



# What's New in the World of Noncompetes?

## Tips to Embrace and Traps to Avoid for the Savvy Franchise Lawyer

Deborah S. Coldwell

Scott Kuykendall

Peter V. Snell

James M. Susag

**iFA** INTERNATIONAL  
FRANCHISE  
ASSOCIATION

**2025 LEGAL  
SYMPOSIUM**

||| MAY 4-6 | WASHINGTON, DC

# Introductions



**Deborah S. Coldwell**  
Haynes and Boone, LLP  
Dallas, Texas



**Scott Kuykendall**  
Neighborly  
Irving, Texas



**Peter V. Snell**  
Cassels, Brock & Blackwell LLP  
Vancouver BC



**James M. Susag**  
Larkin Hoffman Law Firm  
Minneapolis, MN

# Why use noncompetes?



# Prepare clear noncompete provisions

- Answer 1
- Answer 2
- Answer 3
- Answer 4
- Answer 5
- Answer 6
- Answer 7

## Who is bound

**. . . you and your owners agree that, for a period of one (1) year . . . , neither you nor your owners nor any member of such owner's or owners' immediate families shall have any direct or indirect Association with a Competitive Business . . . .**

# Scope of conduct

**“Competitive Business” means any business** that operates, manages, franchises or licenses restaurants or stores that derive more than twenty percent (20%) of its total gross revenue from the sale of **any type of sandwiches on any type of bread**, including but not limited to sub rolls and other bread rolls, sliced bread, pita bread, flat bread, and wraps, **whether for on or off-premises consumption, or via delivery or catering.**

**“Association with a Competitive Business” means:** . . . [owning, advising, lending to, leasing to, or licensing to] a Competitive Business.”

. . . neither you nor your owners . . . shall have **any direct or indirect Association with a Competitive Business** . . . except in connection with the operation of [Franchisor-branded] Restaurants under franchise agreements with us. The restrictions of this sub-section shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent two percent (2%) or less of the number of shares of that class of securities issued and outstanding. . . .

## Length of time

. . . for a period of **one (1) year** commencing on the effective date of termination or expiration or the date on which you and your owners begin to comply with this Section, **whichever is later . . . .**

## Geographic scope

. . . within a **three (3) mile radius** of the Approved Location or any [Franchisor-branded] Restaurant in operation or under construction as of the termination or expiration date or the date on which you and your owners begin to comply with this Section

## Reasonableness

**. . . You further acknowledge and agree that the terms of the covenant are reasonable in scope, geography and time.** Consequently, enforcement of the covenants made in this Section will not deprive you (or them) of your (or their) personal goodwill or ability to earn a living. . . .

## Blue pencil

. . . To the extent that this sub-section is deemed unenforceable by virtue of its scope in terms of area or length of time, but may be made enforceable by reduction of either or both thereof, **you and we agree that the same shall be enforced to the fullest extent permissible** under the laws and public policies applied in the jurisdiction in which enforcement is sought.

# Enforcement



2025 LEGAL SYMPOSIUM

**iFA** INTERNATIONAL  
FRANCHISE  
ASSOCIATION

# International Updates



# Special considerations for noncompetes

What arguments have you successfully raised in disputes regarding enforcement of noncompete provisions?

What issues have factfinders been most interested in?

What should lawyers who are new to the franchise bar consider?



# It's your turn to be the judge

We will consider facts from real franchise disputes and discuss:

- LeTip World Franchise LLC v. Long Island Social Media Grp., LLC
- Real Prop. Mgmt. SPV LLC v. Truitt
- Postnet Int'l Franchise Corp. v. Wu

# LeTip World Franchise LLC v. Long Island Social Media Grp., LLC

No. 2:24-cv-165, 2024 WL 1285621 (D. Ariz. Jan. 23, 2024)

- Franchisor LeTip World Franchise LLC terminated franchisee Long Island Social Media Group for trademark misuse.
- Pfleger had painted crude modification of LeTip logo on his boat and texted photo to LeTip's CFO, who said "Looks great."
- Pfleger challenged enforcement of noncompete based on invalid termination of franchise agreement.
- Noncompete provision lasted two years, and geographic scope covered Suffolk County, New York.

