

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

AIRTRAC, INC., CLARENCE
FRIEND, and CHRISTOPHER BRYAN,

Defendants.

Case No.: SACV 06-0582-JVS (RNBx)

**SECOND REVISED FINAL JUDGMENT OF
PERMANENT INJUNCTION,
DISGORGEMENT, PREJUDGMENT
INTEREST AND CIVIL PENALTIES
AGAINST DEFENDANTS AIRTRAC, INC.
AND CLARENCE FRIEND**

Date: December 17, 2007
Time: 1:30 p.m.
Place: Courtroom 10 C
Ronald Reagan Federal
Bldg. & Courthouse
411 West 4th Street
Santa Ana, CA 92701

1 The Motion of Plaintiff, Securities and Exchange Commission
2 (“Commission”), pursuant to Rule 56, Fed. R. Civ. P., for Summary Judgment in
3 favor of the Commission and against Defendant AirTrac, Inc. (“AirTrac”) and
4 Clarence Friend (“Friend”) came before the Court for hearing on December 17,
5 2007. The Court, having considered the Commission’s Motion, the Memorandum
6 of Points and Authorities, the Declarations including Exhibits relating thereto, the
7 Statement of Uncontroverted Facts and Conclusions of Law, and other documents
8 filed in support of the motion, all documents filed in opposition to the Motion and
9 all other evidence and argument presented regarding the motion, finds that:

10 I.

11 IT IS HEREBY ORDERED that the Commission’s Motion for Summary
12 Judgment against AirTrac and Friend is GRANTED.

13 II.

14 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
15 that AirTrac and Friend and their agents, servants, employees, attorneys, and all
16 persons in active concert or participation with them who receive actual notice of
17 this Final Judgment by personal service or otherwise are permanently restrained
18 and enjoined from violating Section 5 of the Securities Act of 1933 (“Securities
19 Act”), 15 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable
20 exemption:

- 21 (a) Unless a registration statement is in effect as to a security, making use
22 of any means or instruments of transportation or communication in
23 interstate commerce or of the mails to sell such security through the
24 use or medium of any prospectus or otherwise;
- 25 (b) Unless a registration statement is in effect as to a security, carrying or
26 causing to be carried through the mails or in interstate commerce, by
27 any means or instruments of transportation, any such security for the
28 purpose of sale or for delivery after sale; or

1 (c) Making use of any means or instruments of transportation or
2 communication in interstate commerce or of the mails to offer to sell
3 or offer to buy through the use or medium of any prospectus or
4 otherwise any security, unless a registration statement has been filed
5 with the Commission as to such security, or while the registration
6 statement is the subject of a refusal order or stop order or (prior to the
7 effective date of the registration statement) any public proceeding or
8 examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

9 III.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
11 that AirTrac and Friend and their agents, servants, employees, attorneys, and all
12 persons in active concert or participation with them who receive actual notice of
13 this Final Judgment by personal service or otherwise are permanently restrained
14 and enjoined from violating Section 17(a) of the Securities Act, 15 U.S.C. §
15 77q(a), in the offer or sale of any security by the use of any means or instruments
16 of transportation or communication in interstate commerce or by use of the mails,
17 directly or indirectly:

- 18 (a) to employ any device, scheme, or artifice to defraud;
- 19 (b) to obtain money or property by means of any untrue statement of a
20 material fact or any omission of a material fact necessary in order to
21 make the statements made, in light of the circumstances under which
22 they were made, not misleading; or
- 23 (c) to engage in any transaction, practice, or course of business which
24 operates or would operate as a fraud or deceit upon the purchaser.

25 IV.

26 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that AirTrac
27 and Friend and their agents, servants, employees, attorneys, and all persons in
28 active concert or participation with them who receive actual notice of this Final

1 Judgment by personal service or otherwise are permanently restrained and enjoined
2 from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act
3 of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
4 thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of
5 interstate commerce, or of the mails, or of any facility of any national securities
6 exchange, in connection with the purchase or sale of any security:

7 (a) to employ any device, scheme, or artifice to defraud;

8 (b) to make any untrue statement of a material fact or to omit to state a
9 material fact necessary in order to make the statements made, in the
10 light of the circumstances under which they were made, not
11 misleading; or

12 (c) to engage in any act, practice, or course of business which operates or
13 would operate as a fraud or deceit upon any person.

14 V.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
16 that Friend and his agents, servants, employees, attorneys, and all persons in active
17 concert or participated with them who receive actual notice of this Final Judgment
18 by personal service or otherwise are permanently restrained and enjoined from
19 violating Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), by, directly or
20 indirectly, in the absence of any applicable exemption, engaging in the business of
21 a broker or a dealer by making use of the mails or any means or instrumentality of
22 interstate commerce to induce the purchase or sale of, any security (in the absence
23 of an applicable exemption), without being associated with a broker-dealer that has
24 been registered with the Commission.

25 VI.

26 IT IS FURTHER ORDERED that AirTrac shall be liable for disgorgement
27 of \$1,759,542.28, representing proceeds gained as a result of the conduct alleged in
28 the Complaint, together with prejudgment interest thereon in the amount of

1 \$115,859.70, and a third-tier civil penalty in the amount of \$130,000.00 pursuant
2 to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of
3 the Exchange Act, 15 U.S.C. § 78u(d)(3). AirTrac shall receive a credit for any
4 sums paid by Friend on his disgorgement and/or interest obligations. AirTrac shall
5 satisfy this obligation by paying \$2,005,401.98 within eleven (11) business days
6 after entry of this Final Judgment by certified check, bank cashier's check, or
7 United States Postal money order payable to the Securities and Exchange
8 Commission. The payment shall be delivered or mailed to the Office of Financial
9 Management, Securities and Exchange Commission, Operations Center, 6432
10 General Green Way, Mail Stop O-3, Alexandria, Virginia 22312, and shall be
11 accompanied by a letter identifying AirTrac as a Defendant in this action, setting
12 forth the title and civil action number of this action and the name of this Court, and
13 specifying that payment is made pursuant to this Final Judgment. AirTrac shall
14 pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. §
15 1961. AirTrac shall simultaneously transmit photocopies of such payment and
16 letter to the Commission's counsel in this action.

17 VII.

18 IT IS FURTHER ORDERED that Friend shall be liable for disgorgement of
19 \$273,487.87, representing proceeds gained as a result of the conduct alleged in the
20 Complaint, together with prejudgment interest thereon in the amount of
21 \$18,008.22, and a third-tier civil penalty in the amount of \$130,000.00 pursuant to
22 Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the
23 Exchange Act, 15 U.S.C. § 78u(d)(3). Friend shall receive a credit for any sums
24 paid by AirTrac on its disgorgement and/or interest obligations up to the amounts
25 owed by Friend. Friend shall satisfy this obligation by paying \$421,496.09 within
26 eleven (11) business days after entry of this Final Judgment by certified check,
27 bank cashier's check, or United States Postal money order payable to the Securities
28 and Exchange Commission. The payment shall be delivered or mailed to the

1 Office of Financial Management, Securities and Exchange Commission,
2 Operations Center, 6432 General Green Way, Mail Stop O-3, Alexandria, Virginia
3 22312, and shall be accompanied by a letter identifying Friend as a Defendant in
4 this action, setting forth the title and civil action number of this action and the
5 name of this Court, and specifying that payment is made pursuant to this Final
6 Judgment. Friend shall pay post-judgment interest on any delinquent amounts
7 pursuant to 28 U.S.C. § 1961. Friend shall simultaneously transmit photocopies of
8 such payment and letter to the Commission's counsel in this action.

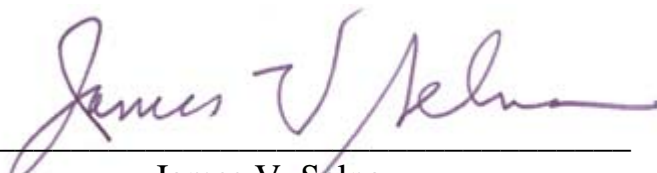
9 VIII.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this
11 Court shall retain jurisdiction of this matter for the purposes of enforcing the terms
12 of this Final Judgment and all orders and decrees which have been entered or may
13 be entered herein, and to grant such other relief as the Court may deem necessary
14 and just.

15 IX.

16 There being no just reason for delay, pursuant to Rule 54(b) of the Federal
17 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment
18 forthwith and without further notice.

19 Dated: April 02, 2008

20 
21 _____
22 James V. Selna
23 UNITED STATES DISTRICT JUDGE

24 Presented by:

25 _____
26 Molly M. White
27 Gregory C. Glynn
28 Attorneys for Plaintiff
Securities and Exchange Commission