



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.<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> The form contracts allegedly contained standardized terms “imposed on RivX consumers without a meaningful opportunity to negotiate those terms.”<sup>5</sup> 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].”<sup>6</sup>

I vote to approve this complaint that alleges two violations Section 5 of the Federal Trade Commission Act (“FTC Act”),<sup>7</sup> four violations of the Business Opportunity Rule,<sup>8</sup> and a violation of the Consumer Review Fairness Act (“CRFA”).<sup>9</sup> I write separately to explain why I have voted for Count X—which alleges that the non-disparagement clauses violated the CRFA<sup>10</sup>—

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<sup>1</sup> Compl. ¶¶ 28, 41.

<sup>2</sup> *Id.* ¶ 28.

<sup>3</sup> *Id.* ¶¶ 40-42.

<sup>4</sup> *Id.* ¶¶ 49, 52.

<sup>5</sup> *Id.* ¶ 50.

<sup>6</sup> *Id.* ¶ 51.

<sup>7</sup> 15 U.S.C. § 45(a).

<sup>8</sup> 16 C.F.R. Part 437.

<sup>9</sup> 15 U.S.C. § 45b.

<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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

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<sup>11</sup> 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](https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-statement-on-franchise-policy-statement.pdf). (hereinafter “Ferguson Franchise Policy Statement Dissent”).

<sup>12</sup> 15 U.S.C. § 45b.

<sup>13</sup> See Ferguson Franchise Policy Statement Dissent, supra note 11.