

**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

**TRUPANION MANAGERS USA,
INC.,**

Licensee.

Order No. 19-0249

WAOIC No. 718030
NPN/FEIN 38-3756263

CONSENT ORDER LEVYING A FINE

This Consent Order Levying a Fine (“Order”) is entered into by the Insurance Commissioner of the state of Washington (“Insurance Commissioner”), acting pursuant to the authority set forth in RCW 48.02.060, RCW 48.17.530, and RCW 48.17.560, and Trupanion Managers USA, Inc. This Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner’s policies and procedures.

BASIS:

1. Trupanion Managers USA, Inc. (“the Licensee”) is a Washington Corporation and a resident insurance producer licensed to do business in the state of Washington. It has been licensed in Washington State since January 15, 2008. The Licensee is the managing general agent of American Pet Insurance Company Inc. (“APIC”). Trupanion Inc. owns APIC and the Licensee.
2. The Insurance Commissioner’s Regulatory Investigation Unit began its investigation following a referral from the Insurance Commissioner’s Market Conduct Unit (“Market Conduct”), alleging APIC “is continuing activities that were found to be violations during the 2015 Market Conduct Exam.”

The Licensee’s Compensation to Pet Care Providers for Referrals Violated RCW 48.30.133(1)

3. The investigation found that the Licensee rewarded pet care providers for referrals through its Trupanion Express software. This software could be used by pet care providers to bill their customers if the customers elected to purchase Trupanion pet insurance. Starting in 2016, the Licensee rewarded pet care providers with points based on their use of the software, including

entering in the customer's information and providing such contact information to the Licensee, who would then send an "Exam Day Offer" to consumers.

4. This "Exam Day Offer" was approved by OIC; however, the rewards program was not. From 2016 through 2018, based on the point system, the Licensee rewarded 11 pet care providers in Washington State gifts, within (1) one year, valued in excess of \$100. Of these 11 pet providers, one provider received gifts of more than \$100 in a one-year period earned solely through points tied to informing Trupanion about pet owners' eligibility for Exam Day Offers. The prohibited gifts totaled \$133.00. Trupanion ended this rewards program at the end of 2018.

5. RCW 48.30.133(1) provides that an insurance producer may give to an individual, prizes, goods, wares, gift cards, gift certificates, or merchandise not exceeding one hundred dollars in value per person in any consecutive twelve-month period for the referral of insurance business to the insurance producer, if the giving of the prizes, goods, wares, gift cards, gift certificates, or merchandise is not conditioned upon the person who is referred applying for or obtaining insurance through the insurance producer.

6. RCW 48.17.530(1)(g) allows the Insurance Commissioner to place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license, an insurance producer's license, a title insurance agent's license, or any surplus line broker's license, or to levy a civil penalty in accordance with RCW 48.17.560 for having admitted or been found to have committed any insurance unfair trade practice or fraud.

The Licensee Accepted Insurance Business from Reviews, LLC, in Violation of RCW 48.17.530(1)(l)

7. According to Trupanion Inc.'s "Marketing Agreement" ("the Agreement") with Reviews, LLC, Trupanion, Inc. paid Reviews, LLC, to promote APIC's policy and generate leads.

8. A consumer may use Reviews, LLC's website to compare pet insurance products. If a consumer clicks on "get a quote" for Trupanion, then the Licensee's website pops up, and a consumer may complete an application for APIC, d.b.a. Trupanion, pet insurance.

9. This website crosses the line from a referral to unlicensed solicitation, where it discusses the terms of the policies ("one deductible for related complaints") and encourages a consumer to select APIC pet insurance for "young and purebred pets."

10. Under the Agreement, if the consumers completed an application and provided appropriate payment information, Reviews, LLC earned \$35. From April 2017 through May 2018, Trupanion, Inc., paid Reviews, LLC, \$980. Based on Reviews, LLC's promotion of Trupanion pet insurance, it solicited insurance business for Trupanion and needed to be licensed. As a result, the Licensee, in accepting business from Reviews, LLC, violated RCW 48.17.530(1)(1).

11. WAC 284-17-825(1) provides that an unlicensed individual who receives referral compensation under RCW 48.30.133(1) or a referral fee under RCW 48.30.133(4) is not selling, soliciting, or negotiating insurance if all of the following conditions are met:

- (a) The referral compensation or fee does not depend upon whether the referral results in a purchase or sale;
- (b) If insurance is purchased, the purchase is not a factor in determining the value of the referral compensation or the amount of the referral fee; and
- (c) The recipient of the referral compensation or fee does not make representations to the prospective insured about the terms of or specific need for a policy.

12. RCW 48.17.530(1)(1) allows the Insurance Commissioner to place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license, an insurance producer's license, a title insurance agent's license, or any surplus line broker's license, or to levy a civil penalty in accordance with RCW 48.17.560 for knowingly accepting insurance business from a person who is required to be licensed under this title and is not so licensed, other than orders for issuance of title insurance on property located in this state placed by a nonresident title insurance agent authorized to act as a title insurance agent in the title insurance agent's home state.

