

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
6 Telephone: (916) 445-9626
Facsimile: (916) 445-6985

7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

10 OF THE STATE OF CALIFORNIA

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

20 The Commissioner of Business Oversight, Manuel P. Alvarez, (Commissioner) and
21 Trademark INT PTT AB, doing business as Husse (Husse) and Tim Biorck Eliasson (Eliasson)
22 (collectively, Respondents) enter this Settlement Agreement (Agreement) with respect to the
23 following facts:

24 **I.**
25 **Recitals**

26 A. At all relevant times, Husse, doing business as Trademark INT PTT AB, was a
27 Swedish private limited company with a principal place of business located at Rökubbsgatan 6
28 115 59 Stockholm, Sweden. Husse conducts business by telephone numbers +46 85025 5705 and

1 +46 8678 1202, and by email at master@husse.com. Husse was in the business of operating
2 franchises and selling master franchise agreements for the sale and home delivery of pet products.

3 B. At all relevant times, Eliasson was a representative, director of sales, and chief
4 operating officer of Husse. Eliasson conducted business in California by telephone numbers +46
5 85025 5705 and +46 8678 1202, and by email at tim@husse.com.

6 C. Husse filed an initial franchise registration application with the Department of
7 Business Oversight (Department) pursuant to Corporations Code section 31111, including a Uniform
8 Franchise Disclosure Document (FDD) and accompanying documents on April 7, 2014. On April
9 20, 2014, the Department approved the franchise application, thus allowing Husse to offer and sell
10 franchises in California for one year.

11 D. On February 21, 2020, the Commissioner issued to Respondents a Citation including
12 Desist and Refrain Order and Assessment of Administrative Penalties (collectively, Administrative
13 Action) pursuant to Corporations Code section 31406 for violations of the California Franchise
14 Investment Law codified in Corporations Code section 31000 et. seq. (CFIL) as follows: (1) Failing
15 to disclose to the Commissioner and to a franchisee that Respondents required franchisees to engage
16 in “Door to Door” and “Face to Face” sales of Respondents’ products in violation of CFIL sections
17 31200 and 31201; and (2) Failing to disclose to the Commissioner and to a franchisee the laws,
18 ordinances, and regulations that applied to the street vending of pet food and related products in
19 California, and that the franchisee would have to apply for these permits in any city they wanted to
20 sell pet products, also in violation of CFIL sections 31200 and 31201 . In fact, despite trying to
21 obtain such permits, the franchisee was not granted one in any of the many California cities to which
22 he applied. The Department also ordered \$10,000 in administrative penalties.

23 E. The Administrative Action was received by Respondents on March 17, 2020.
24 Respondents submitted a timely written hearing request and statutory time waiver to the
25 Commissioner on April 3, 2020.

26 F. Respondents, in and for purposes of entering into this Agreement, neither admit nor
27 deny the allegations set forth in the Administrative Action.
28

1 G. The Commissioner finds that this Agreement is appropriate, in the public interest, and
2 consistent with the purposes fairly intended by the policy and provisions of this law.

3 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
4 forth herein, the parties agree as follows:

5 **II.**
6 **Terms and Conditions**

7 1. Purpose. The Agreement resolves the issues before the Commissioner described in
8 the Recitals above, in a manner that avoids the expense of a hearing and other possible court
9 proceedings, protects consumers, is in the public interest, and is consistent with the purposes,
10 policies, and provisions of the CFIL.

11 2. Desist and Refrain Order. Pursuant to Corporations Code section 31406,
12 Respondents are hereby ordered to desist and refrain from filing registrations that contain willful
13 omissions of material fact; from making omissions of material facts to consumers, in accordance
14 with Corporations Code sections 31200; from engaging in written or oral communication which
15 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
16 make the statements made, in the light of the circumstances under which they were made, not
17 misleading, in relation to the offer and/or sale of franchises in violation of Corporations Code
18 section 31201; and are ordered to desist and refrain from any further violations of the CFIL.

19 3. Finality of Order. Respondents agree that the Desist and Refrain Order as described
20 in Paragraph 2 above is hereby deemed a final order.

21 4. Payment of Administrative Penalties. Respondents hereby agree to pay, and shall
22 pay, as full settlement of all Administrative Penalties assessed in the Administrative Action the
23 amount of \$7,500 within five business days from the date of execution of this Agreement.
24 Respondents shall remit the Administrative Penalties to the Commissioner via cashier's check or
25 Automated Clearing House deposit to the Department of Business Oversight, Accounting, 1515 K
26 Street, Suite 200, Sacramento, California 95814. Failure to timely pay the Administrative Penalties
27 in full within five business days from the date of execution of this Agreement constitutes a breach
28 of this Agreement.

1 5. Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is
2 ready, willing and able to proceed with the administrative enforcement action described above in
3 Recital Paragraph D, and Respondents hereby withdraw their hearing request issued on April 3,
4 2020 and waive the right to a hearing, and to any reconsideration, appeal, or other right to review
5 which may be afforded pursuant to the CFIL; the California Administrative Procedure Act, the
6 California Code of Civil Procedure, or any other provision of law; and by waiving such rights,
7 Respondents effectively consent to this Agreement becoming final.

8 6. Future Actions by Commissioner. If Respondents fail to comply with any terms of
9 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
10 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
11 against Respondents, or any of its partners, owners, officers, shareholders, directors, employees or
12 successors for any and all unknown violations of the CFIL.

