

1 PRESTON DuFAUCHARD
California Corporations Commissioner
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Deputy Commissioner
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7 Attorneys for Complainant
8

9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

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12 In the Matter of the Order of THE) File No.: 8026
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) SETTLEMENT AGREEMENT
14)
Complainant,)
15)
16 v.)
17 LOLLICUP USA, INC., ALAN YU, MARVIN)
CHENG,)
18)
19 Respondents.)
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1 This Settlement Agreement ("Agreement") is entered into between Lollicup USA, Inc.
2 ("Lollicup"), Alan Yu ("Yu") and Marvin Cheng ("Cheng") (collectively, "Respondents"), on the
3 one hand, and the California Corporations Commissioner ("Commissioner"), on the other hand, with
4 respect to the following facts:

5 RECITALS

6 A. Lollicup is a California corporation in good standing incorporated on January 21, 2000.
7 Lollicup's principal place of business is 1100 Coiner Court, City of Industry, CA 91748.

8 B. Yu is the Co-Founder and President/CEO and a control person of Lollicup.

9 C. Cheng is the Co-Founder and Executive Vice President and a control person of Lollicup.

10 D. The Commissioner acting to protect the public from unlawful practices in the offer and
11 sale of franchises in violation of section 31110 of the California Franchise Investment Law,
12 California Corporations Code section 31000 *et. seq.*,¹ commenced an investigation into
13 Respondents' offer and sale of Lollicup stores, which sell boba, tea, coffee, juice and smoothie
14 beverage products under the distinctive Lollicup brand.

15 E. As a result of the investigation, the Commissioner found that since in or about December
16 2000, Respondents have offered and/or sold franchises to California residents pursuant to exclusive
17 and non-exclusive "Trademark License" and other agreements. The agreements grant the right to
18 engage in the business of offering, selling, or distributing goods or services under Lollicup® USA
19 Inc.'s exclusive trademarks, including service marks and trade names, and constitute franchise
20 agreements under the Franchise Investment Law. Respondents contend that they intended to create
21 and operate valid, legally permissible trademark license agreements, and not franchise agreements.

22 F. On or about April 16, 2008, the Commissioner issued Citations and Desist and Refrain
23 Order to Respondents ("Order") finding that Respondents have engaged in the offer and sale of
24 franchises in this state that are subject to registration under the Franchise Investment Law without
25 the offers first having been registered, and ordering Respondents to desist and refrain from the
26 further offer or sale of franchises unless and until the offers have been duly registered under the
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¹ All references are to the California Corporations Code unless otherwise noted.

1 Franchise Investment Law. Further, the Order requires Respondents to pay to the Commissioner an
2 administrative penalty in the amount of thirty-five thousand dollars (\$35,000).

3 G. It is the intention and desire of the parties to resolve this matter without the necessity of a
4 hearing and/or other litigation.

5 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
6 forth herein, the parties agree as follows:

7 **TERMS AND CONDITIONS**

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

10 2. Without admitting or denying the allegations contained in the Order, Respondents hereby
11 stipulate to issuance of the Order. In the event that any future proceeding(s) are initiated by or
12 brought before the Commissioner against Respondents, Respondents shall not dispute the allegations
13 contained in this Agreement, including the Recitals above. It is the intent and understanding of the
14 parties that this Agreement, and its Recitals, shall not be binding or admissible against Respondents
15 in any action(s) brought against Respondents by third parties.

16 3. Respondents hereby waive their right to a hearing on the allegations set forth in the
17 Order. Respondents acknowledge their right to an administrative hearing under sections 31402 and
18 31406 in connection with the Order, and hereby waive that right to a hearing, and to any
19 reconsideration, appeal, or other right which may be afforded pursuant to the Franchise Investment
20 Law, the California Administrative Procedure Act, the California Code of Civil Procedure or any
21 other provision of law in connection with this matter.

- 22 4. Respondents agree to the following:
 - 23 (i) Pursuant to the Order, Respondents shall pay a citation in the amount of
 - 24 \$35,000 to the Commissioner within 10 (ten) business days of execution of
 - 25 this Agreement.
 - 26 (ii) Within six (6) months of execution of this Agreement, Respondents shall
 - 27 have filed an application for registration under the Franchise Investment
 - 28 Law, and shall be in full compliance with the Franchise Investment Law.

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(iii) Respondents shall comply with section 31303 and California Code of Regulations section 310.303 within ninety (90) days of execution of this Agreement by filing an application for approval as to form of a written notice of violation, and delivering the approved notice of violation to all franchisees in accordance with the Franchise Investment Law.

(iv) If Respondents fail to comply with any of the terms of this Order, the Commissioner may institute proceedings for any and all violations otherwise resolved pursuant to this Agreement and the Order.

5. The parties hereby acknowledge and agree that this Agreement is intended to and shall constitute a final and complete resolution of the Order, and constitutes the entire Agreement between the parties with respect thereto. This Agreement supercedes any and all prior or contemporaneous agreements between the parties hereto.

6. Notwithstanding any other provision contained herein, nothing in this Agreement shall operate to limit the Commissioner’s ability to investigate and prosecute violations of the Franchise Investment Law not addressed herein, or to assist any other agency (county, state or federal) with any prosecution, administrative, civil or criminal, brought by such agency against Respondents concerning violations alleged herein or otherwise.

7. Each party hereto represents and warrants that it has received independent advice from its attorney(s) and/or other representatives prior to entering into this Agreement, and in executing this Agreement relied solely on this statements set forth herein and the advice of its own counsel and/or representative.

8. In that the parties have had the opportunity to draft, review and edit the language of this Agreement, no presumption for or against any party arising out of drafting all or any part of this Agreement will be applied in any action relating to or arising out of this Agreement. Accordingly, the parties hereby waive the benefit of California Civil Code section 1654 and any successor statute.

9. The waiver of any provision of this Agreement shall not operate to waive any other provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement must be in writing signed by the parties hereto.

1 10. Each signatory hereto represents and warrants that he/she possesses the necessary
2 capacity and authority to execute this Agreement and bind the parties hereto.

3 11. This Agreement may be executed in one or more counterparts, each of which shall be an
4 original but all of which, together, shall be deemed to constitute a single document. A fax signature
5 shall be deemed the same as an original signature.

6 Dated: 4/16/08 PRESTON DuFAUCHARD
7 California Corporations Commissioner

8
9 By: _____
10 Alan S. Weinger
11 Lead Corporations Counsel

12 Dated: 4/16/2008 Approved as to form:
13 MICHAEL OBERBECK
14 Burkhalter Kessler Goodman & George LLP

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16 By: _____
17 Michael Oberbeck, counsel for
18 Respondents Lollicup USA, Inc., Alan Yu
and Marvin Cheng

19 Dated: 4/16/08 LOLLICUP USA, INC.

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22 By: _____
23 Alan Yu, President/CEO

24 Dated: 4/16/08 By: _____
25 Alan Yu, an individual

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27 Dated: 4/16/08 By: _____
28 Marvin Cheng, an individual