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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: 352363
)
13 THE COMMISSIONER OF BUSINESS) CITATION INCLUDING:
OVERSIGHT,)
14) (1) DESIST AND REFRAIN ORDER;
15 Complainant,)
) (2) ASSESSMENT OF ADMINISTRATIVE
16 v.) PENALTIES;
)
17 ROYAL TEA TAIWAN CO., LTD also known) (3) CLAIM FOR ANCILLARY RELIEF
18 as GONG CHA GROUP,)
)
19 Respondent.)
20)

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

23 I.

24 **Introduction**

25 1. Royal Tea Taiwan Co., Ltd. (“Royal Tea Taiwan”), also known as Gong Cha Group, is
26 a Taiwanese limited liability company located at No. 180, Wenfu Road., Zuoying District, Kaoshiung,
27 Taiwan, Republic of China, and owns the Gong Cha franchise system, a system of Gong Cha-branded
28 counter service restaurants particularly known for their boba tea beverages.

1 6. Royal Tea Taiwan did not, prior to the offer or sale of the 2015 MFA to Gong Cha
2 California, register the offer with the Commissioner under the FIL nor was the offer or sale exempt
3 from registration.

4 7. Royal Tea Taiwan never created a franchise disclosure document for the offer or sale of
5 the 2015 MFA which would be required to register the offer under the FIL.

6 8. Royal Tea Taiwan did not, prior to the sale of the 2015 MFA to Gong Cha California,
7 provide a copy of any franchise disclosure document, together with a copy of all proposed agreements
8 relating to the sale of the franchise, at least 14 days prior to the execution by Gong Cha California of
9 the 2015 MFA or at least 14 days prior to Royal Tea Taiwan receiving consideration under the 2015
10 MFA, whichever of the two events occurred first.

11 **B. The illegal planned early termination of the 2015 MFA and offer of a new unregistered**
12 **180-day MFA in 2020**

13 9. On or about September 22, 2019, Gong Cha California sent an email to representatives
14 of Royal Tea Taiwan indicating that Gong Cha California intended to exercise its option under the
15 2015 MFA to extend the term of the 2015 MFA for another six years.

16 10. After several phone calls and email message exchanges regarding the extension, Gong
17 Cha California sent an email on or about January 9, 2020, requesting that Royal Tea Taiwan expedite
18 confirmation it would allow Gong Cha California to exercise its option to extend the term of the 2015
19 MFA.

20 11. On or about January 21, 2020, Gong Cha California formally notified Royal Tea
21 Taiwan by letter that Gong Cha California was exercising its option under the 2015 MFA to extend the
22 term of the 2015 MFA by six years, to February 14, 2026.

23 12. On or about February 7, 2020, Royal Tea Taiwan informed Gong Cha California by
24 letter that it was “commercially unreasonable” to perform under the extension. Royal Tea instead
25 offered to extend the term of the 2015 MFA for 180 days, to August 12, 2020, but without the
26 franchisee option to renew the agreement for two six-year periods. (“2020 Offer.”) This offer would
27 result in the termination of the franchise agreement on August 12, 2020; Gong Cha California and the
28 Chens would lose their entire business, except for Royal Tea Taiwan’s re-purchase of their inventory.

1 section 31100. (Corp. Code, § 31110.)

2 22. Every application for registration must include a proposed franchise disclosure
3 document (“FDD”) that contains material information and disclosures to prospective franchisees in
4 accordance with the Uniform Franchise Disclosure Document Guidelines adopted by the North
5 American Securities Administrators Association, Inc. (Corp. Code, § 31114; Cal. Code Regs., tit. 10, §
6 310.111, subd. (b); North American Securities Administrators Association, Inc., NASAA 2008
7 Franchise Registration and Disclosure Guidelines (Amended and Restated UFOC Guidelines) (July 1,
8 2008) [hereinafter “UFDD Guidelines”].)

