

1 MARY ANN SMITH
Deputy Commissioner
2 DANIEL P. O'DONNELL
Assistant Chief Counsel
3 MARISA I. URTEAGA-WATKINS (State Bar No. 236398)
Counsel
4 Department of Business Oversight
1515 K Street, Suite 200
5 Sacramento, California 95814
Telephone: (916) 445-9626
6 Facsimile: (916) 445-6985

7 Attorneys for Complainant

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

10 In the Matter of:
11 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
12)
13 Complainant,)
14 v.)
15 TRADEMARK INT PTT AB, doing business as)
16 HUSSE, and TIM BIORCK ELIASSON,)
17)
18 Respondents.)

CITATION INCLUDING:

- (1) DESIST AND REFRAIN ORDER PURSUANT TO CORPORATIONS CODE SECTION 31406; and
- (2) ASSESSMENT OF ADMINISTRATIVE PENALTIES PURSUANT TO CORPORATIONS CODE SECTION 31406

19 **I.**
20 **Introduction**

21 The Commissioner of Business Oversight (Commissioner) of the Department of Business
22 Oversight (Department), issues this Citation including Desist and Refrain Order and Assessment of
23 Administrative Penalties to Husse (Husse) and Tim Biorck Eliasson (Eliasson), the chief operating
24 officer of Husse¹. This action is issued to Respondents pursuant to Corporations Code section 31406
25 for violations of the Franchise Investment Law codified in Corporations Code section 31000 et. seq.
26 (CFIL).

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28 ¹ Husse and Eliasson are herein collectively referred to as "Respondents." Whenever reference is made herein to "Respondents" doing any act, the allegation shall mean the act of each Respondent acting individually, jointly and severally.

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3 **II.**
4 **Statement of Facts**

5 1. At all relevant times, Husse, doing business as Trademark INT PTT AB, was a
6 Swedish private limited company with a principal place of business located at Torstenssonsgaten 9,
7 114 56 Stockholm, Sweden. Husse conducts business by telephone numbers +46 85025 5705 and
8 +46 8678 1202, and by email at master@husse.com. Husse was in the business of operating
9 franchises and selling master franchise agreements for the sale and home delivery of pet products.

10 2. At all relevant times, Eliasson was a representative, director of sales, and chief
11 operating officer of Husse. Eliasson conducted business in California by telephone numbers +46
12 85025 5705 and +46 8678 1202, and by email at tim@husse.com.

13 3. Husse filed an initial franchise registration application with the Department pursuant
14 to Corporations Code section 31111, including a Uniform Franchise Disclosure Document (FDD) and
15 accompanying documents² on April 7, 2014. On April 20, 2014, the Department approved the
16 franchise application, thus allowing Husse to offer and sell franchises in California for one year.

17 4. In the initial franchise registration application to the Commissioner, Eliasson certified
18 to the following:

19 "I certify and swear under penalty of law that I have read and know the
20 contents of this application including the Franchise Disclosure
21 Document...and that all material facts state in all those documents are
22 accurate and those documents do not contain any material omissions. I
23 further certify that I am duly authorized to make this certification on
24 behalf of the Franchisor and that I do so upon my personal knowledge."

25 5. In the FDD and Attachments, Respondents described its franchise business model as
26 master franchisees who sell unit franchises to others to provide the home delivery of pet food and
27 other pet supplies to consumers. Respondents also operated a website where consumers could order
28 products from franchisees. Respondents provided training and support for franchisees. Respondents

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30 ² Respondents submitted the following documents as attachments to the FDD: Master Franchise Agreement; Territory
31 Attachment; Development Schedule; EFT Authorization; General Release; Collateral Assignment and Assumption of
32 Lease Agreement; Confidentiality, Non-Use and Non-Competition Agreement; Confidentiality, Non-Use and Non-
33 Competition Agreement Form; Assignment of Telephone and Internet Listings and Advertisements; Guarantee; and State
34 Amendments (collectively, Attachments).

1 required all franchisees to offer and sell products and services as disclosed in the FDD and
2 Attachments.

3 6. In June 2014, Respondents negotiated with California resident NM (NM) to purchase
4 a Husse master franchise. NM purchased a Husse franchise as a master franchisee for \$120,000 and
5 paid an additional \$39,600 in franchise fees to Husse from 2014 to 2016. NM received the FDD and
6 Attachments from Respondents, which included a description of the business and directions on how
7 to operate the franchise. NM believed that what was described in the FDD and Attachments
8 constituted a full description of the franchise and its operation.

9 7. Months after his Husse business purchase, Respondents gave NM a packet of
10 additional manuals, including a Husse Sales Procedure Manual; Husse Manual; Husse Step by Step
11 Manual; Husse Marketing and Sales Manuals; and the Husse Confidential Operating Manual
12 (collectively, Manuals). This was the first time NM became aware of the Manuals and that the
13 Manuals described an entirely different business model than the FDD and Attachments.

