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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) FIRST AMENDED 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 Pursuant to Government Code section 11507, the Complainant, the Commissioner of Business
22 Oversight, amends its Citation issued on January 15, 2020, against the Respondents, TTM Guitars,
23 LLC and Lance Mitchell Benedict. The Complainant finds the following:

24 **I.**

25 **Statement of Facts**

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

1 2. At all relevant times, TTM Guitars, LLC’s principal place of business was 45501 Club
2 Drive, Indian Wells, California 92210.

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

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

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

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

16 7. On or around April 5, 2019, TTM Guitars, LLC entered into a “TTM Guitars Franchise
17 Agreement” with California residents Curtis Berry and Michael Lucero. The agreement designated
18 TTM Guitars, LLC as the franchisor and Berry and Lucero as the franchisees.

19 8. The April 5, 2019, agreement granted Curtis Berry and Mike Lucero the right to own
20 and operate a TTM Guitars franchise in West Sacramento, California.

21 9. The April 5, 2019, agreement constituted a franchise within the meaning of
22 Corporations Code section 31005. The franchise opportunity offered in the April 5, 2019, agreement
23 was not registered under the FIL and is not exempt under Chapter 1, beginning at Corporations Code
24 section 31100, of that law.

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

28 11. The April 8, 2019, agreement granted John and Christopher Hussey the right to own

1 and operate a TTM Guitars franchise in Corning, California, as well as the exclusive right to distribute
2 and sell all TTM Guitars products in the state of Washington.

3 12. The April 8, 2019, agreement constituted a franchise within the meaning of
4 Corporations Code section 31005. The franchise opportunity offered in the April 8, 2019, agreement
5 was not registered under the FIL and is not exempt under Chapter 1, beginning at Corporations Code
6 section 31100, of that law.

7 13. TTM Guitars, LLC sold the March 22, April 5, and April 8, 2019 agreements in
8 violation of Corporations Code section 31110.

9 14. TTM Guitars, LLC did not provide offerees with any franchise disclosure document,
10 together with a copy of all proposed agreements relating to the sale of the franchise, at least 14 days
11 prior to receiving any consideration, in violation of Corporations Code section 31119, subdivision (a).

12 **II.**

13 **Citations and Desist and Refrain Orders**

14 15. Corporations Code section 31110 states:

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

18 16. Corporations Code section 31119, subdivision (a) states:

19 It is unlawful to sell any franchise in this state that is subject to
20 registration under this law without first providing to the prospective
21 franchisee, at least 14 days prior to the execution by the prospective
22 franchisee of any binding franchise or other agreement, or at least 14
23 days prior to the receipt of any consideration, whichever occurs first, a
24 copy of the franchise disclosure document, together with a copy of all
25 proposed agreements relating to the sale of the franchise.

26 17. Corporations Code section 31402 states:

27 If, in the opinion of the commissioner, the offer of any franchise is
28 subject to registration under this law and it is being, or it has been,
29 offered for sale without the offer first being registered, the commissioner
30 may order the franchisor or offeror of that franchise to desist and refrain
31 from the further offer or sale of that franchise unless and until the offer
32 has been duly registered under this law. If, after that order has been
33 made, a request for a hearing is filed in writing within 60 days from the
34 date of service of the order by the person to whom the order was
35 directed, a hearing shall be held in accordance with Chapter 5
(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of

1 the Government Code, and the commissioner shall have all of the
2 powers granted under that chapter. Unless that hearing is commenced
3 within 15 business days after the request is made (or the person affected
4 consents to a later date), the order shall be deemed rescinded.

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

9 18. Corporations Code section 31406 states:

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

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

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

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

(e) After the exhaustion of the review procedures provided for in this
section, the commissioner may apply to the appropriate superior court
for a judgment in the amount of the administrative penalty and order
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.

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

1 under the Franchise Investment Law or are otherwise exempt.

2 20. Furthermore, based upon the foregoing findings, the Commissioner is of the opinion
3 that TTM Guitars, LLC and Lance Mitchell Benedict sold franchises in this state that were subject to
4 registration under this law without first providing to the prospective franchisee, at least 14 days prior
5 to the execution by the prospective franchisee of any binding franchise or other agreement, or at least
6 14 days prior to the receipt of any consideration, whichever occurs first, a copy of the franchise
7 disclosure document, together with a copy of all proposed agreements relating to the sale of the
8 franchise, in violation of Corporations Code section 31119, subdivision (a). Pursuant to Corporations
9 Code section 31406, TTM Guitars, LLC and Lance Mitchell Benedict are hereby cited and ordered to
10 desist and refrain from the further sale of franchises in this state that are subject to registration under
11 this law without first providing to the prospective franchisee, at least 14 days prior to the execution by
12 the prospective franchisee of any binding franchise or other agreement, or at least 14 days prior to the
13 receipt of any consideration, whichever occurs first, a copy of the franchise disclosure document,
14 together with a copy of all proposed agreements relating to the sale of the franchise.

