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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 THE COMMISSIONER OF BUSINESS) File Org. ID.: 177901
12 OVERSIGHT,)
13 Complainant,) STATEMENT IN SUPPORT OF STOP
14 v.) ORDER DENYING EFFECTIVENESS OF
15) APPLICATION AND CLAIM FOR
16 SHIPPING FRANCHISE HOLDING) ANCILLARY RELIEF
17 CORPORATION, and SSFC, LLC)
18 Respondent.)
19)
20)
21)

22 I.
23 INTRODUCTION

24 1. The Commissioner is the head of the Department of Business Oversight and is
25 responsible for administering and enforcing the California Franchise Investment Law (FIL) (Corp.
26 Code § 31000, et seq.)¹ and registering the offer and sale of franchises in California.

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28 ¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 of SSFC to sell franchises in the State of California was not in effect, in violation of section 31110.

2 10. Section 31110 provides in pertinent part:

3 [I]t shall be unlawful for any person to offer or sell any franchise in this
4 state unless the offer of the franchise has been registered under this part or
5 exempted under Chapter 1 (commencing with Section 31100) of this part.

6 B. Franchise Applications Filed by Shipping Franchise Holding Corporation

7 11. On or about January 1, 2015, SSFC sold the assets of the company, which included the
8 “Safe Ship” franchise, to Shipping Franchise Holding Corporation.

9 12. At all relevant times after January 1, 2015, Shipping Franchise Holding Corporation
10 was engaged in business activities relating to the franchising of the “Safe Ship” franchise in this state.

11 13. On or about June 10, 2015, Shipping Franchise Holding Corporation first filed a
12 Uniform Franchise Registration Application (Application) with the Commissioner, seeking to register
13 its franchise enterprise in this state in compliance with section 31111.

14 14. Shipping Franchise Holding Corporation’s registration became effective on July 20,
15 2015, and expired on April 20, 2016.

16 15. Shipping Franchise Holding Corporation filed a second Application with the
17 Commissioner on June 27, 2016.

18 16. The second Application that Shipping Franchise Holding Corporation submitted to the
19 Commissioner was accompanied by a UFDD containing the material information set forth in the
20 application, as required by section 31114.

21 17. Shipping Franchise Holding Corporation represented in the UFDD that it purchased
22 the assets of SSFC on January 1, 2015.

23 18. Item 2 of the UFDD only disclosed two individuals: (1) Richard Marsh and (2) Cheryl
24 Marsh. Item 2 identified Richard Marsh as “Head Trainer and Build-out Manager” and Cheryl Marsh
25 as “Logistics Manager.”

26 19. Both Richard Marsh and Cheryl Marsh were previously officers of SSFC, with
27 Richard Marsh serving as President and Cheryl Marsh serving as Secretary/Treasurer.

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1 C. Civil Litigation Not Disclosed in Application

2 20. After Shipping Franchise Holding Corporation filed the second Application in June of
3 2016, the Commissioner became aware of a pending civil lawsuit against SSFC, Safe Ship, Richard
4 Marsh, Ocean and United Brands Biz Corporation (hereafter “Civil Litigation”).

5 21. The First Amended Complaint in the Civil Litigation was filed on May 22, 2015 in
6 San Diego County Superior Court by Franchisee against SSFC dba Safe Ship, a Florida limited
7 liability company, Richard Marsh, United Brands Biz Corporation, a Florida Corporation and Ocean
8 alleges, among other things, violations of sections 31110 (unlawful sale of an unregistered franchise)
9 and 31201 (unlawful sale of a franchise by means of statements that include an untrue statement of
10 material fact or which omits to state a material fact) in violation of Business and Professions Code
11 section 17200.

12 22. On June 27, 2016, the Commissioner advised Shipping Franchise Holding
13 Corporation, through Ocean, that although Richard Marsh was identified in Item 2 of the UFDD,
14 Item 3 did not disclose the Civil Litigation filed against him.

