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8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) FIL ORG. ID. 325570
13)
14 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
OVERSIGHT,)
15)
Complainant,)
16)
v.)
17)
SPORTBALL SYSTEMS USA, LLC)
18)
Respondent.)
19)
20)

21
22 The Commissioner of Business Oversight (Commissioner) and Respondent, Sportball
23 Systems USA, LLC (Respondent), (Commissioner and Respondent are collectively referred to as
24 Parties), enter into this Consent Order based on the following facts:

25 **Recitals**

26 A. The Commissioner is authorized to administer and enforce the provisions of the
27 Franchise Investment Law (Corp. Code § 31000 et seq.) (FIL) and the rules and regulations
28 promulgated thereunder which control the registration, offer, and sale of franchises in California.

1 B. The Commissioner brings this action pursuant to the provisions of the FIL, and the
2 rules and regulations promulgated thereunder, including Corporations Code sections 31110, 31150,
3 31402, 31406, and 31408.

4 C. Respondent admits to the jurisdiction of the Commissioner in this matter and for the
5 purposes of issuing and enforcing this Consent Order.

6 D. At all relevant times, Respondent was a Delaware limited liability company organized
7 on October 27, 2006, with a business address located at 39 Glen Cameron Road, Unit 8, Thornhill,
8 ON L3T 1P1, Canada. Respondent is a wholly owned subsidiary of Sportball Systems Inc., a Canada
9 corporation, and an affiliate of Sportball Canada Inc. (collectively, Companies), which is the owner
10 of the trademark “Sportball.”

11 E. Jon Mallinick is one of the owners of the Companies and is a director of Respondent.
12 As such, he is authorized to enter into this Consent Order on behalf of Respondent.

13 F. Respondent entered into licensing agreements (Agreements) with California residents
14 on July 30, 2010, and July 7, 2012, for the operation of children’s sports programs under the
15 trademark “Sportball” at specified locations in California. Respondent registered the offer of these
16 franchises under the FIL in 2009 and 2011. The first registration order was issued July 2, 2009, and
17 expired April 20, 2010. The second registration order was issued August 16, 2011, and expired April
18 20, 2012.

19 G. On or about April 29, 2019, Respondent applied to the Department of Business
20 Oversight (Department) for registration to offer and sell franchises in California pursuant to
21 Corporations Code section 31110. During the ensuing application process, Respondent
22 acknowledged that it had entered into the Agreements after the expiration of the registrations, and
23 therefore, the Commissioner considers the sales unregistered sales of franchises in California in
24 violation of Corporations Code section 31110.

25 H. Respondent’s personnel responsible for franchise sales at the time of the violations is
26 no longer employed by or associated with Respondent. Respondent’s current employees responsible
27 for franchise sales and regulatory compliance, Jason D’Rocha and Myriam Brenner, along with
28 Respondent’s principals, Carmella Gelgor, Mark Gelgor, and Jon Mallinick, voluntarily attended a

1 two-hour franchise law training course on August 8, 2019, provided by Respondent’s counsel at
2 Plave Koch PLC shortly after Respondent was made aware of the violations.

3 I. Respondent also acknowledged that, as a consequence of its document retention
4 policies, it had not retained copies of the Franchise Disclosure Document receipts for Z Gray Sports
5 and Active Kids or records of amounts paid by the franchisees, which the Commissioner considers to
6 be violations of Corporations Code section 31150.

7 J. Respondent admits that the Agreements constituted franchises subject to the FIL, and
8 has indicated its intent and desire to cooperate fully with the Department to correct and remedy any
9 past violations and to consent to the entry of this Consent Order by the Commissioner for the
10 requested relief without the need for the Commissioner to file an administrative action or for further
11 litigation.

12 K. The Commissioner finds that entering into this Consent Order is necessary, in the
13 public interest, for the protection of investors and consistent with the purposes, policies, and
14 provisions of the Franchise Investment Law (Corp. Code § 31000 et seq.).

