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AN 

CV 01 3311

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against-

STEVEN MADDEN,

Defendant.  
-----X

GILBERTSON, M.

MANN, M.J.  
(JG)

2001-cv- \_\_\_\_\_

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Steven Madden ("Madden"), alleges as follows:

**PRELIMINARY STATEMENT**

1. This action involves insider trading by Madden, the founder, Chief Executive Officer, and lead shoe designer of Steven Madden Ltd. ("SHOO"). On December 20, 1999, Madden and his attorneys met with representatives from the U.S. Attorney's Office for the Eastern District of New York ("USAO-EDNY"), the U.S. Attorney's Office for the Southern District of New York ("USAO-SDNY"), and the Federal Bureau of Investigation ("FBI"), who informed Madden that he had been the target of their investigations, and that he would be indicted or otherwise charged for securities fraud. While in possession of that non-public



information, Madden sold 100,000 shares of SHOO stock on May 31, 2000. When Madden was arrested and indicted on June 20, 2000, SHOO stock was suspended from trading by the NASD for two days, and its price dropped significantly. By selling in advance of the announcement of his arrest, Madden illegally avoided losses of \$784,000.

2. By the conduct alleged herein, Madden has engaged, directly or indirectly, in transactions, acts, practices, or courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5. Unless he is permanently enjoined by this Court, Madden will continue to engage in the transactions, acts, practices and courses of business set forth in this Complaint and in transactions, acts, practices and courses of business of similar type and object.

#### **JURISDICTION AND VENUE**

3. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), for permanent injunctive relief against Madden from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint; for disgorgement of illegally avoided losses plus prejudgment interest; and for such other relief as the Court may deem appropriate. The Commission also brings this action pursuant to Section 21A of the Exchange Act, 15 U.S.C § 78u-1, for civil penalties under the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA").

4. Madden, directly and indirectly, made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged herein. Certain

of the alleged transactions, acts, practices, and courses of business occurred in the Eastern District of New York, including but not limited to Madden's acquisition of material, non-public information and his sale of SHOO securities. Accordingly, this Court has jurisdiction over this action, and venue is proper in this district, pursuant to Sections 20(b) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77v(a), and Sections 21(d), 21A, and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u-1, 78aa.

**DEFENDANT**

5. **Madden** is 43 years old and resides in New York, New York. Between December 1993 and June 22, 2000, Madden was the Chairman of SHOO. From December 1993 until the present time, Madden has been the Chief Executive Officer of SHOO. SHOO has announced that on July 1, 2001, Madden will resign his position as Chief Executive Officer, and will thereafter be SHOO's Chief Creative Officer.

**RELEVANT ENTITY**

6. **SHOO** is a Delaware corporation headquartered in Long Island City, NY. SHOO securities are registered with the Commission pursuant to Section 12(g) of the Exchange Act, 15 U.S.C. §§ 78l(g), and are traded on the National Association of Securities Dealers' (the "NASD's") Automated Quotation System ("NASDAQ"). The company, whose current market capitalization is approximately \$200 million, designs, sources, and sells fashion footwear under the Steve Madden, Lei, and David Aaron brands.

## **MADDEN'S ILLEGAL INSIDER TRADING**

### **Madden's Fiduciary Duty**

7. At the time of the transactions and events alleged in this Complaint, Madden was SHOO's Chairman and Chief Executive Officer, and therefore owed a fiduciary duty to SHOO and its shareholders. As a result, Madden had a fiduciary duty, among other things, not to trade while in possession of material non-public information.

