

1 Deputy Commissioner  
DANIEL P. O’DONNELL  
2 Assistant Chief Counsel  
MARISA I. URTEAGA-WATKINS (State Bar No. 236398)  
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Department of Financial Protection and Innovation  
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6

7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
9 OF THE STATE OF CALIFORNIA

10 In the Matter of: )

11 THE COMMISSIONER OF FINANCIAL )  
12 PROTECTION AND INNOVATION, )

13 Complainant, )

v. )

14 HAPPY LEMON HK, LIMITED, )

15 Respondent. )  
16 )

CONSENT ORDER

17  
18 This Consent Order is entered into between the Commissioner of Financial Protection and  
19 Innovation (Commissioner), Happy Lemon HK, Limited (HLHK) (collectively, Parties) and is  
20 made with respect to the following facts:

21 **I.**

22 **RECITALS**

23 A. The Commissioner is the head of the Department of Financial Protection and  
24 Innovation (Department) and is responsible for administering and enforcing the Franchise  
25 Investment Law (FIL) (Corp. Code, § 31000 et seq.),<sup>1</sup> and registering the offer and sale of franchises  
26 in California. To register a franchise, a franchisor must file an application which includes a Uniform  
27 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance  
28

<sup>1</sup> All further statutory references are to the Corporations Code unless otherwise indicated.

1 with sections 31111 and 31114. The FIL requires franchisors to disclose certain material  
2 information which is intended to provide prospective franchisees with facts upon which to make an  
3 informed decision to purchase a franchise, as stated in section 31001.

4 B. At all relevant times HLHK was a Hong Kong company with a principal place of  
5 business located at Unit F, 9th Floor, World Tech Centre, No. 95 How Ming Street, Kwun Tong,  
6 Kowloon, Hong Kong. At all relevant times, Yute Chen was the director of HLHK. At all relevant  
7 times, HLHK, directly or through its affiliates, is the franchisor/licensor for a tea shop concept  
8 offering a variety of drinks under the name “Happy Lemon” outside of the United States, mostly in  
9 Asia. At all relevant times, HLHK, through its affiliates, also own and operate company-owned  
10 “Happy Lemon” outlets outside of the United States, mostly in Asia. HLHK asserts that it has not  
11 done any business in the United States since 2019.

12 C. Under section 31110, it is unlawful for any person to offer or sell a franchise in this  
13 state unless the offer has been registered with the Commissioner or is exempt.

14 D. From 2016 to 2018, HLHK offered and sold in California at least eight franchise  
15 outlets before properly registering these franchises with the Commissioner. HLHK alleges that some  
16 transactions were exempt from the FIL, as the franchises were sold to large and seasoned franchisees  
17 and/or existing franchisees.

18 E. The Commissioner finds that HLHK, in at least eight instances, offered or sold a  
19 franchise in California without being registered with the Commissioner or exempt in violation of  
20 section 31110.

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

23 **II.**

24 **TERMS AND CONDITIONS**

25 1. Purpose. This Consent Order resolves the issues before the Commissioner [findings  
26 in paragraphs C, D, and E above] in a manner that avoids the expense of a hearing and other  
27 possible court proceedings, protects consumers, is in the public interest, and is consistent with the  
28 purposes and provisions of the applicable law.

1           2.       Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,  
2 Happy Lemon HK, Limited is hereby ordered to desist and refrain from the violations set forth  
3 herein, in violation of Corporations Code sections 31110, and 31200.

4           3.       Penalties. HLHK shall pay penalties of \$13,000 (Penalties) for the violations  
5 discussed herein. HLHK shall pay the Penalties to the Commissioner within ten calendar days of the  
6 effective date of this Consent Order in paragraph 22 herein (Effective Date) via cashier's check or  
7 Automated Clearing House deposit to the Department of Financial Protection and Innovation,  
8 Accounting, 2101 Arena Blvd., Sacramento, California 95834. Failure to timely pay the Penalties  
9 constitutes a breach of this Consent Order.

10          4.       Remedial Education. The following class of persons are required to attend remedial  
11 education: (1) All persons with direct management responsibility relating to the sale of franchises in  
12 California; (2) All persons who assist in preparing franchise materials (excluding outside lawyers  
13 and accountants), if applicable; and (3) the person who certifies the accuracy of the franchise  
14 disclosure document, if applicable. These persons shall complete at least eight hours of remedial  
15 FIL education offered by a Department-approved vendor or franchise attorney within ninety days of  
16 the Effective Date of this Consent Order. HLHK shall file proof of compliance, in the form of a  
17 sworn statement of each person required to take remedial education, under penalty of perjury, and  
18 a certificate of completion from the vendor to the Commissioner upon completion. Proof of  
19 compliance shall be sent to the Department of Financial Protection and Innovation, Attn. Marisa I.  
20 Urteaga-Watkins, Counsel, 2101 Arena Blvd., Sacramento, California 95834. HLHK agrees that the  
21 Department shall not register any HLHK franchise application, if at all, for registration until all  
22 remedial education is complete. Failure to timely complete said remedial education requirement  
23 within ninety days of the Effective Date of this Order constitutes a breach of this Consent Order and  
24 HLHK shall be barred from offering and selling franchises until said training is complete.

