

1 STATE OF WASHINGTON  
2 DEPARTMENT OF FINANCIAL INSTITUTIONS  
3 SECURITIES DIVISION

4 IN THE MATTER OF DETERMINING  
5 Whether there has been a violation of the  
6 Franchise Investment Protection Act of  
7 Washington by:

8 Wellspring Industry, Inc. d/b/a  
9 Tutti Frutti Frozen Yogurt;

10 Respondent.

Order Number S-10-303-11-SC01

STATEMENT OF CHARGES AND  
NOTICE OF INTENT TO ENTER ORDER  
TO CEASE AND DESIST

11 THE STATE OF WASHINGTON TO:

12 Wellspring Industry, Inc., d/b/a  
13 Tutti Frutti Frozen Yogurt

14 **STATEMENT OF CHARGES**

15 Please take notice that the Securities Administrator of the state of Washington has reason  
16 to believe that Respondent, Wellspring Industry, Inc. d/b/a Tutti Frutti Frozen Yogurt has  
17 violated the Franchise Investment Protection Act of Washington, RCW 19.100, and that its  
18 violations justify the entry of an order of the Securities Administrator under RCW 19.100.248  
19 against it to cease and desist from such violations. The Securities Administrator finds as follows:

20 **TENTATIVE FINDINGS OF FACT**

21 Respondent

22 1. Wellspring Industry, Inc. (“Wellspring Industry”) is a California corporation doing  
23 business as Tutti Frutti Frozen Yogurt. Its principal place of business is 6363 Knott Avenue,  
24 Buena Park, California 90620.  
25

1 Nature of the Offering

2 2. Wellspring Industry is in the business of selling frozen yogurt products under the  
3 trademark Tutti Frutti Frozen Yogurt. Tutti Frutti Frozen Yogurt is “a specialty frozen yogurt  
4 retailer with over 100 upcoming stores nation and world wide.”

5 3. In March 2008, Wellspring Industry and two Washington residents entered into an  
6 agreement entitled “Trade Name License Agreement” (“the Agreement”) to operate a Tutti Frutti  
7 Frozen Yogurt store in a shopping mall in Tukwila, Washington. The Agreement prohibited the  
8 Washington residents from directly selling “any other products, services or merchandise on the  
9 premises unless authorized by [Wellspring Industry].”

10 4. The Washington residents paid Wellspring Industry a one-time license fee of \$10,000.  
11 The Washington residents were granted the right to sell frozen yogurt made from Wellspring  
12 Industry’s powdered frozen yogurt base, and utilize its recipes, formulas, and branded supplies  
13 such as cups and uniforms.

14 5. According to the Agreement, the Washington residents were required to obtain  
15 Wellspring Industry’s approval when securing a location for the store. Wellspring Industry  
16 referred them to the management of the shopping mall where the store was to be located.  
17 Wellspring Industry then assisted with setting up the store, including recommending vendors and  
18 an architect who coordinated the interior design and layout of the store.

19 6. Wellspring Industry provided the Washington residents with an opportunity to purchase  
20 marketing and advertising materials such as flyers and frequent customer stamp cards branded  
21 with the Tutti Frutti Frozen Yogurt name and logo. Wellspring Industry also sold the  
22 Washington residents its proprietary yogurt products, including powder, syrups and toppings.

23 7. Shortly before the store was to open, a representative of Wellspring Industry arrived in  
24 Washington State with starting supplies and yogurt machines. Wellspring Industry provided  
25

1 training and instruction on the day to day business operations for the store, preparation of frozen  
2 yogurt, and operation of the yogurt machines.

3 Ongoing Offer

4 8. The website [www.tfyogurt.net](http://www.tfyogurt.net) includes a page headed “Business Opportunity” which  
5 discusses “Benefits of Joining Tutti Frutti.”

6 9. According to this page, Wellspring Industry “will provide [a prospective purchaser] with  
7 a comprehensive site analysis on [the prospective purchaser’s] location.” The page further states  
8 that Wellspring Industry will “provide comprehensive training at [Wellspring Industry’s]  
9 facilities.” Prospective purchasers will be taught how to make frozen yogurt and use Wellspring  
10 Industry’s machines. Wellspring Industry further states that it will “provide guidance in financial  
11 and staff management issues in order to fully prepare [the prospective purchaser] for the  
12 operation of [the purchaser’s] store.” Additionally, prospective purchasers “will be given  
13 guidance and support to advertise locally.”  
14

15 10. Wellspring Industry also represents that it will provide “on-going help and support.”  
16 Field staff from Wellspring Industry will “take the time to visit [the prospective purchaser’s]  
17 store and follow up with the owners in order to make sure that the store is running properly and  
18 efficiently.”

19 11. Prospective purchasers can click on links to see more information and register for “Tutti  
20 Frutti Business Opportunity Seminars” held in various locations such as Los Angeles, Texas, and  
21 Florida.  
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1 Failure to Deliver Offering Circular

2 12. Wellspring Industry did not provide the Washington purchasers with a disclosure  
3 document or offering circular as required by RCW 19.100.080 that contained the information  
4 about the franchise required by RCW 19.100.040.

5 Registration Status

6 13. Wellspring Industry, Inc. is not registered to sell franchises in the State of Washington  
7 and has not previously been so registered.  
8

9  
10 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

11 **CONCLUSIONS OF LAW**

12 1. The offer or sale of the franchise described above constitutes the offer or sale of a  
13 franchise as defined in RCW 19.100.010(4) and RCW 19.100.010(16).

14 2. The offer or sale of said franchise is in violation of RCW 19.100.020 because no  
15 registration for such offer or sale is on file with the Securities Administrator.

16 3. The offer and/or sale of the above-described franchise was made in violation of RCW  
17 19.100.080 because Respondent Wellspring Industry, Inc. d/b/a Tutti Frutti Frozen Yogurt did  
18 not provide the Washington purchasers with a disclosure document or offering circular as  
19 required by RCW 19.100.040 prior to the sale of the franchise.  
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21 **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

22 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities  
23 Administrator intends to order that Respondent Wellspring Industry, Inc. d/b/a Tutti Frutti  
24 Frozen Yogurt, its agents and employees, each shall cease and desist from violations of RCW  
25 19.100.020 and RCW 19.100.080.

1 **AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of RCW 19.100.248 and  
3 is subject to the provisions of RCW 34.05. The respondent, Wellspring Industry, Inc. d/b/a Tutti  
4 Frutti Frozen Yogurt, may make a written request for a hearing as set forth in the NOTICE OF  
5 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this  
6 order.

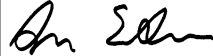
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8 If the respondent does not request a hearing, the Securities Administrator intends to adopt  
9 the above Tentative Findings of Fact and Conclusions of Law as final and enter an order to cease  
10 and desist permanent as to that respondent.

11 DATED AND ENTERED this 3rd day of May, 2011.

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15 WILLIAM M. BEATTY  
16 Securities Administrator

17 Approved by:

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19 SUZANNE E. SARASON  
20 Chief of Enforcement

Presented by:

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23 Jiyoung C. Kwon  
24 Financial Legal Examiner  
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