

U.S. DISTRICT COURT
EASTERN DISTRICT - WI
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

BIGPLAYSTOCKS.COM, INC. AND
JOHN R. LUERS,

Defendants.

SOFRON B. NEDILSKY
CLERK

CIVIL ACTION
FILE NO.

01 - C - 0949

RANDA

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission

("Commission"), alleges as follows:

NATURE OF THE ACTION

1. This action concerns false and misleading investment advice and information provided through the internet website, www.bigplaystocks.com.
2. The sports-themed website is operated by BigPlayStocks.com, Inc. ("BPS") and its president, John R. Luers ("Luers"), who bills himself "the Stock Jock" on the site. Through the site, BPS and Luers provide paid subscribers with stock-trading recommendations supposedly produced by a staff of multiple professional traders. BPS and Luers represent to subscribers and potential subscribers that these recommendations have been highly successful. For over a year, the site also featured a "live trading room," where BPS and Luers represented to subscribers and potential subscribers that they could watch the Stock Jock making profitable stock trades.

3. In reality, Luers alone produces the stock-trading recommendations, and he is not a professional trader. Also, BPS and Luers have mischaracterized market history and other information in claiming that their trading recommendations have been successful. Moreover, nearly all the trading activity depicted on the site is hypothetical, a fact that BPS and Luers have not disclosed to subscribers and potential subscribers.

4. BPS and Luers have engaged and, unless enjoined, will continue to engage in acts, practices, and courses of business that violate antifraud provisions of the federal securities laws, specifically, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

JURISDICTION

5. The Court has jurisdiction over this action pursuant to Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78aa] and 28 U.S.C. § 1331.

6. Defendants, directly and indirectly, have made and are making use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, and courses of business alleged herein.

DEFENDANTS

7. BPS is a Wisconsin corporation formed by Luers to operate the internet website found at www.bigplaystocks.com. BPS currently maintains its office in Highlands Ranch, Colorado. From its incorporation on June 16, 1999, through approximately August 2000, BPS's office was located in Appleton, Wisconsin.

8. Luers resided in Appleton, Wisconsin, from at least February 1999 through approximately August 2000, and he now resides in Highlands Ranch, Colorado. Luers controls all the substantive content distributed through the BPS website and is BPS's president.

BACKGROUND OF THE BPS WEBSITE

9. The focus of the BPS website is providing investing information and advice to day-traders and other short-term traders of stocks and other securities.

10. At its inception in February 1999, the site was free. Since August 1999, the site has charged for its services, with subscription fees ranging from \$19.95 to \$89.95 per month.

11. In 1999, the site generated approximately \$70,000 in subscription fees; in 2000, it generated approximately \$280,000. Currently, the site receives approximately \$3,000 in subscription fees each month. At its height, the site had approximately 900 subscribers; currently, it has approximately 300.

KEY INFORMATION PROVIDED TO SUBSCRIBERS AND POTENTIAL SUBSCRIBERS

12. Defendants post descriptions and samples of the website's services on the site for subscribers and potential subscribers to view. In particular, subscribers and potential subscribers can view past stock-trading recommendations and past performance tables that purport to show how recommendations performed.

13. Defendants send subscribers one or more e-mail messages each day at pre-scheduled times. The messages contain stock-trading recommendations in which the Stock Jock (Luers) identifies a supposedly promising stock. The recommendations

typically provide a price range from which subscribers should purchase the stock, a target price at which subscribers should sell the stock, a time frame during which the stock should reach the target, and a stop loss price. The recommended stocks are usually thinly traded with volatile market prices.

14. From approximately May 1999 through August 2000, Defendants provided a "live trading room," where subscribers purportedly could watch the Stock Jock (Luers) engage in "real-time" trading and contemporaneously replicate his trades in their own accounts.

15. From approximately October 2000 through June 2001, Defendants provided certain subscribers with access to the "live traders wire," where Luers delivered live commentary on current market conditions and his purported personal strategies and trades.

**FALSE IMPRESSION OF THE SUCCESS OF RECOMMENDATIONS
AND THE OVERALL VALUE OF THE BPS WEBSITE**

16. On the site, in e-mail messages to subscribers, in the live trading room, and on the live traders wire, Defendants represent and have represented to subscribers and potential subscribers that the Stock Jock (Luers) frequently makes and profits from the trades he recommends.

