

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Mark R. Meador

)	
In the Matter of)	
)	DECISION AND ORDER
Rollins, Inc.,)	Docket No.
a corporation,)	
)	REDACTED PUBLIC VERSION
)	
)	

DECISION

The Federal Trade Commission initiated an investigation of certain acts and practices of Respondent Rollins, Inc. The Commission’s Bureau of Competition prepared and furnished to Respondent the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondent and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondent of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the said Act, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent Rollins, Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its principal place of business located at 2170 Piedmont Road, N.E., Atlanta, Georgia.
2. The Commission has jurisdiction of the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Rollins” means Rollins, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Rollins, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Agreement” means any agreement, contract, understanding, or provision or term thereof, whether express or implied, written or unwritten.
- D. “Covered Employee” means a Person employed by Respondent, previously employed by Respondent during the previous two years prior to the date this Order is issued, or in the process of being employed by Respondent, in the United States, including third-party contractors, provided that Covered Employee does not include a director, officer, or other Senior Leader who is eligible for grants of equity or equity-based interests in Respondent as a benefit of employment.
- E. “Senior Leader” means a senior employee of Respondent who exercises significant policy-making authority, as described in Nonpublic Appendix B to this Order. *Provided, however,* Senior Leader shall not include any branch-level employees, such as pest-control or termite technicians, sales inspectors, account managers, customer service representatives, service managers, or branch managers.
- F. “Non-Compete Agreement” means any Agreement or provision or term thereof, however designated by Respondent, between Respondent and a Covered Employee that restricts or restrains the right or ability of the Covered Employee to seek or accept employment with any Person, to operate a business, or otherwise to compete with Respondent for any period of time after the conclusion of the Covered Employee’s employment with Respondent. *Provided, however,* nothing in this definition prohibits Respondent from entering or enforcing non-compete Agreements in conjunction with the acquisition of a business, provided that individuals subject to such an agreement have a preexisting equity interest in the business being acquired.
- G. “Person” means both natural and artificial persons, including corporations, partnerships, and unincorporated entities.

II. Injunction

IT IS FURTHER ORDERED that Respondent, in connection with its activities in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall:

- A. Cease and desist from, directly or indirectly, entering or attempting to enter into, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce a Non-Compete Agreement against a Covered Employee.
- B. Cease and desist from, directly or indirectly, communicating to a Covered Employee or any prospective or current employer of that Covered Employee that the Covered Employee is subject to, a Non-Compete Agreement.
- C. Immediately cease requiring any Covered Employee who is party to an existing Non-Compete Agreement in the United States to pay any fees or penalties relating to a Non-Compete Agreement.
- D. Not prohibit a Covered Employee, in any Agreement with that Covered Employee, from soliciting customers of Respondent through general advertisements, *i.e.*, any broadly distributed notice, announcement, or other communication conveying the availability of business services, for a business that may compete with Respondent or by responding to inquiries initiated by Respondent’s customers, provided such inquiry is not prompted by any action of the Covered Employee other than a general advertisement.

III. Notice to Covered Employees

IT IS FURTHER ORDERED that Respondent shall:

- A. No later than 60 days from the date this Order is issued, deliver to each Covered Employee that is subject to a Non-Compete Agreement from the date this Order is issued a letter in the form of Appendix A and a copy of this Order. Respondent shall deliver Appendix A to each Covered Employee by name, either:
 - 1. By U.S. Mail, return receipt requested; or
 - 2. Via electronic transmittal with a proof of a read-receipt, or where no read-receipt can be provided, proof of delivery.
- B. No later than 30 days from the date this Order is issued, and continuing for the duration of this Order, post a clear and conspicuous notice in the documentation, electronic or otherwise, provided to each new Covered Employee upon hire that states:

“IMPORTANT: You are receiving this Notice because you are an employee affected by the attached consent Order (“FTC Order”) that Rollins has entered into with the Federal Trade Commission (“Commission”).

Your employment with Rollins in this position is not and will not be subject to a non-compete agreement. This means that once you stop working for Rollins:

- You may seek or accept a job with any company or person – even if they compete with Rollins.
- You may run your own business – even if it competes with Rollins.
- You may compete with Rollins at any time following your employment with Rollins.
- You may issue general advertisements – any broadly distributed notice, announcement, or other communication conveying the availability of business services – to solicit customers for a business that may compete with Rollins.

Rollins can still enter and/or enforce other agreements (or provisions within agreements) that continue to apply after your employment with Rollins, such as agreements (or provisions) that prevent you from using or disclosing Rollins' confidential business information and trade secrets and non-solicitation agreements to the extent that such agreements (or provisions) are permitted by law and the FTC's Order.

IV. Compliance Obligations

IT IS FURTHER ORDERED that Respondent shall:

- A. No later than 30 days after the date on which this Order is issued, provide a copy of this Order and the Complaint to each of Respondent's directors, officers, human resources officers, and the most senior human resources employee who oversees hiring for each of the Respondent's United States locations.
- B. For the duration of this Order, provide a copy of this Order and the Complaint to any Person who becomes a director, officer, human resources officer, or the most senior human resources employee who oversees hiring at each of Respondent's United States locations, and provide such copies within 30 days of the commencement of such Person's employment or term.
- C. Require each Person to whom a copy of this Order is furnished pursuant to Paragraphs IV.A and IV.B to submit to Respondent within 30 days of the receipt thereof a written statement that (1) represents that the Person has read the Order, and (2) acknowledges that the Person has been advised and understands that non-compliance with the Order may subject Respondent to penalties for violation of the Order.
- D. Retain documents and records sufficient to record Respondent's compliance with said obligations.

