

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN ROONEY
Assistant Chief Counsel
3 BLAINE A. NOBLETT (State Bar No. 235612)
Senior Counsel
4 Department of Business Oversight
5 320 West 4th Street, Suite 750
Los Angeles, California 90013-2344
6 Telephone: (213) 576-1396
7 Facsimile: (213) 576-7181

8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of :)
13) SETTLEMENT AGREEMENT
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
15)
16 Complainant,)
17 v.)
18 LOLLICUP USA INC.,)
19)
20 Respondent.)
21)

22 This Settlement Agreement (“Agreement”) is entered into between Lollicup USA Inc.
23 (“Lollicup”) and the California Commissioner of Business Oversight (“Commissioner”) (collectively
24 the “Parties”), and is made with respect to the following facts, terms, and conditions:

25 **RECITALS**

26 A. Lollicup, at all relevant times, was a California corporation with its principal place of
27 business located at 6185 Kimball Avenue, Chino, California.

28 B. The Commissioner had previously investigated Lollicup and two of its principals,

1 Alan Yu and Marvin Cheng (collectively “Respondents”), concerning the unlawful offer and sale of
2 unregistered franchises in the State of California.

3 C. The Commissioner found that from approximately December 2000 through April 16,
4 2008, Respondents offered and/or sold franchises to California residents under exclusive and non-
5 exclusive “Trademark” Licenses and other agreements. The agreements granted the purchaser the
6 right, in exchange for consideration, to engage in the business of offering, selling, or distributing
7 goods or services under Lollicup’s exclusive trademarks, including service marks, and trade names
8 and therefore constituted franchises within the meaning of Corporations Code section 31005.

9 D. As a result of the Commissioner’s investigation, on April 16, 2008, the Commissioner
10 and Respondents entered into a settlement agreement (“2008 settlement agreement”) whereby
11 Respondents, without admitting or denying the allegations, stipulated to the issuance of a Citation
12 and Desist and Refrain Order (“Order”) and agreed to pay the Commissioner administrative penalties
13 in the amount of \$35,000.00 (within 10 days of the date of the Order); file a franchise registration
14 application with the Commissioner (within six months of the date of the Order); and file a notice of
15 violation with the Commissioner (within 90 days of the date of the Order).

16 E. Respondents paid the administrative penalties on April 24, 2008, but failed to file the
17 notice of violation and registration statement as agreed. Lollicup contends that it engaged outside
18 counsel to assist with the notice and related matters and believed that they were being handled.

19 F. More than six years after having entered into the 2008 settlement agreement, Lollicup
20 filed a notice of violation with the Department on or about November 13, 2014. Based on the
21 Commissioner’s assessment of the information contained in the notice of violation, from April 16,
22 2008 to the present, the Commissioner found that Lollicup had sold an additional five unregistered
23 franchises in California under its “Trademark License” agreements in violation of the Order and the
24 Franchise Investment Law (Corp. Code, § 31000 et seq.).

25 G. On June 9, 2015, the Commissioner issued Lollicup a Citation (“Citation”) finding
26 that the company had offered and sold unregistered franchises in California in violation of
27 Corporations Code section 31110 of the Franchise Investment Law, which provides that it is
28 “unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise

1 has been registered” or exempted. Further, the Citation requires Lollicup to pay to the Commissioner
2 administrative penalties of \$5,850.00. Attached hereto as **Exhibit A** and incorporated herein by
3 reference is a true and correct copy of the Citation dated June 9, 2015.

4 H. On or about March 11, 2015 and May 8, 2015, Lollicup complied with Corporations
5 Code section 31303 and California Code of Regulations, title 10, section 310.303, and filed amended
6 applications for approval as to form of a written notice of violation and related documents under the
7 Franchise Investment Law (collectively, the “Notice of Violation”), which approval was obtained
8 from the Commissioner on or around June 5, 2015.

9 I. It is the intention and desire of the Parties to resolve this matter without the necessity
10 of a hearing and/or other litigation.

11 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
12 forth herein, the Parties agree as follows:

13 **TERMS AND CONDITIONS**

14 1. This Agreement is entered into for the purpose of judicial economy and expediency,
15 and to avoid the time and expense of a hearing and possible further court proceedings.

16 2. Without admitting or denying allegations contained in the Citation or this Settlement
17 Agreement, Lollicup stipulates to the issuance of the Citation.

18 3. Lollicup acknowledges its right to an administrative hearing under section 31406 in
19 connection with the Citation, and hereby waives its right to a hearing on the allegations, and to any
20 reconsideration, appeal, or other right which may be afforded under the Franchise Investment Law;
21 the Administrative Procedure Act (Govt. Code, § 11370 et seq.); the Code of Civil Procedure (Code
22 of Civ. Proc., § 1, et seq.); or any other provision of law in connection with this matter. The Citation
23 and its findings are now final and this Agreement is intended only to supplement its terms.

24 4. Lollicup agrees to the following:

- 25 a. Under the Citation, Lollicup shall pay administrative penalties to the
26 Department of Business Oversight in the amount of \$5,850.00 by cashier’s
27 check within 15 days of execution of this Agreement.

