

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

**2946033 CANADA, INC.,
d.b.a. The Mad Science Group,**

Respondent,

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Case No. 2012-0433

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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 2946033 CANADA, INC., d.b.a. The Mad Science Group (“Mad Science”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §14-201 et seq. (2010 Repl. Vol. and Supp. 2012) (the “Maryland Franchise Law”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Commissioner”) concluded that grounds existed to allege that Mad Science violated the registration, disclosure and antifraud provisions of the Maryland Franchise Law and Maryland Franchise Regulations regarding advertising and record keeping, in relation to offers and sales of Mad Science 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 Mad Science admitting or denying any violation of law, the Commissioner and Mad Science 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. Mad Science is a Canadian corporation with a principal business address of 8360 Bougainville Street, Suite 201, Montreal, Quebec, Canada H4P 2G1.

3. Mad Science offers and sells franchises for businesses offering children's education and entertainment specializing in interactive science activities and science demonstrations.

4. Mad Science was registered to offer and sell franchises under the Maryland Franchise Law for a one year period, from June 19, 1995 through June 19, 1996.

5. Mad Science was not registered to offer or sell franchises under the Maryland Franchise Law at any time after June 19, 1996.

6. On October 4, 2012, Mad Science filed an application with the Securities Division to re-register Mad Science's franchise offering under the Maryland Franchise Law.

7. The Securities Division reviewed Mad Science's registration application and, in a letter dated November 8, 2012, requested information regarding alleged offers and sales of Mad Science franchises in Maryland after June 19, 1996.

8. In response to the Securities Division's request for information, on November 26, 2012, Mad Science's counsel provided the Securities Division with documentation regarding 5 franchise transactions in Maryland or with Maryland franchisees between June 19, 1996 and November 26, 2012. Specifically, Mad Science represented as follows:

1999 Franchise Sale Involving A. Miller

9. Mad Science represents that in 1999, A. Miller purchased a Mad Science franchise for value from an existing Mad Science franchisee operating in Central Maryland. Mad Science states that it has no documents related to that 1999 transaction.

10. Mad Science also represents that in March 2007, A. Miller transferred her Mad Science franchise for value to franchisee Tayjor II, Inc. and DC, a principal of Tayjor II, Inc.

2004 Franchise Agreement with Tayjor I

11. Mad Science acknowledges that on June 6, 2004, it entered into a Mad Science franchise agreement with Tayjor Communications, Inc., a Maryland corporation, and DC, a principal of Tayjor Communications, Inc. and a resident of Reisterstown, Maryland (collectively “Tayjor I”), in connection with Tayjor I’s acquisition of an existing Mad Science franchise located in Maryland.

12. Mad Science has no record of providing a Mad Science franchise disclosure document, then called a UFOC (hereafter “FDD”), to Tayjor I related to the June 6, 2004 franchise transaction.

13. Mad Science represents that in April 2010, Tayjor I transferred its Mad Science franchise for value to Triumph Communications, Inc. and PM, a principal of Triumph Communications, Inc.

2006 Franchise Agreement with JS of Southern Maryland

14. Mad Science acknowledges that on October 16, 2006, it entered into a Mad Science franchise agreement with JS of Hollywood, Maryland, granting JS the right to operate a Mad Science franchise in Southern Maryland.

15. Mad Science did not retain a copy of an acknowledgment of receipt reflecting the delivery of a Mad Science FDD to JS.

16. The FDD that Mad Science prepared for delivery to JS did not have all disclosures required under the Maryland Franchise Law, and that FDD was not registered by the Securities Division for use in Maryland under the Maryland Franchise Law.

17. Mad Science represents that JS paid Mad Science a franchise fee of \$13,500.

18. Mad Science also represents that JS voluntarily terminated his Mad Science franchise in August 2012.

2007 Franchise Agreement with Tayjor II

19. Mad Science acknowledges that on March 15, 2007, it entered into a Mad Science franchise agreement with Tayjor II, Inc., a Maryland corporation, and DC, a principal of Tayjor II and a resident of Reisterstown, Maryland (collectively “Tayjor II”), in connection with Tayjor II’s acquisition of a Mad Science franchise in Central Maryland.

