

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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US DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff

Civil Action No.

v.

ROBERT D. HAPP,

Defendant.

00 12051 REK

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges that:

SUMMARY

1. This matter involves Robert D. Happ's ("Happ") illegal insider trading in the securities of Galileo Corporation ("Galileo"), formerly a Sturbridge, Massachusetts manufacturer of fiber-optic and electro-optic products, while he was a director of Galileo and chairman of the board of directors' audit committee. In or about and between June 25, 1998 and June 29, 1998, Galileo's chief executive officer ("CEO") telephoned Happ to schedule a meeting with him to discuss difficulties and problems Galileo had experienced during the fiscal quarter ending June 30, 1998 ("third quarter"). During these telephone contacts, the CEO informed Happ that the purpose of the meeting was to discuss problems Galileo had experienced in the third quarter. On June 29, 1998, after learning that Galileo was having trouble in the third quarter and just one day before the scheduled meeting, Happ sold all of his 4,000 shares of Galileo stock. Happ's sale of Galileo stock was based upon the material, nonpublic information Galileo's CEO conveyed to him during their prior telephone contacts. On July 23, 1998, Galileo publicly announced an

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assortment of bad news, including a loss of \$3.3 million, or \$.41 per share, for the third quarter. Following this public announcement, Galileo's stock price declined approximately 64%, from \$8.25 to \$3. As a result of his illegal sale on June 29, 1998, Happ avoided losses of approximately \$34,758.

2. By virtue of his conduct, Happ violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77q(a)] and 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]. Accordingly, the Commission seeks entry of a permanent injunction against Happ prohibiting him from future violations of the federal securities laws. The Commission also seeks disgorgement in an amount equal to the losses Happ avoided as a result of his illegal trading, plus prejudgment interest thereon, and civil monetary penalties of up to three times the amount of the losses avoided.

### **JURISDICTION**

3. The Commission brings this action pursuant to the enforcement authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. 77t(b)] and Sections 21(d) and 21A of the Exchange Act [15 U.S.C. 78u(d) and 78u-1].

4. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. 77v(a)] and Sections 21(e), 21A and 27 of the Exchange Act [15 U.S.C. 78u(e), 78u-1 and 78aa]. Additionally, the acts and transactions alleged herein occurred within the District of Massachusetts.

5. Happ, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, of the mails, of the facilities of a national securities exchange, and/or of the

means and instruments of transportation or communication in interstate commerce, in connection with the acts, practices, transactions, and courses of business alleged herein.

6. Happ, unless enjoined, will continue to engage in the acts, practices, transactions, and courses of business alleged herein, or in acts, practices, and courses of business of similar object and purpose.

#### **THE DEFENDANT AND RELEVANT ENTITY**

7. Happ, age 59, is a resident of Palm Beach, Florida and also maintains a residence in Weston, Massachusetts. In June and July of 1998, Happ lived in his Weston, Massachusetts home. From 1995 to May 2000, Happ was a director of Galileo and the chairman of Galileo's board of directors' audit committee.

8. At all relevant times, Galileo was a Delaware corporation headquartered in Sturbridge, Massachusetts that manufactured fiber-optic products. At all relevant times, Galileo's stock was registered with the Commission under Section 12(g) of the Exchange Act and was quoted on the NASDAQ National Market System. In September 1999, Galileo changed its name to NetOptix Corporation and on May 12, 2000, Corning, Inc. acquired NetOptix Corporation, which is currently located in Natick, Massachusetts.

#### **FACTS**

##### **GALILEO'S THIRD QUARTER PROBLEMS**

9. From mid-June 1998 continuing through June 26, 1998, Galileo's CEO became aware of a series of material adverse developments that would have a significant impact on Galileo's third quarter financial results.

10. By mid-June, 1998, Galileo's CEO and chief financial officer ("CFO") knew that Galileo's earnings for the third quarter would be significantly below expectations due, at least in part, to a significant decrease in orders across certain of Galileo's major product lines.

11. On June 15, 1998, Galileo notified BankBoston that Galileo believed it would be in violation of the covenants of its bank loan due to its failure to meet specified profit projections. A violation of the bank loan covenants gave BankBoston the right to accelerate the \$10-12 million loan.

