

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

*

IN THE MATTER OF: *

*

Triune, LLC, d.b.a. Baja Fresh, * Case No. 2012-0073

Respondent. *

* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Securities Division”) initiated an inquiry into the franchise-related activities of Triune, LLC, successor-in-interest to Triune Corporation, doing business as Baja Fresh (“Triune”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG §14-201 et seq. (2010 Repl. Vol. and Supp. 2011) (the “Maryland Franchise Law”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Commissioner”) concluded that grounds exist to allege that Triune violated the disclosure and anti-fraud provisions of the Maryland Franchise Law, and the record keeping and escrow requirements of the Code of Maryland Regulations (COMAR), in relation to offers and sales of Baja Fresh franchises in Maryland and to prospective Maryland franchisees; 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 Triune admitting or denying any violation of law, the Commissioner and Triune 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

A. **Background**

2. Triune is a California limited liability company with a principal business address of 320 Commerce, Suite 100, Irvine, California 92602.

3. Triune offers and sells franchises for quick service restaurants featuring Mexican-style food and related products under the name Baja Fresh.

4. As of January 2012, Triune had approximately 220 franchised outlets throughout the United States.

5. Triune or its predecessor in interest, Triune Corporation, has been registered with the Securities Division to offer and sell franchises under the Maryland Franchise Law for most time periods beginning in 1997 to the present.

6. In January 2012, the Securities Division received information suggesting that Triune had offered and sold franchises in Maryland in violation of the disclosure and anti-fraud provisions of the Maryland Franchise Law.

7. On February 24, 2012, the Securities Division contacted counsel for Triune and requested information regarding offers and sales of Baja Fresh franchises in Maryland during the time period January 1, 2009 through the present.

8. On March 29, 2012, counsel for Triune provided documents and information that the Securities Division requested.

B. Franchise Sales in Maryland

9. Between January 1, 2009 and November 26, 2009, Triune entered into nine franchise agreements with Maryland residents and an additional three franchises agreements with non-Maryland residents for Baja Fresh franchises to be located in Maryland [these twelve franchisees will be referred to hereafter as “Maryland Franchisees”].

10. In all but one case, Triune did not retain signed acknowledgments of receipt reflecting the dates the Maryland Franchisees received a copy of Triune’s Franchise Disclosure Document registered under the Maryland Franchise Law (“Maryland FDD”).

C. Triune’s 2009 Franchise Renewal Application

11. On March 31, 2009, Triune filed an application with the Securities Division to renew its then-current franchise registration in Maryland. Triune included with that registration application an updated Maryland FDD that contained audited financial statements of Triune for the fiscal year ended December 31, 2007.

12. Item 21 of Triune’s Maryland FDD filed with the Securities Division on March 31, 2009 stated that the franchisor included audited financial statements for the fiscal year 2008, but, in fact, those audited financial statements were not included in that Maryland FDD.

13. The Securities Division reviewed Triune’s March 31, 2009 renewal application and on April 21, 2009 issued to Triune a comment letter outlining several deficiencies in the application. Among the deficiencies the Securities Division noted was that the franchisor must include with its Maryland FDD a copy of its 2008 audited financial statements.

14. On May 11, 2009, Triune filed a corrected Maryland FDD with the Securities Division. At the same time, Triune included in that corrected Maryland FDD a copy of audited

financial statements for the franchisor's fiscal year ending December 29, 2008. The auditor's report that accompanied Triune's 2008 audited financial statements was dated April 15, 2009, and it included a "going concern" note from the auditor that stated:

The accompanying financial statements have been prepared assuming that Triune Corporation will continue as a going concern. As more fully described in Note 1, Triune Corporation is a wholly owned subsidiary of BF Acquisition Holdings, LLC. On a consolidated basis, BF Acquisition Holdings, LLC (Parent company) reported a net operating loss and reflected negative cash flows for the year ended December 29, 2008 resulting in a working capital deficiency. In addition, the Parent company is in technical default on certain covenants of its loan agreement and the lender could demand the repayment of the loan. These conditions raise substantial doubt about BF Acquisition Holdings, LLC's ability to continue as a going concern. Because of the aforementioned conditions relating to BF Acquisition Holdings, LLC, and the uncertainties surrounding its plans to address its liquidity needs, Parent company's actions could have a substantial effect on Triune Corporation's assets; therefore there is also substantial doubt about whether Triune Corporation will continue as a going concern.

15. In response to Triune's May 11, 2009 submission, on June 23, 2009, the Securities Division issued a comment letter advising Triune that, based on the financial information in its May 11, 2009 submission, the Securities Commissioner had determined that all fees paid to the franchisor by (Maryland) franchisees, including payments for goods and services received from the franchisor before the business opens, should be held in escrow pending satisfaction of all of the franchisor's material pre-opening obligations to the franchisee.

16. In addition, in its June 23, 2009 comment letter, the Securities Division directed Triune to include a risk factor on the state cover page of its Maryland FDD stating that Triune's auditors had expressed a substantial doubt that the franchisor will continue as a going concern ("the Going Concern Note").

17. On June 30, 2009, counsel for Triune advised the Securities Division that, in lieu

of opening an escrow account, Triune would defer the receipt of initial fees and payments due from any Maryland franchisees, pending Triune's satisfaction of its material pre-opening obligations to those Maryland franchisees ("Deferral Condition"). As required by the Securities Division, Triune disclosed the Deferral Condition in the state addendum to its Maryland FDD. Triune also revised the form of franchise agreement in its Maryland FDD to incorporate the Deferral Condition.

18. On July 2, 2009, the Securities Division advised Triune that its franchise registration was effective under the Maryland Franchise Law. The issuance date of the FDD was April 24, 2009, with an effective date in Maryland of July 2, 2009 (the "2009 Maryland FDD").

D. Sales Activities After Issuance of Triune's 2008 Audited Financial Statements

19. At least by April 15, 2009, the date of the auditor's report on the 2008 audited financial statements, Triune had knowledge of Triune's 2008 audited financial statements and the Going Concern Note. Nevertheless, after April 15, 2009, Triune continued to offer and sell franchises to Maryland Franchisees without providing Maryland Franchisees with a copy of Triune's 2008 financial statements or information regarding the Going Concern Note. Specifically, between April 15, 2009 and July 2, 2009, Triune offered and sold three franchises to Maryland Franchisees Globe Partners, Inc., Alexander Enterprise, Inc. and Aashnin Four, Inc., without providing those franchisees with a copy of Triune's 2008 financial statements containing the Going Concern Note.

20. Between July 2, 2009, when the Securities Division made Triune's 2009 Maryland FDD effective for use in Maryland, and November 26, 2009, Triune offered and sold franchises to several Maryland Franchisees without having given those Maryland Franchisees a

copy of the 2009 Maryland FDD before the sale of the franchise. Specifically, without giving them a copy of the 2009 Maryland FDD before the sale of their Baja Fresh franchise, Triune offered and sold franchises to four Maryland Franchisees: Jai Ho Fresh, Inc.; Rabita, Inc.; Khalid Group, Inc.; and, BFPA, LLC.

21. Among other things, the form of Maryland FDD that Triune gave to the four Maryland Franchisees before the sale of their Baja Fresh franchise did not include a copy of the 2008 audited financial statements with the Going Concern Note, the Maryland-imposed risk factor discussing Triune's financial condition, or the Securities Division's imposition of the Deferral Condition.

22. In addition, the Deferral Condition that the Securities Commissioner imposed on June 23, 2009 was not included in the franchise agreements that Triune executed with the four Maryland Franchisees between July 2, 2009 and November 26, 2009: Jai Ho Fresh, Inc.; Rabita, Inc.; Khalid Group, Inc.; and, BFPA, LLC.

23. Triune represents that it has implemented new procedures to ensure that, in the future, the franchisor complies with the disclosure and antifraud provisions of the Maryland Franchise Law and the record keeping and escrow requirements of COMAR.

IV. CONCLUSIONS OF LAW

24. By engaging in the above activities, the Commissioner has concluded that Triune violated §§14-223, and 14-229 of the Maryland Franchise Law and COMAR §§ 02.02.08.08 and 02.02.08.15.

V. ORDER AND CONSENT

25. THE COMMISSIONER HEREBY ORDERS, AND TRIUNE REPRESENTS AND CONSENTS THAT:
- A. Triune shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
 - B. Triune has submitted to the Securities Division an undertaking, signed by an officer of the franchisor, that in the future Triune will retain copies of all signed acknowledgments of receipt confirming dates that prospective Maryland franchisees received any Maryland FDDs;
 - C. Triune has submitted to the Securities Division an outline of new sales procedures that it has implemented to ensure that, in the future, the franchisor complies with the disclosure and antifraud provisions of the Maryland Franchise Law and the record keeping and escrow requirements under COMAR;
 - D. Within five (5) days of Triune's receipt of a fully executed copy of this Consent Order, shall send a copy of this Consent Order to the Maryland Franchisees along with a cover letter informing those Maryland Franchisees that, as part of the Securities Division's settlement of an administrative action brought under the Maryland Franchise Law, Triune is required to send a copy of the Consent Order to the Maryland Franchisees informing them of the facts surrounding their franchise purchase, and stating that the settlement of the Securities Commission's action does not affect any civil liability for which Triune may be responsible;
 - E. Triune shall pay the Office of the Attorney General the sum of \$50,000 as a civil monetary penalty;
 - F. Triune 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.

VI. JURISDICTION RETAINED

26. 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.

VII. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

27. If Triune 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 Triune 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.

VIII. MODIFICATION OF CONSENT ORDER

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

BY CONSENT:

Triune, LLC

/S/

By: Charles Rink, President and CEO

SO ORDERED:

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

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

September 21, 2012