9 23. At least 14 days prior to the execution by a prospective franchisee of any binding
10 franchise agreement or 14 days prior to the receipt of any consideration, whichever occurs first, the
11 franchisor must provide the franchisee a copy of the FDD together with a copy of all proposed
12 agreements relating to the sale of the franchise. (Corp. Code, § 31119, subd. (a).)

13 24. The California Franchise Relations Act (“CFRA”) (Bus. & Prof. Code, § 20000 et seq.)
14 governs the ongoing relationship between a franchisor and a California-domiciled franchisee. (B. & P.
15 Code, § 20015.)

16 25. Except as otherwise provided in the CFRA, no franchisor may terminate a franchise
17 prior to the expiration of its term, except for good cause. (Bus. & Prof. Code, § 20020.)

18 26. One of the required disclosures that must be provided to a prospective franchisee in an
19 FDD created in accordance with the UFDD Guidelines and FIL is Item 17, which requires the
20 production of a table that should disclose to the franchisee, among other things:

21 a. In Item 17(c), what the term “renewal” means for the franchisor’s franchise
22 system, including, if applicable, a statement that franchisees may be asked to sign a contract with
23 materially different terms and conditions than their original contract (UFDD Guidelines, p. 55);

24 b. in Item 17(e), a summary of the grounds that the franchisor may terminate the
25 franchise without cause (*Id.*);

26 c. in Item 17(f), a summary of the grounds that the franchisor may terminate the
27 franchise with cause (*Id.*);

28 d. if a particular item is not applicable, that item should state “Not Applicable” (*Id.*)

1 at p. 56);

2 e. if any item in the table is not addressed in the agreement, but the franchisor
3 unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, there
4 should be a footnote to describe the policy and state whether the policy is subject to change (*Id.*);

5 f. that the CFRA provides rights to the franchisee concerning termination or non-
6 renewal of a franchise, and that if the franchise agreement contains a provision that is inconsistent
7 with the CFRA, the CFRA will control (Cal. Code Regs., tit. 10, § 310.114.1, subd. (c)(5)(A); see also
8 Bus. & Prof. Code, §§ 20010 [waiver of CFRA rights void as contrary to public policy], 20015 [CFRA
9 applicable to franchise domiciled in California]);

10 g. if the franchise agreement contains a binding arbitration clause, where the
11 arbitration will occur, who bears the costs of arbitration, and an advisory to consult private legal
12 counsel to determine the applicability of California and federal laws to any provisions of a franchise
13 agreement restricting venue to a forum outside the State of California (Cal. Code Regs., tit. 10, §
14 310.114.1, subd. (c)(5)(B)(iv));

15 h. if the franchise agreement contains a choice of law clause, that that provision
16 may not be enforceable under California law. (Cal. Code Regs., tit. 10, § 310.114.1, subd.
17 (c)(5)(B)(v).)

18 **A. Unlawful offers or sales of franchises in this state in violation of Corporations Code**
19 **section 31110**

20 27. Corporations Code section 31110 provides, “On and after April 15, 1971, it shall be
21 unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has
22 been registered under this part or exempted under Chapter 1 (commencing with Section 31100) of this
23 part.”

24 28. The Commissioner finds that by selling the 2015 MFA to Gong Cha California without
25 a franchise registration, Royal Tea Taiwan engaged in the unlawful sale of a franchise in this state, in
26 violation of Corporations Code section 31110.

27 29. The Commissioner finds that by offering the 2020 Offer to Gong Cha California
28 without a franchise registration, Royal Tea Taiwan engaged in the unlawful offer of a franchise in this

1 state, in violation of Corporations Code section 31110.

