

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:)	Case Number SEU-2008-051
)	
)	
RICHARD CRAFT, JR., dba)	PRELIMINARY ORDER TO CEASE
BLAZIN' ENTERPRISES, INC. and)	AND DESIST AND NOTICE OF
CRAFT ENTERPRISES, LLC, nka CRAFT)	RIGHT TO HEARING
ENTERPRISES, INC.,)	
)	
)	
Respondents.)	
)	
)	

PRELIMINARY ORDER TO CEASE AND DESIST
AND NOTICE OF RIGHT TO HEARING

I. STATEMENT OF APPLICABLE STATUTORY LAW

Pursuant to the authority granted by Hawaii Franchise Investment Law, Chapter 482E of the Hawaii Revised Statutes ("HRS"), the rules and orders adopted thereunder, the authority delegated by the Director of the Department of Commerce and Consumer Affairs of the State of Hawaii ("Director") to the Commissioner of Securities ("Commissioner"), and other applicable authority, the Commissioner, through the Securities Enforcement Branch of the Business Registration Division, has conducted a preliminary investigation into the activities of Respondents Richard Craft, Jr., dba Blazin Enterprises, Inc. ("Respondent Craft"), and Craft Enterprises, LLC, nka Craft Enterprises, Inc. ("Respondent Craft Enterprises" and collectively "Respondents"), to determine if the

Respondents have engaged in, or are about to engage in, any act or practice constituting a violation of Chapter 482E, HRS, or any rule or order adopted thereunder.

From the information revealed pursuant to said investigation, the Commissioner has reasonable cause to believe that the above-named Respondents have violated Chapter 482E, HRS, and that such violations justify the entry of an order pursuant to the authority of HRS § 482E-10.7(a), to cease and desist from such violations, in that she finds as follows:

II. STATEMENT OF JURISDICTION

The Commissioner has jurisdiction under Chapter 482E, HRS, as this case involves the offer and sale of franchises within the meaning of HRS § 482E-2 and other applicable authority.

III. RESPONDENTS

1. Respondent Craft, Jr. is an individual and the owner of Craft Enterprises and was, at all relevant times, a resident of Hawaii. At all times relevant to this proceeding, Respondent Craft was engaged in the offer and sale of Blazin' Steak businesses in the State of Hawaii.

2. Respondent Craft Enterprises was registered with the State of Hawaii as a domestic limited liability company from March 20, 2009, until April 12, 2010. On April 12, 2010, Craft Enterprises became Craft Enterprises, Inc., a Hawaii for-profit corporation. Both entity forms were set up to offer, at least in part, opportunities for opening

restaurants under the trade name of Blazin' Steaks, and were or are Hawaii entities with their principal place of business located in Kailua, Hawaii.

3. Respondent Craft registered the trade name "Blazin' Steaks" with the State of Hawaii on or about April 12, 2007. In his Application for Registration of Trade Name, Respondent Craft, as registrant, stated that the nature of the business for which the trade name would be used was "STEAK PLATE LUNCHES." On July 6, 2009, the Respondent Craft assigned the trade name to Respondent Craft Enterprises, LLC, as the registrant.

4. In or around 2005, Respondent Craft opened his first Blazin' Steaks business as a mobile food establishment in Hawaii, selling the "steak plate lunch." Soon thereafter, he expanded the business to include more mobile food establishments and restaurants. In or around 2007, he began to market the rights to the Blazin' Steaks business logo and operational and marketing programs to third parties.

5. The Blazin' Steaks restaurants specialize in selling plate lunches of steak, chicken, fish, and other menu items to the public and are based on a unique operating system.

IV. STATEMENT OF FACTS AND ALLEGATIONS

A. Franchisee One

6. In or around the Summer of 2007, Respondents solicited "Franchisee One" to purchase a Blazin' Steaks restaurant business. Franchisee One accepted and entered an oral contract to purchase the business ("Franchisee One's Contract"), agreeing to follow Respondents' operational and marketing programs and to pay

"franchise fees" up front and monthly after the store opened, as described in more detail herein below.