14 8. In the Manuals, Respondents directed NM, and other franchisees, when selling Husse
15 products to:

- 16 • Sell Husse Products “Door to Door” and “Face to Face”
- 17 • Sell Husse products from a car at random parks or locations;
- 18 • Sell Husse products by becoming a street vendor of Husse products;
- 19 • Sell and “present” products at exhibitions, fairs, local markets, and similar events;
- 20 • Use product catalogs to solicit products to consumers;
- 21 • Use the internet and a Husse website;
- 22 • Engage in direct mass market emailing to advertise Husse products; and
- 23 • Recruit franchisees by placing local advertisements in newspapers.

24 For the first time NM also learned from the Manuals that Husse prohibited the sale of all
25 Husse products in stores or retail outlets and that Husse expected franchisees to procure proper
26 permits, tents, stands, and uniforms to engage in some of these activities.

1 9. During the relevant time, Respondents did not disclose to the Commissioner any
2 franchise conditions regarding the business or method of sales, other than the conditions set forth
3 in the FDD and Attachments.

4 10. During the relevant time, Respondents did not disclose to NM or to the Commissioner
5 that it required Husse franchisees to engage in “Face to Face” sales in the form of street vending.
6 Respondents also did not disclose to NM or to the Commissioner the laws or regulations relating to
7 street vending of pet food and related products, nor that in many California cities street vending was
8 not legally permitted.

9 11. In 2017, NM, in following the directives in the Manuals, applied for street vendor
10 permits to sell Husse products in more than 50 California cities. Every one of them denied NM a
11 street vendor permit. Thus, NM could not offer franchises in those cities, a fact that was not
12 previously disclosed to NM by Respondents.

13 **III.**
14 **CFIL Violations**

15 **A. Willful Omissions by Respondents to the Commissioner**

16 12. Pursuant to Corporations Code section 31200, it is unlawful to willfully make any
17 untrue statement of a material fact in any application, notice or report filed with the Commissioner, or
18 willfully to omit to state in any such application, notice, or report any material fact which is required
19 to be stated therein, or fail to notify the Commissioner of any material change as required by
20 Corporations Code section 31123.

21 13. Respondents required franchisees to engage in “Door to Door” and “Face to Face”
22 sales of Husse products in the Manuals. The business described in the FDD and Attachments made
23 no mention of “Door to Door” and “Face to Face” sales as part of the business or otherwise. A
24 website was involved in the operation of the business as disclosed in the FDD and Attachments. The
25 business that was disclosed to the Commissioner was similar to an “amazon.com” business model
26 ordering business but with more personalized customer service. The “Door to Door” and “Face to
27 Face” sales requirement is a significant and material change from the business disclosed. The “Door
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1 to Door” and “Face to Face” sales requirement was not disclosed to the Commissioner in the FDD
2 and Attachments. Therefore, Respondents are in violation of Corporations Code section 31200.

3 **B. Willful Omissions to NM**

4 14. Pursuant to Corporations Code section 31201, it is unlawful for any person to offer or
5 sell a franchise in this state by means of any written or oral communication not enumerated in section
6 31200 which includes an untrue statement of a material fact or omits to state a material fact necessary
7 in order to make the statements made, in the light of the circumstances under which they were made,
8 not misleading.

9 15. Husse failed to disclose to NM at presale or at the time of sale that NM was required
10 to engage in “Door to Door” and “Face to Face” sales of Husse products. NM believed that the
11 business described in the FDD and Attachments was the business that he purchased as a Husse
12 franchise. The “Door to Door” and “Face to Face” sales requirement changed the business
13 significantly and materially to another franchise business model that was not disclosed to NM. NM
14 would need to employ additional staff, change the way NM engaged in business as a Husse master
15 franchisee, and incur significant additional expenses to meet this previously undisclosed requirement.
16 Therefore, Respondents are in violation of Corporations Code section 31201.

17 16. Also, Respondents failed to disclose to NM the laws, ordinances, and regulations that
18 applied to the street vending of pet food and products in California and that permits to do so would
19 not be granted by almost every major city in California. (16 C.F.R. 436; DBO 310.111 UFDD
20 Packet.) The FDD and Attachments remained silent as to street vending and the laws, ordinances,
21 and regulations that applied to the street vending of pet food and related products in California. NM
22 applied to more than 50 cities for street vendor permits in furtherance of Respondent’s directive to
23 engage in the street vending of Husse products. Each and every city denied NM’s request for permit,
24 thus rendering the franchise purchased by NM inoperable in California. Street vending of pet food
25 and related products is not permissible in California cities. Respondents never disclosed this to NM
26 or the laws, ordinances, and regulations that applied to street vending in California cities. As such,
27 Respondents failed to disclose to NM in violation of Corporations Code section 31201.

