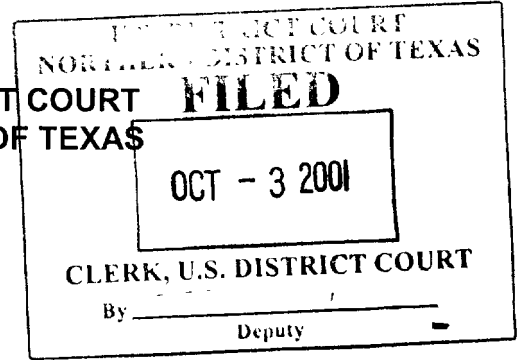


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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

THE BALANCER COMPANY, INC.,  
MARK MICLETTE and TONI BONAR MICLETTE

Civil Action No.

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COMPLAINT

Plaintiff Securities and Exchange Commission alleges as follows:

SUMMARY

1. This matter involves securities fraud and registration violations of the federal securities laws by Defendants The Balancer Company, Inc. ("TBC"), Mark Miclette ("M. Miclette") and Toni Bonar Miclette ("T. Miclette"). From about February 2000 through about April 2001, Defendants engaged in a fraudulent scheme to offer and sell the unregistered common stock of TBC, a start-up company created for the purpose of developing and marketing a single product known as the Spin Cycle Balancer ("Balancer") — a washing machine device that, if completed, would purportedly have automatically balanced loads of laundry during the spin cycle. From February 2000 through April 2001, TBC raised at least \$750,000 from approximately 90 investors located nationwide, in Canada and in the British West Indies.

2. In the course of offering and selling the unregistered common stock of TBC, M. Miclette and T. Miclette engaged in numerous misrepresentations and omissions of material fact concerning, among other things, the expected rate of return

on the investment, the status of the Balancer's development, TBC's business operations and the use of investor funds. Specifically, Defendants represented that TBC was poised to provide immediate and substantial profits to investors. In reality, TBC never developed a finished prototype of its product, nor did it achieve any sales or agreements to sell its product in the future. Moreover, Defendants stated that investor funds would be used to develop and market the Balancer. In fact, M. Miclette and T. Miclette diverted a large portion of investor funds for unauthorized personal and business expenditures.

3. By engaging in the conduct detailed in this Complaint, Defendants TBC, M. Miclette and T. Miclette, directly or indirectly, singly or in concert, have engaged in, and unless enjoined will again engage in, transactions, acts, practices and courses of business that constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§77e(a), 77e(c) and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and of Rule 10b-5 [17 C.F.R. §240.10b-5], promulgated thereunder.

### **JURISDICTION AND VENUE**

4. The investments offered and sold by the Defendants are "securities" under Section 2(1) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77b] and Section 3(a)(10) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78c].

5. 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)], to permanently enjoin Defendants TBC, M. Miclette and T. Miclette from future violations of the federal securities laws.

6. This Court has jurisdiction over this action, and venue is proper, pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], and Section 27 of the Exchange Act [15 U.S.C. §78aa].

7. Defendants, directly or indirectly, made use of the means or instruments of transportation and communication, and the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein. Certain of the transactions, acts, practices and courses of business alleged herein took place in the Northern District of Texas.

#### **DEFENDANTS**

8. **The Balancer Company**, located principally in Dexter, Maine, was incorporated in Delaware on January 31, 2000. TBC also maintains an office and at least one bank account in Texas. Neither TBC's securities nor any offer or sale of TBC's securities have ever been registered with the Commission or any state.

9. **Mark Miclette**, age 41 and a resident of Dexter, Maine, is co-founder, president and CEO of TBC. During the Commission's investigation, M. Miclette refused to testify based on his assertion of the Fifth Amendment privilege against self-incrimination.

10. **Toni Bonar Miclette**, age 42 and a resident of Dexter, Maine, is M. Miclette's wife and TBC's co-founder, secretary and treasurer. During the

Commission's investigation, T. Miclette refused to testify based on her assertion of the Fifth Amendment privilege against self-incrimination.

