

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

Daekyo America, Inc.,

Respondents

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Case No. 2017-0845

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CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Securities Division”) initiated an investigation into the franchise-related activities of Daekyo America, Inc., doing business as Eye Level Learning Centers and E.nopi Learning Centers (“Daekyo”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG. §14-201 et seq. (2015 Repl. Vol. and Supp. 2017) (the “Maryland Franchise Law”) and the regulations promulgated thereunder; and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Securities Commissioner”) has concluded that grounds exist to allege that Daekyo violated the registration, disclosure, and anti-fraud provisions of the Maryland Franchise Law and a previous Consent Order of the Securities Commissioner in relation to offers and sales of Daekyo franchises in Maryland; 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 Daekyo admitting or denying any violation of law, the Securities Commissioner and Daekyo have reached an agreement to enter into this

Consent Order; and

WHEREAS, Daekyo waives its rights to a hearing and any rights to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

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

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED:

I. JURISDICTION

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

II. FINDINGS OF FACT

A. Respondents

2. Daekyo is a California corporation with a principal business address of 105 Challenger Road, Ridgefield Park, NJ 07660.

3. Daekyo has offered franchises in the United States since 1991.

4. Daekyo or its predecessors have been registered to offer franchises under the Maryland Franchise Law at various times since January 1997.

B. The 1996 Consent Order

5. On January 15, 1996, the Maryland Securities Commissioner issued a Consent Order (the “1996 Consent Order”) against Daekyo based on allegations that Daekyo violated the registration, disclosure, and antifraud provisions of the Maryland Franchise Law in relation to the offer and sale of Dayekyo franchises to three Maryland franchisees.

6. Under the 1996 Consent Order, the Securities Commissioner ordered that Daekyo

shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law.

7. Also under the 1996 Consent Order, Daekyo acknowledged that the 1996 Consent Order was a currently effective order required to be disclosed under the litigation disclosure requirements of the Maryland Franchise Law.

C. Registration filings from 2011 through 2015

8. After 2007, Daekyo was registered with the Securities Division to offer and sell franchises for only a one-year period. Specifically, Daekyo's most recent franchise registration in Maryland was effective for the period July 20, 2011 through July 20, 2012.

9. On May 1, 2013, Daekyo re-filed an initial franchise registration application with the Securities Division (the "2013 Registration Application").

10. The Securities Division reviewed the 2013 Registration Application and issued comments to the application in one or more deficiency letters.

11. In a deficiency letter dated June 10, 2013, the Securities Division required that Daekyo submit an undertaking, signed by an authorized officer of the franchisor, that the franchisor neither offered nor sold franchises in Maryland or to any Maryland residents during the time it was not effectively registered under the Maryland Franchise Law.

12. Daekyo did not respond to the Securities Division's June 10, 2013 deficiency letter, and Daekyo's 2013 Registration Application eventually was deemed abandoned.

13. On May 16, 2014, Daekyo re-filed another initial franchise registration application with the Securities Division (the "2014 Registration Application").

14. The Securities Division reviewed the 2014 Registration Application and issued

comments to the application in one or more deficiency letters.

15. In a deficiency letter dated June 18, 2014, the Securities Division required that Daekyo submit an undertaking, signed by an authorized officer of the franchisor, that the franchisor neither offered nor sold franchises in Maryland or to any Maryland residents during the time it was not effectively registered under the Maryland Franchise Law.

16. Daekyo did not respond to the Securities Division's June 18, 2014 deficiency letter, and Daekyo's 2014 Registration Application eventually was deemed abandoned

17. On April 8, 2015, Daekyo re-filed a third initial franchise registration application with the Securities Division (the "2015 Registration Application").

18. The Securities Division reviewed the 2015 Registration Application and issued comments to the application in one or more deficiency letters.

19. In a deficiency letter dated May 14, 2015, the Securities Division required that Daekyo submit an undertaking, signed by an authorized officer of the franchisor, that the franchisor neither offered nor sold franchises in Maryland or to any Maryland residents during the time it was not effectively registered under the Maryland Franchise Law.

20. Daekyo did not respond to the Securities Division's May 14, 2015 deficiency letter, and Daekyo's 2015 Registration Application eventually was deemed abandoned.

D. Unregistered Offers and Sales 2005-2012

21. On September 5, 2017, Daekyo re-filed an initial franchise registration application with the Securities Division. In that application, counsel for Daekyo acknowledged that Daekyo offered and sold unregistered franchises in Maryland.

22. Specifically, Daekyo acknowledges that it entered into a franchise agreement dated

August 9, 2011 with Victory Learning, Inc., a Maryland corporation, for a franchise territory of Bethesda, Maryland (the “North Bethesda Franchise”).

23. Victory Learning, Inc. paid Daekyo a \$12,000 franchise fee on August 9, 2011 for the North Bethesda Franchise.

24. According to Daekyo, however, Victory Learning, Inc. actually entered into an oral agreement with Daekyo prior to the date of the written franchise agreement, and the North Bethesda Franchise was open as early as March 2010, when Daekyo was not registered under the Maryland Franchise Law. Daekyo acknowledges that it kept track of royalties owed by Victory Learning, Inc. for the North Bethesda franchisee from the date of opening of the franchise, and the franchisee paid those accrued royalties to Daekyo after the franchisee executed the written franchise agreement.

25. Daekyo further acknowledges that it entered into a second franchise agreement dated August 9, 2011 with Victory Learning, Inc., a Maryland corporation, for a franchise territory of Gaithersburg, Maryland (the “Gaithersburg Franchise”).

