ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	**Civil Action No.**
	§	
vs.	§	**3-01CV1474-D**
	§	
LARRY BIGGS, JR., DONALD McLELLAN, and LESLIE D. CRONE,	§	
	§	
Defendants.	§	

COMPLAINT

Plaintiff Securities and Exchange Commission for its Complaint against defendants Larry Biggs, Jr., Donald McLellan and Leslie D. Crone, shows as follows:

SUMMARY

1. This is a case of serious financial fraud. MAX Internet Communications, Inc. ("MAX") fraudulently overstated sales for the first two quarters of fiscal year 2000 (i.e., the 12-month period ended June 30, 2000) by 98%. These inflated sales figures prompted a 600% spike in MAX's stock price in only three months (from $4.44 to more than $28), and allowed MAX's stock to qualify for listing on the Nasdaq National Market. MAX's former chief executive officer (Biggs), president (McLellan) and chief financial officer (Crone) each knew these sales were illegitimate under generally accepted accounting principles ("GAAP"), but nevertheless recorded them to protect MAX's stock price and to avoid "condemnation" from and loss of "credibility" in the investment community. They compounded this by lying to their auditors during quarterly reviews, and by issuing a false press release responding to a March 2000 WALL STREET

JOURNAL article questioning MAX's rapid sales growth. They even fabricated the sale of their Brazilian subsidiary in an attempt to justify recording inventory parked at the subsidiary as a "sale" to a "third party."

2. By May 2000, defendants no longer could hide the illegitimate sales from the board of directors. Following an investigation by outside counsel, MAX restated the fraudulent quarterly financial statements, which ultimately led to its stock being delisted from the NASDAQ stock market, the collapse of its stock price and a dozen private securities fraud class actions. Yet, even then, defendants continued to mislead investors and the board of directors, claiming that the restatements resulted solely from alleged misconduct at the Brazilian subsidiary. They said nothing about the fact that nearly all sales from those quarters were improperly booked in the first instance.

3. Because of defendants' serious violations, the Commission files this suit to enjoin their further violations of the federal securities laws and to obtain an appropriate civil money penalty.

JURISDICTION

4. The Court has jurisdiction over this action pursuant to Section 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78(aa)].

5. Defendants used means and instrumentalities of interstate commerce and the mails in connection with the acts, practices, or courses of business alleged herein, all or most of which occurred within the Dallas Division of the Northern District of Texas.

THE DEFENDANTS

6. Defendant Larry Biggs, Jr. resides in Dallas, Texas and was MAX's CEO and a director until he resigned in October 2000. Biggs has consented to this Court's jurisdiction over him and has waived service of process.

7. Defendant Donald McLellan is an Australian citizen residing in Australia, and was MAX's president until he resigned in October 2000. McLellan was a chartered accountant licensed in Australia until 1977, when his license lapsed. McLellan signed MAX's periodic reports filed with the Commission for the relevant periods. McLellan has consented to this Court's jurisdiction over him and has waived service of process.

8. Defendant Leslie D. Crone resides in Dallas, Texas and was MAX's CFO until he resigned on January 25, 2001. Crone signed MAX's periodic reports filed with the Commission for the relevant periods and has consented to this Court's jurisdiction over him and has waived service of process.

THE PUBLIC COMPANY

9. MAX Internet Communications, Inc., originally known as Voxcom Holdings, Inc., is a Nevada corporation based in Dallas, Texas whose stock is registered with the Commission under Section 12(g) of the Exchange Act, and currently is quoted on the over-the-counter Bulletin Board, an electronic quotation service operated by the National Association of Securities Dealers. In mid-1998, Voxcom began concentrating on a new high tech product, a state-of-the-art computer card providing seamless audio and video conferencing over the Internet. Voxcom then changed its name to MAX. At June 30, 1999, MAX was still a developmental stage company, with very little in sales (approximately $300,000 for the entire fiscal year 1999).

FACTS

MAX Forms MAX Brazil

10. In May 1999, Biggs and McLellan met Carlos Leonardo Lima Freitas, a Brazilian who supposedly had major contacts within Brazilian government and business, through which he could secure sales of MAX's product. On September 14, 1999, MAX formed and funded MAX Internet Communications do Brasil Ltda. ("MAX Brazil"), with Freitas in charge. At no point thereafter did MAX Brazil become capable of supporting its own operations.