## **STATEMENT OF FACTS**

### **The Business of TBC**

11. TBC is a start-up company that acquired exclusive rights to develop, market and sell technology from a Canadian company, European Technologies, Inc. ("ETI"). The technology, named "CanBalance" by ETI, involved the use of movable weights within a spinning component of machinery to offset any imbalances. TBC's license had a four-year duration with two five-year options (fourteen years total). According to the license agreement, TBC was to pay a license fee of \$150,000, with \$50,000 paid upon execution of the agreement and the remaining \$100,000 paid on or before February 4, 2001. In addition, TBC was to pay \$50,000 on or before June 15, 2000, to prepay all royalties on the first 100,000 units to be manufactured and sold, and pay \$1 per unit sold thereafter.

12. Pursuant to this license, TBC began developing an application of the CanBalance technology for use in residential washing machines. TBC's product, the Balancer, was supposedly able to balance loads of laundry in the spin cycle. TBC hired an engineer to design the Balancer, create drawings for the final product, and construct ten prototypes, each more sophisticated than the prior one with the tenth as the final product. The engineer completed the first two prototypes in February and March 2001, respectively. During the period that TBC stock was sold to investors, however, TBC neither conducted any tests on the first two prototypes nor constructed additional

prototypes. Consequently, TBC had not begun manufacturing or marketing its product for retail sales.

### **The Offer and Sale of TBC Stock**

13. From February 2000 through at least April 2001, TBC raised at least \$750,000 from some 90 investors nationwide, in Canada and in the British West Indies through the sale of common stock in a purported private placement offering. TBC marketed the investment to prospective investors in three ways. First, the Defendants solicited prospective shareholders via an Internet website located at ***www.spincyclebalancer.com***. Second, the Defendants solicited prospective investors to purchase stock through the use of written offering materials and through purported demonstrations of the Balancer in the Miclettes' home. Finally, the Defendants encouraged existing shareholders to recruit new shareholders.

14. Prospective investors were provided with scanty written offering materials. These included a glossy brochure with information and representations similar to TBC's website, and an investor agreement to be executed by each investor. The brochure included a 10-year projected sales plan that valued the company in the tenth year at approximately \$9 billion, and also included projected returns on investment after ten years. The offering materials, however, did not include financial statements, or any other financial information or disclosures that would ordinarily be included in a registration statement. The TBC website and oral sales presentations in the Miclettes' home were similarly lacking in any specific or legitimate financial disclosure about TBC's current or past business operations.

15. The TBC shares were generally sold for \$0.50 per share. One individual, however, purchased her shares at \$1 per share, and a number of “free shares” were issued, either as apparent gifts from M. Miclette or as compensation to TBC employees.

### **Defendants’ Misrepresentations and Omissions**

16. In the course of offering and selling TBC common stock, the Defendants made numerous material misrepresentations and omissions. The false and misleading statements and nondisclosures concerned, among other matters, the expected return on investment, the status of product development and business operations, and the use of investor funds.

17. TBC’s website stated that the company would conduct an initial public offering (“IPO”) possibly as early as 2001, but no later than the year 2003. The website further represented that the IPO would give investors the option to liquidate their investment when the share price reached 60 to 120 times what they paid for the shares. This representation translates into a minimum price of \$30 per share. The offering materials represented that, depending upon how long the stock was held, investors’ returns could go as high as 1008%. TBC’s website and offering materials also represented that shareholders would earn huge dividends on their investment as early as 2001. In fact, the investor agreement stated that investors would begin receiving dividends at the end of the fourth quarter of 2001 or upon the sale of one million units, whichever occurred first.

18. In fact, there was no reasonable basis for these stock price and dividend predictions. The company had no income, no product, no agreements to manufacture

the product, and no agreements to sell the product once it was completed. Further, the company was – under the most favorable circumstances – at least a year away from selling any product. In addition, TBC was entirely dependent upon investor funds to pursue its business since the company had no other sources of income or funding. Given these facts, the stock price and dividend predictions were, at best, wishful thinking and therefore materially misleading.