15 L. For purposes of resolving the Commissioner’s inquiry into this matter without the
16 expense and uncertainty of further proceedings, Respondent, while neither admitting or denying the
17 above findings, and while making no personal admissions, agrees that at a hearing, Complainant
18 could establish a prima facie factual basis for each of the findings noted above and that those
19 findings constitute cause for this action. Respondent further agrees this Consent Order estops any
20 future denial that cause exists for this action in any future proceedings before the parties herein and
21 hereby gives up the right to contest that cause for discipline exists based upon these findings.

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

24 **Terms and Conditions**

25 1. Purpose. This Consent Order resolves the issues before the Commissioner in a
26 manner that avoids the expense of a hearing and other possible court proceedings, protects
27 consumers, is in the public interest, and is consistent with the purposes and provisions of the FIL.
28

1 2. Desist and Refrain Order. Pursuant to Corporations Code section 31402, Respondent
2 is hereby ordered to desist and refrain from the further offer or sale of franchises in violation of
3 Corporations Code section 31110, unless and until the offers have been duly registered under the FIL
4 or are otherwise exempt. Respondent is also hereby ordered to desist and refrain from failing to
5 keep and maintain a complete set of books, records, and accounts of the sale of franchises in this
6 state that are subject to registration under the FIL in violation of Corporations Code section 31150.

7 3. Order to Discontinue Violations. Respondent hereby agrees that in accordance with
8 Corporations Code sections 31110 and 31150, it will immediately discontinue the violations set forth
9 herein.

10 4. Administrative Penalties. Respondent agrees to pay administrative penalties in the
11 total amount of \$5,000.00 pursuant to Corporations Code section 31406. Such payment shall be
12 made within ten business days following the effective date of this Consent Order, as such date is
13 defined in Paragraph 23 (Effective Date), made payable in the form of a cashier’s check or
14 Automated Clearing House deposit to the “Department of Business Oversight,” and transmitted to
15 the attention of Accounting-Litigation, Department of Business Oversight, 1515 K Street, Suite 200,
16 Sacramento, California 95814. Notice of all payments shall be sent to Noah M. Bean, Counsel, at
17 Noah.Bean@dbo.ca.gov. In the event any payment due date falls on a weekend or holiday, the
18 payment shall be due the next business day.

19 5. Education. Within 90 days following the Effective Date of this Consent Order, all of
20 Respondent’s executive officers and franchise compliance officers will attend two additional hours
21 of remedial education pursuant to Corporations Code section 31408. The remedial education will be
22 in the form of franchise law training courses offered by Plave Koch PLC, a franchise law specialist
23 certified with the State Bar of California, or courses offered by or through the International
24 Franchise Association. Attendance may be via videoconference. Within 90 days following the
25 Effective Date of this Consent Order, Respondent shall submit proof of compliance to: Noah M.
26 Bean, Counsel, by email at: Noah.Bean@dbo.ca.gov.

27 6. Amendment to Document Retention Policies. Within 90 days following the Effective
28 Date of this Consent Order, and pursuant to Corporations Code section 31408, Respondent will

1 provide a sworn statement signed under penalty of perjury that it has either adopted document
2 retention policies or modified its existing document retention policies to comply with Corporations
3 Code section 31150.

4 7. Waiver of Hearing Rights. Respondent acknowledges the Commissioner is ready,
5 willing, and able to proceed with the filing of an administrative enforcement action on the charges
6 contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any
7 reconsideration, appeal, or other right to review which may be afforded under the FIL, the
8 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
9 provision of law. Respondent further expressly waives any requirement for the filing of an
10 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such
11 rights, Respondent effectively consents to this Consent Order becoming final.

