

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

Mochinut, Inc., and

Skyism, LLC,

Respondents.

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Case No. 2022-0045

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CONSENT ORDER

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 Mochinut, Inc. and Skyism, LLC (collectively “Respondents”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG. §§14-201 et seq. (2015 Repl. Vol.) (the “Maryland Franchise Law”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Securities Commissioner”) has concluded that grounds exist to allege that Respondents violated provisions of the Maryland Franchise Law in relation to the offer and sale of a franchise and of subfranchises 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 Respondents admitting or denying any violation of law, the Securities Commissioner and Respondents have reached an agreement to enter into this Consent Order; and

WHEREAS, Respondents waive their respective right to a hearing and any rights to seek

judicial review or otherwise challenge or contest the terms and conditions of this Consent Order;
and

WHEREAS, the Securities Commissioner has determined that it is in the public interest
to issue this Consent Order;

NOW, THEREFORE, it is hereby agreed, and the Securities Commissioner hereby
orders:

I. JURISDICTION

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

II. FINDINGS OF FACT

A. Respondents

2. Mochinut, Inc. is a California corporation with a principal business address of 648
N. Gramercy Pl., Los Angeles, CA 90004.

3. The founder and CEO of Mochinut, Inc. is Jaewook Ha.

4. Jaewook Ha owns the rights to the “Mochinut” trademarks and has licensed to
Mochinut, Inc. the right to sublicense the Mochinut trademark to other entities.

5. Mochinut, Inc. operates restaurants that serve Mochinut doughnuts, a combination
of American doughnuts and Japanese mochi.

6. Mochinut, Inc. also licenses to others the trademarks and registrations associated
with the tradename “Mochinut,” along with the proprietary ingredients and proprietary recipes to
allow the licensees to operate a business selling Mochinut donuts and products (collectively, the
“Mochinut License”).

7. Skyism, LLC (“Skyism”) is a New York limited liability company with a

principal business address of 450 Livingston Street, Norwood, NJ 07648.

B. The Mochinut License Agreement with Skyism

8. In March 2021, Mochinut, Inc. entered into a Trademark License Agreement with Skyism, granting Skyism the right to sublicense the rights to establish and operate businesses using the Mochinut License in a geographic territory that included Maryland, Virginia, and Washington, DC.

9. Under the Trademark License Agreement between Mochinut, Inc. and Skyism, Skyism could not grant any sublicenses of the Mochinut License to any third parties without the prior written consent of Mochinut, Inc.

The Skyism Sublicense Agreements with Maryland Licensees

10. In 2021, acting under its authority to sublicense the Mochinut License, Skyism entered into two (2) Trademark License Agreements (“License Agreements”) granting licensees (collectively, “Maryland Licensees”) the right to use the Mochinut License to operate Mochinut businesses located in Maryland.

11. The License Agreements with the Maryland Licensees are described below:

- A. On July 29, 2021, Skyism entered into a Trademark License Agreement with DW10, Inc. (“Ellicott City Mochinut”), a Maryland corporation with a principal business address in Ellicott City, Maryland, granting the Ellicott City Mochinut the rights to use the Mochinut License to operate a Mochinut business in Ellicott City, Maryland.
- B. On August 28, 2021, Skyism entered into a Trademark License Agreement with Mochinut Rockville, Inc. (“Rockville Mochinut”), a Maryland corporation with a principal business address in Rockville, Maryland, granting the Rockville Mochinut the rights to use the Mochinut License to operate a Mochinut business in Rockville, Maryland.

12. Under the License Agreements, the Maryland Licensees paid Skyism an initial license fee of \$30,000 and agreed to pay an additional monthly license fee of \$2,000.00 for every

month the Maryland Licensees' Mochinut business is open to the public. The Maryland Licensees also agreed to pay Skyism a training fee of \$1,500 for training the key employees of the Maryland Licensees in the operation of the Mochinut License.

13. Under the License Agreements, the Maryland Licensees also agreed to purchase ingredients for preparing donuts and other food items and packaging material exclusively from Skyism.

14. The Ellicott City Mochinut opened a Mochinut business at a location in Ellicott City, Maryland. In December 2022, the Ellicott City Mochinut terminated its License Agreement and rebranded its outlet to a different name.

15. The Rockville Mochinut opened a Mochinut business at a location in Rockville, Maryland. As of the date of this Consent Order, the Rockville Mochinut continues to operate a Mochinut business at that location.

D. Offers and Sales of Maryland Franchises by Skyism

16. In August 2022, the Securities Division received information that Mochinut, Inc. and/or Skyism may have offered and sold franchises or subfranchises in Maryland in violation of the Maryland Franchise Law. The Securities Division contacted Mochinut, Inc. and requested information about offers and sales of the Mochinut License in Maryland.

17. In October 2022, an attorney who claimed to represent both Mochinut, Inc. and Skyism ("Mochinut Counsel") provided certain documents to the Securities Division regarding the sale of the Mochinut License in Maryland. Mochinut Counsel represented that the parties had intended for Skyism to act as an area representative for Mochinut, Inc, rather than as a subfranchisor, and that, in the future, Skyism would act in the capacity of area representative for an affiliate of Mochinut, Inc., which would register a franchise offering in Maryland, and, once

registered, offer rescission to the Maryland Licensees.