19. During the course of the offering, Defendants also represented that the Balancer would be sold in stores beginning in October 2000, and that TBC could realistically sell one million Balancers in 2001, five million in 2002, six million in the years 2003-2005 (inclusive) and eight million in the years 2006-2010 (inclusive). As late as October 25, 2000, TBC's website contained these representations. At that time, the website also represented that the sale of one million Balancers in the year 2001 would generate hundreds of thousands of dollars in dividends for the shareholders. The written offering materials also contained these and other false statements, including that the company was valued at \$120,000,000 based upon its net income and other factors.

20. For the reasons stated above, TBC had no reasonable basis for making these sales, revenue and value projections. The company had no income and its only asset was the license to develop and market the Balancer. Moreover, TBC was only required to pay \$150,000 for the license, and a \$0.50 royalty for each of the first 100,000 units sold, and \$1 royalty for any additional units sold. Given these facts, there

was clearly no reasonable basis for claiming that the company had a value of \$120,000,000.

21. Defendants further represented that TBC had created a prototype of the Balancer. They failed to disclose, however, that it was only the second of ten planned prototypes, that it had never been tested, and that it was so rudimentary that it did not resemble the expected finished product. They also failed to disclose that production of the Balancer could not begin until the final prototype had been perfected.

22. TBC's engineer ceased working on the Balancer prototypes in March of 2001 due to a lack of funds. Nevertheless, Defendants continued to lull investors into believing that a capital infusion was imminent and that the promised returns would materialize. For example, on April 3, 2001, TBC forwarded an "update" to its investors, representing that it anticipated a capital infusion of \$15 million by the end of April 2001. Specifically, one foreign investor was purportedly going to invest \$7.5 million on April 16, 2001, and another foreign investor was scheduled to tender an additional \$7.5 million by the end of the same month. These events never occurred. Further, investors were never told that development of the prototypes had ceased because the company could not pay the engineer.

23. Moreover, TBC was delinquent in making its required payments under the licensing agreement with ETI in February 2001. ETI ultimately terminated the license agreement on June 4, 2001. Without the license, TBC was not authorized to sell the Balancer, assuming it was ever completed. The Commission is informed and believes that neither the delinquency nor the default was disclosed to TBC investors.



24. During the period relevant to this Complaint, TBC's only source of revenue consisted of funds collected from investors. TBC's website stated that investment funds would be used to develop the Balancer and to operate TBC. In reality, T. Miclette and M. Miclette spent much of the investors' funds for unauthorized personal and business expenditures. Of the \$750,000 raised, only approximately \$92,000 was spent on the Balancer and other legitimate business expenses. T. Miclette misappropriated as much as \$400,000 by transferring funds to her personal account, writing checks on the TBC bank account for personal expenses, such as mortgage payments, car payments and tuition for her children's private school, and wire transferring funds either to persons without any relation to TBC or persons affiliated with TBC who were owed no compensation. Subsequent investors, of course, were never informed that the Miclettes had misappropriated investor funds.

**Defendants' Disregard and Deception of Securities Regulators**

26. Defendants persisted in the pursuit of their fraudulent scheme in spite of multiple warnings from securities regulators concerning the legality and propriety of their conduct. On September 18, 2000, the Maine Securities Division sought immediate assurances that TBC stock would not be offered or sold unless future transactions were made in compliance with Maine law. In return correspondence (dated September 19, 2000), M. Miclette gave the requested assurances. Despite these assurances, TBC continued the offering and sold another 105,000 shares to at least five more investors. On September 21, 2000, in an apparent attempt to evade the Maine authorities, M. Miclette and T. Miclette opened a bank account in Texas where they deposited the

newly raised funds. In total, TBC was contacted by securities agencies in seven states and in British Columbia regarding its sales of unregistered securities. Nevertheless, the Defendants continued to raise money from investors.

### **FIRST CLAIM**

#### **Violations of Sections 5(a) and 5(c) of the Securities Act**

27. Paragraphs 1 through 26 are hereby realleged and incorporated herein by reference.

28. TBC, M. Miclette and T. Miclette, directly or indirectly, singly or in concert with others, have been offering to sell, selling and delivering after sale, certain securities and have been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise, (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation such securities for the purpose of sale and for delivery after sale, and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

29. The common stock of TBC was offered and sold to the public through a general solicitation of investors.

30. No registration statements were on file with the Commission or were otherwise in effect with respect to these securities.