12. On June 17, 1998, Galileo's CEO and CFO determined that a large receivable owed to Galileo by one of its distributors was potentially uncollectible, and therefore, Galileo might have to reduce its earnings by \$984,000 in the third quarter.

13. On June 25, 1998, Galileo's CEO learned that Galileo's earnings also would be adversely affected by its failure to complete an important marketing agreement before the end of the third quarter. Prior to June 25, 1998, Galileo had expected that the agreement would have been consummated, and resulted in a \$750,000 payment, in the third quarter.

14. On June 26, 1998, Galileo's CEO learned information that led him to conclude that the U.S. Department of Defense would continue foreign shipment restrictions on some of Galileo's products. Galileo's CEO knew that Galileo's third quarter earnings would be negatively impacted because Galileo could not recognize income of approximately \$400,000 on ordered, finished products which would remain unshipped due to the continuing foreign shipment restrictions.

15. As a result of these developments, by on or about June 25, 1998, Galileo's CEO knew that Galileo's third quarter financial results would be significantly below expectations and he called Happ, the head of Galileo's audit committee, to discuss these problems.

#### **HAPP'S ILLEGAL TRADING**

16. On or about Thursday, June 25, 1998, just five days before the close of the third quarter, Galileo's CEO telephoned Happ and left a message for Happ on Happ's home answering machine in Weston, Massachusetts. In the message, Galileo's CEO informed Happ that Galileo had experienced problems in the third quarter and that he needed to talk to Happ. Galileo's CEO's message conveyed to Happ, in general terms, that the company was experiencing difficulties that he wanted to discuss with Happ. In the message, Galileo's CEO requested that Happ meet with him on the following Monday or Tuesday to discuss the problems. Galileo's CEO infrequently requested meetings with individual board members.

17. After the call on June 25, 1998, Galileo's CEO and Happ exchanged other telephone messages including, a call on Friday, June 26, 1998 from Happ's Weston, Massachusetts home to Galileo and a call from Galileo's CEO's home on Sunday, June 28, 1998, to Happ's home, during which the CEO left a message again requesting that Happ meet with him.

18. According to telephone records, a telephone call was made from Happ's home telephone in Weston, Massachusetts to Galileo at 9:57 a.m. on June 29, 1998 and a telephone call was made from Galileo to Happ's home telephone at 10:34 a.m. on June 29, 1998.

19. As a result of telephone contacts between June 25, 1998 and June 29, 1998, Galileo's CEO and Happ arranged for Happ to meet with Galileo's CEO and CFO on June 30, 1998 at Galileo.

20. As early as April 20, 1998, Happ knew Galileo was experiencing financial problems and knew of the potential problems that could later affect the third quarter, including the foreign shipment restrictions on certain Galileo products and the existence of a large overdue receivable. This is the same receivable, which the CEO and CFO later determined was potentially uncollectible on June 17, 1998. Given Happ's earlier knowledge of Galileo's financial problems and the repeated telephone messages Galileo's CEO left for him between June 25, 1998 through June 29, 1998 about third quarter problems and his need to meet with Happ on June 30, 1998, Happ knew, or was reckless in not knowing, that Galileo's financial problems had worsened.

21. On June 29, 1998 at approximately 11:38 a.m., just over an hour after Happ's last telephone contact with Galileo, Happ placed an order to sell all of his 4,000 shares of Galileo stock. The order was executed at prices ranging from \$11.625 to \$12 per share. Happ realized net proceeds of \$46,758 from these sales.

22. As a director at Galileo, Happ was subject to the company's policies and procedures concerning securities transactions and business ethics, which prohibited insider trading and required that employees pre-clear all trades of Galileo stock. These policies were explained to Galileo's directors and specifically discussed at board meetings.

23. Although Happ was subject to Galileo's policies concerning insider trading, he did not pre-clear his June 29, 1998 trades with anyone at Galileo.

24. As a director at Galileo, Happ owed a duty of confidentiality to Galileo, and its shareholders, not to disclose or use material nonpublic information for his personal gain, including information about Galileo's difficulties and problems in the third quarter.