28 ///

- 1 b. Within 15 days of execution of this Agreement or the approval of Lollicup
2 Franchise System, LLC's (a Lollicup affiliate) initial franchise registration
3 application, whichever occurs later, Lollicup shall provide the Commissioner a
4 complete copy of the Notice of Violation, inclusive of its schedule listing the
5 names and addresses, to the best of Lollicup's knowledge, of all California
6 residents who were sold unregistered franchises and were Lollicup franchisees
7 (called "licensees" in Lollicup's agreements) as of the 2008 settlement
8 agreement or were sold unregistered franchises thereafter, the dates of
9 franchise sale, and the amount of initial fees paid to Lollicup by each such
10 California franchisee. Lollicup will submit to an express-mail carrier/overnight
11 delivery service for delivery to current licensees, the Notice of Violation,
12 including the letters signed by the company's principal(s) offering each of the
13 current franchisees rescission of their franchise/license agreements, release of
14 all contractual obligations, and a refund of all trademark license fees, training
15 fees, recurring monthly fees, and license renewal fees paid at any time up
16 through the execution of this Agreement, on the condition that the franchisee
17 cease operating under the Lollicup brand, discontinue any and all use of the
18 Lollicup trademarks, including the removal of all signage, and return all
19 manuals and other proprietary information, all as provided in the Notice of
20 Violation. Such letters shall provide the current licensees 90 days to respond to
21 the rescission offer or to forego any right to rescind.
- 22 c. Lollicup will provide the Commissioner with copies of the letters offering
23 rescission, proof of mailing/submission to an overnight delivery service, and
24 responses received, if any, within 120 days of execution of this Agreement or
25 the approval of Lollicup Franchise System, LLC's (a Lollicup affiliate) initial
26 franchise registration application, whichever occurs later. "Proof of mailing"
27 may include express-mail carrier delivery/overnight delivery service
28 confirmation receipts or notices of inability to deliver, as applicable.

- 1 d. Lollicup shall desist and refrain from the further offer or sale of Lollicup
- 2 “Trademark License” agreements unless and until the offers have been duly
- 3 registered under the Franchise Investment Law, or are exempt.
- 4 e. If Lollicup fails to comply with any of the terms of the Agreement, the
- 5 Commissioner may institute proceedings for any and all violations otherwise
- 6 resolved under this Agreement and Citation.

7 5. Lollicup enters into this Agreement voluntarily and without coercion and

8 acknowledges that no promises, threats, or assurances have been made by the Commissioner or any

9 officer, or agent thereof, about this Agreement.

10 6. The Commissioner reserves the right to bring any future actions against Lollicup or

11 any of its officers, directors, shareholders, or employees for any and all unknown or future violations

12 of the Franchise Investment Law. This Agreement shall not serve to exculpate Lollicup or any of its

13 officers, directors, shareholders, or employees from any liability for violations of the Franchise

14 Investment Law not addressed herein or any and all future violations of the Franchise Investment

15 Law.

16 7. Lollicup acknowledges that nothing in this Agreement shall preclude the

17 Commissioner, or her agents or employees, to the extent authorized by law, from assisting or

18 cooperating in any investigation and/or action brought by any other federal, state, or county agency.

19 Lollicup further agrees that this Agreement shall not bind or otherwise prevent any other federal,

20 state, or county agency from the performance of its duties.

21 8. Each of the Parties represents and warrants that they have received independent advice

22 from their attorneys and/or other representatives with respect to the advisability of executing this

23 Agreement.

24 9. Each of the Parties represents, warrants, and agrees that in executing this Agreement

25 they have relied solely on the statements set forth in the Agreement and the advice of their own

26 attorneys and/or representatives. Each of the Parties represents, warrants, and agrees that in executing

27 this Agreement they have placed no reliance on any statement, representation, or promise of any

28 other party, or any person or entity not expressly set forth herein, or upon the failure of any party or

1 any other person or entity to make any statement, representation, or disclosure of anything
2 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in any
3 way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol
4 evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

5 10. This Agreement is intended to and shall constitute a final and complete resolution of
6 the subject of this Order and constitutes the final written expression and a complete and exclusive
7 statement of all stipulations, agreements, conditions, promises, representations, and covenants
8 between the parties with respect to the matter hereof, and supersedes all prior or contemporaneous
9 agreements, discussions, negotiations, representations, and understandings between and among the
10 parties, their respective representatives, and any other person or entity, with respect to the subject
11 matter covered in this Agreement.

12 11. In that the Parties have had the opportunity to draft, review and edit the language of
13 this Agreement, no presumption for or against any party arising out of drafting all or any part of this
14 Agreement will be applied in any action relating to, connected, to, or involving this Agreement.
15 Accordingly, the parties waive the benefit of Civil Code section 1654 and any successor or amended
16 statute, providing that in cases of uncertainty, language of a contract should be interpreted most
17 strongly against the party who caused the uncertainty to exist.

18 12. The waiver of any provision of this Agreement shall not operate to waive any other
19 provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement
20 must be in writing and signed by the Parties.

21 13. This Agreement shall not become effective until signed by all Parties.

22 14. This Agreement may be executed in one or more counterparts, each of which shall be
23 an original but all of which, together, shall be deemed to constitute a single document.

24 15. This Agreement may be executed by facsimile or scanned signature, and any such
25 facsimile or scanned signature by any party hereto shall be deemed to be an original signature and
26 shall be binding on such party to the same extent as if such facsimile or scanned signature were an
27 original signature.

28 ///