2 **B. Failure to provide franchise disclosure document at least 14 days before**
 3 **execution of franchise agreement or receipt of consideration**

4 30. Corporations Code section 31119, subdivision (a), provides

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

12 31. The Commissioner finds that—by selling the 2015 MFA without creating a franchise
 13 disclosure document to Gong Cha California, and by accepting the execution of a binding franchise
 14 agreement and consideration despite the lack of a franchise disclosure document—Royal Tea Taiwan
 15 failed to provide, at least 14 days prior to the execution by Gong Cha California of a binding franchise
 16 agreement or at least 14 days prior to the receipt of any consideration, whichever occurred first, a copy
 17 of a franchise disclosure document, together with a copy of all proposed agreement relating to the sale
 18 of the franchise, in violation of Corporations Code section 31119, subdivision (a).

19 **III.**

20 **Citations and Administrative Penalties Pursuant to Corporations Code Section 31406**

21 32. Corporations Code section 31406, subdivision (a) provides, in pertinent part:

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

33. Corporations Code section 31406, subdivision (c) provides, “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.”

34. The Commissioner, pursuant to Corporations Code section 31406, hereby issues the
 following citations to Royal Tea Taiwan with orders of administrative penalties totaling \$7,500.00 for

1 the following violations of the Corporations Code:

- 2 a. Section 31110 (unregistered franchise sale) on or about February 15, 2015:
3 \$2,500.00
- 4 b. Section 31110 (unregistered franchise offer) on or about February 7, 2020:
5 \$2,500.00
- 6 c. Section 31119, subdivision (a) (failure to provide FDD at least 14 days before
7 franchisee executes franchise agreement or sends consideration), on or about
8 February 15, 2015: \$2,500.00.

9 35. The administrative penalties in the amounts stated above shall be made payable to the
10 Department of Business Oversight and submitted to the attention of Accounting – Litigation, 1515 K
11 Street, Suite 200, Sacramento, California 95814, no later than 60 days from the date of this order.

12 **IV.**

13 **Desist and Refrain Orders Pursuant to Corporations Code Section 31402 and 31406**

14 36. Corporations Code section 31402 provides, in pertinent part:

15 If, in the opinion of the commissioner, the offer of any franchise is
16 subject to registration under this law and it is being, or it has been,
17 offered for sale without the offer first being registered, the commissioner
18 may order the franchisor or offeror of that franchise to desist and refrain
19 from the further offer or sale of that franchise unless and until the offer
20 has been duly registered under this law.

21 37. Corporations Code section 31406 also authorizes the Commissioner to issue an order to
22 desist and refrain from violations of law with a citation issued under that section. The person cited has
23 60 days from receipt of the citation to request a hearing, or else the citation is deemed final.

24 38. Pursuant to Corporations Code sections 31402 and 31406, Royal Tea Taiwan is hereby
25 ordered to desist and refrain from the further offer or sale of Gong Cha-branded restaurant franchises
26 in California unless and until the offers have been duly registered under the California Franchise
27 Investment Law or are otherwise exempt, in compliance with Corporations Code section 31110.

28 39. Pursuant to Corporations Code section 31406, Royal Tea Taiwan is hereby ordered to
desist and refrain from:

- a. offering or selling any franchise in this state unless the offer of the franchise has been
registered under the California Franchise Law or is otherwise exempt, in compliance

1 with Corporations Code section 31110;

- 2 b. the sale of any franchise in this state that is subject to registration under this law
3 without first providing to the prospective franchisee, at least 14 days prior to the
4 execution by the prospective franchisee of any binding franchise or other agreement, or
5 at least 14 days prior to the receipt of any consideration, whichever occurs first, a copy
6 of the franchise disclosure document, together with a copy of all proposed agreements
7 relating to the sale of the franchise, in compliance with Corporations Code section
8 31119, subdivision (a).

9 **V.**

10 **Ancillary Relief Pursuant to Corporations Code Section 31408**

- 11 40. Corporations Code section 31408, subdivision (a), provides, in pertinent part:

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

- 20 41. One of the intended legislative purposes of the FIL is “to prohibit the sale of franchises
21 where the sale would lead to fraud or a likelihood that the franchisor’s promises would not be fulfilled,
22 and to protect the franchisor and franchisee by providing a better understanding of the relationship
23 between the franchisor and franchisee with regard to their business relationship.” (Corp. Code, §
24 31001.)

