

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 DANIEL O'DONNELL
Assistant Chief Counsel
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Counsel
5 Department of Financial Protection and Innovation
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8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CONSENT ORDER
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14 THE COMMISSIONER OF FINANCIAL
PROTECTION AND INNOVATION,
16 Complainant,
17 v.
19 SPORTSMOBILE IP, INC. and
SPORTSMOBILE TEXAS INC.,
21 Respondent.

24 This Consent Order is entered into by and between the Commissioner of Financial Protection
25 and Innovation (the "Commissioner"), and Sportsmobile IP, Inc. and Sportsmobile Texas Inc. (the
26 "Consent Order").

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I.

RECITALS

A. The Commissioner is the head of the Department of Financial Protection and Innovation (formerly the Department of Business Oversight) (Department) and is responsible for administering and enforcing the Franchise Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises in California. To register a franchise, a franchisor must file an application which includes a Uniform Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance with sections 31111 and 31114.

B. Sportsmobile IP, Inc. (“Sportsmobile IP”) is a Nevada corporation incorporated in 2020 and has a registered agent address at 8275 South Eastern Avenue #200, Las Vegas, Nevada 89123.

C. Sportsmobile Texas, Inc. (“Sportsmobile Texas”) is a Texas corporation incorporated in 1981 and has a registered agent address at 9805 Gray Blvd, Austin, Texas 78758. Sportsmobile IP and Sportsmobile Texas are collectively referred to as “Sportsmobile.”

D. Mark Borskey is the principal of Sportsmobile IP and is authorized to enter into this Consent Order on behalf of Sportsmobile.

E. Under section 31110, it is unlawful for any person to offer or sell a franchise in this state unless the offer has been registered with the Commissioner or is exempt.

F. A Fresno, California resident doing business as “Sportsmobile West” signed a “Manufacturing License Agreement” (agreement) with Sportsmobile Texas in 1990. The agreement designated Sportsmobile West as the licensee.

G. The agreement included that: “TEXAS is the manufacturer and marketer of converted vans and van options in the RV market under its trade name of Sportsmobile. Van Camper. . . means conversion vans into campers with minimum to full self containment, with or without an expandable top or a fixed raised top.” Van conversions also included accessories and options, and the agreement referred to converted vans as “products.”

¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 H. The agreement stated that Sportsmobile West: “is a newly organized Corporation who
2 is acting as an exclusive distributor of retail sales and dealer sales of [p]roducts to residents in the
3 State of California, and desires to manufacture [p]roducts using designs, technology, and expertise of
4 Sportsmobile Texas.”

5 I. The agreement also stated that “TEXAS will provide” Sportsmobile West with:
6 material, appliance & parts, complete set information books, sales aids such as wall photos, systems
7 examples, sales literature, and magazine advertising.

8 J. The agreement provides that “TEXAS hereby grants to [Sportsmobile West] a right
9 and license to use the MARKS in the TERRITORY as trademarks. . . .”

10 K. The agreement also included a minimum annual payment of \$25,000, royalty and
11 services fees.

12 L. The company website Sportsmobile.com previously advertised the Fresno location
13 conducting utility van conversion and manufacturing services.

14 M. At all relevant times, neither Sportsmobile Texas nor Sportsmobile IP did not register
15 with the Commissioner to offer or sell a franchise in California.

16 N. Based on the above findings, the Commissioner determined that Sportsmobile offered
17 a franchise in California.

18 O. Without admitting or denying the Commissioner’s findings above, Sportsmobile
19 desires to enter into this Consent Order which the Commissioner finds is appropriate, in the public
20 interest, and consistent with the purposes fairly intended by the FIL.

21 P. Sportsmobile admits to the jurisdiction of the Commissioner in this matter and for the
22 purposes of issuing and enforcing this Consent Order.

23 Q. By this Consent Order, Sportsmobile and the Commissioner intend to resolve these
24 matters amicably without the necessity of a hearing or other litigation.

25 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
26 contained herein, the Commissioner and Sportsmobile (the Parties) agree as follows:

27 **II.**

28 **TERMS AND CONDITIONS**

1 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth
2 in paragraphs A through Q in a manner that avoids the expense of a hearing and other possible
3 court proceedings, protects consumers, is in the public interest, and is consistent with the
4 purposes, policies, and provisions of the FIL.

5 2. Final Desist and Refrain Order. Pursuant to Corporations Code section 31406,
6 Sportsmobile IP, Inc. is hereby ordered to desist and refrain from violations set forth herein, in
7 violation of Corporations Code section 31110 (offering or selling a franchise in California unless the
8 offer has been registered with the Commissioner or is exempt.) Sportsmobile IP, Inc. agrees to
9 comply with this Desist and Refrain Order and stipulates this Desist and Refrain Order is hereby
10 deemed final and effective from the effective date of this Consent Order, as defined in paragraph 24
11 (Effective Date).

12 3. Administrative Penalty. Pursuant to Corporations Code section 31406, Sportsmobile
13 IP, Inc. is hereby ordered to pay an administrative penalty in the amount of \$2,500.00, no later than
14 30 days after the Effective Date of this Consent Order. The penalty must be made payable in the
15 form of a cashier’s check or Automated Clearing House deposit to the Department of Financial
16 Protection and Innovation and transmitted to the attention of Accounting – Litigation, at the
17 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California
18 95834. Notice of the payment shall be concurrently sent to Steven Vong, by e-mail at:
19 steven.vong@dfpi.ca.gov.