# LeTip World Franchise LLC v. Long Island Social Media Grp., LLC

No. 2:24-cv-165, 2024 WL 1285621 (D. Ariz. Jan. 23, 2024)

## Discussion:

- Whether the noncompete provision is enforceable
- The appropriate remedy if the noncompete provision is enforceable
- What could have been done differently to obtain a different outcome

# LeTip World Franchise LLC v. Long Island Social Media Grp., LLC

No. 2:24-cv-165, 2024 WL 1285621 (D. Ariz. Jan. 23, 2024)

- **Court enforced noncompetition provision as written.**
- CFO's texts not construed as granting permission for logo misuse.
- Noncompetition provision “properly serve[d] to protect Plaintiff's interest in retaining customers likely sought out by both parties.”

# Real Prop. Mgmt. SPV LLC v. Truitt

No. 2:24-cv-184, 2024 WL 3567866 (D. Utah Jul. 29, 2024)

- Franchisor sought preliminary injunction to enforce noncompetition provision against California franchisee.
- Franchisee attempted to leave Franchisor's system during franchise agreement term operate a competing business at same location.
- Noncompetition provision prohibited competition with Franchisor during the franchise agreement's 10-year term.
- Franchisee pointed to Cal. Bus. & Prof. Code § 16600, which provides "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

# Real Prop. Mgmt. SPV LLC v. Truitt

No. 2:24-cv-184, 2024 WL 3567866 (D. Utah Jul. 29, 2024)

## Discussion:

- Whether the noncompete provision is enforceable
- The appropriate remedy if the noncompete provision is enforceable
- What could have been done differently to obtain a different outcome

# Real Prop. Mgmt. SPV LLC v. Truitt

No. 2:24-cv-184, 2024 WL 3567866 (D. Utah Jul. 29, 2024)

- **Court enforced noncompetition provision as written.**
- Court applied Utah law instead of California law even though franchised business operated in California.
- California public policy not affected by enforcement because California courts enforce in-term noncompetition provisions.
- Under Utah law, in-term noncompetition provision was reasonable and enforceable.

# Postnet Int'l Franchise Corp. v. Wu

521 F.Supp.3d 1087 (D. Co. 2021)

- Franchisor sought preliminary injunction to enforce noncompetition provision against California franchisee who conceded breach.
- Noncompetition provision stated breach constitutes irreparable harm.
- Franchisor also alleged that it may have lost prospective franchisee due to California franchisee's competing business.
- Franchisor also pointed to customer confusion and erosion of Franchisor's goodwill in the marketplace.
- Franchisor lacked concrete evidence that franchisee was using protected client lists or knowledge gained from Franchisor's

# Postnet Int'l Franchise Corp. v. Wu

521 F.Supp.3d 1087 (D. Co. 2021)

## Discussion:

- Whether the noncompete provision is enforceable
- The appropriate remedy if the noncompete provision is enforceable
- What could have been done differently to obtain a different outcome

# Postnet Int'l Franchise Corp. v. Wu

521 F.Supp.3d 1087 (D. Co. 2021)

- **Court refused to enjoin franchisee's competing business.**
- Franchisor failed to establish irreparable harm – no evidence of trade secret misappropriation or loss of significant customers.
- Franchisor also failed to show balance of harms and the public interest favored injunctive relief.
- Court suggested franchisor may be entitled to monetary damages.

# Questions and Further Discussion



**2025 LEGAL SYMPOSIUM**

**iFA** INTERNATIONAL  
FRANCHISE  
ASSOCIATION

# THANK YOU



## 2025 LEGAL SYMPOSIUM

**iFA** INTERNATIONAL  
FRANCHISE  
ASSOCIATION

## 2025 LEGAL SYMPOSIUM

||| MAY 4-6 | WASHINGTON, DC