18. In February 2023, the Securities Division sent a proposed Consent Order to Mochinut Counsel for both Mochinut, Inc. and Skyism to resolve alleged violations of the Maryland Franchise Law by those entities. Mochinut Counsel represented to the Securities Division that Mochinut, Inc. was trying to reach some type of settlement with Skyism to clarify their relationship and resolve disputes between those parties.

19. In July 2023, Mochinut Counsel advised the Securities Division that Skyism was represented by its own attorney (“Skyism Counsel”)

20. In July 2023, the Securities Division contacted Skyism Counsel, and Skyism Counsel represented that Mochinut, Inc. and Skyism were negotiating an arrangement to clarify their relationship and resolve disputes between themselves as well as resolve the Securities Division’s ongoing inquiry into alleged violations of the Maryland Franchise Law.

21. In October 2023, Skyism Counsel represented to the Securities Division that it had entered into an agreement with Mochinut, Inc. in which Mochinut, Inc. terminated the Trademark License Agreement that Mochinut, Inc. had with Skyism. As a result of that settlement agreement, Skyism has no current rights to use the Mochinut License or sublicense the rights to the Mochinut License to others.

22. In October 2023, an attorney representing only Mochinut, Inc. (“New Mochinut Counsel”) represented to the Securities Division that Skyism had offered to rescind the License Agreements that Skyism entered into with the Maryland Licensees.

E. The Securities Commissioner’s Conclusions

23. The Securities Commissioner has determined that the Trademark License Agreement that Mochinut, Inc. signed with Skyism is a subfranchise, also known as an “area

franchise” under the Maryland Franchise Law, with Skyism acting in the capacity of subfranchisor for Mochinut, Inc.

24. The Securities Commissioner also has determined that the License Agreements that Skyism signed with the Maryland Licensees are franchises under the Maryland Franchise Law.

25. Neither Mochinut, Inc. nor Skyism has ever registered with the Securities Division to offer franchises or subfranchises under the Maryland Franchise Law.

F. Representations by Respondents

26. Skyism represents that, as of the date of this Consent Order, the Ellicott City Mochinut has ceased operating a Mochinut business, and Skyism has agreed to rescind the License Agreement it has with the Ellicott City Mochinut.

27. Skyism also represents that, as of the date of this Consent Order, Skyism has offered to rescind the License Agreement it has with the Rockville Mochinut, and the Mochinut Rockville has indicated that it wishes to rescind that License Agreement.

28. Skyism represents that it has no current rights to franchise or subfranchise the Mochinut License, and it agrees that, in the future, it will not offer or sell franchises under the Maryland Franchise Law.

29. Mochinut, Inc. has obtained new legal counsel who is preparing a franchise disclosure document for a new entity, Mochinut Franchise, Inc. (“Mochinut Franchise”), an affiliate of Mochinut, Inc., and that Mochinut Franchise will have the rights to offer and sell the Mochinut License in the form of a franchise.

III. CONCLUSIONS OF LAW

30. By engaging in the above activities, the Securities Commissioner has concluded

that Respondents violated sections 14-214, 14-216, and 14-231 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

31. THE SECURITIES COMMISSIONER HEREBY ORDERS AND RESPONDENTS HEREBY CONSENT AND REPRESENT AS FOLLOWS:

- A. Skyism and Mochinut, Inc. shall permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Within ten (10) days of its receipt of a fully executed Consent Order of the Securities Commissioner, Skyism shall send to each of the Maryland Licensees the following: (i) a copy of this Consent Order; and (ii) a letter, in a form approved by the Securities Division, notifying each Maryland Licensee that it is refunding to each of them the initial license fee and the training fees each paid to Skyism under their respective License Agreement, with no conditions or requirements that they sign a release of claims they may have under the Maryland Franchise Law and (iii) a check in the amount of the initial license fee and the training fees that each Maryland Licensee paid under its respective License Agreement with Skyism;
- C. Mochinut, Inc. shall pay a civil monetary penalty to the Office of the Attorney General in the amount of Fifteen Thousand Dollars (\$15,000); and
- D. Skyism and Mochinut, Inc. acknowledge that this Consent Order is a disclosable order as described under the Maryland Franchise Law, and Item 3 of the NASAA Franchise Registration and Disclosure Guidelines and Amended FTC Franchise Rule.

V. JURISDICTION RETAINED

32. 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.

VI. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

33. If Respondents fail to comply with any term of this Consent Order, the Securities Division may bring administrative or judicial proceedings against them to enforce this Consent Order or to sanction either of them for violating an order of the Securities 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 Securities Commissioner or a court finds that a Respondent violated this Consent Order, the Securities Division also may seek other sanctions for violations that initiated this matter. Solely for the purpose of determining those sanctions, the Statement of Facts and the violations of the Maryland Franchise Law alleged in the 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 that Respondent.

VII. MODIFICATION OF CONSENT ORDER

34. The terms of this Consent Order may be modified only by a subsequent order issued by the Securities Commissioner.

SO ORDERED:

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

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

February 8, 2024

BY CONSENT:

Skyism, LLC

By: Evan John, Partner Young su Pyun, Partner

Mochinut, Inc.

By: Jaewook Ha, CEO