20. Mad Science did not retain an acknowledgment of receipt reflecting the delivery of a Mad Science FDD to Tayjor II.

21. The FDD that Mad Science prepared for delivery to Tayjor II did not have all disclosures required under the Maryland Franchise Law, and that FDD was not registered by the Securities Division for use in Maryland under the Maryland Franchise Law.

22. Mad Science acknowledges that, on or about March 20, 2007, it received a \$10,000 transfer fee relating to Tayjor II’s purchase of a Mad Science franchise from A. Miller. Mad Science further represents that \$5,000 of that transfer fee was paid to Mad Science by Tayjor II, as transferee, and \$5,000 was paid to Mad Science by A. Miller, as transferor.

23. Mad Science represents that Tayjor II has notified Mad Science that Tayjor II will voluntarily terminate its Mad Science franchise in May 2013.

2010 Franchise Agreement with Triumph

24. Mad Science acknowledges that on April 16, 2010, it entered into a Mad Science franchise agreement with Triumph Communications, Inc., a Maryland corporation, and PM, a principal of Triumph Communications, Inc. and a resident of Potomac, Maryland (collectively “Triumph”), in connection with Triumph’s acquisition of a Mad Science franchise in Washington, DC.

25. Mad Science represents that it gave Triumph a copy of a Mad Science FDD dated December 21, 2009, and Triumph signed an acknowledgment of receipt confirming receipt of that FDD on March 11, 2010.

26. The FDD that Mad Science represents it gave to Triumph did not have all disclosures required under the Maryland Franchise Law, and that FDD was not registered by the Securities Division for use in Maryland under the Maryland Franchise Law.

27. Mad Science represents that it received a \$10,000 transfer fee relating to Triumph’s purchase of a Mad Science franchise on April 16, 2010 from Taylor I. Mad Science further represents that \$5,000 of that transfer fee was paid to Mad Science by Triumph, as transferee, and \$5,000 was paid to Mad Science by Taylor I, as transferor.

2012 Offer to a Prospective Maryland Franchisee

28. Mad Science acknowledges that on October 11, 2012, it provided a copy of a Mad Science FDD dated July 26, 2012 to RGG, a resident of Ellicott City, Maryland.

29. The FDD that Mad Science gave to RGG did not contain all disclosures required under the Maryland Franchise Law, and that FDD was not registered by the Securities Division for use in Maryland under the Maryland Franchise Law.

30. Mad Science represents that RGG never purchased a Mad Science franchise and did

not pay Mad Science any consideration towards the purchase of a Mad Science franchise.

Franchise Advertising and Promotional Brochures

31. Between 1996 and 2012, Mad Science distributed promotional brochures regarding the Mad Science franchise offering in Maryland and to prospective Maryland franchisees.

32. Between 1996 and 2012, Mad Science did not file a copy of any prospective advertising regarding the Mad Science franchise offering with the Maryland Securities Division.

33. Mad Science acknowledges that in 2007, Mad Science distributed to prospective franchisees a promotional brochure (the “2007 Promotional Brochure”) regarding the Mad Science franchise offering. That promotional brochure states under the heading “High Gross Margins” that “On average, every presentation you offer has a gross margin that ranges from 60% to 80%.”

34. The 2007 Promotional Brochure contains a chart representing that the Average Gross Margin Per Presentation that a Mad Science franchisee could expect to earn is \$106.76 (revenue of \$151.36 minus various expenses totaling \$44.60).

35. The chart in the 2007 Promotional Brochure also contains a disclaimer stating that “The Average Gross Margin Per Presentation is calculated before deducting various expenses— expected from the franchisee—and does not represent any profit achieved. The figures above are based on a survey of fiscal 2004 performance with franchisees throughout our system. Seventy three franchisees participated in this survey, representing 71% of all Mad Science North American franchisees in 2004.”

