

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
BRIAN L. SCHWALB

Public Advocacy Division
Antitrust and Nonprofit Enforcement Section



ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“Assurance”) is entered into between the Office of the Attorney General for the District of Columbia (the “District”) and Hissho International, LLC (“Hissho” or “Respondent”), in lieu of the District resolving Respondent’s allegedly unlawful conduct in court. The District and Respondent agree as follows:

I. THE PARTIES

1. The Attorney General for the District of Columbia (the “Attorney General”) is the chief legal officer for the District. The Attorney General is authorized to bring legal actions in the public interest, including actions under Section 1 of the Sherman Act, 15 U.S.C. § 1, the District of Columbia’s Antitrust Act, D.C. Code §§ 28-4501, *et seq.*, and the Ban on Non-Compete Agreements Amendment Act of 2020, as amended by the Non-Compete Clarification Amendment Act of 2022 (collectively, “Non-Compete Ban”), D.C. Code §§ 32-581.01, *et seq.*

2. Respondent is a limited liability corporation that operates a franchising system for the development and operation of sushi bars and Asian hot food bars under various names, including, but not limited to “Hissho Sushi,” “Oumi Sushi,” and “Sushi with Gusto.” Hissho franchisees operate in the District at 32 locations.

3. Hissho has no offices or employees in the District.

II. DEFINITIONS

4. “Franchise Agreement” shall be defined as the franchise agreement attached as Exhibit E to Hissho’s Franchise Disclosure Document, dated May 6, 2022.

5. “Franchisee” shall be defined as any entity—as well as its predecessors, successors, officers, directors, employees, agents, consultants, attorneys, affiliated entities or other affiliates, subdivisions, subsidiaries, and all other persons or entities acting or purporting to act on behalf of or under the control of each of the foregoing—that operates or is developing a franchise pursuant to a contract or other agreement with Respondent.

6. “District Franchisee” shall be defined as any Franchisee incorporated in, having a headquarters in, operating or developing a franchise in, or otherwise doing business in the District of Columbia.

7. “No-Poach Provision” shall be defined as Section 17.A.1.b of the Franchise Agreement, or any other provision of a contract or agreement that purports to restrict the ability of a party thereto to employ or seek to employ any person on the ground that that person is employed or was employed by Respondent or one of its Franchisees.

8. “Party” shall be defined as a party to this Assurance.

9. “Effective Date” shall be defined as the last date upon which any party executes this Assurance.

III. THE DISTRICT’S ALLEGATIONS

10. In February 2023, the Attorney General opened an investigation into Respondent’s possible violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, the District’s antitrust statute, D.C. Code § 28-4502, and the District’s non-compete ban, D.C. Code §§ 32–581.01, *et seq.*, through its inclusion of a No-Poach Provision in the Franchise Agreement.

11. Specifically, the Franchise Agreement contains the following language:

A. Franchisee acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and Confidential Information, including, without limitation, information relating to the operational, sales, promotional, and marketing

methods and techniques of Franchisor and the System. Accordingly, Franchisee covenants that:

(1) During the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee and its shareholders or members shall not, either directly or indirectly, for themselves, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or limited liability company:

...

(b) Employ or seek to employ any person who is at that time employed by Franchisor or by any other developer or franchisee of Franchisor, or otherwise directly or indirectly induce such person to leave his or her employment.

Franchise Agreement § 17.A.1.b.

12. The Attorney General alleges that this provision illegally restricts competition for workers among Franchisor and Franchisees and that it constitutes a workplace policy that precludes workers from competing for new, better, or additional opportunities at other Hissho franchises.

IV. APPLICATION

13. The provisions of this Assurance shall apply to Respondent, its principals, its officers, its directors, and all persons or entities that it controls or has the ability to control, including without limitation, employees, agents, successors, assignees, affiliates, merged or acquired entities, or wholly owned subsidiaries, and all other persons acting in concert with Respondent now and in the future.

14. Nothing in this Assurance may be construed as addressing or otherwise resolving any claim(s) any employee of Respondent or its District Franchisees may have individually or as a class against Respondent or any District Franchisee, including any claim(s) they may have regarding the facts at issue here.

15. Nothing in this Assurance may be construed to alter or amend the Attorney

General's right to seek relief in court, without providing notice to Respondent, should the Attorney General become aware of any violations of this Assurance by Respondent.

16. Respondent expressly denies the No-Poach Provision constitutes a contract, combination, or conspiracy in restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, the District's antitrust statute, D.C. Code § 28-4502, and the District's non-compete ban, D.C. Code § 32-581.01, *et seq.*, or any other law or regulation, and expressly denies it has engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade.