7. Pursuant to Franchisee One's Contract, Respondents agreed to grant Franchisee One a license to use the Blazin' Steaks trade name and logo.

8. Respondents and Franchisee One had a continuing community interest in selling Blazin' Steaks plate lunches to the general public during Franchisee One's operation of the franchise, from May 31, 2008, until March 2009, as follows:

- a. Respondent Craft granted Franchisee One a protected territory in Kapolei, Hawaii;
- b. Respondents collected a monthly franchise payment;
- c. Franchisee One was required to pay the monthly lease for the restaurant which was in Respondent Craft's name; and
- d. Respondent Craft charged a monthly fee for advertising from Franchisee One.

9. Franchisee One paid \$37,000 in direct franchise fees to Respondents prior to opening the restaurant, in addition to his purchase of equipment, furnishings, supplies, and food for the restaurant, consistent with Respondents' operational and marketing programs. Franchisee One's Contract included his obligation to pay the following monthly franchise fees to Respondents: \$1,500 monthly for the first six months of operations, \$2,000 for each of the months seven through twelve, and then \$3,000 per month thereafter.

B. Franchisee Two

10. Respondents solicited "Franchisee Two" in or around April of 2008 to purchase and open a Blazin' Steaks restaurant business in Kaneohe, Hawaii.

11. In April 2008, Respondent Craft presented Franchisee Two with a written contract titled the "Blazin' Steaks Franchise Agreement" ("Franchisee Two's Contract" or together with Franchisee One's Contract, "Contracts"). The "Franchisor" was identified in that document as "Blazin' Enterprises, Inc." Respondent Craft signed on behalf of Blazin Enterprises, Inc.

12. Franchisee Two's Contract included the following: license to Franchisee Two for the Blazin' Steaks trade name and logo, an acknowledgment of a "community interest" in the business of selling plate lunches to the general public, terms of the operational and marketing programs, and the franchise fees.

13. Respondents and Franchisee Two had a continuing community interest in selling Blazin' Steaks plate lunches to the general public during her operation of the franchise, from summer of 2008, until July 1, 2009, as follows:

- a. Pursuant to Franchisee Two's Contract, Franchisee Two was obligated to pay Respondents a monthly "non refundable franchise fee;"
- b. Franchisee Two was required to pay the monthly lease for the restaurant which was in Respondent Craft's name;
- c. Pursuant to Franchisee Two's Contract, Franchisee Two was required to pay Respondents for advertising, at Respondents'

discretion, and acknowledged the "importance of the standardization of advertising and promotion to the goodwill and public image of the [Blazin' Steaks] System;" and,

- d. Pursuant to Franchisee Two's Contract, Franchisee Two was required to maintain accurate books and records "in the form and manner prescribed by Franchisor."

14. Franchisee Two paid more than \$65,000 to "build out" the store, which included buying and installing equipment, furnishings, and supplies, consistent with Respondents' operational and marketing programs. Pursuant to Franchisee Two's Contract, the up-front \$25,000 franchise fee was credited toward the total cost of this build out. Franchisee Two also paid approximately \$2,000 per month in franchise fees after the store opened for business.

V. VIOLATIONS OF FRANCHISE LAWS

15. The facts and allegations in paragraphs 1 through 14, inclusive, are realleged and incorporated as if set forth verbatim.

16. The above-described Contracts are "franchises" within the meaning of HRS § 482E-2 and other applicable authority.

17. In connection with the sale of these franchises, Respondents were required to, but did not, present an "offering circular" to both Franchisee One and Franchisee Two prior to the sales of the franchise, in violation of HRS § 482E-3(a).

18. Respondents were also required to, but did not, file a copy of the offering circular with the Director prior to the sale of the franchise, in violation of HRS § 482E-3(c).