25          5.       Waiver of Hearing Rights. HLHK acknowledges that the Commissioner is ready,  
26 willing, and able to proceed with the filing of an administrative enforcement action on the charges  
27 contained in this Consent Order. HLHK hereby waives the right to any hearings, and to any  
28 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the

1 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of  
2 law. HLHK further expressly waives any requirement for the filing of an Accusation pursuant to  
3 Government Code section 11415.60, subdivision (b). By waiving such rights, HLHK effectively  
4 consents to this Consent Order and the Desist and Refrain Order becoming final.

5       6.     Failure to Comply with Consent Order. HLHK agrees that if it fails to comply with  
6 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies  
7 it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable) or deny  
8 FIL applications (if applicable) until HLHK is in compliance. HLHK waives any notice and  
9 hearing rights to contest such summary suspensions which may be afforded under the FIL, the APA,  
10 the CCP, or any other provision of law in connection therewith.

11       7.     Information Willfully Withheld or Misrepresented. This Consent Order may be  
12 revoked, and the Commissioner may pursue any and all remedies available under law against  
13 HLHK if the Commissioner discovers that HLHK knowingly or willfully withheld or  
14 misrepresented information used for and relied upon in this Consent Order.

15       8.     Future Actions by Commissioner. If HLHK fails to comply with any terms of the  
16 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
17 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
18 against HLHK, or any of its partners, owners, officers, shareholders, directors, employees or  
19 successors for any and all unknown violations of the FIL.

20       9.     Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s  
21 ability to assist any other government agency (whether city, county, state, or federal) with any  
22 administrative, civil or criminal action brought by that agency against HLHK or any other person  
23 based upon any of the activities alleged in this matter or otherwise.

24       10.    Headings. The headings to the paragraphs of this Consent Order are inserted for  
25 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
26 the provisions hereof.

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

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

10           13.    Waiver, Amendments, and Modifications. No waiver, amendment, or modification  
11 of this Consent Order will be valid or binding unless it is in writing and signed by each of the  
12 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any  
13 other provision. No waiver by either party of any breach of, or of compliance with, any condition  
14 or provision of this Consent Order by the other party will be considered a waiver of any other  
15 condition or provision or of the same condition or provision at another time.

16           14.    Full Integration. This Consent Order is the final written expression and the complete  
17 and exclusive statement of all the agreements, conditions, promises, representations, and covenant  
18 between the Parties with respect to the subject matter hereof, and supersedes all prior or  
19 contemporaneous agreements, negotiations, representations, understandings, and discussions  
20 between and among the Parties, their respective representatives, and any other person or entity with  
21 respect to the subject matter covered hereby.

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

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

1           17.    Effect Upon Future Proceedings. If HLHK applies for any license, registration,  
2 permit, or qualification under the Commissioner’s current or future jurisdiction, or is the subject of  
3 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof  
4 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

5           18.    Voluntary Order. HLHK enters into this Consent Order voluntarily and without  
6 coercion and acknowledges that no promises, threats or assurances have been made by the  
7 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent  
8 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and  
9 without any duress or undue influence of any kind from any source.

10          19.    Notice. Any notice required under this Consent Order shall be provided to each  
11 party at the following addresses:

12           To HLHK:                   Jimmy Chen, Esq.  
13   Garcia, Rainey, Blank and Bowerbank, LLP  
14   695 Town Center Drive, Suite 700  
15   Costa Mesa, California 92626  
16   jchen@garciarainey.com

17           To the Commissioner:       Marisa I. Urteaga-Watkins, Counsel  
18   Department of Financial Protection and Innovation  
19   2101 Arena Blvd.  
20   Sacramento, California 95834  
21   marisa.urteaga-watkins@dfpi.ca.gov

22          20.    Signatures. A fax or electronic mail signature shall be deemed the same as an  
23 original signature.

24          21.    Public Record. HLHK hereby acknowledges that this Consent Order is and will be a  
25 matter of public record.

26          22.    Effective Date. This Consent Order shall become final and effective when signed by  
27 all Parties and delivered by the Commissioner’s agent via e-mail to HLHK’s agent, Jimmy Chen,  
28 Esq. at jchen@garciarainey.com.

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1           23.    Authority to Sign. Each signatory hereto covenants that he/she possesses all  
2 necessary capacity and authority to sign and enter into this Consent Order and undertake the  
3 obligations set forth herein.  
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5 Dated: April 28, 2021

MANUEL P. ALVAREZ  
Commissioner of Financial Protection and Innovation

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7  
8 By: \_\_\_\_\_  
9 MARY ANN SMITH  
10 Deputy Commissioner

11 Dated: April 27, 2021

HAPPY LEMON HK, LIMITED,

12  
13  
14 By: \_\_\_\_\_  
15 YUTE CHEN,  
16 Director