

BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

KickHouse Fitness Licensing, LLC,

Respondent.

Case No. 2020-0118

* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Securities Division”) initiated an investigation into the franchise-related activities of KickHouse Fitness Licensing, LLC (“KickHouse”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG. §§14-201 et seq. (2015 Repl. Vol.) (the “Maryland Franchise Law”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Securities Commissioner”) has concluded that grounds exist to allege that KickHouse violated the Maryland Franchise Law in relation to offering in Maryland franchises in the form of “Trademark License Agreements; and

WHEREAS, before the holding of a hearing in this matter, without trial or final adjudication of any issue of fact or law, and without KickHouse admitting or denying any violation of law, the Securities Commissioner and KickHouse have reached an agreement to enter into this Consent Order; and

WHEREAS, KickHouse waives its rights to a hearing and any rights to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

WHEREAS, the Securities Commissioner has determined that it is in the public interest to issue this Consent Order;

NOW, THEREFORE, it is hereby agreed, and the Securities Commissioner hereby orders:

I. JURISDICTION

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to Section 14-210 (a) of the Maryland Franchise Law.

II. FINDINGS OF FACT

2. KickHouse is a Delaware limited liability company with a principal business address of 931 Lexington Drive, Rockwall, Texas 75087.

3. KickHouse has entered into Trademark License Agreements granting licensees the right to use KickHouse's trademarks and system to operate KickHouse fitness studios that offer classes in kickboxing.

4. KickHouse's affiliate, KickHouse Fitness, LLC ("KickHouse Franchising") offers franchises for KickHouse fitness studios.

5. On October 14, 2020, KickHouse Franchising filed with the Securities Division an initial application to register the KickHouse franchise offering under the Maryland Franchise Law.

6. On October 22, 2020, the Securities Division reviewed KickHouse Franchising's registration application and issued a comment letter detailing additional information that KickHouse Franchising needed to include in its Franchise Disclosure Document for KickHouse Franchising's franchise offering to be registered under the Maryland Franchise Law. KickHouse Franchising's franchise registration is still pending registration in Maryland as of the date of this

Consent Order.

7. KickHouse has acknowledged to the Securities Division that between September and early October 2020, prior to KickHouse Franchising filing its initial franchise registration application with the Securities Division, KickHouse entered into Trademark License Agreements with four (4) Maryland entities (“Maryland Licensees”) to operate KickHouse fitness studios in Maryland.

8. KickHouse represents that all of the Maryland Licensees are former franchisees of another kickboxing fitness franchise.

9. Under its Trademark License Agreements, KickHouse agreed to license the use of KickHouse trademarks and system to the Maryland Licensees and to provide part of the conversion costs to rebrand the Maryland Licensees’ fitness studios to the KickHouse trademarks.

10. Under the Trademark License Agreements, Maryland Licensees agreed to pay a license fee to KickHouse for the term of that agreement, although the amount of that fee would not exceed \$614.00 within the first six months of the term of the Trademark License Agreement.

11. Under the Trademark License Agreements, Maryland Licensees agreed to pay a percentage of gross revenues to KickHouse, although all fees due under that agreement were waived until KickHouse became registered to offer franchises under the Maryland Franchise Law and the Maryland Licensee executed a KickHouse franchise agreement.

12. KickHouse acknowledges that KickHouse and the Maryland Licensees agreed that, once KickHouse Franchising was registered to offer franchises under the Maryland Franchise Law, the Maryland Licensees would have the option to enter into a franchise agreement and, in that event, and only at that time, the Maryland Licensees would begin paying

franchise fees to KickHouse Franchising.

13. In addition, under the Trademark License Agreements, if any Maryland Licensee chose not to enter into a franchise agreement with KickHouse Franchising, the Maryland Licensee's Trademark License Agreements with KickHouse would terminate.

14. KickHouse represents that, as of the date of this Consent Order, other than as set forth in this Consent Order, none of the Maryland Licensees have paid any fees to KickHouse or KickHouse Franchising under those Maryland Licensee's respective Trademark License Agreements.

15. KickHouse acknowledges that at the time it entered into the Trademark License Agreements with the Maryland Licensees, KickHouse was not registered with the Securities Division to offer franchises under the Maryland Franchise Law.

16. KickHouse acknowledges that it did not provide to any Maryland Licensees copies of a form of Franchise Disclosure Document ("FDD") registered for use in Maryland.

17. KickHouse further represents and agrees that, in the future, it will comply with all provisions under the Maryland Franchise Law.