MAX Overstates First Quarter Sales

11. MAX began fraudulently inflating its sales during the first quarter of fiscal year 2000 (the three months ending September 30, 1999). MAX's Commission Form 10-Q for this quarter (filed November 12, 1999) reported total sales of approximately $2.6 million. Simultaneously, MAX issued a press release quoting Biggs, who touted the "successful launch" of MAX's product, a 1,300% increase in comparable period sales, "very strong revenues" and the company's "belief that [it] will be profitable on strong sales growth in the second quarter." This alleged success, however, was entirely illusory since none of the three transactions making up nearly all of MAX's first quarter revenue should have been recognized as sales.

The TelMart Transaction

12. The largest of the three first quarter transactions was a purported $1.5 million sale through MAX Brazil to a Brazilian reseller, TelMart. This order came in after MAX Brazil was formed and shipped just before quarter end, on September 29, 1999. However, the product only shipped to MAX Brazil, not to TelMart. MAX Brazil

did not ship any product to TelMart until October 28, 1999, as announced in an email that day from Freitas to McLellan, Crone and others (and which was explained to Biggs as well). Therefore, by the end of October 1999, Biggs, McLellan and Crone knew that no part of the TelMart sale had shipped to the ultimate customer during the first quarter. GAAP precludes recognizing revenue from a sale of goods until, among other things, delivery has occurred. *See, e.g.*, Statement of Financial Accounting Concepts ("SFAC") No. 5, ¶ 84(a); Statement of Position ("SOP") 97-2; Staff Accounting Bulletin ("SAB") 101. Nevertheless, Biggs, McLellan and Crone caused MAX to record the sale in the first quarter financial statements included in its first quarter Form 10-Q filed with the Commission.

13. TelMart never paid MAX for the order and, on November 17, 1999, TelMart cancelled the transaction and returned what units it had.

The GTI Transaction

14. The second improper first quarter sale was a $500,000 transaction with Graphics Technologies, Inc. ("GTI"), a United States computer products distributor. This sale shipped in August 1999. GTI had never dealt with MAX before, but had dealt with MAX's new sales director, who had joined MAX in July 1999. The sales director convinced GTI to place the unit order, but MAX, a new vendor with no history of sales, had to provide GTI substantial rights of return, as was customary in the industry. Accordingly, the sales director sent GTI a letter giving GTI the unqualified right to return up to 50% of the order and further guaranteed GTI purchasers for the remaining 50%. MAX also agreed that GTI did not have to pay for the goods until either it decided to keep them or they were sold to customers. GTI accepted these terms.

15. These terms were discussed with McLellan and Crone before the order shipped and they agreed that MAX should provide these rights to secure GTI as a distributor.

16. MAX recognized the GTI transaction as a sale in its first quarter 10-Q. This was improper under GAAP, which precludes recognizing a sale if, among other things, (i) the buyer has not paid the seller and has no obligation to pay until the product is resold, or (ii) the seller has "significant obligations for future performance to directly bring about resale of the product by the buyer." Statement of Financial Accounting Standards ("SFAS") No. 48, ¶ 6(b, e). GTI did not pay MAX for the sale and had no obligation to pay until it either chose to keep the products or sold them. Moreover, MAX guaranteed GTI purchasers for up to 50% of the order. These terms precluded recognizing this transaction as a sale under GAAP.

17. GTI could not sell MAX's product. Accordingly, in January 2000 (its fiscal year end), GTI returned its entire allotment of MAX product.

The ICG Transaction

18. The third improper first quarter sale was a $500,000 transaction with International Computer Graphics ("ICG"), another United States computer products distributor. As with GTI, MAX had no prior relationship with ICG, but MAX's sales director had dealt with ICG for many years. Like GTI, ICG would take MAX's product only with complete rights of return, with no obligation to pay MAX until the product sold through to customers. These conditions were fully explained to McLellan and Crone and they accepted them to secure ICG as a distributor.

19. Like the GTI transaction, SFAS No. 48 precluded recognizing this transaction as a sale. Nevertheless, MAX recognized the ICG transaction as a sale in its first quarter Form 10-Q filed with the Commission.

20. ICG demanded to exercise its right of return in December 1999 (its fiscal year end), after failing to sell any significant amount of MAX's product. MAX consented to ICG's demand and released it from any obligation to pay for the sale.

MAX's Management Knew of the Return of Nearly All First Quarter Sales But Never Disclosed Them, Instead Intentionally Perpetuating the Appearance of Robust Sales

21. By the end of January 2000, Biggs, McLellan and Crone knew that nearly all reported first quarter sales had been returned. In November 1999, for instance, Freitas apprised Biggs, McLellan and Crone of the TelMart return. Later, in December 1999 and January 2000, MAX's Director of Sales briefed these three on the GTI and ICG returns.

