

permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law; and

WHEREAS, based on information presented by the Securities Division, the Commissioner has concluded that Tropical Smoothie committed additional violations of the Maryland Franchise Law in the two year period after Tropical Smoothie entered into the 2008 Consent Order; 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 Tropical Smoothie admitting or denying any violation of law, the Commissioner and Tropical Smoothie have reached an agreement to enter into this Consent Order;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED:

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding pursuant to Section 14-210(a) of the Maryland Franchise Law.

II. STATEMENT OF FACTS

2. Tropical Smoothie is a Florida corporation with a principal business address of 4100 Legendary Drive, Suite 250, Destin, FL 32541.

3. Tropical Smoothie offers franchises for the operation of Tropical Smoothie cafes. Tropical Smoothie also offers area developer franchises that grant developers the right to operate Tropical Smoothie cafes and to recruit and service franchises in particular geographic areas.

4. Tropical Smoothie has been registered to offer and sell unit franchises under the Maryland Franchise Law, for most periods, since February 18, 2004.

5. Tropical Smoothie also has been registered to offer and sell area development

franchises under the Maryland Franchise Law, for most periods, since February 18, 2004.

6. On September 23, 2008, Tropical Smoothie entered into the 2008 Consent Order with the Securities Division to resolve alleged violations of the registration and disclosure provisions of the Maryland Franchise Law.

7. In the 2008 Consent Order, the Commissioner concluded that Tropical Smoothie violated §§14-214, 14-216, 14-223, and 14-228 of the Maryland Franchise Law, Maryland Franchise Regulations (COMAR) Section 02.02.08.04, and a previous Agreement with the Commissioner.

8. In the 2008 Consent Order, Tropical Smoothie agreed to immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law

9. In the 2008 Consent Order, Tropical Smoothie agreed to engage an independent franchise law compliance training program or trainer approved by the Securities Division to monitor Tropical Smoothie's franchise sales activities in Maryland and to Maryland residents for a period of two (2) years from the date that Tropical Smoothie's next franchise renewal registration was made effective in Maryland.

10. Tropical Smoothie renewed its unit franchise registration with the Securities Division on October 17, 2008.

11. As required under the 2008 Consent Order, Tropical Smoothie engaged a Monitor (hereafter the "Monitor"), who filed annual reports with the Securities Division, on February 1, 2010 and February 3, 2011, respectively.

12. The Monitor's report to the Securities Division dated February 1, 2010 (the "Monitor's 2010 Report") reviewed franchise sales activities of Tropical Smoothie during the

reporting period October 2008 through December 31, 2009.

13. In the Monitor's 2010 Report, the Monitor advised the Securities Division that on September 23, 2009, Tropical Smoothie sold a unit franchise to a Maryland franchisee ("Maryland Franchisee"), Hely Hiral Patel of Ellicott City, Maryland for a Tropical Smoothie franchise to be located in Howard County, Maryland.

14. The Monitor's 2010 Report acknowledged that Tropical Smoothie had delivered a Franchise Disclosure Document ("FDD") in the form registered by the Securities Division to the Maryland Franchisee at least 10 business days before the sale, as required under the Maryland Franchise Law. The Monitor noted, however, that the Tropical Smoothie franchise agreement signed by the Maryland Franchisee did not include the Maryland Addendum, which is required under the Maryland Franchise Law and was included as part of the FDD registered by the Securities Division for use in Maryland. The Maryland Franchisee signed that Maryland Addendum after the Monitor advised Tropical Smoothie of the error.

15. The Monitor's 2010 Report also acknowledges that the Maryland Franchisee received via electronic mail a "business plan template and break even analysis," which the Monitor described as a means to assist the prospective franchisee to organize information the prospective franchisee is to obtain from contacting existing franchisees. The Monitor noted, however, that a copy of the business plan template and break even analysis had not been submitted to the Securities Division as a form of advertising, that the template includes a statement that the franchisor has developed a profitable business system, and that it reproduces an Item 7 Estimated Initial Investment table that is not the same as the Item 7 table included in the FDD registered with the Securities Division.

16. The Monitor's 2010 Report did not disclose, but Tropical Smoothie acknowledges,

that, with regard to the September 23, 2009 sale to the Maryland Franchisee, Tropical Smoothie did not, as the Securities Division required, defer the payment of initial franchisee fees until all of Tropical Smoothie's pre-opening obligations to that franchisee were completed and the franchised business had opened. As a condition of granting Tropical Smoothie's October 17, 2008 registration, the Securities Division had imposed that deferral condition, and the FDD the Securities Division registered for use in Maryland stated that Tropical Smoothie would comply with that deferral condition. In contravention of that deferral requirement, Tropical Smoothie accepted from the Maryland Franchisee a \$25,000 initial franchise fee on September 23, 2009, the same date that Maryland Franchisee signed a Tropical Smoothie franchise agreement.

17. On November 9, 2010, Tropical Smoothie filed an application to amend its then-current franchise registration with the Securities Division. The Securities Division reviewed Tropical Smoothie's amendment application and noted several deficiencies that it required Tropical Smoothie to make to its application. The Securities Division also requested additional information about Tropical Smoothie's franchise sales activities in Maryland and documentation regarding the sale to the Maryland Franchisee noted in the Monitor's 2010 Report. The Securities Division reviewed the additional documentation submitted in response to its request and determined that Tropical Smoothie had not complied with the Securities Division's deferral requirement and did not file proposed advertising as required under COMAR 02.02.08.09 under the Maryland Franchise Law.

18. The Monitor's Report to the Securities Division dated February 3, 2011 (the "Monitor's 2011 Report") covers the reporting period January 1, 2010 through December 1, 2010.

19. In the Monitor's 2011 Report, the Monitor advised the Securities Division that Tropical Smoothie sold 2 franchises to be opened in Maryland during 2010. According to the

Monitor, one of those franchise sales was exempt from registration under the Maryland Franchise Law, and the second franchise sale was made on October 14, 2010 to a Virginia LLC, but all of the members of that franchisee received an FDD registered by the Securities Division for use in Maryland as of July 28, 2010.

20. Tropical Smoothie represents that it has ceased offering and selling franchises in Maryland and to any Maryland residents.

21. As of the date of this Consent Order, Tropical Smoothie represents that it has developed new compliance procedures to ensure that, in the future, it complies with all required provisions of the Maryland Franchise Law.

III. CONCLUSIONS OF LAW

22. By engaging in the above activities, the Commissioner has concluded that Tropical Smoothie violated §§ 14-214, 14-216, 14-223, and 14-228 of the Maryland Franchise Law, Maryland Franchise Regulations (COMAR) Sections 02.02.08.04, 02.02.08.09., the 2008 Consent Order and an Agreement with the Commissioner.

IV. ORDER AND CONSENT

23. THE COMMISSIONER HEREBY ORDERS AND TROPICAL SMOOTHIE REPRESENTS AND CONSENTS THAT:

- A. Tropical Smoothie shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Tropical Smoothie shall diligently pursue the completion of the pending application to amend the Tropical Smoothie unit franchise offerings in Maryland;
- C. Tropical Smoothie shall send to the Maryland Franchisee, upon Tropical Smoothie's notification by the Securities Division that Tropical Smoothie's amended franchise

offering has been effectively registered for use in Maryland: (i) a copy of the applicable, effectively registered Maryland Franchise Disclosure Document; and (ii) a letter, in substantially the form attached to this letter as Exhibit 1, notifying that Maryland Franchisee that he has the right to rescind his Tropical Smoothie franchise under the terms stated in that letter;

- D. Prior to the date of this Consent Order, Tropical Smoothie has submitted to the Securities Division a copy of new compliance procedures approved by the Securities Division that Tropical Smoothie has implemented to make sure that it complies with the Maryland Franchise Law;
- E. Tropical Smoothie shall pay to the Office of the Attorney General a civil monetary penalty of \$10,000.00;
- F. Tropical Smoothie acknowledges that this Consent Order is a discloseable order as described under the Maryland Franchise Law, and Item 3 of the NASAA Franchise Registration and Disclosure Guidelines and Amended FTC Franchise Rule.

V. JURISDICTION RETAINED

24. Jurisdiction shall be retained by the Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Consent Order.

VI. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

25. If Tropical Smoothie fails to comply with any term of this Consent Order, the Securities 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 Tropical Smoothie 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:

Tropical Smoothie Franchise
Development Corporation

BY:

_____/S_____
Print Name

Title

SO ORDERED:

**Commissioner's Signature is
on File with Original Document**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

March 10, 2011

FORM
(On Franchisor's Letterhead)

Certified Mail
Return Receipt Requested

Re: [Franchisor] Notice of Offer to Rescind Franchise Agreement

Dear _____:

In accordance with discussions our attorneys have had with the Division of Securities of the Maryland Attorney General's Office (the "Division"), [Insert name of Franchisor] ("we") have agreed to offer rescission to all Maryland residents who purchased franchise agreements, and any other persons who purchased a franchise to be located in Maryland, that we sold in violation of the registration or disclosure provisions of the Maryland Franchise Law. This offer of rescission is made in settlement of the administrative proceeding that the Division may bring for the sale of a franchise in violation of the Maryland Franchise Law and does not affect any civil liability for which we may be responsible.

If you elect to rescind and terminate the franchise relationship, we agree to return to you the initial fees you paid, and cancel any indebtedness you may have to us, less the cost for any unreturned items and equipment included in the purchase price you paid us for the franchise.

In the event you elect to rescind, you will give up your franchise agreement and any rights to use our trademarks and system. Also, you will be obligated to refrain from using and disclosing our trade secrets and any of our confidential and proprietary information. This offer will remain open for thirty (30) days from the date you receive this letter. Please check the appropriate place below and return a signed copy of this letter to me within the time period.

If you have any questions, please contact Dale E. Cantone, Assistant Attorney General, at the Division (410-576-6368).

Sincerely,

THE FRANCHISOR

EXHIBIT 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE AGREEMENT

1. I, the undersigned franchisee, acknowledge that I have read the preceding Notice of Offer to Rescind Franchise Agreement and understand its contents.
2. I understand that I have not waived my rights under the Maryland Franchise And Disclosure Law by signing this document.
3. I hereby make the following choice to accept or refuse your offer to rescind my agreement:

CHECK ONE

_____ I hereby **accept** your offer of rescission and agree to not use your trademarks and system and to not use or disclose to anyone the trade secrets, and confidential and proprietary information that we obtained from you.

_____ I do **not accept** your offer of rescission. I wish to remain a franchisee in your franchise system.

Date: _____

_____ Franchisee