

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

	*	
IN THE MATTER OF:		
	*	
SweetFrog Enterprises, LLC	*	
f.k.a. Imagination Enterprises, Inc.,		Case No. 2012-0055
d.b.a. Sweet Frog,	*	
 Respondent.	*	
* * * * * * * * * * * *		

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Securities Division”) initiated an inquiry into the franchise-related activities of SweetFrog Enterprises, LLC, formerly known as Imagination Enterprises Inc., d.b.a. Sweet Frog (“SF Enterprises”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN., BUS. REG. §14-201 et seq. (2010 Repl. Vol. and Supp. 2011) (the “Maryland Franchise Law”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Commissioner”) concluded that grounds exist to allege that SF Enterprises violated the registration and disclosure provisions of the Maryland Franchise Law in relation to offers and sales of Sweet Frog franchises in Maryland; and

WHEREAS, before the holding of a hearing in this matter, without trial or final adjudication of any issue of fact or law, and without SF Enterprises admitting or denying any violation of law, the Commissioner and SF Enterprises have reached an agreement to enter into this Consent Order;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED:

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding pursuant to Section 14-210(a) of the Maryland Franchise Law.

II. STATEMENT OF FACTS

A. Respondent

2. SF Enterprises is a Virginia Corporation with a principal business address of 730 Research Road, Suite C, Richmond, Virginia 23236.

3. SF Enterprises has offered licenses granting licensees the right to make and market certain frozen yogurt products and to operate a restaurant under Sweet Frog trademarks, trade names, service marks, and logos.

4. In January 2012, the Securities Division received information suggesting that SF Enterprises, then known as Imagination Enterprises, Inc., may have offered and sold franchises in Maryland in the form of licensing agreements in violation of the registration and disclosure provisions of the Maryland Franchise Law.

5. On January 27, 2012, the Securities Division requested information from SF Enterprises regarding its potential offers and sales of licenses in Maryland. In response, SF Enterprises provided documents and information responding to the Securities Division's request.

6. On April 30, 2012, SFF, LLC ("SFF"), d.b.a. Sweet Frog, filed an initial registration application with the Securities Division to offer and sell Sweet Frog franchises. In its Franchise Disclosure Document filed with the Securities Division, SFF represents that SF Enterprises is the

sole member and manager of SFF.

B. Sweet Frog License Agreements

7. Based on information provided by SF Enterprises, between August 30, 2011 and April 30, 2012, SF Enterprises entered into three (3) license agreements (“License Agreements”) with Maryland residents and another five (5) license agreements with Virginia residents, granting them the right to open a licensed Sweet Frog business to be located in Maryland (collectively “Maryland Licensees”).

8. The eight (8) Maryland Licensees identified by SF Enterprises are: Active Culture; Frasko Frozen Inc.; Silveray Enterprises LLC; Able La Plata LLC; Towson Frog LLC; Frederick Yogurt Co. LLC; Goldrod LLC; and Ibbiddy, Inc.

9. The Sweet Frog License Agreements granted the Maryland Licensees the right to manufacture and market Sweet Frog frozen yogurt products, operate under the Sweet Frog name, and use all trademarks, trade names, service marks, logos and recipes developed by SF Enterprises in connection with the Maryland Licensees’ frozen yogurt business.

10. Under the Sweet Frog License Agreements, 7 of 8 Maryland Licensees paid an initial fee, due upon execution of the License Agreement, of between \$25,000 and \$30,000; one Maryland Licensee paid no initial fee. All Maryland Licensees also made monthly royalty payments to SF Enterprises.

C. Acknowledgments, Representations and Undertakings of SF Enterprises

11. SF Enterprises acknowledges to the Securities Division that the Sweet Frog License Agreements constitute a “franchise” as defined by Maryland Franchise Law.

12. SF Enterprises acknowledges that it was not registered offer and sell franchises

under the Maryland Franchise Law at the time SF Enterprises entered into Sweet Frog License Agreements with the Maryland Licensees.

13. SF Enterprises acknowledges that it did not give prospective Maryland Licensees a copy of a registered Maryland Franchise Disclosure Document (“FDD”) regarding the Sweet Frog franchise offering before the Maryland Licensees signed their respective Sweet Frog License Agreements.

14. SF Enterprises represents that, other than the eight (8) Maryland Licensees identified in this Consent Order, SF Enterprises did not offer or sell any Sweet Frog franchises in the form of the Sweet Frog License Agreement to any Maryland residents or any non-Maryland residents granting them the right to open a Sweet Frog business to be located in whole or in part in Maryland.

15. SF Enterprises represents that it has ceased offering franchises in the form of Sweet Frog License Agreements.

16. SF Enterprises represents that its offers and sales of franchises in violation of the registration and disclosure requirements of the Maryland Franchise Law were inadvertent, and that it has implemented new franchise sales compliance procedures to ensure that it and any subsidiaries that may offer franchises in the future comply with the registration and disclosure provisions of the Maryland Franchise Law.

17. SF Enterprises represents that its officers and sales staff shall undergo a comprehensive franchise law compliance training program to ensure that, in the future, those individuals comply with all required provisions of the Maryland Franchise Law.

IV. CONCLUSIONS OF LAW

18. By engaging in the above activities, the Commissioner has concluded that SF Enterprises violated §§14-214, 14-216, 14-228 and 14-229 of the Maryland Franchise Law.

V. ORDER AND CONSENT

19. THE COMMISSIONER HEREBY ORDERS, AND SF ENTERPRISES REPRESENTS AND CONSENTS THAT:

- A. SF Enterprises shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. SF Enterprises shall promptly file and diligently pursue an application for an initial franchise registration in Maryland relating to the License Agreements it has offered and sold to the Maryland Licensees. For purposes of this Agreement “diligently pursue” means that an applicant submits a substantive response to a Securities Division comment letter regarding a registration application no later than 20 days after the applicant’s receipt of the comment letter;
- C. Within seven (7) days of its receipt of the fully executed Consent Order of the Commissioner, SF Enterprises shall send to each Maryland Licensee a copy of this signed Consent Order, along with a Notice of Rescission Rights, in the form attached as Exhibit 1, informing the Maryland Licensee that it is being offered an opportunity to immediately rescind its Sweet Frog License Agreement under the terms of this Consent Order;
- D. Upon notification by the Securities Division that SF Enterprises’s franchise offering has been effectively registered for use in Maryland, except for any Maryland Licensee that has previously opted to rescind its Sweet Frog License Agreement franchise in response to the Notice of Rescission Rights, SF Enterprises shall send to all Maryland Licensees the following: (i) a copy of the applicable, effectively registered Maryland FDD; and (ii) a letter, in substantially the form attached to this letter as Exhibit 2, notifying the Maryland Licensees that, now that SF Enterprises is effectively registered to offer franchises in Maryland, the Maryland Licensee has a second opportunity to rescind its Sweet Frog License Agreement under the terms stated in that letter;

- E. SF Enterprises agrees that if any Maryland Licensee accepts SF Enterprises's offer to rescind its License Agreement in response to the Notice of Rescission Rights or a subsequent Offer to Rescind Franchise Agreement required under this Consent Order, SF Enterprises will complete payments to that Maryland Licensee within thirty (30) days of SF Enterprise's receipt of either written Acceptance;
- F. SF Enterprise's offer of a franchise for the limited purposes described in Paragraph 19C of this Consent Order is exempt from the registration provisions of the Maryland Franchise Law; and
- G. SF Enterprises acknowledges that this Consent Order is a discloseable order as described under the Maryland Franchise Law, and Item 3 of the NASAA Franchise Registration and Disclosure Guidelines and Amended FTC Franchise Rule.

VI. JURISDICTION RETAINED

20. Jurisdiction shall be retained by the Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Consent Order.

VII. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

21. If SF Enterprises fails to comply with any term of this Consent Order, the Securities Division may bring administrative or judicial proceedings against it to enforce this Consent Order or to sanction it for violating an order of the Commissioner, and may take any other action authorized under the Maryland Franchise Law or any other applicable law. In any such proceeding in which, after an opportunity for a hearing, the Commissioner or a court finds that SF Enterprises has violated this Consent Order, the Statement of Facts and the violations of the Maryland Franchise Law alleged in the Consent Order shall be deemed admitted and may be introduced into evidence against it.

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: Notice of Rescission Rights

Dear _____:

As required under the attached Consent Order with the Securities Division of the Maryland Attorney General's Office (the "Securities Division"), [Insert name of Company] ("we") have agreed to offer rescission to all Maryland residents to whom we sold licenses agreements and all non-Maryland residents to whom we sold license agreements for locations in Maryland (hereafter "franchises"), which we sold in violation of the registration and disclosure provisions of the Maryland Franchise Law. This offer of rescission is made in settlement of the administrative proceeding that the Securities Division may bring for the sale of a franchise in violation of the Maryland Franchise Law and does not affect any civil liability for which we may be responsible.

If you elect to rescind and terminate your franchise, we agree to return to you a the initial license fees you paid us. If you purchased any optional items as part of your license agreement, we will reimburse you for the cost you paid us for those items that you return.

In the event you elect to rescind, you will give up your license agreement. You also will give up any rights to use our trademarks and system and be obligated to refrain from using and disclosing any of our trade secrets and any of our confidential and proprietary information. We will make payments within thirty (30) days after we receive your Acceptance of Offer to Rescind.

This offer will remain open for thirty (30) days from the date you receive this letter. Please check the appropriate place below and return a signed copy of this letter to me within the time period. If you have any questions, please contact Dale E. Cantone, Assistant Attorney General, at the Division (410-576-6368).

If you do not rescind your license agreement in response to this offer, you will be given a second opportunity to rescind your license agreement, after we have completed the franchise registration process. When that registration is complete, we will send you a copy of a registered Franchise Disclosure Document and a new letter offering to rescind your license agreement under the same terms outlined in this letter.

Sincerely,
THE COMPANY

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND LICENSE AGREEMENT

1. I, the undersigned, acknowledge that I have read the preceding Notice of Rescission Rights and understand its contents.
2. I understand that I have not waived my rights under the Maryland Franchise and Disclosure Law by signing this document or my right to accept a subsequent rescission offer at a later time.

CHECK ONE

_____ I hereby **accept** your offer of rescission and agree to not use your trademarks and system and to not use or disclose to anyone the trade secrets, and confidential and proprietary information that I/we obtained from you.

_____ **I do not wish to accept your offer of rescission at this time.** I understand that I will be given a second opportunity to rescind my license agreement once the franchisor has effectively registered its franchise offering with the Securities Division under the Maryland Franchise Law.

Date: _____

Licensee

Attachment follows (Copy of Consent Order)

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: [Company] Offer to Rescind License Agreement

Dear _____:

As you recall, [Insert name of Company] ("we") have agreed to offer rescission to any Maryland residents to whom we sold licenses agreements and all non-Maryland residents to whom we sold license agreements for locations in Maryland (hereafter "franchises"), which we sold in violation of the registration and disclosure provisions of the Maryland Franchise Law. You previously received a "Notice of Rescission Rights" from us offering to rescind your franchise immediately. Now that we have completed the registration of our franchise offering, we are giving you this second opportunity to rescind your franchise, along with a copy of a Maryland Franchise Disclosure Document. We are making this offer in settlement of the administrative proceeding that the Division may bring for the sale of a franchise in violation of the Maryland Franchise Law, and this offer does not affect any civil liability for which we may be responsible.

If you elect to rescind and terminate your license agreement, we agree to return to you the initial license fees you paid us. If you purchased any optional items as part of your license agreement, we will reimburse you for the cost you paid us for any of the items that you return.

In the event you elect to rescind, you will give up your license agreement. You also will give up any rights to use our trademarks and system and be obligated to refrain from using and disclosing any of our trade secrets and any of our confidential and proprietary information.

This offer will remain open for thirty (30) days from the date you receive this letter. Please check the appropriate place below and return a signed copy of this letter to me within the time period. If you have any questions, please contact Dale E. Cantone, Assistant Attorney General, at the Division (410-576-6368).

Sincerely,

THE COMPANY

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND LICENSE AGREEMENT

1. I, the undersigned, acknowledge that I have read the preceding Offer to Rescind License Agreement and understand its contents.
2. I understand that I have not waived my rights under the Maryland Franchise and Disclosure Law by signing this document.
3. I hereby make the following choice to accept or refuse your offer to rescind my license agreement:

CHECK ONE

_____ I hereby **accept** your offer of rescission and agree to not use your trademarks and system and to not use or disclose to anyone the trade secrets, and confidential and proprietary information that I/we obtained from you.

_____ I do **not accept** your offer of rescission. I wish to remain a licensee under my current license agreement.

Date: _____

Licensee