22. Biggs, McLellan and Crone did not disclose this negative news to the public. Instead, they actively sought to sustain the illusion of robust sales growth by providing inaccurate information for and authorizing public dissemination of misleading analyst reports. For example, in early December 1999, they authorized an analyst from Coleman & Company (which MAX had hired to provide investment banking services) to disseminate a misleading report asserting that first quarter sales totaled over $2.6 million – even though management knew that the TelMart sale, which made up 60% of first quarter sales, had been improperly recognized and already had been returned.

23. Then, in January 2000, MAX hired Access 1 Financial to produce a report touting the company's sales growth and potential. Even though none of these sales were properly recognized in the first instance, and either already had been returned (TelMart

and ICG) or were in the process of being returned (GTI), MAX's management provided Access 1 with first quarter sales figures that included these sales. MAX's management then authorized Access 1 to disseminate this misleading report to the public, and MAX included a link to the report on its website.

MAX Overstates Second Quarter Sales

23. MAX's seemingly spectacular first quarter sales growth pushed its stock price and trading volume higher, giving it the appearance of a fast-growing technology company. It also pressured MAX's management to maintain the façade of expanding sales. For the second quarter of fiscal year 2000 (i.e., the quarter ended 12/31/99), MAX reported total sales of approximately $8.1 million, nearly all through MAX Brazil. These purported sales consisted primarily of an alleged $6.3 million sale to the Brazilian government and a supposed $4.2 million sale to a Chilean entity called Igen-Parti, and allowed MAX to report a profit for the first time in its history.

24. Simultaneous with the filing of its second quarter Form 10-Q on February 22, 2000, MAX issued a press release (quoting Crone and approved by Biggs and McLellan) touting its "strong revenue growth" and alleged profitability, which it characterized as a "clear indication" that the company's product was "rapidly gaining acceptance." According to its release, MAX felt that "[t]o be profitable at this stage of our growth is a promising indicator of the company's future."

25. MAX's purported sales growth and profitability, however, were a complete sham. As with MAX's first quarter sales, neither of MAX's large second quarter sales was recognizable under GAAP.

The Brazilian Government Transaction

26. On October 26, 1999, Freitas presented MAX with a supposed order from the Brazilian government, to be delivered in five lots. The first two lots shipped to MAX Brazil on December 1, 1999 and December 20, 1999, respectively.

27. However, MAX Brazil did not deliver, nor have authority from the Brazilian government to deliver, either of these lots before December 31, 1999. Instead, all units were still in customs in early January 2000, which Crone, McLellan and Biggs knew no later than January 4, 2000. Indeed, as reflected in a series of email among various MAX and MAX Brazil employees – including McLellan and Crone – no part of the government order had been delivered by January 28, 2000.

28. Crone, who visited MAX Brazil's operations in January 2000, knew these facts and reported them to Biggs and McLellan upon his return. Even so, Crone and McLellan signed MAX's second quarter 10-Q (filed February 22, 2000), representing that the Brazilian government sale was complete.

29. GAAP precludes revenue recognition under these circumstances. GAAP requires, among other things, delivery of the product to the ultimate customer before revenue from a transaction can be recognized. Here, delivery to the ultimate customer – the Brazilian government – was not completed by December 31, 1999. In fact, no product was ever delivered to the Brazilian government, which Biggs, McLellan and Crone knew.

30. In an effort to artificially render the Brazilian government sale recognizable, Biggs, McLellan and Crone engineered an alleged sale of MAX Brazil to Freitas, backdated to December 31, 1999, which they reasoned made MAX Brazil a

"third party buyer" for revenue recognition purposes. MAX signed an agreement to sell MAX Brazil to Freitas on February 11, 2000. By agreement, the transaction was backdated to December 31, 1999. However, no such agreement was in place on December 31, 1999 and GAAP precluded recognizing revenue from mere shipments to MAX Brazil (which lacked the ability to pay for them in any event).

The Igen-Parti Transaction

31. On December 28, 1999, Freitas presented MAX with a supposed $4.2 million order from a Chilean company, Igen-Parti. The goods for this order never left Dallas. On December 29, 1999, a shipment to fill the order was picked up by MAX's shipping agent. However, at McLellan's direction, the shipment was held at the shipping agent's Dallas warehouse, because McLellan would not release shipment until Igen-Parti provided a letter of credit securing payment for the order. MAX retained title to the goods in the shipping agent's warehouse. The Igen-Parti shipment never left the custody of MAX's shipping agent until many months later, when MAX finally retook possession.

