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

12 In the Matter of: ) FIL ORG ID: 160301  
13 )  
14 THE COMMISSIONER OF BUSINESS ) CITATION INCLUDING:  
OVERSIGHT, ) (1) DESIST AND REFRAIN ORDER  
15 ) (2) ASSESSMENT OF ADMINISTRATIVE  
16 Complainant, ) PENALTIES  
17 v. ) (3) CLAIM FOR ANCILLARY RELIEF AND  
18 ) COSTS  
HANDEL’S ENTERPRISES, INC., LEONARD )  
19 J. FISHER, )  
20 Respondents. )  
21

22 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), finds the  
23 following:

24 I  
25 Introduction

26 1. Handel’s Enterprises, Inc. (Handel’s) is an Ohio corporation with its principal place of  
27 business at 3830 Starr Centre Drive, Suite 1, Canfield, Ohio 44406. Handel’s is in the business of  
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1 operating ice cream shops under the “Handel’s” name. The company maintains a website at  
2 www.handelsicream.com.

3 2. At all relevant times, Leonard J. Fisher (Fisher) is the president of Handel’s.

4 3. The Commissioner as the chief officer of the Department of Business Oversight  
5 (Department) is responsible for administering and enforcing the California Franchise Investment Law  
6 (FIL) (Corporations Code § 31000 et seq.).

7 **II**

8 **Statement of Facts**

9 4. Since at least December of 2009, Handel’s and Fisher (collectively, Respondents)  
10 have offered and sold franchises in California pursuant to franchise agreements. The agreements  
11 grant the right to engage in the business of operating a retail ice cream store under Handel’s trade  
12 names, exclusive trademarks, service marks, advertising and other commercial symbols. Handel’s  
13 Disclosure Document (FDD) states that “[t]he franchisee will operate a business selling homemade  
14 ice cream, sherbet, ices, sorbet, frozen yogurt and other ice cream products that principally involves  
15 the establishment and operation of an ice cream parlor.” Handel’s initial registration with the  
16 Commissioner to offer and sell franchises in California became effective on December 30, 2009 and  
17 expired on April 20, 2010. Handel’s is required to renew its registration on an annual basis. Its  
18 present franchise registration would terminate on April 22, 2019.

19 5. On March 30, 2015, Handel’s filed an application to renew its registration (2015  
20 Registration). The 2015 Registration was approved and became effective on April 13, 2015 and it  
21 expired on April 20, 2016.

22 6. On January 11, 2016, Respondents filed a post-effective amendment application to  
23 modify its franchise agreement, specifically Article Fourteen, section 14.02; Article Sixteen, section  
24 16.06; and Article Seventeen, sections 17.03, 17.04 and 17.07. The amended franchise agreement  
25 became effective on January 19, 2016 (2016 Amended Agreement). There were no revisions made to  
26 the FDD.

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1 thousand five hundred dollars (\$2,500) per violation and shall contain  
2 reference to this section, including the provisions of subdivision (c).  
3 All penalties collected under this section shall be deposited in the State  
4 Corporations Fund.

5 (b) The sanctions authorized under this section shall be separate from,  
6 and in addition to, all other administrative, civil, or criminal remedies.

7 (c) If within 60 days from the receipt of the citation, the person cited  
8 fails to notify the commissioner that the person intends to request a  
9 hearing as described in subdivision (d), the citation shall be deemed  
10 final.

11 (d) Any hearing under this section shall be conducted in accordance  
12 with Chapter 5 (commencing with Section 11500) of Part 1 of Division  
13 3 of Title 2 of the Government Code.

14 (e) After the exhaustion of the review procedures provided for in this  
15 section, the commissioner may apply to the appropriate superior court  
16 for a judgment in the amount of the administrative penalty and order  
17 compelling the cited person to comply with the order of the  
18 commissioner. The application shall include a certified copy of the  
19 final order of the commissioner and shall constitute a sufficient  
20 showing to warrant the issuance of the judgment and order.