VI. PRELIMINARY ORDER TO CEASE AND DESIST

NOW THEREFORE, pursuant to Chapter 482E, HRS, based on the aforementioned findings and conclusions and/or because it appears that Respondents may engage in further acts or practices in violation of Chapter 482E, HRS, and/or because it is found that this action is necessary and in the public interest for the protection of franchisees and prospective franchisees, IT IS HEREBY ORDERED that:

(1) Respondents shall CEASE AND DESIST from making any offer to sell, solicitation to purchase, sale of and/or transfer of the above-described franchise, or any other franchise, within the State of Hawaii;

(2) All contracts regarding the purchase or sale of the aforesaid franchise by Respondents to Franchisee One and Franchisee Two, or any similarly situated franchisees, are hereby RESCINDED effective immediately. Respondents, jointly and severally, shall REFUND to said franchisees, all monies or other franchise fees paid, plus interest on the amounts of monies or other compensation calculated at the same rate of ten percent (10%) per annum from the date of the sale of the franchise to the date of the refund payment until fully paid, minus amounts or remuneration already paid to said franchisees. This payment shall be made within thirty (30) days of the date of the Commissioner's Final Order ("Final Order"). Proof of said payments to franchisees shall be provided to the Securities Enforcement Branch within thirty (30) days of the

date of the Final Order. If a franchisee elects not to rescind the purchase or sale of a franchise, then the franchisee must so indicate in writing that the franchisee has elected not to exercise such right;

(3) Respondents shall be liable to pay the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division, a CIVIL PENALTY in the sum of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00), plus interest on the unpaid balance thereof at the rate of ten percent (10.0%) per annum from the date of the Final Order until finally paid, pursuant to HRS § 482E-10.5. Payment of this civil penalty shall be made by cashier's check or certified check made payable to the "Department of Commerce and Consumer Affairs Compliance Resolution Fund" and received by the Commissioner within thirty (30) days of the date of the Final Order;

(4) Respondents shall be subject to a civil penalty of not more than One Hundred Thousand and No/100 Dollars (\$100,000.00) per violation for each and every violation of this Preliminary Order to Cease and Desist ("Preliminary Order") or any other order of the Director or the Commissioner, pursuant to HRS §§ 482E-10.5, and any future violation of Chapter 482E, HRS; and

(5) The imposition of this Preliminary Order shall not preclude or prevent in any way the imposition of further sanctions or other actions against Respondents or any other party for violations of Chapter 482E, HRS.

YOU ARE HEREBY NOTIFIED that pursuant to HRS § 482E-10.7, you may request a hearing on this matter within thirty (30) days of the date of this Preliminary

Order. Said request must be in writing and addressed to: Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawaii, P.O. Box 541, Honolulu, Hawaii 96809.

You must simultaneously serve a copy of your written request for a hearing upon the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii, P.O. Box 40, Honolulu, Hawaii 96810. If a hearing is requested, it shall be scheduled within fifteen (15) business days after your written request has been received by the Office of Administrative Hearings unless extended by the Commissioner for good cause.

If no written request for a hearing is received by the Office of Administrative Hearings and a none is ordered by the Commissioner, this Preliminary Order shall remain in effect unless and until modified or vacated by the Commissioner or until a Final Order becomes effective.

You are hereby further notified that pursuant to § 16-201-23 of the Hawaii Administrative Rules for Administrative Practice and Procedure, you may, within ten (10) days after receiving a Final Order, move the Commissioner to reconsider the Final Order. Your motion shall be filed with the Commissioner and shall state specifically what points of law or facts the Commissioner has overlooked or misunderstood, together with brief arguments on the points raised.

Additionally, pursuant to HRS §§ 16-201-24, as applicable, you may file an appeal with the Circuit Court of the First Circuit of the State of Hawaii in the manner provided in Chapter 91, HRS.

You have the right to retain legal counsel, at your own expense, for all stages of these proceedings.

MAY 02 2012

DATED: Honolulu, Hawaii, _____.



TUNG CHAN
Commissioner of Securities
Department of Commerce & Consumer Affairs
STATE OF HAWAII