32. GAAP generally precludes recognizing revenue from a sale of goods before delivery has occurred. Obviously, delivery had not occurred by December 31, 1999; indeed, MAX always retained title to and constructive possession of the goods. Crone and McLellan knew these facts, and had informed Biggs of them by the end of January 2000. Nevertheless, Crone and McLellan signed MAX's second quarter 10-Q, representing that the Igen-Parti sale was complete.

The Damning January 4, 2000 Email

33. On January 4, 2000, Freitas notified McLellan and Crone by email that he supposedly had just secured release of the 8,000 units for the Brazilian government order

from customs, but still lacked authority from the government to deliver them. McLellan responded:

> Let me ... say Leo that without your efforts our company would not be nearly as progressed as we are today. I mean that, not in a technology sense, but in the fact of reportable sales which obvious is reflected in our stock price. And this is the first dilemma we find ourselves in. Because of your belief and therefore our belief that the 8000 unit Government sale and the 6000 unit Chile sale would take place in December, they have been included in December projections given to Stock Market analysts and then published for public view. To be totally wrong in these projections will be a great condemnation of this company and its executives. There will thus be a major credibility problem for any further announcements or projections ... However I believe that if the Government deliveries take place this week, and if the [Igen-Parti letter of credit] arrives from Chile this week, we can still treat the sales as December.

McLellan forwarded Crone a copy of this response the next day.

34. Notably, the Brazilian government sale was not delivered "this week" (or ever) and the Igen-Parti letter of credit never arrived. MAX nevertheless recognized these sales in the second quarter.

The Critical WALL STREET JOURNAL Article and MAX's Misleading Response Thereto

35. On March 22, 2000, an article in the WALL STREET JOURNAL's "Texas Journal" questioned MAX's sales growth. The article noted that MAX's accounts receivable had grown by the same magnitude as its sales for the first two quarters of FY 2000, which indicated that all of MAX's sales were on credit. The article suggested that MAX was simply stuffing the channels to create the illusion of sales growth, specifically highlighting the South American sales and the apparent lack of payment for those sales.

36. The next day, MAX issued a press release in which Biggs was quoted in support of the legitimacy of MAX's sales, particularly the Brazilian sales:

> I have just returned from a week long trip in Brazil where I was working with our distributor and their customers. They have been met with some delays as may be expected in the normal course of business, which has resulted in the payment of the receivable being slow. However, we are confident in their ability to manage these temporary delays, and we expect the receivable will be collected. The distributor and their customers are sound and we look forward to a long, profitable future with them.

37. Biggs' statements in this press release were either misleading or outright falsehoods. In reality, Biggs learned from his trip to Brazil, among other things, that certain sales-related documents had been forged and that Freitas had resigned. He also had reason to know that up to half of the $500,000 Biggs and another director had advanced to get the Brazilian government goods out of customs had been misused. None of this was mentioned in the press release, and certainly could not be considered "delays as may be expected in normal course of business."

38. Moreover, when he made these statements, Biggs knew that the TelMart sale had been returned months earlier and that no product had ever been delivered to the Brazilian government or Igen-Parti. Thus, Biggs could not reasonably have believed that the receivables for these undelivered sales were collectable.

MAX's Management Lies to Grant Thornton

39. Grant Thornton ("Grant") reviewed MAX's first and second quarter financial statements. In connection with these reviews, Grant obtained representation letters from MAX's management. In representation letters or direct conversation with Grant, Biggs, McLellan and Crone made the following misrepresentations:

- That the first quarter sales to ICG and GTI were appropriately recognized and had no significant rights of return prohibiting revenue recognition;
- That the first quarter sale to TelMart had shipped to TelMart before the quarter ended, and had been paid for;

- That the Brazilian government sale had shipped to the Brazilian government before the quarter ended;
- That the Igen-Parti sale had shipped to Igen-Parti before the quarter ended; and
- That substantial payment had been made on the receivables from MAX Brazil's sales before MAX filed the second quarter 10-Q.

40. Crone, McLellan and Biggs also failed to disclose to Grant that they were relying on the sale of MAX Brazil to justify recognition of the Brazilian government sale. These representations and omissions were false and were intended to, and did, prevent Grant from discovering that MAX's financial statements were materially misstated.

