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California Corporations Commissioner
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BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. TOPZ FRANCHISING, INC., Respondent.	)	Case No: File No.: 993-4706 STATEMENT IN SUPPORT OF ORDER DENYING EFFECTIVENESS OF FRANCHISE REGISTRATION APPLICATION (Corp. Code section 31117)

Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the Department of Corporations ("Department") finds that:

1. At all relevant times, Topz Franchising, Inc. ("TFI") was a California corporation formed on January 30, 2002. TFI's last known principal business address was 22351 Ventura Blvd., Suite 186, Woodland Hills, California 91364. TFI's corporate status was suspended on February 1, 2008.

2. Mark Matters, formerly known as Mark Avila, is, and has been, the Chairman, President, Chief Financial Officer and Secretary of TFI since its formation in January 2002.

3. At all relevant times, Mark Matters was an officer of Pacific Crest Holdings, Inc., an affiliate of TFI, which owns the trademarks registered with the United States Patent and Trademark

Office. Pacific Crest Holdings, Inc. licenses the rights to use the TOPZ proprietary marks to TFI. Pacific Crest Holdings, Inc.'s corporate status was suspended on October 1, 2007.

4. At all relevant times, Mark Matters was also an officer of Pacific Crest Management, Inc., the majority common stockholder of TFI. Pacific Crest Management, Inc.'s corporate status was suspended on October 1, 2003.

5. TFI offers and sells franchises to establish and operate quick service restaurants under the tradename "TOPZ". TFI's last franchise registration obtained from the Department expired on April 20, 2006.

6. Pursuant to Corporations Code sections 31110 and 31111, on March 5, 2008, TFI filed a Uniform Franchise Registration Application with the Department to obtain a new franchise registration to offer and sell franchises in California. On May 19, 2008, TFI filed a pre-effective amendment to this franchise registration application. The Uniform Franchise Registration Application included TFI's Uniform Franchise Disclosure Document ("UFDD") and TFI's audited financial statements for the fiscal years ending 2005, 2006, and 2007.

7. TFI willfully omitted to state the following material facts, which were required to be disclosed in the Uniform Franchise Registration Application filed with the Department, in violation of Corporations Code section 31200:

a. TFI failed to disclose that its corporate status was suspended on February 1, 2008;

b. TFI failed to disclose that Pacific Crest Management, Inc. is an affiliate that provides products or services to the franchisees of TFI;

c. TFI failed to disclose that in 2007 it paid management fees of $425,763 to its majority common shareholder, Pacific Crest Management, Inc. for various services provided to franchisees such as training, consultation and advisory services as well as reimbursement for certain overhead expenses;

d. TFI failed to disclose that Pacific Crest Management, Inc.'s corporate status was suspended on October 1, 2003;

e. TFI failed to disclose that Pacific Crest Holdings, Inc.'s corporate status was suspended on October 1, 2007;

f. TFI failed to disclose that the notes payable to former franchisees listed in Item 3 of the UFDD were secured by intellectual property, accounts receivable and company assets and that these notes were in default as of December 31, 2007; and

g. TFI failed to disclose two additional unsecured notes payable to former franchisees in the amount of $116,392 that were in default as of December 31, 2007.

8. Based upon the audited financial statements submitted, TFI has failed to demonstrate that it can meet its pre-opening obligations to its franchisees. TFI's 2007 audited financial statements for the fiscal year ending December 31, 2007 revealed the following:

a. TFI's ability to continue to operate as a going concern is in doubt because of recurring net losses, working capital deficits, and the defaults of four notes payable in the amount of $354,312;

b. TFI has been meeting its liquidity needs through the sale of its capital stock and loans from shareholders. Historically, cash flows from operating activities have not been sufficient to meet TFI's liquidity requirements; and

c. In 2007, TFI paid $425,763 in management fees to its majority common stockholder while reporting only $332,829 in total revenues for the 2007 calendar year.

9. TFI maintains a website at www.topz.com that offers to sell franchises in violation of Corporations Code section 31110. The TFI website does not comply with the provisions of California Code of Regulations, title 10, section 310.100.3 in that it does not indicate, directly or indirectly that the franchise is not being offered to the residents of the State of California and therefore is not exempt from the provisions of Corporations Code section 31110.

10. Corporations Code section 31110 provides:

> On and after April 15, 1971, it shall be unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has been registered under this part or exempted under Chapter 1(commencing with Section 31100) of this part.

11. Corporations Code section 31200 provides:

> It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice or report filed with the commissioner under this law, or willfully to omit to state in any such application, notice, or report any material fact which is required to stated therein, or fail to notify the commissioner of any material change as required by Section 31123.

12. Corporations Code section 31115 provides, in relevant part, as follows:

> The commissioner may summarily issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration if the commissioner finds:
>
> (a) That there has been a failure to comply with any of the provisions of this law or the rules of the commissioner pertaining thereto.
>
> (b) That the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud of the purchasers, . . .

13. Corporations Code section 31117 provides, in relevant part:

> Upon the entry of a stop order under Section 31115 the commissioner shall promptly notify the applicant that it has been entered and of the reasons therefor and that upon receipt of written request the matter will be set down for hearing to commence within 15 business days after such receipt unless the applicant consents to a later date. If no hearing is requested within 30 days after receipt of the notice and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner….

Based upon the foregoing findings, the California Corporations Commissioner is of the opinion that Topz Franchising, Inc. has failed to comply with certain provisions and rules of the commissioner pertaining to the Franchise Investment Law within the meaning of Corporations Code section 31115(a). Further, the sale of franchises by Topz Franchising, Inc. would constitute misrepresentation to, or deceit or fraud of the purchasers within the meaning of Corporations Code section 31115(b).

For these reasons, the California Corporations Commissioner has determined that an order should be summarily issued pursuant to Corporations Code sections 31115(a) and (b) to deny the effectiveness of the franchise registration application, and any pre-effective amendments, filed by Topz Franchising, Inc.

Dated: October 28, 2008
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By: ____________________________
Linda A. Stella
Sr. Corporations Counsel