

ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND

\*

IN THE MATTER OF: \*

\* \*

**Cornwell Quality Tools Company, Inc.,** \* Case No. 2010-0375

Respondent, \*

\* \* \* \* \*

**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 Cornwell Quality Tools Company, Inc. (“Cornwell”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §14-201 et seq. (2010 Repl. Vol.) (the “Maryland Franchise Law”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Commissioner”) concluded that grounds existed to allege that Cornwell violated the registration provisions of the Maryland Franchise Law, in relation to offers and sales of Cornwell Quality Tool franchises in Maryland and to prospective Maryland franchisees; 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 Cornwell admitting or denying any violation of law, the Commissioner and Cornwell have reached an agreement to enter into this Consent Order;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED:

## I. JURISDICTION

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

## II. STATEMENT OF FACTS

2. Cornwell is an Ohio corporation with a principal business address of 667 Seville Road, Wadsworth, Ohio 44281.

3. Cornwell offers and sells mobile tool franchises. Cornwell franchisees purchase, resell and service products that are manufactured or distributed by Cornwell.

4. Cornwell has been registered with the Securities Division to offer and sell franchises under the Maryland Franchise Law at various periods since October 1999.

5. Cornwell's last effective franchise registration in Maryland expired as of May 22, 2008. In April 2008, Cornwell filed an application with the Securities Division to renew Cornwell's then-effective franchise registration in Maryland. That April 2008 renewal registration was never made effective, as the application was deemed abandoned by the Securities Division on June 9, 2009, after the Securities Division had not received a response for more than six months to the Securities Division's last comment letter regarding that application.

6. On August 26, 2010, Cornwell re-filed an initial application with the Securities Division to register Cornwell's franchise offering under the Maryland Franchise Law.

7. On August 31, 2010, and again on September 9, 2010, the Securities Division contacted Cornwell and advised it that the Securities Division had received information that Cornwell may have offered or sold franchises in Maryland after May 22, 2008, the last date Cornwell was registered to offer franchises under the Maryland Franchise Law.

8. Cornwell acknowledges that after May 22, 2008, specifically between August 2009 and February 2010, Cornwell had offered and sold four (4) franchises in Maryland to the following franchisees (collectively, “Maryland Franchisees”): Peter W. Covert of Chesterstown, Maryland; Douglas G. Brown, III of Hampstead, Maryland; Richard D. Huether, Jr., of Perry Hall, Maryland; and Robert L. McKellar of Arnold, Maryland.

9. Cornwell represents that between August 2009 and February 2010 it gave each of the Maryland Franchisees a Franchise Disclosure Document (“FDD”) at least ten (10) business days before those individuals entered into their respective Cornwell Quality Tools franchise agreements.

10. The form of FDD that Cornwell gave to those four Maryland Franchisees was dated May 22, 2007 and was not registered by the Securities Division for use in Maryland after May 22, 2008.

11. The FDDs that Cornwell distributed to the four Maryland Franchisees included financial statements that were out of date. Specifically, the FDDs did not include audited financial statements dated after December 31, 2006, even though, at the time Cornwell distributed the FDDs to those Maryland Franchisees, Cornwell had in its possession copies of its 2007, 2008, and 2009 audited financial statements.

12. The FDDs distributed to the Maryland Franchisees also did not include other updated information about the Cornwell franchise offering, including an updated list of current and terminated franchisees.

13. On September 7, 2010, Cornwell sent a rescission offer to the Maryland Franchisees notifying them they had a right to rescind their franchise agreement because they had purchased their franchise at a time when Cornwell was not registered under the Maryland Franchise Law.

14. At least one of the Maryland Franchisees has opted, prior to the date of this Consent Order, to rescind his Cornwell franchise agreement. Specifically, on September 8, 2010, Peter W. Covert (“Covert”) entered into a Settlement Agreement and Release with Cornwell to rescind Covert’s franchise purchase on terms mutually agreeable to both parties.

15. Cornwell represents that it has implemented new procedures to ensure that, in the future, the franchisor delivers the correct and updated form of FDD to prospective Maryland franchisees.

16. Specifically, Cornwell has represented the following: (A) Cornwell has engaged an attorney to prepare new written compliance procedures regarding registration and delivery requirements of Cornwell’s FDDs; (B) Cornwell has agreed to send its franchise compliance manager and at least one officer of the franchisor to attend a franchise law compliance program acceptable to the Securities Division; and (C) for as long as Cornwell offers or sells franchises in Maryland, Cornwell shall have an officer of Cornwell, or its legal counsel review each franchise sale in Maryland and to any Maryland residents to ensure that the transaction complies with the registration and disclosure provisions of the Maryland Franchise Law.

#### IV. CONCLUSIONS OF LAW

17. By engaging in the above activities, the Commissioner has concluded that Cornwell violated §§14-214, 14-216, 14-228, and 14-229 of the Maryland Franchise Law.