12 8. Remedy for Breach. In the event Respondent fails to timely comply with any of the
13 terms of this Consent Order, and upon written notice from the Commissioner to Respondent and 30
14 days' opportunity to cure, the Respondent and its respective affiliates, successors, and assigns agree
15 that this Consent Order may be converted immediately to an enforceable civil judgment for the
16 entire penalty amount of \$5,000.00. Respondent further agrees that such civil judgment may be
17 entered by the court ex parte without further notice or hearing. Respondent agrees that a breach of
18 this Consent Order shall be cause for the Commissioner to immediately suspend or revoke any
19 registrations held by, and deny any pending application(s) of, Respondent and its respective
20 affiliates, successors, and assigns, by whatever names they might be known.

21 9. Information Willfully Withheld or Misrepresented. This Consent Order may be
22 revoked and the Commissioner may pursue any and all remedies available under law against
23 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
24 misrepresented information used for and relied upon in this Consent Order.

25 10. Future Actions by the Commissioner. If Respondent fails to comply with any terms of
26 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
27 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
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1 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
2 successors for any and all unknown violations of the FIL.

3 11. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
4 ability to assist a government agency (whether city, county, state, or federal) with any
5 administrative, civil, or criminal action brought by that agency against Respondent or any other
6 person based upon any of the activities alleged in this matter or otherwise.

7 12. Headings. The headings to the paragraphs of this Consent Order are inserted for
8 conveniences only and will not be deemed a part hereof or affect the construction or interpretation of
9 the provisions hereof.

10 13. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
11 interest.

12 14. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
13 Consent Order, it had relied solely on the statements set forth herein and the advice of its own
14 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
15 Order it has placed no reliance on any statement, representation, or promise of any other party, or
16 any person or entity not expressly set forth herein, or upon the failure of any party or any other
17 person or entity or entity to make any statement, representation, or disclosure of anything
18 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in
19 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of
20 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

21 15. Waiver, Amendments, and Modification. No waiver, amendment, or modification of
22 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
23 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
24 provision. No waiver by either Party of any breach of, or of compliance with, any condition or
25 provision of this Consent Order by the other Party will be considered a waiver of any other condition
26 or provision or of the same condition or provision at another time.

27 16. Full Integration. This Consent Order is the final written expression and the complete
28 and exclusive statement of all the agreements, conditions, promises, representations, and covenants

1 between the Parties with respect to the subject matter hereof, and supersedes all prior or
2 contemporaneous agreements, negotiations, representations, understandings, and discussions
3 between and among the Parties, their respective representatives, and any other person or entity, with
4 respect to the subject matter covered hereby.

5 17. Governing Law. This Consent Order will be governed by and construed in
6 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
7 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
8 forum to the maintenance of such action or proceeding in such court.

9 18. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
10 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
11 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
12 admitted for the purpose of such application(s) or enforcement proceedings(s).

13 19. Voluntary Agreement. Respondent enters into this Consent Order voluntarily and
14 without coercion and acknowledge that no promises, threats, or assurances have been made by the
15 Commissioner or any officer, or agent thereof, about this Consent Order. Each of the Parties
16 represent and acknowledge that it is executing this Consent Order completely voluntary and without
17 any duress or undue influence of any kind from any source.

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

21 21. Signatures. An electronic signature, or a faxed, photocopied, or scanned copy of an
22 original signature, shall be deemed the same as an original signature.

23 22. Public Record. Respondent hereby acknowledges that this Consent Order is and will
24 be a matter of public record.

25 23. Effective Date. This Consent Order shall become final and effective when signed by
26 all parties and delivered by the Commissioner’s agent by email to Respondent’s attorney, Michael
27 Laidhold, at mlaidhold@plavekoch.com.
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24. Authority to Sign. Each signatory hereto covenants that he/she/they possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

MANUEL P. ALVAREZ
Commissioner of Business Oversight

Dated: August 5, 2020

By _____
Mary Ann Smith
Deputy Commissioner

SPORTBALL SYSTEMS USA, LLC

Dated: July 20, 2020

By _____
Jon Mallinick, Director

APPROVED AS TO FORM AND CONTENT:

Michael Laidhold
PLAVE KOCH PLC
Counsel for Sportball Systems USA, LLC