15 23. In the Commissioner’s letter dated June 27, 2016, Shipping Franchise Holding
16 Corporation was also asked to describe Ocean’s position in both SSFC and Shipping Franchise
17 Holding Corporation and explain why Ocean was not listed in Item 2 of the UFDD if he was an
18 officer, director or someone holding control in either SSFC and/or Shipping Franchise Holding
19 Corporation.

20 24. On July 21, 2016, Ocean represented to the Commissioner that SSFC had sold all
21 assets except for three franchises (including the Franchisee) to Shipping Franchise Holding
22 Corporation and that he was a franchise consultant and attorney for both SSFC and Shipping
23 Franchise Holding Corporation.

24 25. On August 4, 2016, the Commissioner informed Shipping Franchise Holding
25 Corporation, through Ocean, that the Civil Litigation should have been disclosed in Item 3 because
26 the action was filed against Richard Marsh, an individual named in Item 2 of the UFDD. The
27 Commissioner asked Ocean to provide a copy of the civil complaint referenced above, disclose the
28 names of directors and officers of Shipping Franchise Holding Corporation, and provide a copy of the

1 bylaws and the Articles of Incorporation. Ocean was advised that the Application would be deemed
2 abandoned if the information was not submitted within a reasonable time.

3 26. On August 8, 2016, Shipping Franchise Holding Corporation submitted amended
4 UFDD documents that removed Richard Marsh from Item 2.

5 27. On August 29, 2016, the Commissioner asked Ocean to explain why Richard Marsh
6 was removed from Item 2 of the UFDD as he was the president of SSFC and Safe Ship, both of
7 which were still in existence. Ocean was also asked to explain why SSFC sold its assets to Shipping
8 Franchise Holding Corporation when the officer/director of Shipping Franchise Holding Corporation
9 and SSFC are the same person.

10 28. On September 9, 2016, Shipping Franchise Holding Corporation submitted additional
11 materials to the Commissioner, including: (1) a copy of the civil complaint requested by the
12 Commissioner; (2) an assertion that Shipping Franchise Holding Corporation does not have directors
13 or officers; and (3) a statement that Richard Marsh ceased to work as an agent for the corporation in
14 the spring of this 2016 “due to ill health.”

15 29. On November 10, 2016, Shipping Franchise Holding Corporation, through Ocean,
16 forwarded a letter to the Commissioner asserting that the sole shareholder of Shipping Franchise
17 Holding Corporation was Jaguar Investment Trust and that neither Richard Marsh nor Cheryl Marsh
18 was “in control of Jaguar Investment Trust.” Ocean also included a copy of a stock certificate.
19 Ocean further advised that Richard Marsh had been served with the complaint on July 10, 2015.

20 30. Section 31200 provides in pertinent part:

21 [I]t is unlawful for any person willfully to make any untrue statement of a
22 material fact in any application, notice or report filed with the
23 commissioner under this law, or willfully to omit to state in any such
24 application, stated therein, or fail to notify the commissioner of any
25 material change as required by Section 31123.

26 31. Section 31123 provides:

27 A franchisor shall promptly notify the commissioner in writing, by an
28 application to amend the registration, of any material change in the
information contained in the application as originally submitted, amended
or renewed. The commissioner may by rule further define what shall be

1 considered a material change for such purposes, and the circumstances
2 under which a revised offering prospectus must accompany such
3 application.

4 32. California Code of Regulations, title 10, section 310.111, requires an applicant to be in
5 compliance with the UFDD, including Item 3, which contains a requirement that the applicant
6 disclose any pending civil action against a person named in Item 2.

7 33. Based on allegations of the civil complaint (filed on May 12, 2015) and the date of
8 service of the same on Richard Marsh (service effectuated on July 10, 2015), the Civil Litigation
9 against Richard Marsh should have been disclosed on both Applications (filed on June 10, 2015 and
10 June 27, 2016, respectively).

