

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

8 Attorneys for Complainant

9  
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
11 OF THE STATE OF CALIFORNIA  
12

13 In the Matter of: )  
14 THE CALIFORNIA COMMISSIONER OF ) CITATION  
15 BUSINESS OVERSIGHT, )  
16 Complainant, )  
17 v. )  
18 LOLLICUP USA INC. )  
19 Respondent. )  
20 )  
21 )  
22 )

23 The California Commissioner of Business Oversight (“Commissioner”) finds that:

24 1. At all relevant times, Lollicup USA Inc. (“Lollicup”) was a California corporation.  
25 Lollicup’s principal place of business is 6185 Kimball Avenue, Chino, California. The company  
26 maintained a website at www.lollicup.com.

27 ///

28 ///

1           2. The Commissioner had previously investigated Lollicup and two of its principals, Alan  
2 Yu and Marvin Cheng (collectively “Respondents”), concerning the unlawful offer and sale of  
3 unregistered franchises in the State of California.

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

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

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

20          6. More than six years after having entered into the settlement agreement, Lollicup filed a  
21 notice of violation with the Department on or about November 13, 2014. Based on the  
22 Commissioner’s assessment of the information contained in the notice of violation, from April 16,  
23 2008 to the present, the Commissioner finds that Lollicup sold an additional five unregistered  
24 franchises in California under its “Trademark License” agreements in violation of the Order.

25          7. The Commissioner further finds that the agreements offered and sold by Lollicup  
26 constitute franchises within the meaning of Corporations Code section 31005. The agreements  
27 provided that Lollicup would supply its franchisees with original beverage products and ingredients  
28 under the Lollicup brand; rights to its trademark name and logo; marketing and sales assistance and

1 training; in-store facility and machine support; business models; detailed sales and marketing plans;  
2 and commercial advertising campaign materials in return for “franchise” or “license” fees. The  
3 agreements further included obligations that franchisees purchase Lollicup products and materials,  
4 and grant Lollicup certain approval and management rights.

5 8. Lollicup’s offer and sale of agreements in California have not been registered as  
6 franchises under the Franchise Investment Law and the Commissioner finds that they are not  
7 exempted under Chapter 1, beginning with Corporations Code section 31100, of that law.

8 9. Corporations Code section 31406 provides in relevant part:

9 (a) If, upon inspection or investigation, based upon a complaint or  
10 otherwise, the commissioner has cause to believe that a person is  
11 violating any provision of this division or any rule or order  
12 promulgated pursuant to this division, the commissioner may issue a  
13 citation to that person in writing describing with particularity the basis  
14 of the citation. Each citation may contain an order to desist and refrain  
15 and an assessment of an administrative penalty not to exceed two  
16 thousand five hundred dollars (\$2,500) per violation and shall contain  
17 reference to this section, including the provisions of subdivision (c). All  
18 penalties collected shall be deposited in the State Corporations Fund.

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

23 (d) Any hearing under this section shall be conducted in accordance  
24 with Chapter 5 (commencing with Section 11500) of Part 1 of Division  
25 3 of Title 2 of the Government Code.

26 Based on the foregoing findings, the Commissioner is of the opinion that Lollicup USA Inc.  
27 has engaged in the offer and sale of franchises in this state that are subject to registration under the  
28 Franchise Investment Law without the offers first being registered, in violation of Corporations Code  
section 31110 and the Commissioner’s April 16 Order. Under Corporations Code section 31406,  
Lollicup USA Inc. is ordered to pay administrative penalties in the amount of \$5,850.00 for  
violations of Corporations Code section 31110 and the Order.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The Citation is necessary, in the public interest, for the protection of franchisees and consistent with the purposes, policies, and provisions of the Franchise Investment Law.

Dated: June 9, 2015  
Los Angeles, CA

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
Mary Ann Smith  
Deputy Commissioner  
Enforcement Division