

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**  
April 21, 2008

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13017**

**In the Matter of**

**CLARENCE FRIEND,**

**Respondent.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE PROCEEDINGS**  
**PURSUANT TO SECTION 15(b) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Clarence Friend (“Friend” or “Respondent”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. THE RESPONDENT**

1. Clarence Friend, age 64, is a resident of Fountain Valley, California. Friend is the founder, controlling shareholder, and CEO of AirTrac, Inc. (“AirTrac”). From January 2004 through April 2005, Friend participated in the offer and sale of unregistered securities by AirTrac. Friend is not registered with the Commission in any capacity. On September 29, 2005, AirTrac and Friend stipulated to the entry of a Desist and Refrain Order entered by the California Department of Corporations related to their unregistered sale of securities within the state. Friend and AirTrac agreed to pay a joint and several penalty of \$10,000 for violations of the California securities laws.

## B. THE DISTRICT COURT PROCEEDINGS

2. On June 27, 2006, the Commission filed a civil action in the United States District Court for the Central District of California, Southern Division, entitled: *Securities and Exchange Commission v. AirTrac, Inc., Clarence Friend, and Christopher Bryan*, Civil Action No. SACV 06-582 JVS (RNBx).<sup>1</sup>

3. On August 31, 2007, the Commission filed a Motion for Summary Judgment against AirTrac and Friend. After a hearing on December 17, 2007, the District Court issued on January 2, 2008 a Minute Order granting the Commission's Motion for Summary Judgment against both Defendants. On April 2, 2008, the District Court entered a Second Revised Final Judgment of Permanent Injunction, Disgorgement, Prejudgment Interest and Civil Penalties Against Defendants AirTrac, Inc. and Clarence Friend ("Final Judgment").

4. In its Order Granting the Commission's Motion for Summary Judgment, the District Court made the following findings of fact and conclusions of law:

a. Defendants Friend and AirTrac sold unregistered stock in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) and (e), without an available exemption from registration under California Corp. Code § 25102(n). The Court further found that Defendants failed to qualify for an exemption from registration under Commission Regulation D, 17 C.F.R. § 230.502 and 17 C.F.R. § 230.506, and that the sales of AirTrac stock thus violated the registration provisions of the Securities Act. During the period from January 2004 to April 2005, the Defendants sold stock to over 200 investors nationwide who paid a total of approximately \$1.8 million for their shares.

b. Defendants Friend and AirTrac falsely represented to investors that an Initial Public Offering ("IPO") or public listing on NASDAQ for AirTrac was imminent and that this would greatly enhance the value of the AirTrac stock. AirTrac sales persons often told potential investors that a public offering was only weeks away. Indeed, Friend told an investor named Darrel Hardy that he was about to take his company public and had already filed a Form 10SB with the Commission. This statement was false, since AirTrac never filed a Form 10 or Form 10SB with the Commission and never filed for a listing on NASDAQ.

c. Friend and AirTrac also falsely told investors that AirTrac was on the verge of very lucrative contracts with several major telecommunications carriers. AirTrac sales people told AirTrac investors that the company was currently negotiating lucrative business contracts with several different telecommunications companies, including SBC, Cingular, AT&T and Alltel. Such statements were false because no such contracts were ever in existence.

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<sup>1</sup> On March 9, 2007, pursuant to an Offer of Settlement by Bryan, the Commission entered an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions, Admin. Proc. File No. 3-12588, Exchange Act Release No. 55433. The Order barred Bryan from association with any broker or dealer.

d. Friend and AirTrac falsely represented how investors' funds would be used in the "Use of Proceeds" section of AirTrac's Private Placement Memorandum ("PPM"). Although the PPM stated in a section entitled "Sources and Estimated Use of Proceeds" that the \$5,250,000 sought from investors would be used on various business sectors, the funds actually raised were not used in the percentages described in the PPM. Moreover, Friend personally received payments directly from AirTrac bank accounts totaling \$273,487.87 in the form of cash withdrawals from AirTrac bank accounts, cashier's checks, lease payments on his residence, medical expenses and personal shopping on an AirTrac credit card.

e. Each of the foregoing three misrepresentations was material to investors and both Friend and AirTrac acted with scienter in making these misrepresentations. The scheme of AirTrac and Friend was a well-thought-out and long-running attempt to accumulate millions of dollars in investor funds based on patently false information. At a minimum the conduct was reckless and therefore satisfied the standard for scienter under applicable law. The conduct of Friend and AirTrac therefore constituted violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5. This conduct also violated Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

f. In selling AirTrac shares to members of the public, Friend acted as a broker but failed to register as a broker under Section 15(b)(1) of the Exchange Act, 15 U.S.C. § 78o(b)(1). Because he functioned as an unregistered broker, Friend violated Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

5. The District Court entered permanent injunctions against both Friend and AirTrac, enjoining both from future violations of Sections 5 and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Court also enjoined Friend from future violations of Section 15(a) of the Exchange Act. The Court then awarded disgorgement of \$273,487.87 against Friend and \$1,759,542.28 (less any amount which Friend in fact disgorges) against AirTrac. The Court further awarded prejudgment interest, calculated pursuant to 28 U.S.C. § 1961, in the amount of \$18,008.22 against Friend and \$115,859.70 (less any interest that Friend in fact pays) against AirTrac. In addition, the Court awarded a third-tier civil penalty of \$130,000 against Friend and a third-tier penalty of \$130,000 against AirTrac.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

#### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Nancy M. Morris  
Secretary