

1
2
3
4
5
6
7
8

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

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

Terry M. Phillips, doing business as Limeberry,
Respondent.

Order Number S-11-0790-CO01

CONSENT ORDER

9 Pursuant to the Franchise Investment Protection Act of Washington, RCW 19.100, the Securities
10 Division of the Department of Financial Institutions (“Securities Division”) and Respondent, Terry M.
11 Phillips, doing business as Limeberry, do hereby enter into this CONSENT ORDER in settlement of the
12 matters alleged herein. Respondent Terry M. Phillips neither admits nor denies the Findings of Fact and
13 Conclusions of Law stated below.

14
15 **FINDINGS OF FACT**

16 **I. Respondent**

17 1. Terry M. Phillips, doing business as Limeberry, is an Oregon resident and is a sole
18 proprietor engaged in the business of operating and marketing frozen yogurt stores.

19 **II. Nature of Conduct**

20 2. In 2011, Terry Phillips was approached by several prospective investors through word of
21 mouth by family members and a business acquaintance. Terry Phillips met with the prospective investors
22 in person at the Limeberry store in Salem, Oregon and at locations in Washington State. Terry Phillips also

23 LIMEBERRY CONSENT ORDER

1 communicated with prospective investors by telephone and email. Limeberry maintains a website at
2 www.limeberry.com that lists, among its six current operating locations, a location in Tumwater and in
3 Lacey, Washington. Terry Phillips negotiated agreements with at least three Washington residents in which
4 he would provide the residents with his expertise and detailed knowledge of the frozen yogurt business to
5 establish Limeberry stores in Tumwater, Lacey and Camas, Washington. In order to avoid being a
6 “franchise” under Washington State law, Terry Phillips told the investors that he would be a 51% owner of
7 an LLC to be formed to operate the investor’s specific store. Each investor would own the other 49% of
8 their respective LLC. The investors would provide all of the capital for the store, personally manage and
9 operate their respective locations, and share the profits of the store on a 50% basis with Terry Phillips.
10 Terry Phillips would allow the investors each to use the Limeberry name, marks and trade dress. Terry
11 Phillips would also provide each investor with location advice and assistance; provide each with training
12 and/or operations experience at existing Limeberry locations; provide guidance on pricing the products,
13 assist with the design and layout of the stores; provide advice on equipment purchases; provide opening
14 and ongoing operational assistance; and assist with the investors’ relationship with the Limeberry suppliers
15 and credit card vendors.

16 III. Failure to Deliver Offering Circular

17 3. In connection with the offer and sale of the Limeberry licenses, Terry M. Phillips failed to
18 provide the prospective purchasers with a disclosure document or offering circular as required by RCW
19 19.100.080 that contained the information about the franchise required by RCW 19.100.040.

20 IV. Registration Status

21 4. Terry M. Phillips is not currently registered to offer or sell Limeberry franchises in the state
22 of Washington and has not previously been so registered.

1 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

2 **CONCLUSIONS OF LAW**

3 1. The offer and/or sale of the Limeberry stores described above constitute the offer and/or
4 sale of a franchise as defined in RCW 19.100.010(16) and RCW 19.100.010(4).

5 2. The offer and/or sale of said franchises were in violation of RCW 19.100.020 because no
6 registration for such offer and/or sale is on file with the Securities Administrator.

7 3. The offer and/or sale of said franchises was made in violation of RCW 19.100.080 because
8 Respondent did not provide licensees with a disclosure document or offering circular required under RCW
9 19.100.040 prior to the sale of the franchise.

10 **CONSENT ORDER**

11 Based upon the foregoing and finding it in the public interest:

12 IT IS AGREED AND ORDERED that Respondent, Terry M. Phillips, his agents and employees,
13 each shall cease and desist from offering or selling franchises in violation of RCW 19.100.020, the
14 registration section of the Franchise Investment Protection Act of the State of Washington.

15 IT IS FURTHER AGREED AND ORDERED that Respondent, Terry M. Phillips, his agents and
16 employees, each shall cease and desist from violating RCW 19.100.080, the delivery of offering circular
17 section of the Franchise Investment Protection Act of the State of Washington.

18 IT IS FURTHER AGREED AND ORDERED that Respondent, Terry M. Phillips shall pay the
19 Securities Division the costs and other expenses incurred in the investigation of this matter in the amount
20 of \$2,600 on or before the date of entry of this Consent Order.

21 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Order.

1 IT IS FURTHER AGREED that in consideration of the foregoing, Respondent, Terry M. Phillips
2 waives his rights to a hearing in this matter and judicial review of this order.

3 SIGNED this 22nd day of February, 2012,

4 /s/
Terry M. Phillips, an individual and doing business as Limeberry

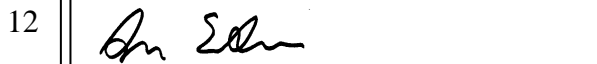
6 SIGNED and ENTERED this 6th day of March, 2012

7 

9 WILLIAM M. BEATTY
Securities Administrator

11 Approved by:

Presented by:

12 

12 

13 SUZANNE SARASON
Chief of Enforcement

13 MARTIN CORDELL
Financial Legal Examiner

16 Reviewed by:

18 

19 CHARLES CLARK
Financial Legal Examiner Supervisor