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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: 330172
)
13 THE COMMISSIONER OF BUSINESS) CITATION INCLUDING:
OVERSIGHT,)
14) (1) DESIST AND REFRAIN ORDER;
15 Complainant,)
) (2) ASSESSMENT OF ADMINISTRATIVE
16 v.) PENALTIES;
)
17 TTM GUITARS, LLC and LANCE) (3) CLAIM FOR ANCILLARY RELIEF
18 MITCHELL BENEDICT,)
) (Corp. Code §§ 31402, 31406, 31408)
19 Respondents.)
20)

21 The Complainant, the Commissioner of Business Oversight (Commissioner) of the Department
22 of Business Oversight (Department), finds the following:

23 I.

24 **Statement of Facts**

25 1. At all relevant times, TTM Guitars, LLC was organized on or around December 11,
26 2017, as a California limited liability company. As of August 7, 2019, TTM Guitars, LLC's business
27 status is canceled.

28 2. At all relevant times, TTM Guitars, LLC's principal place of business was 45501 Club

1 Drive, Indian Wells, California 92210.

2 3. At all relevant times, Lance Mitchell Benedict was managing member or control person
3 of TTM Guitars, LLC, with a principal place of business at 45501 Club Drive, Indian Wells,
4 California 92210.

5 4. On or around March 22, 2019, TTM Guitars, LLC entered into a “TTM Guitars
6 Franchise Agreement” with Music For My Sanity, LLC. The agreement designated TTM Guitars, LLC
7 as the franchisor and Music For My Sanity, LLC as franchisee.

8 5. The March 22, 2019, agreement granted Music For My Sanity, LLC the right to own
9 and operate a TTM Guitars franchise in Lexington, South Carolina, as well as the exclusive right to
10 distribute and sell all TTM Guitars products in the state of Tennessee.

11 6. The March 22, 2019, agreement constituted a franchise within the meaning of
12 Corporations Code section 31005. The franchise opportunity offered in the March 22, 2019, agreement
13 was not registered under the Franchise Investment Law (Corp. Code § 31000 *et seq.*) (FIL) and is not
14 exempt under Chapter 1, beginning at Corporations Code section 31100, of that law.

15 7. On or around April 8, 2019, TTM Guitars, LLC entered into a “TTM Guitars Franchise
16 Agreement” with California residents John Hussey and Christopher Hussey. The agreement designated
17 TTM Guitars, LLC as the franchisor and John and Christopher Hussey as the franchisees.

18 8. The April 8, 2019, agreement granted John and Christopher Hussey the right to own
19 and operate a TTM Guitars franchise in Corning, California, as well as the exclusive right to distribute
20 and sell all TTM Guitars products in the state of Washington.

21 9. The April 8, 2019, agreement constituted a franchise within the meaning of
22 Corporations Code section 31005. The franchise opportunity offered in the April 8, 2019, agreement
23 was not registered under the Franchise Investment Law (Corp. Code § 31000 *et seq.*) (FIL) and is not
24 exempt under Chapter 1, beginning at Corporations Code section 31100, of that law.

25 10. TTM Guitars, LLC sold the March 22 and April 8, 2019 agreements in violation of
26 Corporations Code section 31110.

27 11. TTM Guitars, LLC did not provide offerees with any franchise disclosure document,
28 together with a copy of all proposed agreements relating to the sale of the franchise, at least 14 days

1 prior to receiving any consideration, in violation of Corporations Code section 31119, subdivision (a).

2 **II.**

3 **Citations and Desist and Refrain Orders**

4 12. Corporations Code section 31110 states:

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

8 13. Corporations Code section 31119, subdivision (a) states:

9 It is unlawful to sell any franchise in this state that is subject to
10 registration under this law without first providing to the prospective
11 franchisee, at least 14 days prior to the execution by the prospective
12 franchisee of any binding franchise or other agreement, or at least 14
13 days prior to the receipt of any consideration, whichever occurs first, a
14 copy of the franchise disclosure document, together with a copy of all
15 proposed agreements relating to the sale of the franchise.

16 14. Corporations Code section 31402 states:

17 If, in the opinion of the commissioner, the offer of any franchise is
18 subject to registration under this law and it is being, or it has been,
19 offered for sale without the offer first being registered, the commissioner
20 may order the franchisor or offeror of that franchise to desist and refrain
21 from the further offer or sale of that franchise unless and until the offer
22 has been duly registered under this law. If, after that order has been
23 made, a request for a hearing is filed in writing within 60 days from the
24 date of service of the order by the person to whom the order was
25 directed, a hearing shall be held in accordance with Chapter 5
26 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
27 the Government Code, and the commissioner shall have all of the
28 powers granted under that chapter. Unless that hearing is commenced
within 15 business days after the request is made (or the person affected
consents to a later date), the order shall be deemed rescinded.

If that person fails to file a written request for a hearing within 60 days
from the date of service of the order, the order shall be deemed a final
order of the commissioner and shall not be subject to review by any
court or agency, notwithstanding Section 31501.

15. Corporations Code section 31406 states:

(a) If, upon inspection or investigation, based upon a complaint or
otherwise, the commissioner has cause to believe that a person is
violating any provision of this division or any rule or order promulgated
pursuant to this division, the commissioner may issue a citation to that
person in writing describing with particularity the basis of the citation.
Each citation may contain an order to desist and refrain and an
assessment of an administrative penalty not to exceed two thousand five
hundred dollars (\$2,500) per violation and shall contain reference to this

1 section, including the provisions of subdivision (c). All penalties
2 collected under this section shall be deposited in the State Corporations
Fund.