V. Compliance Reports

IT IS FURTHER ORDERED that Respondent shall file verified written reports (“Compliance Reports”) in accordance with the following:

- A. Respondent shall submit:
1. Interim Compliance Reports 60 days after the date this Order is issued, and then one report 6 months after the date the Order is issued, which contain a list of all persons who received the notice required by Paragraph III.A of this Order, together with proof of service of the notice (which service may be satisfied by sending the notice via electronic transmittal, as described in Paragraph III.A);
 2. Annual Compliance Reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and
 3. Additional Compliance Reports as the Commission or its staff may request.
- B. Each Annual Compliance Report shall include, among other information or documentation that may be necessary to demonstrate compliance, (1) a sworn declaration that Non-Compete Agreements with Covered Employees have been rescinded pursuant to this Order and not reimposed and that Respondent’s Agreements or provisions comply with this Order, (2) any cease-and-desist letter or similar letter making a new threat of legal action against any Covered Employee relating to a non-solicitation Agreement, (3) any filed complaint initiating a cause of action in a state or federal court against any Covered Employee related to a non-solicitation Agreement, and (4) upon the Commission’s request, a copy of any employment Agreement (apart from a collective bargaining agreement) that Respondent enters or implements after execution of the Consent Agreement.
- C. For a period of 5 years after filing a Compliance Report, Respondent shall retain all material written communications identified in each Compliance Report as required by Paragraph V.B and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent’s obligations under this Order during the period covered by such Compliance Report. Respondent shall provide copies of these documents to Commission staff upon request.
- D. Respondent shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent shall file its Compliance Reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a).

VI. Change in Respondent

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least 30 days prior to:

- A. The dissolution of Rollins, Inc. or any of its subsidiaries;
- B. The acquisition, merger, or consolidation of Rollins, Inc. or any of its subsidiaries; or
- C. Any other change in Respondent, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at their expense; and
- B. To interview directors, officers, or employees of Respondent, who may have counsel present, regarding such matters.

VIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and to prevent the Respondent from entering into, maintaining, or enforcing or threatening to enforce, a Non-Compete Agreement with a Covered Employee.

IX. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED:

APPENDIX A

[Rollins letterhead]

[Name and email address of Covered Employee] VIA U.S. MAIL or EMAIL

Re: Non-Compete Agreement with Rollins

Dear [name of Covered Employee]:

You are receiving this letter because you are an employee affected by the attached consent Order (“FTC Order”) that we have entered into with the Federal Trade Commission (“Commission”).

As you know, certain employment agreements entered by Rollins, Inc. and its predecessors, subsidiaries and brands (“Rollins”) previously contained provisions that required employees not to compete with Rollins for a period of time following their employment with the company. Last year we provided written notice to you that Rollins had decided that it would no longer enforce the non-compete provisions in its agreement with you.

The Commission has been investigating the use of non-compete agreements in the pest control industry in the United States. As part of this investigation, Rollins has reached a settlement agreement with the Commission prohibiting Rollins from entering, enforcing, or threatening to enforce Non-Compete Agreements (as defined in the FTC Order) with you and all other employees covered by the order, *i.e.*, a “Covered Employee” as defined in the FTC Order. The Commission has alleged that Rollins’ use of Non-Compete Agreements had a tendency to restrict new business formation and job mobility and harm competition. We have entered into a consent Order with the Commission under which we will not reinstate Non-Compete Agreements with you or any other Covered Employees for 10 years. Consistent with the prior notice we sent you, any Non-Compete Agreement (as defined in the FTC Order and explained just below) between you (as a Covered Employee) and Rollins is null and void.

What is a Non-Compete Agreement?

A Non-Compete Agreement, as defined in the FTC Order, is an agreement or provision that restricts an employee’s ability to seek or accept a job with another company, to operate his or her own business, or otherwise to compete with his or her former employer after he or she has left the company. These agreements sometimes (but not always) use words like “non-competition” or “non-compete.”

How the FTC Order affects you

The FTC Order requires us to:

1. Cancel all Non-Compete Agreements with you and all other Covered Employees;
2. Stop entering into new Non-Compete Agreements with you and all other Covered Employees; and
3. Release you (as a Covered Employee) from your Non-Compete Agreement with us.

Where a Non-Compete Agreement is contained in a broader agreement, these requirements apply only to those terms or provisions constituting the Non-Compete Agreement.

This means that once you stop working for Rollins:

- You may seek or accept a job with any company or person – even if they compete with Rollins.
- You may run your own business – even if it competes with Rollins.
- You may compete with Rollins at any time after you leave Rollins.
- You may issue general advertisements – any broadly distributed notice, announcement, or other communication conveying the availability of business services – to solicit customers for a business that may compete with Rollins.

Rollins can still enforce other Agreements it may have entered with you, such as agreements (or provisions) that prevent you, after your employment with Rollins, from using or disclosing Rollins' confidential business information and trade secrets, or non-solicitation agreements (or provisions) to the extent that such agreements are permitted by law and the FTC's Order.

Where to get more information

To learn more about this case, please read the attached FTC Order [], or visit [URL that goes to the ftc.gov press release]. This letter summarizes the main points of the matter, but the only official source of information is the FTC Order. The FTC Order reflects an agreement between the FTC and Rollins that settles the FTC's allegations regarding the Non-Compete Agreements with Covered Employees. It does not constitute an admission by Rollins that it has violated the law or that any of the facts alleged by the FTC regarding Rollins's conduct are true.

If you have concerns about whether Rollins or any Rollins employees are complying with their obligations under the Order – or how the Order applies to you or your colleagues – contact [name] in the Rollins legal department at [phone] or [email], or the FTC by contacting [FTC contact] at [phone] or [email].

Sincerely,

[Name]

Senior Vice President, Human Resources

APPENDIX B – NON-PUBLIC

Redacted From Public Version But Incorporated By Reference