

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

IN THE MATTER OF DETERMINING ) Order No.: S-15-1656-15-CO01  
whether there has been a violation of the )  
Franchise Investment Protection Act of ) CONSENT ORDER  
Washington by: )  
 )  
APEX FUN RUN, LLC; )  
 )  
Respondent. )

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Pursuant to the Franchise Investment Protection Act of Washington, RCW 19.100, the Securities Division and Respondent, Apex Fun Run LLC do hereby enter into this Consent Order in settlement of the matters alleged herein. Respondent Apex Fun Run LLC neither admits nor denies the Findings of Fact or Conclusions of Law as stated below.

**FINDINGS OF FACT**

**Respondent**

1. Apex Fun Run LLC (“Apex”) is an Arizona corporation, established on August 1, 2012, with its principal place of business in Scottsdale, Arizona. Apex’s business involves contracting with elementary schools to plan, organize, and conduct “fun runs” to fundraise for the schools. Apex keeps a percentage of revenue, which varies depending on its level of involvement, from the fundraisers.
2. Apex also sells franchises, licensing the right to operate a similar business in a particular area, using the Apex trademarks and business methods, along with supplies provided through Apex. Like Apex, franchisees make money by contracting with elementary schools in their assigned area, using Apex’s trademarks, supplies, and business methods to plan, organize, and conduct fundraising “fun runs,” and keeping a percentage of revenue from the fundraiser.

**Related Party**

3. All Star Fun Run LLC (“All Star”), the predecessor to Apex, is a Texas corporation, established on March 9, 2011, with its principal place of business in Fort Worth, Texas. All Star did business in Texas from March 2011 until July 2012, after which it moved to Arizona and began doing business there, and assigned the rights to use its marks to the newly formed Apex entity.

**Registration and Sale History in Washington**

4. Apex applied to the Securities Division (“the Division”) for registration to sell franchises in Washington on or about March 24, 2014. Apex’s application included a copy of its proposed Franchise Disclosure Document

1 (“FDD”). After reviewing the application, the Division sent Apex a comment letter on April 11, 2014, describing the  
2 potential issues in the FDD and requesting that Apex make various amendments to the FDD in order to comply with  
3 Washington law. Apex sent an amended FDD to the Division with some, but not all, of the requested changes on  
4 May 1, 2014. After discussions with Apex, the Division sent Apex a second comment letter, with further requests to  
5 amend the FDD, on May 20, 2014. Apex did not respond to this letter; consequently, the Division did not process  
6 Apex’s franchise registration.

7 5. Apex applied again to the Division for franchise registration on or about December 29, 2014. This  
8 application was Apex’s first communication with the Division since May 2014. In the FDD included with this  
9 application, Apex disclosed that one Washington outlet had opened in 2013–14. Apex subsequently provided a copy  
10 of a May 10, 2014 Franchise Agreement with a Washington franchisee (“the Agreement”), which was signed only by  
11 the Washington franchisee. In communications with the Division, Apex represented that the Washington outlet is  
12 jointly owned by the Washington franchisee and by Apex’s founder.

13 6. In the Agreement, Apex grants the Washington franchisee the right to use its trademarks and overall business  
14 plan within a particular area in Washington, in exchange for a \$35,000 franchise fee, a percentage of the franchisee’s  
15 gross revenues, and the requirement that the franchisee purchase supplies through Apex.

#### 16 Registration Status

17 7. Apex is not currently registered to sell franchises in the State of Washington, and has not previously been  
18 registered to do so.

#### 19 Failure to Provide Disclosure Document

20 8. Apex did not present the Washington investors, prior to the sale of the franchise, with a disclosure document  
21 which met the requirements of RCW 19.100.140.

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

#### 23 **CONCLUSIONS OF LAW**

24 1. Apex’s offer and sale of the Agreement discussed above to the Washington investors constituted the offer  
25 and sale of a franchise as defined in RCW 19.100.010(6), RCW 19.100.010(12), and RCW 19.100.010(17).

26 2. Apex violated RCW 19.100.020 by offering and/or selling the franchise, because no registration for such  
27 offer and/or sale was on file with the Division at the time of the offer or sale.

28 3. Apex violated RCW 19.100.080 because it did not provide the Washington investors with a copy of its then-  
29 current disclosure document which met the requirements of Washington law at least fourteen calendar days prior to  
30 the Washington investors’ execution of the Franchise Agreement.

**CONSENT ORDER**

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

IT IS AGREED AND ORDERED THAT Respondent Apex, and its agents and employees, shall each cease and desist from offering or selling franchises in violation of RCW 19.100.020, the registration section of the Franchise Investment Protection Act of the State of Washington (“FIPA”).

IT IS FURTHER AGREED AND ORDERED that Respondent Apex, and its agents and employees, shall each cease and desist from violating RCW 19.100.080, the disclosure document section of the FIPA.

IT IS FURTHER AGREED that prior to the entry of this Consent Order, Respondent Apex shall be liable for and shall pay the Division the costs and expenses incurred in investigation of this matter in the amount of \$1,000.

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

IT IS FURTHER AGREED that Respondent Apex enters into this Consent Order freely and voluntarily and with full understanding of its terms and significance.

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

Signed this 15th day of April, 2015.

Signed by:  
Apex Fun Run, LLC

By /s \_\_\_\_\_  
Jeremy Barnhart  
VP, Franchise Development

Approved as to form by:  
/s \_\_\_\_\_  
Daniel Warshawsky, Attorney for Respondent  
State Bar of Arizona #022082

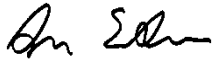
SIGNED and ENTERED this 23 day of April, 2015.

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William M. Beatty  
Securities Administrator

Approved by:



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Jack McClellan  
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