## V. ORDER AND CONSENT

18. THE COMMISSIONER HEREBY ORDERS, AND CORNWELL REPRESENTS AND CONSENTS THAT:

- A. Cornwell shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Cornwell shall diligently pursue the application it has filed to register its franchise offering in Maryland;
- C. Within five days of its receipt of a fully executed Consent Order of the Commissioner, Cornwell shall send a copy of this Consent Order, including Exhibit 1, to the Maryland Franchisees, other than Covert, with a separate cover letter (“Notice of Rescission Rights”), in a form approved by the Securities Division, informing those Maryland Franchisees that they are being offered an opportunity to rescind their respective Cornwell franchise agreements under the terms of the Consent Order. The Notice of Rescission Rights shall offer to rescind the Cornwell franchise agreement if the Maryland Franchisee returns to Cornwell within thirty (30) days of his receipt of the Notice of Rescission Rights an executed Acceptance of Offer to Rescind Franchise Agreement indicating a desire to accept the offer to rescind the Cornwell franchise agreement. If any Maryland Franchisee timely returns an Acceptance of Offer to Rescind Franchise Agreement, Cornwell agrees to complete payments to that Maryland Franchisee within 30 (thirty) days of Cornwell’s receipt of that written Acceptance. The Notice of Rescission Rights also shall allow a Maryland Franchisee the option, in lieu of accepting the Offer to Rescind Franchise Agreement as described above, to defer the decision whether or not to rescind the Cornwell franchise agreement until after Cornwell has effectively registered its franchise offering with the Securities Division and delivers to that Maryland Franchisee an effectively registered Maryland Franchise Disclosure Document.
- D. If, after receiving the Notice of Rescission Rights, any Maryland Franchisee does not return a signed Acceptance of Offer to Rescind Franchise Agreement within thirty (30) days as outlined above, rejects the offer to rescind his Franchise Agreement, or indicates a desire to defer the decision whether or not to rescind his Franchise Agreement, Cornwell shall send to any such Maryland Franchisee(s), upon Cornwell’s notification by the Securities Division that Cornwell’s franchise offering has been effectively registered for use in Maryland: (i) a copy of the applicable, effectively registered Maryland Franchise Disclosure Document; and (ii) a letter, in substantially the form attached to this letter as Exhibit 1, notifying that Maryland Franchisee that he has the right to rescind his Cornwell franchise under the terms stated in that letter.

- E. Cornwell's offer of a franchise for the limited purposes described in Paragraph 18 (C) of this Consent Order is exempt from the registration provisions of the Maryland Franchise Law.
- F. Cornwell shall pay to the Office of the Attorney General a civil monetary penalty of \$10,000.00
- H. Cornwell acknowledge that this Consent Order is a discloseable order as described under the Maryland Franchise Law, and Item 3 of the NASAA Franchise Registration and Disclosure Guidelines and Amended FTC Franchise Rule.

#### VI. JURISDICTION RETAINED

19. 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.

#### VII. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

20. If Cornwell 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 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 Commissioner or a court finds that Cornwell 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.

VIII. MODIFICATION OF CONSENT ORDER

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

**BY CONSENT:**

Cornwell Quality Tools Company, Inc.,

\_\_\_\_\_  
By: Bill S. Nobley, President

**SO ORDERED:**

**Commissioner's Signature is on  
File w/ Original Document**

\_\_\_\_\_  
MELANIE SENTER LUBIN  
SECURITIES COMMISSIONER

**DATE OF THIS ORDER:**

**November 3, 2010**

FORM  
(On Company Letterhead)

Certified Mail  
Return Receipt Requested

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: [Company] Notice of Offer to Rescind Franchise Agreement/Area Representative Agreement

Dear \_\_\_\_\_:

In accordance with discussions our attorneys have had with the Division of Securities of the Maryland Attorney General's Office (the "Division"), [Insert name of Company] ("we") have agreed to offer rescission to all Maryland residents who entered into franchises and area representative franchises (collectively "franchises") with us in violation of the provisions of the Maryland Franchise Law. This offer of rescission is made in settlement of the administrative proceeding that the Division may bring for the sale of a franchise in violation of the Maryland Franchise Law and does not affect any civil liability for which we may be responsible.

If you elect to rescind and terminate your franchise, we agree to return to you the franchise fee you paid us, less the cost for any unreturned items and equipment included in the purchase price you paid for the franchise. If you purchased any optional items as part of your franchise agreement, we will reimburse you for the cost you paid us for any of the items that you return.

In the event you elect to rescind, you will give up your franchise agreement or area representative agreement. You also will give up any rights to use our trademarks and system and be obligated to refrain from using and disclosing any of our trade secrets and any of our confidential and proprietary information. We will make payments within thirty (30) days after we receive your Acceptance of Offer to Rescind your Franchise Agreement.

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

**Exhibit 1**



ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE AGREEMENT/AREA REPRESENTATIVE AGREEMENT

1. I, the undersigned, acknowledge that I have read the preceding Notice of Offer to Rescind Franchise Agreement/Area Representative 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 franchise agreement/area representative agreement:

**CHECK ONE**

\_\_\_\_\_ I hereby **accept** your offer of rescission and agree to not use your trademarks 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 franchisee/area representative under my franchise agreement/area representative agreement.

Date: \_\_\_\_\_

\_\_\_\_\_  
Franchisee