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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:)
14 THE CALIFORNIA COMMISSIONER OF) CITATION
15 BUSINESS OVERSIGHT,)
16 Complainant,)
17 v.)
18 LOLLICUP USA INC.)
19 Respondent.)
20)
21)
22)

23 The California Commissioner of Business Oversight (“Commissioner”) finds that:

24 1. At all relevant times, Lollicup USA Inc. (“Lollicup”) was a California corporation.
25 Lollicup’s principal place of business is 6185 Kimball Avenue, Chino, California. The company
26 maintained a website at www.lollicup.com.

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1 2. The Commissioner had previously investigated Lollicup and two of its principals, Alan
2 Yu and Marvin Cheng (collectively “Respondents”), concerning the unlawful offer and sale of
3 unregistered franchises in the State of California.

4 3. The Commissioner found that from approximately December 2000 through April 16,
5 2008, Respondents offered and/or sold franchises to California residents under exclusive and non-
6 exclusive “Trademark” Licenses and other agreements. The agreements granted the purchaser the
7 right, in exchange for consideration, to engage in the business of offering, selling, or distributing
8 goods or services under Lollicup’s exclusive trademarks, including service marks, and trade names
9 and therefore constituted franchises within the meaning of Corporations Code section 31005.

10 4. As a result of the Commissioner’s investigation, on April 16, 2008, the Commissioner and
11 Respondents entered into a settlement agreement whereby Respondents, without admitting or
12 denying the allegations, stipulated to the issuance of a Citation and Desist and Refrain Order
13 (“Order”) and agreed to pay the Commissioner administrative penalties in the amount of \$35,000.00
14 (within 10 days of the date of the Order); file a franchise registration application with the
15 Commissioner (within six months of the date of the Order); and file a notice of violation with the
16 Commissioner (within 90 days of the date of the Order).

17 5. Respondents paid the administrative penalties on April 24, 2008, but failed to file the
18 notice of violation and registration statement as agreed. Lollicup contends that it engaged outside
19 counsel to assist with the notice and related matters and believed that they were being handled.

20 6. More than six years after having entered into the settlement agreement, Lollicup filed a
21 notice of violation with the Department on or about November 13, 2014. Based on the
22 Commissioner’s assessment of the information contained in the notice of violation, from April 16,
23 2008 to the present, the Commissioner finds that Lollicup sold an additional five unregistered
24 franchises in California under its “Trademark License” agreements in violation of the Order.

25 7. The Commissioner further finds that the agreements offered and sold by Lollicup
26 constitute franchises within the meaning of Corporations Code section 31005. The agreements
27 provided that Lollicup would supply its franchisees with original beverage products and ingredients
28 under the Lollicup brand; rights to its trademark name and logo; marketing and sales assistance and

1 training; in-store facility and machine support; business models; detailed sales and marketing plans;
2 and commercial advertising campaign materials in return for “franchise” or “license” fees. The
3 agreements further included obligations that franchisees purchase Lollicup products and materials,
4 and grant Lollicup certain approval and management rights.

5 8. Lollicup’s offer and sale of agreements in California have not been registered as
6 franchises under the Franchise Investment Law and the Commissioner finds that they are not
7 exempted under Chapter 1, beginning with Corporations Code section 31100, of that law.

8 9. Corporations Code section 31406 provides in relevant part:

9 (a) If, upon inspection or investigation, based upon a complaint or
10 otherwise, the commissioner has cause to believe that a person is
11 violating any provision of this division or any rule or order
12 promulgated pursuant to this division, the commissioner may issue a
13 citation to that person in writing describing with particularity the basis
14 of the citation. Each citation may contain an order to desist and refrain
15 and an assessment of an administrative penalty not to exceed two
16 thousand five hundred dollars (\$2,500) per violation and shall contain
17 reference to this section, including the provisions of subdivision (c). All
18 penalties collected shall be deposited in the State Corporations Fund.

19 (c) If within 60 days from the receipt of the citation, the person cited
20 fails to notify the commissioner that the person intends to request a
21 hearing as described in subdivision (d), the citation shall be deemed
22 final.

23 (d) Any hearing under this section shall be conducted in accordance
24 with Chapter 5 (commencing with Section 11500) of Part 1 of Division
25 3 of Title 2 of the Government Code.

26 Based on the foregoing findings, the Commissioner is of the opinion that Lollicup USA Inc.
27 has engaged in the offer and sale of franchises in this state that are subject to registration under the
28 Franchise Investment Law without the offers first being registered, in violation of Corporations Code
section 31110 and the Commissioner’s April 16 Order. Under Corporations Code section 31406,
Lollicup USA Inc. is ordered to pay administrative penalties in the amount of \$5,850.00 for
violations of Corporations Code section 31110 and the Order.

1 The Citation is necessary, in the public interest, for the protection of franchisees and
2 consistent with the purposes, policies, and provisions of the Franchise Investment Law.

3 Dated: June 9, 2015
4 Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

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6 By _____
7 Mary Ann Smith
8 Deputy Commissioner
9 Enforcement Division
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