales
24 person that's harassing you on the phone saying, you

1 know, you're going to be very sorry if you don't do this,
2 you know, you start to -- like, when you look any
3 figures, they can -- thinking you can get the figures to
4 go on either side, you know.

5 MS. COX: Okay. That's helpful to know.

6 MR. TOPOROFF: Okay. Is there anything -- this
7 is Steve Toporoff. Is there anything that anybody else
8 would like to say for the record?

9 MS. MOUSLEY: I think part of my concern is
10 that we did go through this process, and we did file a
11 complaint with the FTC, and the FTC responded. And I
12 just feel like -- at this point, their lawyer came back
13 and disputed it, which obviously is what you would
14 expect, but I don't really know, is that as far as the
15 FTC is going to go with it?

16 MR. TOPOROFF: Could you -- okay. Just --
17 (inaudible).

18 MS. MOUSLEY: Okay. Is the FTC going to follow
19 up and check their lawyer's response and, you know,
20 respond to that? That's my concern at this point. I
21 just feel like we're more or less in a state of limbo
22 with the FTC.

23 MR. TOPOROFF: Well then that concludes this
24 meeting.

1 (Whereupon, the meeting was concluded.)

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C E R T I F I C A T I O N O F T Y P I S T

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CASE TITLE: FRANCHISE RULE ANPR MEETING

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