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2 **IV.**
Statutory Authority

3 Corporations Code section 31200 provides:

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

10 Corporations Code section 31201 provides:

11 It is unlawful for any person to offer or sell a franchise in this state by
12 means of any written or oral communication not enumerated in Section
13 31200 which includes an untrue statement of a material fact or omits to
14 state a material fact necessary in order to make the statements made, in
15 the light of the circumstances under which they were made, not
16 misleading.

17 Corporations Code section 31406 provides in part:

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

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

29 **V.**
Desist and Refrain Order

30 Based upon the foregoing findings, the Commissioner has cause to believe the following:
31 Husse, also doing business as Trademark INT PTT AB, and Tim Biorck Eliasson:

1 a. Failed to disclose to the Commissioner that Husse required franchisees to engage in
2 “Door to Door” and “Face to Face” sales of Husse products, resulting in the willful omission of a
3 material fact, in violation of Corporations Code section 31200;

4 b. Failed to disclose to the Commissioner the laws, ordinances, and regulations that
5 applied to the street vending of pet food and related products in California and that permits to do so
6 would not be granted by almost every major city in California, resulting in the willful omission of
7 material facts, in violation of Corporations Code section 31200;

8 c. Failed to disclose to NM that “Door to Door” and “Face to Face” sales to
9 sell Husse products were required of all Husse franchisees, which is a written or oral communication
10 which includes an untrue statement of a material fact or omits to state a material fact necessary in
11 order to make the statements made, in the light of the circumstances under which they were made, not
12 misleading, in violation of Corporations Code section 31201; and

13 d. Failed to disclose to NM the laws, ordinances, and regulations that applied to the street
14 vending of pet food and related products in California and that permits to do so would not be granted
15 by almost every major city in California, which are written or oral communications which include an
16 untrue statement of a material fact or omits to state a material fact necessary in order to make the
17 statements made, in the light of the circumstances under which they were made, not misleading, in
18 violation of Corporations Code section 31201.

19 Pursuant to Corporations Code section 31406, Husse, doing business as Trademark INT PTT
20 AB, and Tim Biorck Eliasson, are hereby ordered to desist and refrain from filing registrations that
21 contain willful omissions of material fact; from making omissions of material facts to consumers, in
22 accordance with Corporations Code sections 31200; and from engaging in written or oral
23 communication which includes an untrue statement of a material fact or omits to state a material fact
24 necessary in order to make the statements made, in the light of the circumstances under which they
25 were made, not misleading, in relation to the offer and/or sale of franchises in violation of
26 Corporations Code section 31201. Husee, doing business as Trademark INT PTT AB, and Tim
27 Biorck Eliasson, are also hereby ordered to desist and refrain from any further violations of the CFIL.
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1 This Order is necessary, in the public interest, for the protection of investors and consistent with the
2 purposes, policies and provisions of the CFIL.

3 **VI.**
4 **Administrative Penalties**

5 Pursuant to Corporations Code Section 31406: Husse, also doing business as Trademark INT
6 PTT AB, and Tim Biorck Eliasson, are hereby assessed and ordered to pay administrative penalties in
7 the amount of \$10,000 for a total of four violations of the CFIL comprised of:

8 a. Two violations of Corporations Code section 31200 for failure to disclose to the
9 Commissioner that Husse required franchisees to engage in “Door to Door” and “Face to Face” sales
10 to sell Husse products; and failure to disclose to the Commissioner the laws, ordinances, and
11 regulations that applied to the street vending of pet food and related products and that permits to do
12 so would not be granted by almost every major city in California resulting in the willful omission of
13 material fact, in violation of Corporations Code section 31200; and

14 b. Two violations of Corporations Code section 31201 for failing to disclose to NM that
15 “Door to Door” and “Face to Face” sales to sell Husse products is required of all Husse franchisees
16 and the failure to disclose to NM the laws, ordinances, and regulations that applied to the street
17 vending of pet food and related products in California and that permits to do so would not be granted
18 by almost every major market city in California which are written or oral communications which
19 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
20 make the statements made, in the light of the circumstances under which they were made, not
21 misleading, in violation of Corporations Code section 31201.

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1 The administrative penalties set forth herein shall be made payable to the Commissioner via
2 cashier's check or Automated Clearing House deposit to the Department of Business Oversight,
3 Accounting, 1515 K Street, Suite 200, Sacramento, California 95814, no later than 60 days from the
4 date of a final order in this matter.

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Dated: February 21, 2020
Sacramento, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division