To William Beatty, Dale Cantone, Anya Coverman, and Mark Stewart:

The following is the comment of Kristy Zastrow and Jeffery Haff of Dady & Gardner. P.A. to NASAA's proposed Financial Performance Representations Commentary. Ronald K. Gardner of Dady & Gardner took no part in this comment, and he was not consulted on the comment in any manner.

1) In the last sentence of the "Answer" in Section 19.2, there is a typo; the reference to statutes is missing a "t."

2) *19.13 Item 19—Best Performing Outlets* --While the proposed FPR Commentary makes it clear that a franchisor is not to make an FPR based solely upon the performance of a subset of its best performing outlets, the Commentary should also make it clear that even if a franchisor uses "non-financial criteria" to create a subset for an FPR, such "non-financial criteria," in certain situations, may still provide a misleading FPR to prospective franchisees. For example, if a franchisor chooses a subset using only franchisees that attend the franchisor's National Convention or have made certain upgrades/remodels, these types of subsets could inherently result in making an FPR based on the highest performing outlets. This is so because franchisees that attend the National Convention or have the resources to make upgrades tend to be the franchisees that are financially performing better and have the resources to do these particular things. If franchisors use such "non-financial" criteria to create subsets, this can be misleading. The franchisor should also have to disclose the results of franchisees with outlets that do not meet such criteria (if there are material differences in financial performance between the disclosed subset and those excluded from the disclosed subset).

3) *19.18 Item 19—Omission of Outlets that Have Closed* -- The proposed FPR Commentary allows franchisors to exclude outlets that have closed during the time period covered by the FPR, which may, in essence, remove what were the lowest performing outlets from the FPR. In addition to disclosing the information in the proposed Answer set forth in this Item 19.18, franchisors should also be required to provide an admonition to franchisees that by removing these outlets from the figures in the FPR, the FPR may be excluding results from its lowest performing outlets and, therefore, reporting results that represent higher gross sales, net profits, etc. than those results actually experienced by all outlets on a collective basis.

Thank you for your consideration of these comments.

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