The Scheme Finally Falls Apart and MAX Restates First and Second Quarter Financials, But Still Fails to Come Clean About its Fraud

41. On May 15, 2000, MAX issued amended Form 10-Q's for the first and second quarters of fiscal year 2000, containing restated financial statements for those quarters. The restatement wiped out nearly all previously reported first and second quarter sales. Upon restatement, MAX's first quarter sales went from $2.637 million to $137,000, a 95% decrease. The decrease in second quarter sales was even more precipitous, falling a whopping 99%, from $8.133 million to $119,000. Overall, of the $13.27 million in gross sales MAX recognized in the first and second quarters, all but $256,000 – or more than 98% – was eliminated upon restatement.

42. Even when MAX finally restated, however, Biggs, McLellan and Crone continued to deceive investors and MAX's board. They attributed the restatements to alleged deception and falsification by Freitas, but said nothing about the facts (a) that none of the reversed sales had been recognized properly in the first place; (b) that the ICG and GTI sales had terms precluding revenue recognition; (c) that 80% of first quarter sales had been returned before December 31, 1999 and nearly all of the rest returned

before January 31, 2000; (d) that the goods for the Brazilian government sale never left MAX Brazil's possession; (e) that the goods for the Igen-Parti sale never left Dallas; and (f) that the sale of MAX Brazil was a sham to justify revenue recognition from the prior intercompany transfers between MAX and MAX Brazil.

COUNT I

FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES
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]

43. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

44. Biggs, McLellan and Crone, by engaging in the conduct described above, singly and in concert with others, directly and indirectly, in connection with the purchase and sale of securities, and by use of the means and instrumentalities of interstate commerce and of the mails, have:

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices or courses of business which have operated or will operate as a fraud and deceit upon other persons.

45. Biggs, McLellan and Crone intentionally, knowingly or recklessly made the untrue statements and omissions and engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business described above. Because of the foregoing, Biggs, McLellan and Crone violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

COUNT II

Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-13 and 12b-20 [17 C.F.R. §§ 240.13a-13 and 240.12b-20] Thereunder

46. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

47. Biggs, McLellan and Crone aided and abetted MAX's violations of Section 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 13a-13 and 12b-20 thereunder by causing MAX to file with the SEC materially false financial statements in periodic reports on Forms 10-Q, as set forth above.

48. By reason of their foregoing acts and practices, Biggs, McLellan and Crone aided and abetted MAX's violations and, unless enjoined, will continue to aid and abet violations of Section 13(a) of the Exchange Act and Rules 13a-13 and 12b-20 thereunder.

COUNT III

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m (b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] Thereunder

49. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

50. Biggs, McLellan and Crone violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, by overstating, or causing MAX to overstate, among other things, its sales, net income and accounts receivable on its books and records, as set forth above.

51. By reason of their foregoing acts and practices, Biggs, McLellan and Crone violated and, unless enjoined, will continue to violate Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder.

COUNT IV

Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m (b)(2)(A)]

52. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

53. Biggs, McLellan and Crone aided and abetted MAX's violations of Section 13(b)(2)(A) of the Exchange Act, a provision of the Foreign Corrupt Practices Act, by directly or indirectly causing MAX to falsify its books, records and accounts, as set forth above.

54. By reason of their foregoing acts and practices, Biggs, McLellan and Crone aided and abetted MAX's violations and, unless enjoined, will continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act.

COUNT V

Violations of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2) and Rule 13b2-2 [17 C.F.R. § 240.240.13b2-2] Thereunder

55. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

56. Biggs, McLellan and Crone, who were each officers and/or directors of MAX, made false and misleading statements to MAX's auditors in connection with those auditors' work for MAX required under the Exchange Act.

57. Biggs, McLellan and Crone each signed and delivered management letters to MAX's auditors falsely affirming that MAX had disclosed all material transactions and financial records to its auditors. Moreover, they knowingly presented financial statements to MAX's auditors that overstated MAX's sales.

58. Accordingly, Biggs, McLellan and Crone violated and, unless enjoined, will continue to violate Section 13(b)(2) of the Exchange Act and Rule 13b2-2 thereunder.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

1. Permanently enjoin Biggs, McLellan and Crone from violating Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1 and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.

2. Order Biggs, McLellan and Crone each to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act for their violations of the federal securities laws as alleged herein.

3. Order such further relief as this Court may deem just and proper.

Respectfully submitted,

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