11 34. A request for entry of default was entered in the Civil Litigation against Richard
12 Marsh on September 4, 2015, and thereafter served on his counsel, providing another reason why the
13 Civil Litigation matter should have been disclosed on the UFDD.

14 35. Since Richard Marsh was served with process on July 10, 2015, after the initial
15 Application was filed by Shipping Franchise Holding Corporation on June 10, 2015, but before it was
16 issued a registration on July 20, 2015, the applicant should have filed a pre-effective amendment
17 application to disclose the Civil Litigation or, in the alternative, filed a post-effective amendment
18 application promptly after the registration was issued, as required by section 31123.

19 36. The Commissioner finds that Shipping Franchise Holding Corporation failed to
20 disclose litigation related to Richard Marsh in the Application filed with the Commissioner on June
21 10, 2015, after Richard Marsh was served with process on or about July 10, 2015, but before the
22 Commissioner issued the registration, in violation of section 31200.

23 37. The Commissioner also finds that Shipping Franchise Holding Corporation failed to
24 disclose the pending litigation related to Richard Marsh in the Application filed with the
25 Commissioner on June 27, 2016, and after being further requested to supplement this information, in
26 violation of section 31200.

27 38. Shipping Franchise Holding Corporation also failed to disclose this litigation in the
28 subsequent application filed on June 27, 2016, even after it was asked to do so, and instead removed

1 Richard Marsh’s name from UFDD Item 2.

2 III.

3 STOP ORDER

4 39. Section 31115 provides in pertinent part:

5 [T]he commissioner may summarily issue a stop order denying the
6 effectiveness of or suspending or revoking effectiveness of any
7 registration if the commissioner finds:

8 (a) That there has been a failure to comply with any of the provisions of
9 this law or rules of the commissioner pertaining thereto. . . .

10 40. Based on the Commissioner’s finding of violation of the FIL, as set forth above, the
11 Commissioner has determined that an order should be issued pursuant to section 31115, subdivision
12 (a), denying the effectiveness of the Shipping Franchise Holding Corporation franchise registration
13 application (“Stop Order”).

14 IV.

15 CLAIM FOR ANCILLARY RELIEF

16 41. Section 31408, subdivision (a), provides:

17 If the commissioner determines it is in the public interest, the
18 commissioner may include in any administrative action brought under this
19 division, including a stop order, a claim for ancillary relief, including, but
20 not limited to, a claim for rescission, restitution or disgorgement or
21 damages on behalf of the persons injured by the act or practice constituting
22 the subject matter of the action, and the administrative law judge shall have
23 jurisdiction to award additional relief. The person affected may be required
24 to attend remedial education, as directed by the commissioner.

25 42. Based on the Commissioner’s finding that Shipping Franchise Holding Corporation
26 and SSFC, LLC violated the FIL, as set forth above, the Commissioner determines it is in the public
27 interest to include in the Stop Order a claim for ancillary relief as follows:

28 Rescission

Shipping Franchise Holding Corporation and SSFC, LLC shall afford all Safe Ship
franchisees who purchased a franchise when there was not a registration in effect to sell franchises in
the State of California, as required by the FIL, the right to rescind any contract for the purchase of a
franchise.

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Restitution

Shipping Franchise Holding Corporation and SSFC, LLC shall pay restitution to every Safe Ship franchisee that purchased a franchise when there was not a registration in effect to sell franchises in the State of California, as required by the FIL, in the amount of the initial franchise fee paid by the franchisee, according to proof.

Remedial Education

Pursuant to section 31408, Shipping Franchise Holding Corporation and SSFC, LLC, and all persons who assist in preparing franchise registrations or who assist in selling franchises on their behalf, shall attend remedial education, which shall consist of eight hours of franchise law training per person, offered by instructors that are acceptable to the Commissioner.

Dated: June 8, 2017
Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
WILLIAM F. HORSEY
Senior Counsel
Enforcement Division