

1
2
3
4
5
6
7

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

8
9
10
11

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

12
13

Rhino Linings Corporation,
Respondent.

Order No.: S-19-2777-20-CO01

CONSENT ORDER

14
15
16
17
18
19
20
21
22
23

Pursuant to the Franchise Investment Protection Act of Washington, RCW 19.100, the Securities Division and Respondent Rhino Linings Corporation (“Rhino Linings”) do hereby enter into this Consent Order in settlement of the matters alleged herein. Respondent Rhino Linings neither admits nor denies the Findings of Fact or Conclusions of Law as stated below.

FINDINGS OF FACT

Respondents

1. Rhino Linings is a California entity formed on March 25, 1988 with its principal place of business in San Diego, California. Rhino Linings manufactures protective coating products and distributes its products through what it describes as a “global applicator network” of independent businesses.

Conduct

2. Rhino Linings operates a number of lines of business, including vehicle protection, industrial application, and home flooring products. This consent order only covers Rhino Lining’s vehicle protection line.

3. Rhino Linings entered in Washington into various written vehicle protection agreements between 1996 and the present titled “dealer agreements,” “purchase and license agreements,” and “retail agreements.”

CONSENT ORDER

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 **Use of Trademarks**

2 4. In these agreements, Rhino Linings granted the other party (“Rhino Linings applicators” or
3 “applicators”) the right to sell and apply Rhino Linings products. Rhino Linings allowed its applicators to
4 operate standalone applicator businesses, or to add the application of Rhino Linings products to the
5 applicator’s existing business.

6 5. In these agreements, Rhino Linings granted the Rhino Linings applicators the right to use its
7 marks to promote the applicator’s Rhino Linings application business.

8 **Marketing Plan**

9 6. In some of these agreements, Rhino Linings explicitly granted Rhino Linings applicators an
10 exclusive territory. For other agreements, Rhino Linings would conduct a search to ensure prospective
11 Rhino Linings applicators were not located near its existing applicators. Rhino Linings would also search
12 whether prospective applicators were located near a business that carried Rhino Lining’s vehicle
13 protection products. Additionally, Rhino Linings would approve location changes or the transfer or sale of
14 an applicator business proposed by its applicators, the latter for which Rhino Linings would charge a
15 transfer fee.

16 7. Rhino Linings allowed Rhino Linings applicators to use fictitious business names
17 incorporating the Rhino Linings name with the location in which the applicator was operating, using some
18 variation of “Rhino Linings of [City].” Rhino Linings suggested to applicators that did not use this
19 naming structure to add “and Rhino Linings” to its business name for its social media and web
20 advertising.

21 8. Rhino Linings recruited prospective applicators by promoting its electronic lead generation
22 system and its advertising efforts to increase applicators’ exposure in national and local markets,
23 specifically highlighting its traffic and the number of leads it sent to its applicators. Rhino Linings

1 described to prospective applicators that its email and phone leads numbered in the hundreds of
2 thousands, and its web traffic over a million, in a 12-month period. In some advertisements, Rhino
3 Linings listed its advantages as including its “unparalleled lead generation program,” its “strong national
4 brand name,” “unrivaled multi-media advertising,” “on-site technical training,” and its nationwide
5 warranty program.

6 9. Rhino Linings describes its nationwide warranty program to customers as a uniform
7 warranty offered by its entire North American retail applicator network. Rhino Linings charged some
8 applicators a variable warranty fee. When applicators have refused to pay Rhino Linings the warranty fee,
9 Rhino Linings communicated with the applicators that it would cease sending leads to the applicator and
10 remove its contact information from the Rhino Linings website. Applicators are required to repair
11 defective applications under warranty guidelines prescribed by Rhino Linings at its own expense if it
12 originally applied the customer’s lining. If the customer covered by the warranty moved over 100 miles
13 away from the original applicator or if the original applicator is closed, another applicator will repair the
14 lining, and Rhino Linings will reimburse the repairing applicator.

15 10. Rhino Linings’ nationwide warranty program is part of its marketing plan because it
16 regulates an aspect of applicators’ businesses by determining for the applicator what it warranties to its
17 customers.

18 11. Rhino Linings also operated a cooperative advertising program, maintained a marketing
19 resource database, and produced television, sample radio, and web advertisements for its applicators to
20 use to promote their Rhino Linings application businesses. Rhino Linings has introduced or modified
21 these programs and materials throughout its operating history.

1 12. Rhino Linings created location-specific URLs for its applicators to promote their Rhino
2 Linings application businesses. Rhino Linings also provided profit projections to prospective applicators
3 based on the suggested retail value of its products.

4 **Franchise Fee**

5 13. Rhino Linings required that applicators be trained at the applicator's worksite on how to use
6 Rhino Linings product. While, in some instances, Rhino Linings offered applicators to train at its off-site
7 facility, applicators agreed in the agreement they signed with Rhino Linings to be trained on-site and to be
8 charged by Rhino Linings for this training. Additionally, Rhino Linings represented on its website and in
9 promotional materials sent to prospective applicators that the training was an on-site, three-day training.
10 Rhino Linings represented that its training would teach applicators "how to setup [their] shop, estimate
11 jobs, train employees and maintain [their] Rhino Linings equipment." Rhino Linings further stated on its
12 website that its training included teaching applicators how to bid on jobs. Rhino Linings would send a
13 store checklist in advance of an applicator's training, outlining specifications that the applicator was
14 required to complete and submit along with supporting photographs.