### **Madden Learns of Material Non-Public Information**

8. On December 20, 1999, in the offices of the USAO-EDNY, Madden and his attorneys met with Assistant U.S. Attorneys representing both the USAO-EDNY and the USAO-SDNY, and with a Special Agent from the FBI. During this meeting, the Assistant U.S. Attorneys informed Madden that he had been the target of USAO-EDNY and USAO-SDNY investigations into Madden's participation in over twenty fraudulent initial public offerings (including SHOO's initial public offering) and stock manipulations at two brokerage firms, Stratton Oakmont, Inc. ("Stratton Oakmont") and Monroe Parker Securities, Inc. ("Monroe Parker"), between 1991 and 1997. The Assistant U.S. Attorneys told Madden that he would be indicted or otherwise charged for securities fraud. The Assistant U.S. Attorneys informed Madden that the principals of both Stratton Oakmont and Monroe Parker were cooperating with the government and would testify against Madden. The Assistant U.S. Attorneys also presented Madden with extensive documentary evidence of his guilt.

9. The information that Madden received on December 20, 1999, as set forth in paragraph 8, was material, and was not disclosed to the public prior to June 20, 2000.

**Madden Sells SHOO Stock Without Disclosing Material Non-Public Information**

10. On May 31, 2000, while in possession of the information described in paragraph 8, Madden sold 100,000 shares of SHOO common stock at \$16.00 per share without disclosing the material non-public information described in paragraph 8.

11. On June 19, 2000, the price of SHOO stock at the close of trading was \$13.13.

12. On June 20, 2000, Madden was arrested and charged with conspiracy to commit securities fraud, securities fraud, conspiracy to commit money laundering, and money laundering. Also on June 20, 2000, the Commission filed SEC v. Madden, alleging that Madden had violated of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, and seeking permanent injunctive relief, an order barring Madden from serving as an officer and director of a public company, disgorgement, and civil penalties.

13. The news of Madden's arrest became public during the morning of June 20, 2000. The NASD suspended trading in SHOO stock for the remainder of the day, and for the entire day on June 21, 2000. Trading resumed on June 22, 2000, and the price of SHOO stock fell as low as \$5.50 before closing at \$6.69.

**CLAIM FOR RELIEF**

*Madden Violated Section 17(a) of the Securities Act,  
15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act,  
15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5*

14. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 13, above.

15. Madden, directly or indirectly, singly or in concert, by the use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or by use of the mails, or of any facility of any national securities exchange, in the

offer or sale, and in connection with the purchase or sale, of SHOO securities: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of, or otherwise made, untrue statements of material fact or 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 transactions, acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of SHOO securities and upon other persons.

16. Madden sold SHOO securities on May 31, 2000 while he possessed the material non-public information that he would be indicted or otherwise charged for securities fraud based upon his participation in over twenty fraudulent initial public offerings (including SHOO's initial public offering) and stock manipulations at two brokerage firms, Stratton Oakmont and Monroe Parker, that the principals of both Stratton Oakmont and Monroe Parker were cooperating with the government and would testify against Madden, and that the government had extensive documentary evidence of Madden's guilt.

17. Madden, by selling SHOO securities while he possessed material, non-public information concerning SHOO, breached a fiduciary duty to SHOO and its shareholders arising out of Madden's position of Chairman and Chief Executive Officer of SHOO.

18. When Madden sold SHOO securities on May 31, 2000, Madden knew or was reckless in not knowing that he possessed material, non-public information regarding SHOO, and Madden knew or was reckless in not knowing that his sale of SHOO securities constituted a breach of fiduciary duty, or other duty arising out of Madden's position as Chairman and Chief Executive Officer of SHOO.

19. By reason of the foregoing, Madden, singly or in concert, directly or indirectly, violated, and unless enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

**RELIEF SOUGHT**

**WHEREFORE**, Plaintiff respectfully requests a Final Judgment:

A. Permanently enjoining Madden, his agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5;

B. Ordering Madden to disgorge the losses he avoided by selling SHOO securities in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, and to pay prejudgment interest thereon;

C. Ordering Madden to pay civil money penalties pursuant to Section 21A(a) of the Exchange Act, 15 U.S.C. § 78u-1(a); and

D. Granting such other relief as the Court shall deem just and proper.

Dated: New York, New York  
May 21, 2001

Respectfully submitted,



By: WAYNE M. CARLIN (WC-2114)  
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