15 21. These orders are necessary, in the public interest, for the protection of investors and
16 franchisees and consistent with the purposes, policies, and provisions of the Franchise Investment
17 Law.

18 III.

19 Administrative Penalties

20 22. Pursuant to Corporations Code section 31406, TTM Guitars, LLC and Lance Mitchell
21 Benedict are, jointly and severally, hereby assessed and ordered to pay an administrative penalty of
22 \$2,500.00 for each of six citations under the Franchise Investment Law, totaling \$15,000.00, as
23 follows:

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

27 24. **CITATION B:** In or around March 22, 2019, TTM Guitars, LLC and Lance Mitchell
28 Benedict sold a franchise from Indian Wells, California, that was subject to registration under the

1 Franchise Investment Law without first providing to the prospective franchisee, at least 14 days prior
2 to the execution by the prospective franchisee of any binding franchise or other agreement, or at least
3 14 days prior to the receipt of any consideration, whichever occurs first, a copy of the franchise
4 disclosure document, together with a copy of all proposed agreements relating to the sale of the
5 franchise, in violation of Corporations Code section 31119, subdivision (a).

6 25. **CITATION C:** In or around April 5, 2019, TTM Guitars, LLC and Lance Mitchell
7 Benedict made an unregistered offer and sale of a franchise from Indian Wells, California, to an entity
8 or individuals in West Sacramento, California, without exemption from the registration requirement,
9 in violation of Corporations Code section 31110.

10 26. **CITATION D:** In or around April 5, 2019, TTM Guitars, LLC and Lance Mitchell
11 Benedict sold a franchise from Indian Wells, California, to an entity or individuals in West
12 Sacramento, California, that was subject to registration under the Franchise Investment Law without
13 first providing to the prospective franchisees, at least 14 days prior to the execution by the prospective
14 franchisee of any binding franchise or other agreement, or at least 14 days prior to the receipt of any
15 consideration, whichever occurs first, a copy of the franchise disclosure document, together with a
16 copy of all proposed agreements relating to the sale of the franchise, in violation of Corporations Code
17 section 31119, subdivision (a).

18 27. **CITATION E:** In or around April 8, 2019, TTM Guitars, LLC and Lance Mitchell
19 Benedict made an unregistered offer and sale of a franchise from Indian Wells, California, to an entity
20 or individuals in Corning, California, without exemption from the registration requirement, in
21 violation of Corporations Code section 31110.

22 28. **CITATION F:** In or around April 8, 2019, TTM Guitars, LLC and Lance Mitchell
23 Benedict sold a franchise from Indian Wells, California, to an entity or individuals in Corning,
24 California, that was subject to registration under the Franchise Investment Law without first providing
25 to the prospective franchisee, at least 14 days prior to the execution by the prospective franchisee of
26 any binding franchise or other agreement, or at least 14 days prior to the receipt of any consideration,
27 whichever occurs first, a copy of the franchise disclosure document, together with a copy of all
28 proposed agreements relating to the sale of the franchise, in violation of Corporations Code section

1 31119, subdivision (a).

2 29. Pursuant to Corporations Code section 31406, the total administrative penalty of
3 \$15,000.00 shall be due within 60 days of receipt of Citations A-F and shall be made payable to the
4 Commissioner in the form of a cashier's check or Automated Clearing House deposit to the
5 "Department of Business Oversight," and transmitted to the attention of: Accounting – Enforcement
6 Division, California Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,
7 California 95814, contemporaneously with notice of transmittal to Jeremy F. Koo at
8 Jeremy.Koo@dbo.ca.gov.

9 **IV.**

10 **Order for Ancillary Relief**

11 30. Corporations Code section 31408, subdivision (a), provides:

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

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

- 25 a. Music For My Sanity, LLC of Lexington, South Carolina, on or around March 22,
26 2019;
- 27 b. Curtis Berry of West Sacramento, California and Michael Lucero of Norwalk,
28 California, on or around April 5, 2019;
- 29 c. John Hussey and Christopher Hussey of Corning, California, on or around April 8,
30 2019.

31 32. Pursuant to Corporations Code section 31408, subdivision (a), the Commissioner
32 hereby orders TTM Guitars, LLC and Lance Mitchell Benedict, jointly and severally, to disgorge any

1 and all franchise fees and royalties they retained in connection with its offers and sales of franchises to
2 Music For My Sanity, LLC, to Curtis Berry and Michael Lucero, and to John Hussey and Christopher
3 Hussey, in violation of Corporations Code section 31110 and 31119, subdivision (a). Proof of
4 disgorgement shall be submitted within 60 days from receipt of this citation to Jeremy F. Koo,
5 Counsel, California Department of Business Oversight, 1515 K Street, Suite 200, Sacramento
6 California 95814.

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

10 Dated: February 5, 2020
11 Sacramento, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

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13 By _____
14 MARY ANN SMITH
15 Deputy Commissioner
16 Enforcement Division
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