36. The UFOC dated November 27, 2006 that Mad Science delivered to franchisee Taylor II states in Item 19 that an Exhibit to the UFOC contains a financial performance representation of the average annual earnings of certain franchisees and company owned outlets, but the exhibit was not attached to that UFOC.

37. Mad Science has no records identifying prospective Mad Science franchisees who may have received a copy of the 2007 Promotional Brochure.

38. Under Maryland Franchise Regulation Section COMAR 02.02.08.09 (Advertising), an advertisement for a franchise offering may not refer to a [financial performance representation] unless otherwise permitted by the Commissioner, and a copy of each franchise advertising to be used in the offer or sale of any franchise subject to registration under the Maryland Franchise law must be submitted to the Securities Division for review before the date of its initial use.

39. Mad Science represents that, within seven (7) days of its receipt of this fully executed Consent Order, Mad Science will file a corrected Mad Science FDD with the Securities Division addressing the remaining comments raised by the Securities Division's review of Mad Science's pending franchise registration application and disclosing the terms of this Consent Order.

40. Mad Science represents that it has implemented new procedures to ensure that, in the future, the franchisor complies with the registration, disclosure, and antifraud provisions of the Maryland Franchise Law.

IV. CONCLUSIONS OF LAW

41. By engaging in the above activities, the Commissioner has concluded that Mad Science violated §§14-214, 14-216, 14-223, 14-224, 14-225, 14-228, and 14-229 of the Maryland Franchise Law and COMAR Sections 02.02.08.09 (Advertising) and 02.02.08.15 (Record Keeping).

V. ORDER AND CONSENT

42. THE COMMISSIONER HEREBY ORDERS, AND MAD SCIENCE REPRESENTS AND CONSENTS THAT:

- A. Mad Science shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Mad Science shall diligently pursue the application it has filed to register its franchise offering in Maryland;
- C. Upon notification by the Securities Division that Mad Science's franchise offering has been effectively registered for use in Maryland, Mad Science shall send to Tayjor II and Triumph: (i) a copy of the applicable, effectively registered Maryland FDD; and (ii) a letter, in substantially the form attached to this letter as Exhibit 1, notifying that franchisee that, now that Mad Science is effectively registered to offer franchises in Maryland, Mad Science is offering those franchisees the opportunity to rescind their respective Mad Science franchise agreements under the terms stated in that letter;
- D. Mad Science agrees that if either Tayjor II or Triumph accepts Mad Science's offer to rescind its franchise purchase in response to the Offer to Rescind Franchise Agreement required under this Consent Order, Mad Science will complete payments to the rescinding franchisee within thirty (30) days of Mad Science's receipt of either written Acceptance;
- E. Mad Science shall pay JS the sum of \$13,500, representing a refund of the initial franchise fee JS paid for its Mad Science franchise and notify JS that Mad Science considers JS's franchise agreement voided; and
- F. Mad Science shall pay the Office of the Attorney General the sum of \$5,000 as a civil monetary penalty;
- G. Mad Science 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

43. 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

- 44. If Mad Science 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 Mad Science 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

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

BY CONSENT:

296033 CANADA, INC.

_____/S/_____
Name: _____
Title: _____

SO ORDERED:

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

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

March 7, 2013

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: [Company] Offer to Rescind Franchise

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 Company] ("we") have agreed to offer rescission to Maryland franchisees who entered into franchise agreements with us in violation of the 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 your franchise, we agree to return to you the initial fees you paid us.

In the event you elect to rescind, you will give up your Franchise Agreement. You also will give up any rights to use our trademarks and system and be obligated to refrain from using and disclosing any of our trade secrets and any of our confidential and proprietary information. We will make payments within thirty (30) days after we receive your Acceptance of Offer to Rescind your Franchise.

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 COMPANY

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE

1. I, the undersigned, acknowledge that I have read the preceding Offer to Rescind Franchise 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 franchise:

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 under my current Franchise Agreement.

Date: _____

Franchisee