15 14. Rhino Linings charged this training fee to all of its vehicle protection applicators in
16 Washington who have signed an agreement with it since at least 2014. Rhino Linings charged between
17 \$800.00 and \$2,400.00 for this training, depending on the number of days the applicator was trained.

18 **Misrepresentations and Omissions**

19 15. On its website and in promotional materials sent to prospective applicators, Rhino Linings
20 represented that prospective applicators could "turn a profit," and recapture their investment in training
21 and equipment within 5 to 8 weeks, depending on the size of the applicator package that the prospective
22 applicator purchased. Rhino Linings does not keep track of the price for which applicators sells
23 applications or whether applicators have made a profit. Accordingly, Rhino Linings did not substantiate

1 whether its profit projections accurately reflect its applicators' performance in the offer and sale of its
2 agreements to applicators.

3 **Registration Status**

4 16. Respondent Rhino Linings is not currently registered to sell franchises in the state of
5 Washington and has not previously been so registered. Rhino Linings has no notification of exemption on
6 file with the Securities Division.

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

8 **CONCLUSIONS OF LAW**

9 1. The offer or sale of dealer, purchase and license, and retail agreements, as described above,
10 constitutes the offer or sale of a franchise as defined in RCW 19.100.010(6), RCW 19.100.010(12), and
11 RCW 19.100.010(17).

12 2. The offer or sale of said franchises was in violation of RCW 19.100.020 because no
13 registration for such offer or sale is on file with the Washington Securities Administrator.

14 3. The offer or sale of said franchises was in violation of RCW 19.100.080 because Rhino
15 Linings failed to provide the franchisees with a franchise disclosure document prior to the sale of the
16 franchises.

17 4. The offer and sale of said franchises was in violation of RCW 19.100.170 because Rhino
18 Linings omitted to state material facts necessary to make statements it made, in light of the circumstances
19 in which they were made, not misleading.

20 **CONSENT ORDER**

21 Based upon the foregoing and finding it in the public interest:
22
23

1 IT IS AGREED AND ORDERED that Respondent Rhino Linings, and its agents and employees,
2 shall each cease and desist from offering or selling franchises in violation of RCW 19.100.020, the
3 registration section of the Franchise Investment Protection Act of Washington.

4 IT IS FURTHER AGREED AND ORDERED that Respondent Rhino Linings, and its agents and
5 employees, shall each cease and desist from any violation of RCW 19.100.080, the franchise disclosure
6 document section of the Franchise Investment Protection Act of Washington.

7 IT IS FURTHER AGREED AND ORDERED that that Respondent Rhino Linings, and its agents and
8 employees, shall each cease and desist from offering or selling franchises in violation of RCW 19.100.170,
9 the violations section of the Franchise Investment Protection Act of Washington.

10 IT IS FURTHER AGREED AND ORDERED that Respondent Rhino Linings, shall be liable for and
11 shall pay investigative costs of \$5,937.50 prior to the entry of this Consent Order.

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

13 IT IS FURTHER AGREED that Respondent Rhino Linings enters into this Consent Order freely and
14 voluntarily and with a full understanding of its terms and significance.

15 IT IS FURTHER AGREED and ORDERED that this Consent Order shall be binding on Rhino
16 Linings and fully enforceable by the Securities Division should Rhino Linings violate the terms of this
17 Consent Order, but it shall not be admissible in a civil action by a private party, and shall have no collateral
18 estoppel or claim or issue preclusion effect in any such proceeding.

19 IT IS FURTHER AGREED that in consideration of the foregoing, Respondent Rhino Linings waives
20 its right to a hearing and to judicial review of this matter.

21

22 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

23

Signed this 27th day of April, 2020.

Signed by:

Approved as to form by:

Rhino Linings Corporation

By /s/
Sandra S. Roberts
Vice President and Chief Financial Officer

/s/
Robert K. Peddycord
Attorney for Respondent
California Bar No. 77721

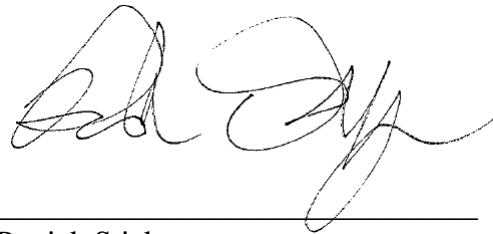
SIGNED and ENTERED this 28th day of April, 2020.



William M. Beatty
Securities Administrator

Approved by:

Presented by:



Suzanne Sarason
Chief of Enforcement

Patrick Stickney
Financial Legal Examiner

Reviewed by:



Jack McClellan
Financial Legal Examiner Supervisor