31. By reason of the foregoing, TBC, M. Miclette and T. Miclette violated and, unless enjoined, will continue to violate Sections 5 (a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a) and (c)].

## **SECOND CLAIM**

### **Violations of Section 17(a) of the Securities Act**

32. Paragraphs 1 through 26 are hereby realleged and incorporated by reference herein.

33. TBC, M. Miclette and T. Miclette, in connection with the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, have employed schemes and artifices to defraud; made untrue statements of material fact and have 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 engaged in acts, practices, courses of business which have operated as a fraud and deceit upon purchasers and sellers.

34. As a part of and in furtherance of their scheme to defraud, TBC, M. Miclette and T. Miclette, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence and oral presentations which contained untrue statements of material facts and misrepresentations of material facts and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under

which they were made, not misleading, including, but not limited to, those set forth above.

35. TBC, M. Miclette and T. Miclette made these misrepresentations and omissions knowingly or with reckless disregard for the truth.

36. By reason of the foregoing, TBC, M. Miclette and T. Miclette have violated and, unless enjoined, will continue to violate the provisions of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)].

### **THIRD CLAIM**

#### **Violations of Section 10(b) of the Exchange Act and Rule 10-5 Thereunder**

37. Paragraphs 1 through 26 are hereby realleged and incorporated by reference herein.

38. TBC, M. Miclette and T. Miclette, directly or indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use 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 light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

39. As a part of and in furtherance of their scheme, TBC, M. Miclette and T. Miclette, directly and indirectly, prepared, disseminated or used written offering documents and made oral presentations which contained untrue statements of material

facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth above.

40. TBC, M. Miclette and T. Miclette made the above-referenced misrepresentations and omissions knowingly or recklessly disregarding the truth.

41. By reason of the foregoing, TBC, M. Miclette and T. Miclette violated and, unless enjoined, will continue to violate the provisions 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].

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Securities and Exchange Commission respectfully requests that this Court:

#### **I.**

Enter an Order permanently enjoining Defendants, their agents, servants, employees, 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 Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§77e(a), 77e(c) and 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and of Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder;

#### **II.**

Enter an Order requiring Defendants to disgorge an amount equal to the funds and benefits they obtained illegally as a result of the violations alleged herein, plus prejudgment interest on that amount;

**III.**

Enter an Order imposing a civil penalty against the Defendants pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], for the violations alleged herein;

**IV.**

Enter an Order requiring the Defendants to file with this Court and serve upon Plaintiff Commission, an accounting, under oath, of (1) all monies and other assets they received, directly or indirectly, from investors in the securities described in the Commission's Complaint; (2) all assets in which the Defendants have a beneficial interest, directly or indirectly, wherever they may be located and by whomever they are being held; and (3) all accounts with any financial institution or securities brokerage firm maintained in any of their names or for any of their benefit on or after January 1, 1999;

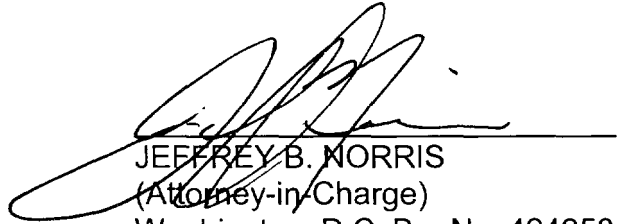
**V.**

Enter an Order pursuant to Section 20(e) of the Securities Act [15 U.S.C. §77t(e)] barring M. Miclette and T. Miclette from acting as officers or directors of any issuer that has a class of securities registered pursuant to section 12 of the Exchange Act or that is required to file reports pursuant to section 15(d) of the Exchange Act; and

VI.

Enter an Order for such further relief as this Court may deem just and proper.

Respectfully submitted,



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Dated this 3rd day of October 2001