20 4. Waiver of Hearing Rights. Sportsmobile acknowledges the Commissioner is ready,
21 willing, and able to proceed with the filing of an administrative enforcement action on the charges
22 contained in this Consent Order. Sportsmobile hereby waives the right to any hearings, and to any
23 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
24 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
25 provision of law. Sportsmobile further expressly waives any requirement for the filing of an action
26 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
27 Sportsmobile effectively consents to this Consent Order and all of its terms becoming final.
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1 5. Failure to Comply with Consent Order. Sportsmobile agrees that if it fails to comply
2 with the terms of this Consent Order or the Desist and Refrain Order, the Commissioner may, deny any
3 pending registrations, renewal applications, license or certificate of Sportsmobile and/or its successors,
4 and assigns, by whatever names they might be known, in addition to all other available remedies it may
5 invoke under the FIL. Sportsmobile waives any notice and hearing rights to contest such remedies which
6 may be afforded under the FIL, the California Administrative Procedure Act, the California Code of
7 Civil Procedure, or any other provision of law in connection therewith.

8 6. Information Willfully Withheld or Misrepresented. This Consent Order may be
9 revoked, and the Commissioner may pursue any and all remedies available under the law against
10 Sportsmobile if the Commissioner discovers that Sportsmobile knowingly or willfully withheld or
11 misrepresented information used for and relied upon in this Consent Order.

12 7. Future Actions by Commissioner. If Sportsmobile fails to comply with any terms of
13 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
14 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
15 against Sportsmobile, or any of its partners, owners, officers, shareholders, directors, employees or
16 successors for any and all unknown violations of the FIL or any other law under the Commissioner’s
17 jurisdiction.

18 8. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
19 ability to assist a government agency (whether city, county, state, or federal) with any
20 administrative, civil or criminal prosecutions brought by that agency against Sportsmobile or any
21 other person based upon any of the activities alleged in this matter or otherwise.

22 9. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
23 has received independent advice from its attorney(s) and/or representatives with respect to the
24 advisability of executing this Consent Order.

25 10. Headings. The headings to the paragraphs of this Consent Order are inserted for
26 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
27 the provisions hereof.

28 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in

1 interest.

2 12. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
3 Consent Order it has relied solely on the statements set forth herein and the advice of its own
4 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
5 Order it has placed no reliance on any statement, representation, or promise of any other party, or
6 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
7 person or entity to make any statement, representation or disclosure of anything whatsoever. The
8 Parties have included this clause: (1) to preclude any claim that any party was in any way
9 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
10 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

11 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
12 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
13 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
14 provision. No waiver by either party of any breach of, or of compliance with, any condition or
15 provision of this Consent Order by the other party will be considered a waiver of any other condition
16 or provision or of the same condition or provision at another time.

17 14. Full Integration. This Consent Order is the final written expression and the complete
18 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
19 between the Parties with respect to the subject matter hereof, and supersedes all prior or
20 contemporaneous agreements, negotiations, representations, understandings, and discussions
21 between and among the Parties, their respective representatives, and any other person or entity, with
22 respect to the subject matter covered hereby.

23 15. Governing Law. This Consent Order will be governed by and construed in
24 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
25 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
26 forum to the maintenance of such action or proceeding in such court.

27 16. Counterparts. This Consent Order may be executed in one or more separate
28 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall

1 together constitute a single document.

2 17. Effect Upon Future Proceedings. If Sportsmobile applies for any license, permit or
3 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
4 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
5 admitted for the purpose of such application(s) or proceeding(s).

6 18. Third Parties. This Consent Order does not create or give rise to any private rights or
7 remedies against Sportsmobile, or any of its past, present, and future predecessors, successors,
8 parents, subsidiaries, affiliates, and related entities, and each of their respective partners, employees,
9 agents, attorneys, officers, directors, shareholders, members, partners, joint venturers,
10 representatives and assigns, create any liability on the part of Sportsmobile, or limit the defenses of
11 Sportsmobile for any person or entity not a party to this Consent Order.

12 19. Voluntary Agreement. Sportsmobile enters into this Consent Order voluntarily and
13 without coercion and acknowledges that no promises, threats or assurances have been made by the
14 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
15 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
16 without any duress or undue influence of any kind from any source.

17 20. Notice. Any notice required under this Consent Order shall be provided to each party
18 at the following addresses:

19 To the Commissioner: Steven Vong, Counsel
20 Department of Financial Protection and Innovation
21 Enforcement Division
22 2101 Arena Blvd
23 Sacramento, California 95834
24 Steven.Vong@dfpi.ca.gov

25 To Respondent: Ryan Beard, Esq.
26 Fisher Broyles, LLP
27 100 Congress Avenue, Suite 2000
28 Austin, Texas 78701
Ryan.Beard@FisherBroyles.com

21. Signatures. A fax or electronic mail signature shall be deemed the same as an

1 original signature.

2 22. Public Record. Sportsmobile hereby acknowledges that this Consent Order is and
3 will be a matter of public record.

4 23. Effective Date. This Consent Order shall become final and effective when signed by
5 all Parties and delivered by the Commissioner’s agent via e-mail Sportsmobile’s counsel, Ryan
6 Beard, Fisher Broyles, LLP, at Ryan.Beard@FisherBroyles.com.

7 24. Authority to Sign. Each signatory hereto covenants that he or she possesses all
8 necessary capacity and authority to sign and enter into this Consent Order and undertake the
9 obligations set forth herein.

10 Dated: April 29, 2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

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13 By _____
14 Mary Ann Smith
Deputy Commissioner

15 Dated: April 29, 2022

SPORTSMOBILE IP, INC.

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18 By _____
19 Mark Borskey
President

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22 Approved as to form:

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24 _____

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26 Dated: April 29, 2022

By: _____
27 Ryan Beard, Esq.
SPORTSMOBILE
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