17. Luers, however, almost never trades in the stocks he recommends. When he does, he often trades unprofitably and at times and prices different than those suggested in the recommendations and documented in the past performance tables. (BPS does not have a securities trading account and does not trade securities.)

18. The past performance tables Defendants have posted on the site typically identify twenty or more individual stocks named in past recommendations and give a buy date, buy price, sell date, and sell price for each. The performance the tables depict is highly profitable, with up to 90% of recommendations in a given month labeled “winners” and returns on a single stock of over 400%.

19. The vast majority of the figures in the past performance tables are hypothetical, for trades that Luers never actually made. Defendants have not disclosed to subscribers and potential subscribers that these figures are hypothetical.

20. The hypothetical prices in the past performance tables are often at or near the market best during the relevant period. Subscribers cannot consistently obtain such prices in the rapidly fluctuating markets for thinly traded stocks that the recommendations usually involve.

21. In compiling the past performance tables, Defendants have also withheld results for recommendations where the stock performed badly in the market and results for Luers’s own losing trades; reported prices that never existed in the market during the relevant period; called recommendations “winners” based on prices and time-frames that do not correspond with the recommendations; and called recommendations “winners” where the stock dropped below the stop loss price before it reached the purported sale price.

22. During the period when Defendants offered the “live trading room,” the site contained tables summarizing trades the Stock Jock (Luers) supposedly made in the trading room. The trades were largely profitable.

23. Luers, however, did not make most of the trades depicted on these tables or the other trades he described in the trading room. Rather, most trades were hypothetical, based on prices that Luers never obtained. Defendants did not disclose to subscribers and potential subscribers that this trading was mostly hypothetical.

24. On the site, Defendants claim that a “team of Pro-Traders . . . spends countless hours each week researching and analyzing thousands of promising companies,” and that “we are professional traders who spend 100-hour weeks (sometimes) [sic] more researching and watching the markets trade.”

25. However, Luers alone produces the recommendations and controls all substantive content distributed through the site. Luers has no experience working in the securities industry (aside from the BPS website) and has never traded securities for a living. Luers’s personal trading profits during 1999-2000 totaled approximately \$4,000.

26. Defendants knew or were reckless in not knowing that their misstatements and omissions described in paragraphs 1-25 above were false and misleading.

27. Defendants’ misrepresentations and omissions have influenced subscribers, who would not have traded as Defendants recommended if they knew that Defendants were providing the false and misleading information described in paragraphs 1-25 above.

COUNT I

**Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]
and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder**

28. Paragraphs 1-27 are realleged and incorporated by reference herein.

29. Since approximately February 1999, Defendants, in connection with the purchase and sale of securities, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, have employed and are employing devices, schemes and artifices to defraud; have made and are making untrue statements of material fact and have omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged and are engaging in acts, practices and courses of business which have operated and will operate as a fraud and deceit upon purchasers and sellers of such securities.

30. Defendants have engaged and are engaging in these activities with knowledge, or reckless lack of knowledge, that their misstatements and omissions described in paragraphs 1-27 above were and are false and misleading.

31. Through these activities, Defendants have violated and are violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that the Court:

I.

Find that Defendants committed the violations alleged above.

II.

Grant an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendants, their officers,

agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order of Permanent Injunction, by personal service or otherwise, and each of them, from, directly or indirectly, engaging in the acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

III.

Grant an order requiring Defendants to take steps as are appropriate to effect compliance with Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

IV.

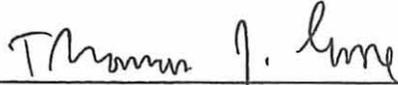
Impose civil penalties against Luers in accordance with Section 21(d)(3) of the Exchange Act [15 U.S.C. § 87u(d)(3)].

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant Orders for such further relief as the Court may deem appropriate.



Thomas J. Eme
One of the Attorneys for Plaintiff
United States Securities and Exchange Commission
500 West Madison Street, Suite 1400
Chicago, IL 60661-2511
(312) 353-7390

Dated: Sept. 18, 2001