26. Victory Learning, Inc. paid Daekyo a \$6,000 franchise fee on August 9, 2011 for the Gaithersburg Franchise.

27. According to Daekyo, however, Victory Learning, Inc. actually entered into an oral agreement with Daekyo prior to the date of the written franchise agreement, and the Gaithersburg Franchise was open and for business as early as July 2011, when Daekyo was not registered under the Maryland Franchise Law. Daekyo acknowledges that it kept track of royalties owed by Victory Learning, Inc. for the Gaithersburg Franchise from the date of opening of the franchise, and the franchisee paid those accrued royalties to Daekyo after the franchisee executed the written

franchise agreement.

28. Daekyo further acknowledges that it entered into a franchise agreement dated January 20, 2012 with Hannah Education Consulting, Inc., a Maryland corporation, for a franchise territory of White Marsh, Maryland (the “White Marsh Renewal Franchise”). Daekyo was registered under the Maryland Franchise Law on January 20, 2012, at the time it entered into a franchise agreement with Hannah Education Consulting, Inc. for the White Marsh Renewal Franchise

29. Hannah Education Consulting, Inc. paid Daekyo a \$1,200 deposit on a franchise fee on December 31, 2011 for the White Marsh Renewal Franchise.

30. According to Daekyo, however, the sale of the White Marsh Franchise to Hannah Education Consulting, Inc. in 2012 was a renewal of an existing franchise (the “White Marsh Initial Franchise”) that was granted on July 5, 2005 between Daekyo and one of the principals of Hannah Education Consulting, Inc.

31. Under the original 2005 franchise agreement for the White Marsh Initial Franchise, one of the principals of Hannah Education Consulting, Inc. paid Daekyo a franchise fee of \$3,000.

32. At the time of the original 2005 sale of the White Marsh Initial Franchise, Daekyo was not registered to offer or sell franchises under the Maryland Franchise Law.

33. According to Daekyo, the owners of the White Marsh Renewal Franchise, the Gaithersburg Franchise, and the North Bethesda Franchise all voluntarily terminated their respective franchise agreements between 2014-16, prior to the date of this Consent Order.

34. Daekyo offered additional franchises in Maryland after July 20, 2012 and provided Franchise Disclosure Documents to at least three of those prospective franchisees, but Daekyo

represents that those prospective franchisees did not enter into agreements with Daekyo or pay Daekyo a franchise fee.

35. Daekyo did not disclose the existence of the 1996 Consent Order in any of the Franchise Disclosure Documents it distributed to prospective Maryland franchisees.

E. Representations and Acknowledgments by Daekyo, Inc.

36. Daekyo represents that, other than the sale of North Bethesda Franchise, the Gaithersburg Franchise, and the White Marsh Initial Franchise (the “Unregistered Maryland Franchises”), Daekyo did not sell after January 15, 1996 any franchise that was subject to registration under the Maryland Franchise Law at any time Daekyo was not registered with the Securities Division to offer and sell franchises.

37. Daekyo also represents that, after 2015, it hired a full time in-house counsel with experience in federal and state franchise laws to ensure that Daekyo complies with the registration and disclosure requirements of, among other laws, the Maryland Franchise Law.

III. CONCLUSIONS OF LAW

38. By engaging in the above activities, the Commissioner has concluded that Daekyo violated the 1996 Consent Order and §§14-214, 14-216, 14-223, 14-228, and 14-229 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

39. THE COMMISSIONER HEREBY ORDERS AND DAEKYO HEREBY CONSENTS AS FOLLOWS:

- A. Daekyo shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law and the 1996 Consent Order of the Securities Commissioner;
- B. Within ten (10) days of its receipt of the fully executed Consent Order of the

Securities Commissioner, Daekyo shall send to the former owners of the North Bethesda Franchise, Gaithersburg Franchise and White Marsh Initial Franchise a copy of this signed Consent Order along with a check in the amount of the franchise fee those franchisees paid under their respective Daekyo franchise agreements, and Daekyo shall send a letter to each of those franchisees confirming that they have no post-sale obligations to Daekyo under their terminated franchise agreements other than to not use Daekyo's trademarks and system and to not use or disclose any of Daekyo's trade secrets or confidential or proprietary information;

- C. Daekyo shall make all reasonable efforts to locate and make payments to the franchisees identified in this Consent Order and shall provide to the Securities Division evidence of the notifications sent and all payments made as required under this Consent Order;
- D. Daekyo shall require its officers and other executives responsible for marketing and offering Daekyo franchises in Maryland and to Maryland residents to attend and complete a remedial franchise law compliance training program approved in advance by the Securities Commissioner with instructions regarding complying with registration and disclosure provisions of federal and state franchise laws, and, upon completion of the program, shall provide written confirmation to the Securities Commissioner of completion and the attendance;
- E. Daekyo shall pay the sum of Fifteen Thousand Dollars (\$15,000) to the Office of the Attorney General of Maryland as a civil monetary penalty; and
- F. Daekyo acknowledges that this Consent Order and the 1996 Consent Order are disclosable orders 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

40. 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

41. If Daekyo 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 Securities 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 Securities Commissioner or a court finds that Daekyo 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

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

SO ORDERED:

**Commissioner's Signature is
On File w/Original Document**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

February 2 _____, 2017

BY CONSENT:

Daekyo, Inc.

By:
Title: