

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND**

In the Matter of:

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Bambu Desserts and Drinks, Inc.,

*

and

*

Case Number 2015-0307

Scott Bachman,

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Respondents.

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ORDER TO SHOW CAUSE

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Securities Division”) initiated an investigation into the franchise-related activities of Bambu Desserts and Drinks, Inc. and Scott Bachman (collectively “Respondents”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §§14-201 et seq. (2015 Repl. Vol.) (the “Maryland Franchise Law”); and

WHEREAS, as a result of that investigation, the Maryland Securities Commissioner (the “Commissioner”) has found grounds to allege that Respondents violated the registration and disclosure provisions of the Maryland Franchise Law, in relation to the offer to sell and sale of a Bambu Desserts and Drinks franchise to be located in Maryland;

NOW, THEREFORE, the Commissioner hereby orders Respondents to show cause why a final order should not be entered ordering each of them to permanently cease and desist from violating the registration and disclosure provisions of the Maryland Franchise Law.

The Commissioner alleges the following as a basis for this Order:

I. JURISDICTION

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

II. STATEMENT OF FACTS

2. Bambu Desserts and Drinks, Inc. (“Bambu, Inc.”) is a dissolved California corporation with a principal business address of 181 2nd Avenue, Suite 460, San Mateo, California 94401.

3. Scott Bachman was, at all relevant times, the Chief Operating Officer of Bambu, Inc.

4. Bambu, Inc. has never been registered to offer and sell franchises under the Maryland Franchise Law

5. Prior to June 2014, Bambu, Inc. entered into certain Business Agreements with distributors granting those distributors the right to operate a Bambu Desserts and Drinks business.

6. In June 2014, Bambu, Inc. began offering and selling franchises.

7. In May 2015, Bambu Franchising, LLC (“Bambu Franchising”) purchased the assets of Bambu, Inc., including Bambu, Inc.’s Business Agreements.

8. On May 7, 2015, Bambu Franchising filed an initial application with the Securities Division to offer and sell franchises in Maryland.

9. On August 11, 2015, the Securities Division notified Bambu Franchising that it was registered to offer and sell franchises under the Maryland Franchise Law effective July 29, 2015.

10. In August 2015, the Securities Division received information that Bambu, Inc.

may have offered or sold in Maryland a franchise in the form of a Business Agreement.

11. In September 2015, counsel for Bambu Franchising advised the Securities Division that Bambu, Inc. offered a right of first refusal to a Virginia resident to open a Bambu Desserts and Drinks distributorship in a territory that included Maryland.

12. Specifically, on March 7, 2013, Bambu, Inc. entered into a Business Agreement with a Virginia corporation (“Virginia Distributor”) granting the Virginia Distributor the right to open and operate a Bambu Desserts and Drinks business at a location in Falls Church, Virginia.

13. Under the March 7, 2013 Business Agreement with the Virginia Distributor, Bambu, Inc. also granted the Virginia Distributor the “option of first right of refusal” to secure a second location within a 20 mile radius of the Virginia Distributor’s original Falls Church location, which territory could include parts of Maryland.

14. On June 14, 2013, Bambu, Inc. notified the Virginia Distributor that a 3rd party had requested to open a Bambu Desserts and Drinks business in Rockville, Maryland, but that the Virginia Distributor could exercise her option of first right of refusal to open a Bambu Desserts and Drinks business at that location by paying a non-refundable reservation fee of \$5,000 to Bambu, Inc.

15. Bachman signed the June 14, 2013 notice from Bambu, Inc. to the Virginia Distributor.

16. On July 2, 2013, the Virginia Distributor exercised her option of first right of refusal to open a second Bambu Desserts and Drinks location in Maryland by paying a \$5,000 reservation fee to Bambu, Inc.

17. The Virginia Distributor never opened a second Bambu Desserts and Drinks location in Maryland and never received a refund of her \$5,000 reservation fee.

18. The option of first right of refusal that Bambu, Inc. granted to the Virginia Distributor to open a Bambu Desserts and Drinks location in Maryland constituted the offer and sale of a “franchise” as described under the Maryland Franchise Law.

19. The Virginia Distributor never received a copy of a Maryland-registered Franchise Disclosure Document prior to paying the \$5,000 reservation fee to Bambu, Inc.

COUNT ONE
(Violation of Registration Provisions)

WHEREAS, section 14-228 of the Maryland Franchise Law makes it unlawful for any person to offer to sell, through advertisement or otherwise, or sell a franchise in Maryland or to a Maryland resident unless the offering has been registered with the Commissioner before the person offers to sell, through advertisement or otherwise, or sells the franchise in Maryland; and

WHEREAS, Respondents offered to sell franchises, and sold franchises in Maryland without registering the offering with the Commissioner;

NOW, THEREFORE, IT IS HEREBY ORDERED that each Respondent show cause why that Respondent should not be ordered to permanently cease and desist from the offer or sale of franchises in Maryland in violation of the registration provisions of section 14-228 of the Maryland Franchise Law.

COUNT TWO
(Violation of Disclosure Provisions)

WHEREAS, section 14-223 of the Maryland Franchise Law makes it unlawful for any person to offer to sell or sell a franchise in Maryland or to a Maryland resident without first giving a prospective franchisee a copy of the offering prospectus and a copy of each proposed agreement that relates to the sale of the franchise at the earlier of: (1) 14 calendar days before the

execution by the prospective franchisee of any binding agreement with the franchisor; (2) 14 calendar days before payment of any consideration that relates to the franchise relationship; or (3) a reasonable request by a prospective franchisee to receive a copy of the offering prospectus; and

WHEREAS, under section 14-216 (a) and COMAR 02.02.08.04, the “offering prospectus” that a franchisor must give to a prospective franchisee is the Franchise Disclosure Document that is registered by the Securities Division and that contains 23 separate Items of disclosure; and

WHEREAS, Respondents offered to sell and sold franchises in Maryland without giving the prospective Maryland franchisees the offering prospectus required under the Maryland Franchise Law at any time before the Maryland franchisees paid consideration or signed a binding contract related to the franchise;

NOW, THEREFORE, IT IS HEREBY ORDERED that each Respondent show cause why that Respondent should not be ordered to permanently cease and desist from the offer and sale of franchises in violation of the disclosure provisions of section 14-223 of the Maryland Franchise Law.

REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

IT IS FURTHER ORDERED, pursuant to section 14-210 of the Maryland Franchise Law and COMAR 02.02.06.06, that each Respondent shall file with the Commissioner a written Answer to this Order within fifteen days of service of the Order. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

The Answer also shall indicate whether a Respondent requests a hearing. A hearing will be scheduled in this matter if one is requested in writing. Failure by any Respondent to file a written request for a hearing in this matter shall be deemed a waiver by that Respondent of the right to such a hearing. Failure of any Respondent to file an Answer, including a request for a hearing, shall result in entry of a final order directing that Respondent to permanently cease and desist from violation of the Maryland Franchise Law.

SO ORDERED:

**Commissioner's Signature
on File w/Original Document**

Dated: June 16, 2016

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER