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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

RAYMOND S. EVANS

Defendant.
-----X

CV

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COMPLAINT SPATT, J.
BOYLE, M.J.

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Raymond S. Evans ("Evans"), alleges as follows:

SUMMARY

1. Evans is an attorney who was engaged in the practice of corporate and securities law and was a name partner in the Uniondale, New York, law firm of Ruskin, Moscou, Evans & Faltischek, P.C., n/k/a Ruskin, Moscou, Faltischek, P.C. (the "Law Firm") until June 1, 2002.
2. On numerous occasions, Evans engaged in insider trading in the securities of two public corporations, Periphonics Corporation ("Periphonics") and Hirsch International Corporation ("Hirsch"), which were clients of the Law Firm.

3. Between June and August 1999, the Law Firm represented Periphonics in confidential negotiations that led to the merger of Periphonics and Nortel Networks Corporation ("Nortel"). Evans participated in numerous meetings concerning the merger negotiations.

4. As an attorney, Evans had a fiduciary duty to keep confidential the information he learned from clients in the course of the Law Firm's representation. In addition, Evans had a fiduciary duty to refrain from using confidential information obtained from a client for his own advantage or benefit.

5. Between June 18 and July 1, 1999, in breach of the duties he owed to Periphonics' shareholders, Evans purchased 19,800 shares of Periphonics stock at prices between \$13.25 and \$16.75 per share on the basis of material non-public information concerning the merger.

6. On August 24, 1999, Periphonics and Nortel announced the merger between the two companies and the price of Periphonics stock rose approximately 10% to close at \$27.75 per share. As a result of his unlawful purchases of Periphonics stock, Evans made at least \$221,762.50 in illicit profits.

7. Evans had previously engaged in insider trading in a client's securities. During 1997, the Law Firm was outside legal counsel to Hirsch. From August 1997 through September 8, 1997, Evans participated in confidential meetings and discussions with Hirsch officers and employees about Hirsch's financial condition, including its estimated earnings for the third quarter of its 1998 fiscal year (the "Estimated 1998 Earnings"), which were expected to be well below analysts' projections.

8. On September 2 and September 3, 1997, in breach of his fiduciary duties, Evans sold his 6,125 shares of Hirsch stock at prices between \$24.375 and \$24.75 per share in advance

of the public announcement of the Estimated 1998 Earnings based on the material non-public information Evans acquired concerning the Estimated 1998 Earnings.

9. Additionally, prior to September 4, 1997, Evans, intending to confer a benefit upon a relative (the "Tippee") who owned Hirsch stock, breached his fiduciary duties to Hirsch's shareholders by disclosing to the Tippee the material non-public information he had obtained concerning the Estimated 1998 Earnings.

10. On September 4, 1997, the Tippee sold 6,000 shares of Hirsch stock at prices between \$24.375 and \$24.75 per share based on the material non-public information he acquired from Evans concerning Hirsch's Estimated 1998 Earnings.

11. On September 8, 1997, Hirsch issued a press release announcing that its estimated earnings for the third quarter of its 1998 fiscal year would be \$.08 to \$.10 below analysts' projections. On September 9, 1997, the price of Hirsch stock decreased approximately 20% to close at \$17.875 per share. As a result of their unlawful sales of Hirsch stock, Evans avoided losses of \$40,562.50 and the Tippee avoided losses of \$40,375.00.

12. By virtue of the conduct alleged herein, Evans engaged, singly or in concert, directly or indirectly, in transactions, acts, practices, or courses of conduct 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 thereunder, 17 C.F.R. § 240.10b-5. Evans, unless permanently enjoined and restrained by this Court, will continue to engage in the acts, practices, and courses of conduct alleged herein, and in acts, practices, and courses of conduct of a similar type and object.

JURISDICTION AND VENUE

13. The Commission brings this action pursuant to 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 a judgment permanently enjoining Evans from engaging in the acts, practices, and courses of conduct alleged in this complaint. The Commission also seeks to require Evans to pay disgorgement, prejudgment interest, and civil penalties pursuant to Section 21A of the Exchange Act, 15 U.S.C § 78u-1. Finally, the Commission seeks any other relief that the Court may deem appropriate.

14. The Court has jurisdiction over this action pursuant to Sections 20(b) and 22 of the Securities Act, 15 U.S.C. §§ 77t(b) and 77v, and Sections 21(d), 21A, and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u-1, and 78aa.

15. Evans, singly or in concert, directly and indirectly, made use of the means and instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the acts, practices, and courses of conduct alleged herein. Certain of these acts, practices, and courses of conduct occurred in the Eastern District of New York. For instance, Evans placed the orders for the purchases and sales of Periphonics and Hirsch securities alleged herein in the Eastern District of New York. Additionally, the Law Firm is located in Uniondale, New York, which is within the Eastern District of New York.

DEFENDANT

16. **Raymond Evans**, age 66, was a partner in the Law Firm during the time when the Law Firm was outside counsel to Periphonics and Hirsch. Evans resigned from the Law Firm on June 1, 2002. Evans lives in Roslyn, New York, which is within the Eastern District of New York.

RELEVANT ENTITIES

17. **Periphonics**, now a wholly owned subsidiary of Nortel, is a Delaware corporation with headquarters in Bohemia, New York. In 1999, Periphonics developed, marketed, and supported products and services for computer telephony integration and for telecom enhanced network services. Prior to merging with Nortel, Periphonics common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act, and was traded on the NASDAQ National Market.

18. **Nortel** is a Canadian Corporation with headquarters in Ontario, Canada. Nortel provides telephony, data, wireless, and wireline products and services for the Internet. Nortel common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange and Toronto Stock Exchange.

19. **Hirsch** is a Delaware corporation with headquarters in Hauppauge, New York. Hirsch is a leading provider of electronic computer-controlled embroidery machinery and related products and services to the embroidery industry. Hirsch common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is traded on the NASDAQ National Market.

FACTUAL ALLEGATIONS

Evans' Law Firm Represented Periphonics in Merger Negotiations

20. At all relevant times, the Law Firm was outside legal counsel to Periphonics. Evans was the "billing partner" at the Law Firm for Periphonics matters and by virtue of that position was kept informed of the legal work performed by the Law Firm for Periphonics.

21. As an attorney for Periphonics, Evans owed to Periphonics' shareholders a duty of confidentiality and a duty not to trade Periphonics securities for personal gain on the basis of information obtained through the confidential relationship.

22. In October 1998, Periphonics and Nortel began merger discussions and executed a confidentiality agreement. The confidentiality agreement provided, among other things, that the parties would not disclose, without the prior written consent of both parties, the fact that merger negotiations were taking place or facts pertaining to the merger, including the status of the merger negotiations.

23. In January 1999, Nortel suspended the merger negotiations.

24. In June 1999, Nortel contacted Periphonics in order to resume merger negotiations.

25. On or about June 10, 1999, a Periphonics senior officer notified Evans that Nortel had contacted Periphonics indicating Nortel's interest in resuming merger negotiations and, in addition, discussed with Evans the confidentiality agreement between Nortel and Periphonics.

26. During June, July, and August 1999, Evans participated in numerous meetings with Periphonics officers, other lawyers at the Law Firm, and other persons concerning the negotiation of the merger between Periphonics and Nortel.

Evans Purchased Periphonics Stock Based Upon Material Non-Public Information Evans Acquired As Counsel For Periphonics

27. Between June 18 and July 1, 1999, on the basis of material non-public information concerning the merger discussions, Evans placed eight separate orders to purchase Periphonics stock. In total, Evans purchased 19,800 shares of Periphonics stock at prices between \$13.25 and \$16.75 per share.

28. On several occasions, Evans' purchases of Periphonics stock coincided with his participation in meetings concerning the merger discussions. For example, on June 17, 1999, according to Evans' own time records, Evans attended a meeting of Periphonics' board of directors, at which there were discussions concerning the prospective merger, including "1. Agreements related to management and director benefits in the event of a buy-out, and 2. Company meetings and discussions with acquirer."

29. The next morning, June 18, 1999, Evans placed two market orders, each to buy 2,000 shares of Periphonics stock. The orders were filled at a price of \$13.50 per share for 3,500 shares and \$13.375 for 500 shares.

30. On June 21, 1999, according to his time records, Evans "[r]eview[ed] notes from meeting regarding this transaction" and had a discussion "regarding various followup" with another attorney at the Law Firm who was actively involved in the merger negotiations. Evans' time records indicate that on June 23 and June 25, 1999, he had discussions with that other attorney at the Law Firm.

31. During the same time period, Evans placed orders to purchase Periphonics stock. On June 21, 1999, Evans placed a market order to buy 2,000 shares of Periphonics stock; on June 23, 1999, Evans placed a market order to purchase 2,000 shares of Periphonics stock; on June 24, 1999, Evans placed a market order to buy 3,000 shares of Periphonics stock; on June 25, 1999, Evans placed a market order to buy 1,500 shares of Periphonics stock; on June 30, 1999, Evans placed a market order to buy 3,500 shares of Periphonics stock; and on July 1, 1999, Evans purchased 3,800 shares of Periphonics stock. These orders were filled at prices ranging from \$13.25 to \$16.75 per share.

The Merger Announcement

32. On August 24, 1999, Periphonics and Nortel publicly announced the merger agreement between the two companies. On that day, Periphonics' trading volume increased over 191% and the price per share increased approximately 10%, to close at \$27.75 per share.

33. As a result of his unlawful purchases of Periphonics stock described above, Evans made illicit profits of at least \$221,762.50.

34. The information concerning the merger negotiations between Periphonics and Nortel was material and, until August 24, 1999, non-public.

Evans Obtained Material Non-Public Information About Hirsch's Estimated Earnings

35. In 1997, the Law Firm was outside legal counsel for Hirsch. Evans was one of the attorneys at the Law Firm who worked on matters concerning Hirsch. As an attorney for Hirsch, Evans had access to material non-public information about the company.

36. As an attorney for Hirsch, Evans owed to Hirsch's shareholders a duty of confidentiality and a duty not to trade Hirsch securities for personal gain on the basis of information obtained through the confidential relationship.

37. Between August 1997 and September 8, 1997, Evans participated in numerous meetings and discussions with senior Hirsch officers and employees about Hirsch's financial condition, including its estimated earnings for the third quarter of its 1998 fiscal year, which ended on October 31, 1997. For example, on August 28, 1997, according to Evans' own time records, he participated in a meeting with Hirsch officers at which the "third and fourth quarter projections" were discussed. On September 2, 1997, Evans had a meeting with another Law Firm attorney to discuss Hirsch's "forecasts." According to Hirsch's own internal estimates, the Estimated 1998 Earnings would be well below analysts' projections.

38. Evans believed that the negative information concerning the Estimated 1998 Earnings would cause the price of Hirsch's stock to decline when it was released to the public. Evans, who knew the Tippee held Hirsch stock, disclosed the negative information concerning the Estimated 1998 Earnings to the Tippee so the Tippee could sell his holdings of Hirsch stock before the public release of the negative earnings estimate and thereby avoid a financial loss as a result of the anticipated decline in the price of Hirsch stock. Thus, by disclosing the negative information concerning the Estimated 1998 Earnings to the Tippee, who was a relative, Evans bestowed a gift upon the Tippee.

Evans and the Tippee Avoided Losses by Selling Hirsch Stock Prior to the Public Announcement of the Company's Estimated Earnings

39. On September 2, 1997, Evans sold 4,000 shares of Hirsch stock at prices between \$24.375 and \$24.75 per share.

40. On September 3, 1997, Evans sold 2,125 shares of Hirsch stock at \$24.375 per share.

41. Evans sold his Hirsch stock based on the material non-public information about the Estimated 1998 Earnings that he obtained in his capacity as counsel for Hirsch.

42. On September 4, 1997, the Tippee sold 6,000 shares of Hirsch stock at prices between \$24.375 and \$24.75 per share.

43. The Tippee sold his Hirsch stock based on the material non-public information acquired from Evans concerning Hirsch's Estimated 1998 Earnings.

44. On September 8, 1997, Hirsch issued a press release announcing that its estimated earnings for the third fiscal quarter of 1998 would be \$.08 to \$.10 below analysts' projections. The next day, the price of Hirsch stock decreased approximately 20% to close at \$17.875 per share.

45. As a result of their unlawful sales of Hirsch stock described above, Evans avoided losses of at least \$40,562.50, and the Tippee avoided losses of at least \$40,375.00.

46. The information concerning the Estimated 1998 Earnings was material and, until September 8, 1997, non-public.

FIRST CLAIM FOR RELIEF
(Insider Trading in Periphonics Stock)

**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**

47. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 46 above.

48. By virtue of the conduct described above, Evans, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange: (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material facts 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; or (3) engaged in acts, practices, or courses of business which operated as a fraud or deceit upon the sellers of Periphonics securities.

49. As part and in furtherance of this violative conduct, Evans, in breach of his fiduciary duties to Periphonics' shareholders, or other similar duties arising out of a relationship of trust and confidence, purchased Periphonics common stock on the basis of material non-public information about the Periphonics merger.

50. Evans knew, or was reckless in not knowing, that the information concerning the Periphonics merger was material and non-public.

51. Evans knew, or was reckless in not knowing, that he was breaching a fiduciary or other similar duty arising out of a relationship of trust and confidence by making the purchases of Periphonics stock described in this complaint.

52. By reason of the acts and practices described above, Evans, singly or in concert, directly or indirectly, violated, and unless permanently enjoined will again violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

SECOND CLAIM FOR RELIEF
(Insider Trading in Hirsch Stock)

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, 17 C.F.R. § 240.10b-5

53. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 52 above.

54. By virtue of the conduct described above, Evans, directly and indirectly, in connection with the offer, purchase, or sale of securities, by the use of the means or instrumentalities of transportation or communication in interstate commerce, or of the mails, or of any facility of any national securities exchange: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or property by means of, or otherwise made, an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engaged in acts, transactions, practices, or courses of business which operated as a fraud or deceit upon the purchasers of Hirsch stock.

55. As part and in furtherance of this violative conduct, Evans, in breach of his fiduciary duties to Hirsch's shareholders, or other similar duties arising out of a relationship of trust and confidence, sold Hirsch stock on the basis of material non-public information about the

Estimated 1998 Earnings. In breach of these duties, Evans also conveyed this material non-public information to the Tippee.

56. Evans knew, or was reckless in not knowing, that the information concerning the Estimated 1998 Earnings was material and non-public.

57. Evans knew, or was reckless in not knowing, that he was breaching a fiduciary or other similar duty arising out of a relationship of trust and confidence by making the sales of Hirsch stock described in this complaint, and by disclosing material non-public information about Hirsch to the Tippee.

58. Evans received a personal benefit by disclosing material non-public information to the Tippee, which constituted a gift from Evans to the Tippee.

59. Evans is liable for the Tippee's financial gains or the losses the Tippee avoided as the result of the sales made by the Tippee based upon the material non-public information the Tippee obtained from Evans.

60. By reason of the acts and practices described above, Evans, singly or in concert, directly or indirectly, violated, and unless permanently 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, 17 C.F.R. § 240.10b-5.

RELIEF SOUGHT

WHEREFORE the plaintiff respectfully requests a final judgment:

A. Permanently enjoining Evans, his agents, servants, employees, and attorneys-in-fact, and all persons in active concert or participation with them, and each of them who receive actual notice thereof, from future violations of 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. Permanently enjoining Evans, his agents, servants, employees, and attorneys-in-fact, and all persons in active concert or participation with them, and each of them who receive actual notice thereof, from future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a);

C. Ordering Evans to disgorge his illegal trading profits and the amount of the losses avoided by Evans and the Tippee from the securities transactions alleged in this complaint to 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 thereunder, 17 C.F.R. § 240.10b-5, plus prejudgment interest thereon;

D. Ordering Evans to pay a civil penalty pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1; and

E. Such other and further relief as this Court may deem just and proper.

Dated: May 12, 2003

Respectfully submitted,



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