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California Corporations Commissioner  
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10 BEFORE THE DEPARTMENT OF CORPORATIONS  
11 OF THE STATE OF CALIFORNIA

12	In the Matter of THE CALIFORNIA	)	Agency Case No.: 993-6250
13	CORPORATIONS COMMISSIONER,	)	
14	Complainant,	)	STATEMENT IN SUPPORT OF STOP
15	vs.	)	ORDER DENYING EFFECTIVENESS OF
16	BEVMAX FRANCHISING, LLC,	)	FRANCHISE REGISTRATION
17	Respondent.	)	APPLICATION AND STOP ORDER
18		)	DENYING EFFECTIVENESS OF
19		)	FRANCHISE REGISTRATION
		)	APPLICATION

20 The California Corporations Commissioner (“Commissioner”) is informed and believes, and  
21 based upon such information and belief, alleges as follows:

- 22 1. At all relevant times, BevMax Franchising, LLC (“BevMax”) was a Connecticut limited  
23 liability company operating its principle business at 17 Cedar Street, Stamford, Connecticut, 06902.
- 24 2. At all relevant times, BevMax engaged in business activities relating to the franchising of a  
25 common plan or system for use by retail store operators, who sell an assortment of alcoholic and non-  
26 alcoholic beverages, tobacco products, lottery tickets, gourmet foods, and party goods, to promote  
27 sales by organizing and marketing their stores under the “BevMax” trademark.
- 28 3. On or about January 5, 2010, BevMax filed its initial Uniform Franchise Registration

1 Application (“franchise registration application”) with the Commissioner, seeking to register its  
2 franchise enterprise in this State in compliance with section 31111 of the California Franchise  
3 Investment Law (California Corporations Code sections 31000 *et seq.*).

4 4. The franchise registration application that BevMax submitted to the Commissioner was  
5 accompanied by a Uniform Franchise Disclosure Document (“UFDD”) containing the material  
6 information set forth in the application, as required by Corporations Code section 31114.

7 5. Item 2 of the UFDD that BevMax filed with its franchise registration application disclosed  
8 that John J. Todd (“Todd”) served as President of BevMax since September 2009 through the present  
9 time.

10 6. On November 14, 2003, the Securities and Exchange Commission (“SEC”) brought a civil  
11 law enforcement action in federal district court against Todd and other former executive officers of  
12 Gateway, Inc. (“Gateway”) for multiple violations of the antifraud, recordkeeping and reporting  
13 provisions of the federal securities laws

14 7. A jury trial in the SEC litigation resulted in an unanimous verdict against Todd on all counts.  
15 However, Todd thereafter moved the district court to set aside the jury verdict in favor of the SEC  
16 and enter judgment as a matter of law.

17 8. On March 7, 2007, the district court issued a final order granting defendants’ motion for  
18 judgment as a matter of law, effectively dismissing many of the charges that the SEC had brought  
19 against Todd for multiple violations of the federal securities laws. However, the district court  
20 declined to overturn the jury’s findings that, in violation of the Securities Exchange Act of 1934  
21 (“Securities Act”), Todd: (1) knowingly and substantially assisted Gateway’s preparation or filing of  
22 a materially false and misleading quarterly report, in violation of section 13(a); (2) knowingly and  
23 substantially assisted in Gateway’s failure to make and keep books, records and accounts in  
24 reasonable detail, accurately and fairly reflecting the transactions and dispositions of Gateway’s  
25 assets, in violation of section 13(b)(2)(A); and, (3) directly or indirectly falsified, or caused to be  
26 falsified, Gateway’s books, records or accounts, in violation of Rule 13b2-1. (See *Securities and*  
27 *Exchange Commission v. John J. Todd and Robert D. Manza*, 03 Civ. 2230 (BEN), (S.D. Cal. Mar. 7,  
28 2007).)

1  
2 9. The district court based its denial of Todd's motion in regard to the aforementioned claims on  
3 grounds that there was substantial evidence to support a jury finding that, in September 2000, Todd  
4 knowingly entered into a \$20 million sales transaction with a computer reselling company called  
5 VenServ; and in connection with the VenServ transaction, Todd assisted in the preparation of a 2000  
6 third quarter report which contained material misstatements concerning the accounting of Gateway's  
7 revenue.

8 10. The district court denied the SEC's request for a permanent injunction against future  
9 violations, an officer and director bar, and disgorgement of ill-gotten gains amounting to \$1,726,250.