III. CONCLUSIONS OF LAW

18. By engaging in the above activities, the Commissioner has concluded that KickHouse offered to sell franchises in Maryland without being registered with the Securities Division in violation of §§14-214 and 14-216 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

19. THE COMMISSIONER HEREBY ORDERS AND KICKHOUSE HEREBY CONSENTS AND REPRESENTS AS FOLLOWS:

- A. KickHouse shall immediately and permanently cease and desist from the offer of franchises in violation of the Maryland Franchise Law;

- B. Within ten (10) days of its receipt of a fully executed Consent Order of the Securities Commissioner, KickHouse shall send by Federal Express to the Maryland Licensees a copy of the executed Consent Order and a letter advising the Maryland Licensees that they have the unconditional right to terminate their Trademark License Agreements at no cost to them and without requiring that they execute any waiver or disclaimer of any rights the Maryland Licensees have under the Maryland Franchise Law.
- C. KickHouse Franchising shall diligently pursue its pending application to register the KickHouse Franchising franchise offering under the Maryland Franchise Law and, once registered, shall provide a copy to any Maryland Licensees who have not previously terminated their Trademark License Agreement the following: (i) a copy of KickHouse's applicable, effectively registered Maryland FDD; and (ii) a letter, in substantially the form attached to this letter as Exhibit 1, notifying that Maryland Licensee that he or she is being given an opportunity to rescind his or her KickHouse Trademark License Agreement under the terms stated in that letter;
- D. KickHouse acknowledges that this Consent Order is a disclosable order as described under the Maryland Franchise Law, and Item 3 of the NASAA Franchise Registration and Disclosure Guidelines and Amended FTC Franchise Rule.

V. JURISDICTION RETAINED

20. Jurisdiction shall be retained by the Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Consent Order.

VI. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

21. If KickHouse fails to comply with any term of this Consent Order, the Securities Division may bring administrative or judicial proceedings against it to enforce this Consent Order or to sanction it for violating an order of the Securities Commissioner, and may take any other action authorized under the Maryland Franchise Law or any other applicable law. In any such proceeding in which, after an opportunity for a hearing, the Securities Commissioner or a court finds that KickHouse has violated this Consent Order, the Statement of Facts and the

violations of the Maryland Franchise Law alleged in the Consent Order shall be deemed admitted and may be introduced into evidence against it.

VII. MODIFICATION OF CONSENT ORDER

22. The terms of this Consent Order may be modified only by a subsequent order issued by the Securities Commissioner.

SO ORDERED:

**Commissioner's Signature on File
w/Original Documents**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

January 5, 2021

BY CONSENT:

KickHouse Fitness Licensing, LLC

By:
Title:

KickHouse Fitness, LLC

By:
Title:

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: **[Company] Offer to Rescind Trademark License Agreement**

Dear _____:

As you recall, [Insert Name of Company] ("we") have agreed to terminate the Trademark License Agreements ("TLA") we entered into with you. Now that our affiliate has completed the registration of the KickHouse Fitness franchise offering, we are giving you this second opportunity to rescind your TLA. This offer of rescission is made in connection with a settlement of an administrative proceeding that the Securities Division may have brought for the offer of a franchise in violation of the Maryland Franchise Law. This offer does not affect any civil liability for which we may be responsible to you the Licensee.

Our affiliate's offer of a franchise to you is separate from this offer to rescind your TLA, but a copy of our affiliate's Franchise Disclosure Document is enclosed, for your information.

If you elect to rescind your TLA, whether or not you choose to enter into a franchise agreement with our affiliate, we will terminate your TLA without charging you any fees, as provided under your TLA. You will give up any rights to use our trademarks, and you may not use or disclose any of our trade secrets and any of our confidential and proprietary information. If you do not rescind, your TLA will terminate as of the end of the current term.

This offer will remain open for thirty (30) days from the date you receive this letter. Please check the appropriate place below and return a signed copy of this letter to me within the time period.

If you have any questions, please contact Dale E. Cantone, Assistant Attorney General, at the Division (410-576-6368).

Sincerely,

[The Company]

cc: Franchise Disclosure Document

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND LICENSE AGREEMENT

1. I, the undersigned, acknowledge that I have read the preceding Notice of Offer to Rescind License Agreement and understand its contents.
2. I understand that I have not waived my rights under the Maryland Franchise and Disclosure Law by signing this document.
3. I hereby make the following choice to accept or refuse your offer to rescind my license agreement:

CHECK ONE

_____ I hereby **accept** your offer of rescission and agree to not use your trademarks, patents, and system and to not use or disclose to anyone the trade secrets, and confidential and proprietary information that we obtained from you.

_____ I do **not accept** your offer of rescission. I wish to remain a licensee under my TLA until the end of the current term.

Date: _____

Licensee