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

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

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

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

13 16. Based upon the foregoing findings, the Commissioner is of the opinion that TTM
14 Guitars, LLC and Lance Mitchell Benedict engaged in the offer and sale of franchises in this state that
15 are subject to registration under the Franchise Investment Law without the offers first being registered
16 or exempt, in violation of Corporations Code section 31110. Pursuant to Corporations Code section
17 31402, TTM Guitars, LLC and Lance Mitchell Benedict are hereby cited and ordered to desist and
18 refrain from the further offer or sale of franchises unless and until the offers have been duly registered
19 under the Franchise Investment Law or are otherwise exempt.

20 17. Furthermore, based upon the foregoing findings, the Commissioner is of the opinion
21 that TTM Guitars, LLC and Lance Mitchell Benedict sold franchises in this state that were subject to
22 registration under this law without first providing to the prospective franchisee, at least 14 days prior
23 to the execution by the prospective franchisee of any binding franchise or other agreement, or at least
24 14 days prior to the receipt of any consideration, whichever occurs first, a copy of the franchise
25 disclosure document, together with a copy of all proposed agreements relating to the sale of the
26 franchise, in violation of Corporations Code section 31119, subdivision (a). Pursuant to Corporations
27 Code section 31406, TTM Guitars, LLC and Lance Mitchell Benedict are hereby cited and ordered to
28 desist and refrain from the further sale of franchises in this state that are subject to registration under

1 this law without first providing to the prospective franchisee, at least 14 days prior to the execution by
2 the prospective franchisee of any binding franchise or other agreement, or at least 14 days prior to the
3 receipt of any consideration, whichever occurs first, a copy of the franchise disclosure document,
4 together with a copy of all proposed agreements relating to the sale of the franchise.

5 18. These orders are necessary, in the public interest, for the protection of investors and
6 franchisees and consistent with the purposes, policies, and provisions of the Franchise Investment
7 Law.

8 **III.**

9 **Administrative Penalties**

10 19. Pursuant to Corporations Code section 31406, TTM Guitars, LLC and Lance Mitchell
11 Benedict are, jointly and severally, hereby assessed and ordered to pay an administrative penalty of
12 \$2,500.00 for each of four citations under the Franchise Investment Law, totaling \$10,000.00, as
13 follows:

14 20. **CITATION A:** In or around March 2019, TTM Guitars, LLC and Lance Mitchell
15 Benedict made an unregistered offer and sale of a franchise from Indian Wells, California, without
16 exemption from the registration requirement, in violation of Corporations Code section 31110.

17 21. **CITATION B:** In or around March 2019, TTM Guitars, LLC and Lance Mitchell
18 Benedict sold a franchise from Indian Wells, California, that was subject to registration under the
19 Franchise Investment Law without first providing to the prospective franchisee, at least 14 days prior
20 to the execution by the prospective franchisee of any binding franchise or other agreement, or at least
21 14 days prior to the receipt of any consideration, whichever occurs first, a copy of the franchise
22 disclosure document, together with a copy of all proposed agreements relating to the sale of the
23 franchise, in violation of Corporations Code section 31119, subdivision (a).

24 22. **CITATION C:** In or around April 2019, TTM Guitars, LLC and Lance Mitchell
25 Benedict made an unregistered offer and sale of a franchise from Indian Wells, California, to an entity
26 or individual in Corning, California, without exemption from the registration requirement, in violation
27 of Corporations Code section 31110.

28 23. **CITATION D:** In or around April 2019, TTM Guitars, LLC and Lance Mitchell

1 Benedict sold a franchise from Indian Wells, California, to an entity or individual in Corning,
 2 California, that was subject to registration under the Franchise Investment Law without first providing
 3 to the prospective franchisee, at least 14 days prior to the execution by the prospective franchisee of
 4 any binding franchise or other agreement, or at least 14 days prior to the receipt of any consideration,
 5 whichever occurs first, a copy of the franchise disclosure document, together with a copy of all
 6 proposed agreements relating to the sale of the franchise, in violation of Corporations Code section
 7 31119, subdivision (a).

8 24. Pursuant to Corporations Code section 31406, the total administrative penalty of
 9 \$10,000.00 shall be due within 60 days of receipt of Citations A-D and shall be made payable to the
 10 Commissioner in the form of a cashier’s check or Automated Clearing House deposit to the
 11 “Department of Business Oversight,” and transmitted to the attention of: Accounting – Enforcement
 12 Division, California Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,
 13 California 95814, contemporaneously with notice of transmittal to Jeremy F. Koo at
 14 Jeremy.Koo@dbo.ca.gov.

15 **IV.**

16 **Order for Ancillary Relief**

17 25. Corporations Code section 31408, subdivision (a), provides:

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

27 26. From in or around March 2019 through at least in or around April 2019, TTM Guitars,
 28 LLC and Lance Mitchell Benedict violated Corporations Code sections 31110 and 31119, subdivision
 (a), in connection with its offers and sales of franchises from California to the following entities and/or
 individuals:

- a. Music For My Sanity, LLC of Lexington, South Carolina, on or around March 22,
 2019;

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b. John Hussey and Christopher Hussey of Corning, California, on or around April 8, 2019.

27. Pursuant to Corporations Code section 31408, subdivision (a), the Commissioner hereby orders TTM Guitars, LLC and Lance Mitchell Benedict, jointly and severally, to disgorge any and all franchise fees and royalties they retained in connection with its offers and sales of franchises to Music For My Sanity, LLC and to John Hussey and Christopher Hussey, in violation of Corporations Code section 31110 and 31119, subdivision (a). Proof of disgorgement shall be submitted within 60 days from receipt of this citation to Jeremy F. Koo, Counsel, California Department of Business Oversight, 1515 K Street, Suite 200, Sacramento California 95814.

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

Dated: January 15, 2020
Sacramento, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division