

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

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DAMON'S RESTAURANTS, INC.

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Case No. 2006-0606

Respondents.

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CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the "Division") initiated an investigation into the franchise-related activities of Damon's Restaurants, Inc. ("Damon's") under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §14-210 et seq. (2004 Repl. Vol. and Supp. 2006) (the "Maryland Franchise Law"); and

WHEREAS, based on information presented by the Division, the Maryland Securities Commissioner (the "Commissioner") concluded that grounds exist to allege that Damon's violated the disclosure provisions of the Maryland Franchise Law in an application filed with the Commissioner to register the Damon's franchise offering; and

WHEREAS, before the holding of a hearing in this matter, without trial or final adjudication of any issue of fact or law, and without Damon's admitting or denying any violation of law, the Commissioner and Damon's have reached an agreement to enter into this Consent Order; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this Consent Order;

NOW, THEREFORE, IT IS HEREBY AGREED AND ORDERED:

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding and over Damon's pursuant to section 14-210 (a) of the Maryland Franchise Law.

2. In the event that judicial intervention in this matter is sought by any party, Damon's consents to the jurisdiction of the Circuit Court for Baltimore City over any such proceeding and as to Damon's.

II. PARTIES

3. Melanie Senter Lubin is the Securities Commissioner for the State of Maryland.

4. Damon's is an Ohio corporation with a principal business address at 4645 Executive Drive, Columbus, Ohio 43220.

5. Damon's offers franchises for the establishment and operation of restaurants under the Damon's name and marks.

III. STATEMENT OF FACTS

Background

6. At various times since 1993, Damon's, or a predecessor of Damon's, has been registered by the Division to offer and sell Damon's franchises in Maryland.

7. The most recent effective registration filing Damon's made with the Division expired on November 29, 2005.

8. On August 10, 2006, Damon's refiled an initial application with the Division to register the Damon's franchise offering.

Damon's August 10, 2006 UFOC

9. In its uniform franchise offering circular filed with the Commissioner on August 10, 2006 (the “August 10, 2006 UFOC”), Damon’s describes itself as a corporate member of a “family” of companies owned by or through Damon’s International, Inc. (“DII”).

10. Damon’s August 10, 2006 UFOC also states that on April 18, 2006, the shares of DII were transferred to Alliance D Holdings, LLC (“Alliance D Holdings”), a Delaware limited liability company.

11. Damon’s August 10, 2006 UFOC identifies Carl T. Howard as the president and a director of Damon’s as of April 18, 2006.

12. Damon’s August 10, 2006 UFOC states, in Item 4, that “[N]o person previously identified in Item 1 or Item 2 of this Offering Circular has been involved as a debtor in proceedings under the U.S. Bankruptcy Code required to be disclosed in this Item.”

UFOC Requirements to Disclose Officers and Bankruptcy History

13. Under Item 2 of the Uniform Franchise Offering Circular Guidelines (the “UFOC Guidelines”), adopted in the regulations promulgated under the Maryland Franchise Law at COMAR 02.02.08.04, a franchisor must disclose in its franchise disclosure document the “directors, trustees, and/or general partners, the principal officers and other executives or subfranchisors who will have management responsibility relating to the franchises offered...” .

14. Item 4 of the UFOC Guidelines requires that the franchisor disclose “whether the franchisor, its affiliates, its predecessor, officers or general partners during the 10 year period immediately before the date of the offering circular: (A) filed as debtor a petition to start an action under the U.S. Bankruptcy Code; (B) obtained a discharge of its debt under the Bankruptcy Code...”.

Alleged Disclosure Violations in Damon's UFOC

15. In September 2006, the Division received information suggesting that Damon's August 10, 2006 UFOC may have failed to identify a principal officer and director of that franchisor. Specifically, the Division received information suggesting that, after April 18, 2006, William J. Burk ("Burk") was an officer of Damon's and was actively involved in making strategic management and corporate decisions for Damon's.

16. The Division also received information suggesting that Burk may have been a party to a bankruptcy proceeding that is required to be disclosed under Item 4 of the UFOC Guidelines.

17. Burk is not disclosed anywhere in Damon's August 10, 2006 UFOC as having any affiliation with Damon's as an officer or director of that franchisor.

18. On November 1, 2006, the Division contacted Damon's and requested information about Burk's affiliation with Damon's and whether Burk was, at any time after January 1, 1993, a party to any U. S. bankruptcy court proceeding or held a controlling interest to any entity that was a party to any U. S. bankruptcy court proceeding.

Damon's Failure to Disclose William J. Burk

19. In response to the Division's inquiry, counsel for Damon's acknowledged that, as of April 10, 2006, Burk had a partial ownership interest in an entity that is the sole member of Alliance D Holdings.

20. Counsel for Damon's also confirmed to the Division that, as of April 18, 2006, Burk was chairman of the board of directors of Damon's and was listed on Damon's corporate records as its chief operating officer.

21. Counsel for Damon's also acknowledged that, on November 30, 2005, Burk was

granted a discharge in a personal bankruptcy action (Chapter 7) that he filed in 2002 in the United States Bankruptcy Court for the Western District of North Carolina.

22. Counsel for Damon's represented to the Division that Damon's did not sell any franchise in Maryland or to any Maryland residents after November 2005, although Damon's engaged in discussions with prospective franchisees about franchise transactions in Maryland that may be exempt from registration under the Maryland Franchise Law.

III. CONCLUSIONS OF LAW

Damon's acknowledges that the Commissioner makes the following conclusions of law:

23. Damon's violated §14-231 of the Maryland Franchise Law by filing an application with the Commissioner that contained an untrue statement of material fact or that omitted to state a material fact about the Damon's franchise offering.

IV. ORDER AND CONSENT

24. THE COMMISSIONER HEREBY ORDERS AND DAMON'S REPRESENTS AND CONSENTS THAT:

- A. Damon's shall immediately and permanently cease and desist from violating the Maryland Franchise Law;
- B. Damon's shall pay the Division an administrative penalty in the amount of Ten Thousand Dollars (\$10,000);
- C. Damon's represents that it has developed and implemented new franchise law compliance procedures to ensure that it complies in the future with all provisions of the Maryland Franchise Law; and
- D. Damon's acknowledges that this Consent Order is a discloseable order as

described under §14-216(c)(9)(I)(4) of the Maryland Franchise Law and Item 3 of the UFOC Guidelines.

V. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

25. If Damon’s fails to comply with any term of this Consent Order, the Division may bring administrative or judicial proceedings against it to enforce this Consent Order or to sanction it for violating an order of the Commissioner, and may take any other action authorized under the Maryland Franchise Law or any other applicable law. In any such proceeding in which, after an opportunity for a hearing, the Commissioner or a court finds that Damon’s has violated this Consent Order, the Statement of Facts and the violations of the Maryland Franchise Law alleged in the Consent Order shall be deemed admitted and may be introduced into evidence against it.

VII. MODIFICATION OF CONSENT ORDER

26. The terms of this Consent Order may be modified only by a subsequent order issued by the Commissioner.

BY CONSENT:

Damon’s Restaurants, Inc.

SO ORDERED:

BY:
President and Chief Executive Officer

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:
