

THE UNITED STATES ATTORNEY'S OFFICE  
SOUTHERN DISTRICT *of* NEW YORK

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**Department of Justice**

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

Thursday, December 5, 2019

**Former Chief Executive Officer Of Publicly Traded Brand Management Company Charged With Accounting Fraud And Obstruction Of Justice**

**Former Chief Operating Officer Has Pled Guilty and Is Cooperating in the Government's Investigation**

Geoffrey S. Berman, the United States Attorney for the Southern District of New York, William F. Sweeney Jr., the Assistant Director-in-Charge of the New York Field Office of the Federal Bureau of Investigation ("FBI"), and Carl W. Hoecker, the Inspector General of the Office of Inspector General of the U.S. Securities and Exchange Commission ("SEC-OIG"), announced today the unsealing of an Indictment in Manhattan federal court charging NEIL COLE, the former chief executive officer of Iconix Brand Group, Inc. ("Iconix"), a publicly traded brand management company, with engaging in a scheme to fraudulently inflate Iconix's revenue and earnings per share and obstruct justice. The case is assigned to U.S. District Judge Edgardo Ramos.

Mr. Berman also announced today the unsealing of charges against Seth Horowitz, the former chief operating officer of Iconix, who pled guilty on December 2, 2019, and is cooperating with the Government.

COLE is expected to be presented and arraigned later today before U.S. Magistrate Judge Barbara C. Moses in Manhattan federal court.

United States Attorney Geoffrey S. Berman said: "As alleged, Neil Cole entered into illegal secret agreements with joint venture partners to artificially inflate the value to his company. Further, as alleged, Cole lied to outside auditors and to the SEC, and took steps to destroy evidence. Now Neil Cole is in custody and facing serious criminal charges for his alleged conduct. This is the third accounting fraud case brought by our Office in the last four months, which illustrates both the pervasiveness of this crime and my Office's commitment to policing it."

FBI Assistant Director William F. Sweeney Jr. said: "As alleged, Cole and Horowitz falsely represented the financial standing of Iconix's revenue at the expense of its shareholders and the investing public. To aggravate matters further, they allegedly destroyed and concealed evidence from the SEC during their inquiry into the company's joint ventures. This is not a crime to be taken lightly, and as our charges today prove, this type of alleged dishonorable behavior will not go unpunished."

SEC Inspector General Carl W. Hoecker said: “We are committed to tracking down and bringing to justice those who are alleged to have deliberately undermined the integrity of the SEC’s mission. The charges announced by the U.S. Attorney’s Office are a result of the superb collaborative efforts of our law enforcement partners.”

According to the allegations contained in the Indictment[1] unsealed today in Manhattan federal court:

Iconix, whose shares traded on the NASDAQ, was in the business of acquiring various brands, including clothing and fashion brands, and then licensing those brands to retailers, wholesalers, and suppliers, who, in turn, produced and sold clothing and other products bearing the brand names.

Iconix utilized joint ventures (“JVs”) to profit from its brands in foreign markets. With respect to these JVs, Iconix transferred ownership of a trademark or brand to the JV while maintaining a 50 percent ownership interest in the JV itself. The other party involved in the JV purchased a 50 percent interest in the JV from Iconix. As part of the JV agreements, each JV partner was generally entitled to 50 percent of the JV’s licensing revenue. When it entered into a JV, Iconix recognized as revenue the buy-in purchase price paid by the JV partner, less Iconix’s cost basis in the trademarks.

Among the most critical financial metrics disclosed in Iconix’s public filings with the SEC were Iconix’s quarterly and annual revenue and non-GAAP diluted earnings per share (“EPS”). Iconix executives, including COLE, publicly identified revenue and EPS as the principal metrics demonstrating Iconix’s growth. They also touted Iconix’s consistent record of revenue and earnings growth and of meeting or exceeding Wall Street analyst consensus with respect to these metrics.

#### *The Accounting Fraud Scheme*

COLE and Horowitz engaged in a scheme to falsely inflate Iconix’s reported revenue and EPS by orchestrating a series of “round trip” transactions in which COLE and Horowitz induced a JV partner, a Hong Kong-based international apparel licensing company (“Company-1”), to pay artificially inflated buy-in purchase prices for JV interests, with the understanding that Iconix would then reimburse Company-1 for the overpayments. COLE and Horowitz executed the scheme for the purpose of enabling Iconix to report fraudulently inflated revenue and EPS figures based on the inflated buy-in purchase prices it obtained from Company-1.

COLE arranged for Iconix to enter into three JVs with Company-1 that included inflated buy-in purchase prices from Company-1: (1) the Southeast Asia JV, which closed on or about October 1, 2013 (“SEA-1”), (2) the Southeast Asia first amendment, which closed on or about June 30, 2014 (“SEA-2”), and (3) the Southeast Asia second amendment, which closed on or about September 17, 2014 (“SEA-3”), (collectively, the “SEA JVs”). Each of the SEA JVs involved a fraudulent “round trip” transaction, lacking in economic substance, in which Company-1 paid an artificially inflated buy-in purchase price for its interest in the JV, in exchange for COLE’s agreement that Iconix would give back the inflated portion of the purchase price to Company-1. COLE and Horowitz hid from Iconix’s lawyers and outside auditors that COLE had reached an understanding with Company-1 to artificially increase the consideration Company-1 paid Iconix in exchange for COLE’s agreement to round-trip the overpayment back to Company-1.

Through the scheme, COLE and Horowitz caused Iconix to report fraudulently inflated revenue and EPS figures to the investing public. COLE and Horowitz did so, in part, to ensure that the reported figures met analyst consensus and to fraudulently convey the impression to the investing public that Iconix was growing quarter after quarter, as COLE had touted to the investing public. Absent the false inflation of revenue from SEA-2 and SEA-3, Iconix would have missed its quarterly revenue consensus in the second and third quarters of 2014 and its annual revenue consensus for the full year 2014. Absent the false inflation of EPS from SEA-2 and SEA-3, Iconix would have missed its annual non-GAAP diluted EPS consensus for the full year 2014.

## Obstruction of Justice

In late 2014 and early 2015, the SEC Division of Corporate Finance (“Corp Fin”) conducted an inquiry into Iconix’s accounting treatment for the formation of certain Iconix international JVs, including the SEA JVs. Although the SEC directed Iconix to disclose to the SEC the “business purpose” and material terms of the SEA JVs, COLE intentionally and falsely omitted from an Iconix response letter to the SEC that Company-1 had agreed to inflate the purchase prices for SEA-2 and SEA-3 by \$5 million and \$6 million, respectively, in exchange for COLE’s secret agreement that Iconix would reimburse Company-1 for these overpayments. COLE also took steps during the Corp Fin inquiry to destroy and conceal relevant evidence, including by deleting emails related to the SEA JVs and directing Horowitz to do the same, in order to prevent the scheme from being detected.

\* \* \*

COLE, 62, of New York, New York, was charged in the Indictment with one count of conspiracy to commit securities fraud, make false filings with the SEC, and improperly influence the conduct of audits; one count of securities fraud; six counts of making false filings with the SEC; one count of improperly influencing the conduct of audits; and one count of conspiracy to destroy, alter, and falsify records in federal investigations. The conspiracy charges carry a maximum prison term of five years. The charges of securities fraud, making false filings with the SEC, and improperly influencing the conduct of audits each carry a maximum prison term of 20 years.

The maximum potential sentences in this case are prescribed by Congress and are provided here for informational purposes only, as any sentence will be determined by the judge.

The allegations contained in the Indictment are merely accusations, and the defendant is presumed innocent unless and until proven guilty.

Mr. Berman praised the investigative work of the FBI and the SEC Office of the Inspector General. Mr. Berman also thanked the SEC Division of Enforcement, which brought a separate civil action.

This case is being handled by the Office’s Securities and Commodities Fraud Task Force. Assistant U.S. Attorneys Edward A. Imperatore, Scott A. Hartman, and Jared Lenow are in charge of the prosecution.

[1] As the introductory phrase signifies, the entirety of the text of the Indictment and the descriptions of the Indictment constitute only allegations, and every fact described should be treated as an allegation.

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**Attachment(s):**

[Download neil\\_cole\\_stamped\\_indictment\\_redacted.pdf](#)

[Download seth\\_horowitz\\_information.pdf](#)

**Topic(s):**

Securities, Commodities, & Investment Fraud

**Component(s):**

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