13 7. Assisting Other Agencies. Nothing in this Agreement limits the Commissioner’s
14 ability to assist a government agency (whether city, county, state, or federal) with any
15 administrative, civil or criminal action brought by that agency against Respondents or any other
16 person based upon any of the activities alleged in this matter or otherwise.

17 8. Headings. The headings to the paragraphs of this Agreement are inserted for
18 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
19 the provisions hereof.

20 9. Binding. This Agreement is binding on all heirs, assigns, and/or successors in
21 interest.

22 10. Reliance: Each of the parties represents, warrants, and agrees that in executing this
23 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
24 Each of the parties further represents, warrants, and agrees that in executing this Agreement it has
25 placed no reliance on any statement, representation, or promise of any other party, or any other
26 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
27 entity to make any statement, representation or disclosure of anything whatsoever. The parties have
28 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to

1 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
2 supplement, or contradict the terms of this Agreement.

3 11. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
4 this Agreement will be valid or binding unless it is in writing and signed by each of the parties. The
5 waiver of any provision of this Agreement will not be deemed a waiver of any other provision. No
6 waiver by either party of any breach of, or of compliance with, any condition or provision of this
7 Agreement by the other party will be considered a waiver of any other condition or provision or of
8 the same condition or provision at another time.

9 12. Full Integration. This Agreement is the final written expression and the complete and
10 exclusive statement of all the agreements, conditions, promises, representations, and covenant
11 between the parties with respect to the subject matter hereof, and supersedes all prior or
12 contemporaneous agreements, negotiations, representations, understandings, and discussions
13 between and among the parties, their respective representatives, and any other person or entity, with
14 respect to the subject matter covered hereby.

15 13. Governing Law. This Agreement shall be governed by and construed in accordance
16 with California law. Each of the parties hereto consents to the jurisdiction of such court, and hereby
17 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to
18 the maintenance of such action or proceeding in such court.

19 14. Counterparts. This Agreement may be executed in one or more separate counterparts,
20 each of which when: so executed, shall be deemed an original. Such counterparts shall together
21 constitute a single document.

22 15. Effect Upon Future Proceedings. If Respondents apply for any license, permit or
23 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future
24 action by the Commissioner to enforce this Agreement, then the subject matter hereof shall be
25 admitted for the purpose of such application(s) or enforcement proceedings(s).

26 16. Voluntary Agreement. Respondents enter into this Agreement voluntarily and without
27 coercion and acknowledges that no promises, threats or assurances have been made by the
28 Commissioner or any officer, or agent thereof, about this Agreement. The parties each represent and

1 acknowledge that he, she or it is executing this Agreement completely voluntarily and without any
2 duress or undue influence of any kind from any source.

3 17. Full and Final Agreement. The parties hereby acknowledge and agree that this
4 Agreement is intended to constitute a full, final and complete resolution of the Administrative
5 Action and that no further proceedings or actions will be brought by the Commissioner in connection
6 with these matters either under the CFIL or any other provision of law, excepting therefrom any
7 proceeding or action if such proceeding or action is based upon facts not presently known to the
8 Commissioner or which were concealed from the Commissioner by Respondents.

9 18. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
10 has received independent advice from its attorney(s) and/or representatives with respect to the
11 advisability of executing this Agreement.

12 19. No Presumption Against Drafting Party. Each party acknowledges that it has had the
13 opportunity to draft, review, and edit the language of this Agreement. Accordingly, the parties intend
14 that no presumption for or against the drafting party will apply in construing any part of this
15 Agreement. The parties waive the benefit of Civil Code section 1654 as amended or corresponding
16 provisions of any successor statute, which provide that in cases of uncertainty, language of a contract
17 should be interpreted most strongly against the party that caused the uncertainty to exist.

18 20. Notice. Any notices required under this Agreement shall be provided to each party at
19 the following addresses:

20 If to Respondents to: Mr. Richard Bayer, Esq.
21 Einbinder & Dunn, LLP.
22 112 Madison Avenue 8th Floor
New York, New York 10016

23 If to the Commissioner to: Marisa I. Urteaga-Watkins, Esq.
24 Department of Business Oversight
25 1515 K Street, Suite 200
Sacramento, California 95814

26 21. Signatures. A fax or electronic mail signature shall be deemed the same as an original
27 signature.

28 22. Authority to Sign. Each signatory hereto covenants that he possesses all necessary

1 capacity and authority to sign and enter into this Agreement and undertake the obligations set forth
2 herein.

3 23. Public Record. Respondents hereby acknowledge that this Agreement is and will be a
4 matter of public record.

5 24. Effective Date. This Agreement shall not become effective until signed by all parties
6 and delivered by the Commissioner’s agent to rb@ed-lawfirm.com.

7
8 Dated: April 24, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

9
10
11 By _____
12 MARY ANN SMITH
13 Deputy Commissioner
Enforcement Division

14 Dated: April 22, 2020

15 By _____
16 TIM BIORCK ELIASSON, as chief operating officer and
17 representative for TRADEMARK INT PTT AB, doing
business as HUSSE

18 Dated: April 22, 2020

19 By _____
20 TIM BIORCK ELIASSON, as an individual

21 Dated: April 24, 2020

22
23 By _____
24 RICHARD BAYER, ESQ., counsel for TRADEMARK INT
25 PTT AB, doing business as HUSSE
26
27
28