21 13. Based upon the foregoing findings, the Commissioner is of the opinion that Handel's  
22 Enterprises, Inc. and Leonard J. Fisher failed to provide a copy of the FDD together with a copy of all  
23 proposed agreements relating to the sale of the franchise, at least 14 days prior to the execution of the  
24 franchise agreement, to at least one franchisee in this state, in violation of section 31119, subdivision  
25 (a). Pursuant to Corporations Code section 31406, Respondents are hereby cited and ordered to desist  
26 and refrain from violating Corporations Code section 31119, subdivision (a).

27 14. Further, the Commissioner is of the opinion that Handel's Enterprises, Inc. and  
28 Leonard J. Fisher engaged in the offer and sale in this state by means of written or oral  
communications which include an untrue statement of a material fact or omit to state a material fact  
necessary in order to make the statements made, in light of the circumstances under which they were  
made, not misleading, to at least one franchisee, in violation of Corporations Code section 31201.  
Pursuant to section 31406, Respondents are hereby ordered to desist and refrain from the further offer

1 or sale of franchises, including but not limited to the operation of ice cream shops under the Handel’s  
2 name, by means of written or oral communications which include an untrue statement of a material  
3 fact or omit to state a material fact necessary in order to make the statements made, in light of the  
4 circumstances under which they were made, not misleading.

5 15. This order is necessary, in the public interest, for the protection of franchisees and  
6 consistent with the purposes, policies and provisions of the Franchise Investment Law.

7 **IV**

8 **Administrative Penalties**

9 16. In light of the foregoing findings, under Corporations Code section 31406, Handel’s  
10 Enterprises, Inc. and Leonard J. Fisher are hereby ordered to pay the Commissioner an administrative  
11 penalty in the amount of \$5,000.00 for one violation of each of sections 31119, subdivision (a) and  
12 31201 of the Corporations Code.

13 17. The administrative penalties in the amounts stated above shall be made payable in the  
14 form of a cashier’s check or Automated Clearing House deposit to the “Department of Business  
15 Oversight,” and transmitted to the attention of Accounting – Enforcement Division, Department of  
16 Business Oversight, 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment  
17 shall be concurrently sent to Marlou de Luna, Senior Counsel, Department of Business Oversight,  
18 320 West 4th Street, Suite 750, Los Angeles, California 90013, no later than 60 days from the date of  
19 this order.

20 **V**

21 **Ancillary Relief and Fees**

22 18. Corporations Code section 31408 provides:  
23  
24 (a) If the commissioner determines it is in the public interest, the  
25 commissioner may include in any administrative action brought under  
26 this division, including a stop order, a claim for ancillary relief,  
27 including, but not limited to, a claim for rescission, restitution or  
28 disgorgement or damages on behalf of the persons injured by the act or  
practice constituting the subject matter of the action, and the  
administrative law judge shall have jurisdiction to award additional

1 relief. The person affected may be required to attend remedial  
2 education, as directed by the commissioner.

3 (b) In an administrative action brought under this part the  
4 commissioner is entitled to recover costs, which in the discretion of the  
5 administrative law judge may include any amount representing  
6 reasonable attorney's fees and investigative expenses for the services  
7 rendered, for deposit into the State Corporations Fund for the use of the  
8 Department of Business Oversight.

9 19. In light of the foregoing findings, under Corporations Code section 31408, subdivision  
10 (b), Handel's Enterprises, Inc. and Leonard J. Fisher shall pay attorney fees and investigative  
11 expenses to the Department of Business Oversight in the amount of \$13,200.00 or according to proof.  
12 The amount awarded for attorney's fees and investigative expenses shall be made payable in the form  
13 of a cashier's check or Automated Clearing House deposit to the "Department of Business  
14 Oversight," and transmitted to the attention of Accounting – Enforcement Division, Department of  
15 Business Oversight, 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment  
16 shall be concurrently sent to Marlou de Luna, Senior Counsel, Department of Business Oversight,  
17 320 West 4th Street, Suite 750, Los Angeles, California 90013, no later than 60 days from the date of  
18 this order.

19 20. This order is necessary, in the public interest, for the protection of investors and  
20 franchisees and consistent with the purpose, policies and provisions of the Franchise Investment Law.

21 Dated: December 3, 2018

JAN LYNN OWEN  
Commissioner of Business Oversight

22  
23 By: \_\_\_\_\_  
24 MARY ANN SMITH  
25 Deputy Commissioner  
26 Enforcement Division  
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