- 25 42. In the 2015 MFA, Royal Tea Taiwan promised Gong Cha California the option to
26 extend the term of the 2015 MFA; Royal Tea Taiwan failed to disclose it believed it could terminate
27 the 2015 MFA without cause notwithstanding the exercise of that option.

- 28 43. Gong Cha California was the entity injured by the failure to disclose the possibility of
termination without cause.

44. In an action at law against Royal Tea Taiwan’s failure to disclose the possibility of
termination without cause, Gong Cha California’s remedy in damages will be inadequate to protect the

1 interests of Gong Cha California and its managing members, the Chens’s, interests, as they will likely
2 lose the business they have invested so much into, and their 90 employees will likely lose their jobs as
3 well.

4 45. The Commissioner finds that it is in the public interest to include in this administrative
5 action a claim, as ancillary relief on behalf of Gong Cha California, for specific performance of the
6 promise of continued performance under the 2015 MFA for the option terms that have been and may
7 be exercised by Gong Cha California.

8 46. The Commissioner requests that an administrative law judge enter an order against
9 Royal Tea Taiwan, pursuant to section 31408, subdivision (a), that Royal Tea Taiwan shall refrain
10 from interfering, altering, or discontinuing in any way the normal and usual business arrangements
11 which Gong Cha California has heretofore enjoyed with Royal Tea Taiwan, unless and until Royal
12 Tea Taiwan has good cause as set forth in Business and Professions Code sections 20020 – 20021 or is
13 permitted to decline to renew the franchise as set forth in Business and Professions Code section
14 20025, and has complied with the requirements of the California Franchise Relations Act (Bus. &
15 Prof. Code, §§ 20000 – 20043) relating to termination and nonrenewal. Royal Tea Taiwan shall also
16 acknowledge and accept, in writing, that the 2015 MFA has been validly extended through February
17 14, 2026.

18 47. The Commissioner orders that, within 60 days of the date of this order, all persons
19 employed by Royal Tea Taiwan who assist in preparing franchise registrations or who assist in
20 franchise selling, including but not limited to Peter Rodwell, Executive Chairman of Royal Tea
21 Taiwan, attend remedial education, which shall consist of eight (8) hours of franchise law training
22 course per person offered by instructors that are acceptable to the Commissioner. Proof of attendance
23 of the remedial education shall be submitted to Jeremy F. Koo, Counsel, 1515 K Street, Suite 200,
24 Sacramento, California 95814, no later than 90 days from the date of this order.

25 **VI.**

26 **Recovery of Costs Pursuant to Corporations Code Section 31408**

27 48. Corporations Code section 31408, subdivision (b), provides, “ In an administrative
28 action brought under this part the commissioner is entitled to recover costs, which in the discretion of

1 the administrative law judge may include any amount representing reasonable attorney's fees and
2 investigative expenses for the services rendered. . . .”

3 49. Pursuant to Corporations Code section 31408, subdivision (b), the Commissioner finds
4 it is entitled to recover costs and that Royal Tea Taiwan shall pay attorney’s fees and investigative
5 expenses to the Department of Business Oversight in the amount of \$10,000.00 or according to proof.
6 The amount awarded for attorney’s fees and investigative expenses shall be made payable to the
7 Department of Business Oversight and submitted to the attention of Accounting – Litigation, 1515 K
8 Street, Suite 200, Sacramento, California 95814, no later than 30 days from the date of this order.

9 **VII.**

10 **Conclusion**

11 50. These orders are necessary, in the public interest, for the protection of investors and
12 franchisees and consistent with the purposes, policies, and provision of the Franchise Investment Law.

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Dated: May 26, 2020
Sacramento, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division