The Licensee Paid Commissions to Unlicensed Producers in Violation of RCW 48.17.490(1)

13. The Licensee had "Independent Contractor Agreements" with "Territory Partners" ("TPs"). This agreement authorized its TP to market and promote *solely* Trupanion pet insurance within their territory to "referral sources," such as pet care providers, animal shelters, and animal stores.

14. The TPs were mostly unlicensed and unaffiliated. Five (5) of the eight (8) TPs were not licensed. From 2015 to 2018, the five (5) unlicensed TPs earned \$244,976 for their promotion

of Trupanion pet insurance, representing thousands of pet insurance transactions. Lastly, six (6) of the eight (8) TPs were not affiliated by the Licensee.

15. The Washington Supreme Court has warned the insurance industry that it “defines ‘solicitation’ broadly, and it does ‘not require that the person approached be an end consumer.’” *Chicago Title Ins. Co. v. Ins. Comm’r*, 178 Wash.2d 120, 135 (2013). In fact, if a producer “approaches a middleman for the purpose of receiving an application (from that middleman’s customers) for an insurance policy, the [producer] is soliciting for CTIC.” *Id.* at 135. In *Chicago Title Ins. Co.*, the producers wined and dined real estate middlemen for referrals. *Id.* at 127, 130. Here, TPs are paid to approach “referral sources” for the purpose of their customers contacting the Licensee to submit applications. Under our law, this constitutes solicitation.

16. RCW 48.17.010(14) defines “solicit” as “attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.”

17. RCW 48.17.490(1) states an insurance company, insurance producer, or title insurance agent shall not pay a commission, service fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter or chapter 48.15 RCW and is not so licensed.

18. WAC 284-17-473 provides a business entity must have at least one affiliated individual licensee in order to transact insurance business. Each business entity must provide the Insurance Commissioner with the names of all individual licensees authorized to represent the business entity and act on its behalf by electronic submission and pay the applicable fees

19. RCW 48.17.530(1)(b) allows the Insurance Commissioner to place on probation, suspend, revoke, or refuse to issue or renew an adjuster’s license, an insurance producer’s license, a title insurance agent’s license, or any surplus line broker’s license, or to levy a civil penalty in accordance with RCW 48.17.560 for violating any insurance laws, or violating any rule, subpoena, or order of the Insurance Commissioner or of another state’s insurance commissioner.

20. RCW 48.17.530(2) allows the Insurance Commissioner to suspend, revoke or refuse to issue or renew the license of a business entity if he finds that an individual licensee’s violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation, and the violation was neither reported to the Insurance Commissioner nor corrective action taken.

21. RCW 48.17.560 provides after hearing or upon stipulation by the licensee or insurance education provider, and in addition to or in lieu of the suspension, revocation, or refusal to renew any such license or insurance education provider approval, the Insurance Commissioner may levy a fine upon the licensee or insurance education provider, for each offense, in an amount not more than one thousand dollars.

22. By failing to ensure its producers were properly licensed and affiliated, paying commissions or other valuable considerations to unlicensed producers for solicitation, giving a pet care provider gifts valued in excess of \$100 in a 12 month period for referrals, and knowingly accepting insurance business from unlicensed producers, the Licensee violated RCW 48.17.490(1), RCW 48.30.133(1), WAC 284-17-825(2), WAC 284-17-473, RCW 48.17.530(1)(g), and RCW 48.17.530(1)(l), justifying the imposition of a fine under RCW 48.17.530(1)(b) and RCW 48.17.560.

CONSENT TO ORDER:

The Insurance Commissioner of the state of Washington and the Licensee agree the best interest of the public will be served by entering into this Order. NOW, THEREFORE, the Licensee consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle this matter in consideration of the Licensee's payment of a fine, and upon such terms and conditions as are set forth below:

1. The Licensee acknowledges its duty to comply fully with the applicable laws of the state of Washington.
2. The Licensee consents to the entry of this Order, waives any and all hearing or other procedural rights, and further administrative or judicial challenges to this Order.
3. By agreement of the parties, the Insurance Commissioner will impose a fine of One Hundred Thousand Dollars (\$100,000.00) to be paid by **June 21, 2019**.
4. The Licensee understands and agrees that any further failure to comply with the statutes and/or regulations that are the subject of this Order constitutes grounds for further penalties, which may be imposed in direct response to further violations.
5. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee.

However, the facts of this Order, and any provision, finding, or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

EXECUTED this 20th day of June, 2019.

TRUPANION MANAGERS USA, INC.

Signature: 

Printed Name: Louis Chames

AGREED ORDER:

Pursuant to the foregoing factual Basis and Consent to Order, the Insurance Commissioner of the state of Washington hereby Orders as follows:

1. The Licensee shall pay a fine in the amount of One Hundred Thousand Dollars (\$100,000.00), receipt of which is hereby acknowledged by the Insurance Commissioner.

2. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee. However, the facts of this Order, and any provision, finding, or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

ENTERED this 24 day of June, 2019.

MIKE KREIDLER
Insurance Commissioner



By and through his designee



ELLEN RANGE
Insurance Enforcement Specialist
Legal Affairs Division

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