



Office of Commissioner
Andrew N. Ferguson

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Concurring Statement of Commissioner Andrew N. Ferguson

In the Matter of RivX Automation
Matter No. 2423010
August 28, 2024

RivX Automation (“RivX”) allegedly marketed business opportunities in the trucking industry promising to secure a truck or refrigerated trailer for consumers in exchange for an investment of \$60,000 or more.¹ As part of the business arrangement, it is alleged that RivX promised to handle all of the logistics of running a trucking operation for the consumer, “including obtaining necessary licenses, registrations, insurance, and inspections for the consumer’s truck; securing a certified driver so the truck can be put on the road; and scheduling and managing all loads and routes.”² Consumers were allegedly assured that they would receive a net monthly return on investment of \$5,000 to \$7,000 per truck or \$1,250 per trailer. In the end, according to the facts alleged in the complaint, RivX has not lived up to these promises, and consumers have been left holding the bag.³

It is further alleged in the complaint that RivX often included in its form contracts a non-disparagement clause that provided for substantial liquidated damages against the consumer for each breach.⁴ The form contracts allegedly contained standardized terms “imposed on RivX consumers without a meaningful opportunity to negotiate those terms.”⁵ The complaint alleges that RivX tried to enforce these non-disparagement clauses, including in 2023, when RivX “initiated arbitration against a consumer, claiming \$100,000 in liquidated damages, where the consumer requested a refund multiple times to no avail and ultimately notified their bank that they did not receive a truck as promised by [RivX].”⁶

I vote to approve this complaint that alleges two violations Section 5 of the Federal Trade Commission Act (“FTC Act”),⁷ four violations of the Business Opportunity Rule,⁸ and a violation of the Consumer Review Fairness Act (“CRFA”).⁹ I write separately to explain why I have voted for Count X—which alleges that the non-disparagement clauses violated the CRFA¹⁰—

¹ Compl. ¶¶ 28, 41.

² *Id.* ¶ 28.

³ *Id.* ¶¶ 40-42.

⁴ *Id.* ¶¶ 49, 52.

⁵ *Id.* ¶ 50.

⁶ *Id.* ¶ 51.

⁷ 15 U.S.C. § 45(a).

⁸ 16 C.F.R. Part 437.

⁹ 15 U.S.C. § 45b.

¹⁰ Compl. ¶¶ 104-108.

notwithstanding that I dissented from the Commission's recent policy statement purporting to limits franchisors' use of non-disparagement clauses in franchise agreements.¹¹

The reason is simple. Congress in the CFRA expressly and unequivocally prohibited the sort of non-disparagement clauses that RivX included in its form contracts.¹² This complaint is therefore a lawful exercise of one of the core powers Congress conferred on us. The policy statement, by contrast, exceeded our statutory authority. It imposed a rule on franchisors without going through the rulemaking process, and the mandate of that putative rule was confusing and untethered to the law it purported to enforce.¹³

Because this complaint is a lawful exercise of the authority conferred on us by Congress, I concur in its filing.

¹¹ See Dissenting Statement of Commissioner Andrew N. Ferguson, Regarding the Policy Statement of the Federal Trade Commission on Franchisors' Use of Contract Provisions, Including Non-Disparagement, Goodwill, and Confidentiality Clauses (July 12, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-statement-on-franchise-policy-statement.pdf. (hereinafter "Ferguson Franchise Policy Statement Dissent").

¹² 15 U.S.C. § 45b.

¹³ See Ferguson Franchise Policy Statement Dissent, *supra* note 11.