10 11. Notwithstanding the above, the district court granted the SEC's motion for civil monetary  
11 relief and ordered Todd to pay penalties in the amount of \$16,500. Todd did not appeal this order.

12 12. Todd's motion for a new trial was denied with prejudice as to the jury's findings that he  
13 violated Rule 13b2-1 and sections 13(a) and 13(b)(2)(A) of the Securities Act.

14 13. On July 27, 2007, the SEC timely appealed the district court's final judgment, and defendants  
15 filed a cross-appeal. The matter remains pending before the United States Court of Appeals for the  
16 Ninth Circuit (Case Nos. 07-56098; 07-56193).

17 14. In the Item 3 litigation disclosure of the BevMax UFDD filed with the Commissioner,  
18 BevMax disclosed that the SEC had accused Todd and other former Gateway officers of violating  
19 "various provisions of the Securities Exchange Act and its rules, including engaging in fraud in  
20 connection with the purchase and sale of securities, failing to comply with certain SEC requirements  
21 regarding reporting and recordkeeping, making false or misleading statements to outside auditors,  
22 and failing to implement certain accounting controls."

23 15. The present status of the aforementioned SEC litigation was reported in Item 3 of the BevMax  
24 UFDD as follows:

25 A directed verdict was entered in favor of defendants on all claims except the claim relating to  
26 compliance with certain reporting and recordkeeping requirements. The court held that the  
27 defendants failed to comply with a reporting and recordkeeping requirement relating to a  
28 single transaction in 2000. The SEC appealed the directed verdict to the U.S. Court of  
Appeals for the Ninth Circuit. The defendants filed a cross-appeal on the books and  
records/reporting claim.

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3 16. Corporations Code section 31200 provides:

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5 It is unlawful for any person willfully to make any untrue statement of a material fact in any  
6 application, notice or report filed with the commissioner under this law, or willfully to omit  
7 to state in any such application, stated therein, or fail to notify the commissioner of any  
8 material change as required by Section 31123.

9 17. The Commissioner finds that the district court's imposition of \$16,500 in penalties against  
10 Todd for violating multiple provisions of the federal securities laws is a material fact that BevMax  
11 failed to disclose in its initial franchise application filed with the Commissioner, in violation of  
12 Corporations Code section 31200.

13 18. Corporations Code section 31115 provides in pertinent part:

14 The commissioner may summarily issue a stop order denying the effectiveness of or  
15 suspending or revoking effectiveness of any registration if the commissioner finds:

16 (a) That there has been a failure to comply with any of the provisions of this law or rules of  
17 the commissioner pertaining thereto. . .

18 . . .  
19 (d) That any person identified in the application or any officer or director of the franchisor,  
20 whether or not identified in the application, meets one or more of the following conditions,  
21 and the involvement of this person in the sale or management of the franchise creates an  
22 unreasonable risk to prospective franchisees:

23 (1) Has been convicted of a felony, or pleaded nolo contendere to a felony charge, or  
24 held liable in a civil action by final judgment if the felony or civil action involved  
25 fraud, embezzlement, fraudulent conversion, or misappropriation of property. . . .

26 19. The Commissioner concludes that the district court's final order, that Todd aided and abetted  
27 Gateway in violating Rule 132b-1 and sections 13(a) and 13(b)(2)(A) of the Securities Act, as well as  
28 the court's imposition of \$16,500 in penalties against Todd personally, supports the finding that Todd  
has been held liable by final judgment of a civil action involving fraud, in violation of Corporations  
Code section 31115(d)(1).

1 20. Accordingly, the Commissioner is of the opinion that BevMax has failed to comply with the  
2 provisions of the California Franchise Investment Law and that the involvement of Todd in the sale  
3 or management of the BevMax franchise in this State would create unreasonable risk to prospective  
4 franchisees.

5 WHEREFORE, the California Corporations Commissioner hereby issues an order denying the  
6 effectiveness of the BevMax Franchising, LLC franchise registration application pursuant to  
7 California Corporations Code section 31115.

8 Based on the foregoing, the issuance of the aforementioned order is necessary, in the public  
9 interest, for the protection of investors, and consistent with the purposes, policies, and provisions of  
10 the California Franchise Investment Law.

11  
12 Dated: May 11, 2010  
13 Los Angeles, California

14 PRESTON DUFAUCHARD  
15 California Corporations Commissioner

16  
17 By: \_\_\_\_\_  
18 ALAN S. WEINGER  
19 Deputy Commissioner  
20 Enforcement Division  
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