



Franchise Group at Lathrop GPM LLP Submits Comments to FTC on Proposed Noncompete Rule

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Group urges the Commission to exclude application to noncompete clauses and agreements between franchisors and franchisees

WASHINGTON D.C. (April 21, 2023) - Earlier this week, the Lathrop GPM LLP Franchise & Distribution Practice Group formally submitted comments to the Federal Trade Commission (FTC) in response to the Commission's January 19, 2023 Notice of Proposed Rulemaking (NPRM) regarding noncompete clauses, urging the Commission to expressly exclude application to noncompete clauses and agreements between franchisors and franchisees.

The Lathrop GPM LLP Franchise & Distribution Practice Group argues that "Any expansion of the proposed rule to cover noncompete clauses entered into as a component of the franchisor-franchisee relationship would be contrary to the overwhelming weight of legal authority establishing that such clauses are valid and enforceable so long as they are reasonable in scope and duration." The full comments, drafted by Lathrop GPM attorneys Michael Sturm, Mike Gray, and Jason Johnson, can be read [here](#).

There are substantial debates as to whether the Commission has the authority to issue any rule governing noncompete clauses, and whether the rules proposed by the Commission are justified as a matter of public policy. However, the Group's comments focus on the reasons why contracts between franchisees and franchisors should be expressly excluded, to the extent that the Commission enacts any rule.

- Franchise relationships are unique. They are not employment relationships.
- The franchise relationship is interlaced with issues of trademark law.
- Noncompete agreements benefit franchisees by protecting their investment, guarding against unfair competition, and avoiding training and setting up direct competitors.
- There are various considerations that courts consider (often based on legislation) when determining whether to enforce a noncompetition agreement in the franchise context.

The comments further state, "Decades of experience demonstrate that noncompete clauses in the franchise context protect legitimate interests of both franchisors and franchisees and that violations of those provisions can cause irreparable harm sufficient to justify entry of preliminary and permanent injunctive relief. The Commission should not eviscerate these long-standing protections under the guise of promoting



fair competition."