17. The Attorney General has agreed to the terms of this Assurance based in part on the representations made to the Attorney General by Respondent. Respondent represents and warrants that it has not made any representations to the Attorney General that are inaccurate or misleading. If any material representations by Respondent are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in its sole discretion.

18. For purposes of construing this Assurance, this Assurance shall be deemed to have been drafted by all Parties to this Assurance and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

19. Failure of Respondent to complete any term of this Assurance by the specified date shall nullify the Assurance.

V. INJUNCTIVE TERMS

20. Within seven (7) days of the Effective Date, Respondent shall provide all of its District Franchisees with written notice that includes the following: (a) the text of all No-Poach Agreements between Respondent and the District Franchisee, (b) that Respondent will no longer enforce those No-Poach Agreements, (c) that District Franchisees are permitted to employ or seek to employ employees of Respondent or of any of Respondent's Franchisees, and (d) that employees may seek employment with Respondent or any Respondent Franchisee.

21. Within thirty (30) days of the Effective Date, Respondent shall provide the Attorney General with proof of receipt by each District Franchisee of the notice required to be provided in the preceding paragraph.

22. Respondent will not enforce any No-Poach Provision in a contract or agreement with a District Franchisee.

23. Respondent will only renew, amend, extend, or otherwise modify existing contracts with District Franchisees if such renewed, amended, extended, or modified contracts do not contain any No Poach Provisions.

24. Respondent will not enter any contracts or agreements with current or prospective District Franchisees containing No Poach Provisions.

VI. ADDITIONAL TERMS

25. This Assurance shall be considered effective and fully executed on the last date upon which any party executes the Assurance. This Assurance may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature. Copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

26. All notices sent pursuant to this Assurance shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

Adam Gitlin
Chief, Antitrust and Nonprofit Enforcement Section
C. William Margrabe
Assistant Attorney General
Public Advocacy Division
Office of the Attorney General

400 6th St., NW, 10th Floor
Washington, D.C. 20001
Adam.Gitlin@dc.gov
Will.Margrave@dc.gov

Counsel for the District of Columbia

27. Respondent agrees to waive confidentiality under D.C. Code § 28-4505(k) with respect to the Attorney General's investigation of Respondent's conduct, including, but not limited to, this Assurance and any description in this Assurance of any documents or data produced by Respondent to the Attorney General during the course of the investigation; however, Respondent does not waive confidentiality under D.C. Code § 28-4505(k) with respect to the documents and data themselves.

28. This is a voluntary agreement. Respondent enters into this Assurance to avoid protracted and expensive litigation. By entering into this Assurance, Respondent neither agrees nor concedes that the claims, allegations and/or causes of action which have or could have been asserted by the Attorney General have merit, and Respondent expressly denies any such claims, allegations, and/or causes of action. Neither this Assurance nor its terms shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of Respondent, and may not be used for any of those purposes. However, proof of failure to comply with this Assurance presented by the Attorney General shall be prima facie evidence of a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, the District's antitrust statute, D.C. Code § 28-4502, and the District's non-compete ban, D.C. Code §§ 32-581.01, *et seq.*, thereby placing upon the violator the burden of defending against imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate civil penalties under these statutes.

29. This Assurance resolves all claims that the Attorney General could bring against Respondent under Section 1 of the Sherman Act, 15 U.S.C. § 1, the District's antitrust statute,

D.C. Code § 28-4502, the District’s non-compete ban, D.C. Code §§ 32–581.01, *et seq.*, and any antitrust, employment, or labor laws that the Attorney General can enforce, pertaining to the acts set forth in paragraphs 10-12 above that may have occurred before the date of entry of this Assurance.

FOR THE DISTRICT OF COLUMBIA:

BRIAN L. SCHWALB
Attorney General for the District of Columbia

DocuSigned by:
Adam Gitlin

Date: 8/21/2023

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Adam Gitlin
Chief, Antitrust and Nonprofit Enforcement Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001

Counsel for the District of Columbia

FOR HISSHO INTERNATIONAL, LLC:

Name
Title

Date: _____

Respondent Signatory

D.C. Code § 28-4502, the District’s non-compete ban, D.C. Code §§ 32–581.01, *et seq.*, and any antitrust, employment, or labor laws that the Attorney General can enforce, pertaining to the acts set forth in paragraphs 10-12 above that may have occurred before the date of entry of this Assurance.

FOR THE DISTRICT OF COLUMBIA:

BRIAN L. SCHWALB
Attorney General for the District of Columbia

_____ Date: _____
Adam Gitlin
Chief, Antitrust and Nonprofit Enforcement Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001

Counsel for the District of Columbia

FOR HISSHO INTERNATIONAL, LLC:

DocuSigned by:
Mathew Wilken
_____ Date: 8/18/2023
Name: MATHWILKEN926D13EA45B... Mathew Wilken
Title: President / CFO

Respondent Signatory