**GALILEO'S PUBLIC ANNOUNCEMENT OF ITS THIRD QUARTER RESULTS**

25. On June 30, 1998, Galileo's CEO and CFO met with Happ and discussed Galileo's third quarter financial problems and their negative impact on earnings. At the meeting, Happ told Galileo's CEO that he had recently sold his Galileo shares because he had some bills that were due.

26. Even though Happ told the CEO that he sold his Galileo shares because he had some bills that were due, Happ did not withdraw any funds from his brokerage account until January of 1999. Also, on August 7, 1998, after the price of Galileo's stock had dropped dramatically, Happ purchased 5,000 shares of Galileo stock.

27. On July 15, 1998, at a Galileo board of directors meeting, Galileo's CEO and CFO told the board about the negative earnings and other adverse events that had affected Galileo in the third quarter.

28. After the close of trading on July 23, 1998, Galileo issued a press release announcing an assortment of bad news, including that the company had experienced greater than expected losses during its fiscal third quarter and that it was planning to drop one of its major product lines. In the press release, Galileo reported revenues of \$12,106,000 for the quarter, with losses of \$3,330,000, or \$.41 per share.

29. Following the public announcement, Galileo's stock price declined approximately 64% from its July 23, 1998 closing price of \$8.25 per share, to a July 24, 1998 closing price of \$3 per share.

30. As a result of his illegal trading on June 29, 1998, Happ avoided losses totaling approximately \$34,758.

31. Prior to Galileo's July 23, 1998 public announcement, information concerning the difficulties and problems Galileo was experiencing in the third quarter was nonpublic and Galileo's management intended that this information be kept confidential.

**HAPP'S FALSE AND INCONSISTENT STATEMENTS**

32. During the Commission's investigation of Happ's trading, Happ made a number of false and/or inconsistent statements, which include the following:

a. On January 25, 1999, during an informal interview with Commission staff, Happ stated that he routinely pre-cleared his trades of Galileo stock to make sure he was not trading in a closed period. Later, during investigative testimony on January 12, 2000, Happ claimed that he was not aware of any Galileo trading policies in 1998 and he never pre-cleared his trades;

b. During his investigative testimony, Happ falsely claimed that substantially all of the discussion with Galileo's CEO and CFO at the June 30, 1998 meeting, which the CEO had telephoned him to schedule, was about positive developments in connection with the anticipated marketing agreement referred to in paragraph 13 above. In fact, on June 30, 1998, Galileo's CEO and CFO told Happ about recent negative developments at Galileo; and

c. During his investigative testimony, Happ testified that he had not attempted to obtain transcripts of anyone else's testimony in the investigation when, in fact, he had.



**FIRST CLAIM**

**Unlawful Insider Trading  
(Violation of Securities Act § 17(a))**

33. Plaintiff Commission repeats and realleges Paragraphs 1 through 32 above.

34. On or about June 29, 1998, Happ, while in possession of information that he knew, or was reckless in not knowing, was material and nonpublic, used that information when he sold his shares of Galileo securities.

35. By reason of the foregoing, Happ, singly or in concert with others, directly or indirectly, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions 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 (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchaser of securities in violation of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)].

**SECOND CLAIM**

**Unlawful Insider Trading  
(Violation of Exchange Act § 10(b) and Rule 10b-5)**

36. Plaintiff Commission repeats and realleges Paragraphs 1 through 32 above.

37. On or about June 29, 1998, Happ, while in possession of information that he knew, or was reckless in not knowing, was material and nonpublic, used that information when he sold his shares of Galileo securities.

38. By reason of the foregoing, Happ, singly or in concert with others, directly or indirectly, in connection with the purchase or sale of securities, by the use of any means and instrumentalities of interstate commerce, or of the mails, or any facility of any national securities exchange: (a) employed devices, schemes, or artifices to defraud; (b) 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; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any persons, including purchasers or sellers of Galileo's securities in violation 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**, the Commission respectfully requests that this Court:

**I.**

Issue a Final Judgment of Permanent Injunction permanently restraining and enjoining Defendant Happ, his agents, servants, employees, attorneys, successors and assigns, and each of them, and all persons in active concert or participation with them, and each of them who receive actual notice of the Final Judgment by personal service or otherwise, from directly, or indirectly, violating Section 17(a) of the Securities Act [15 U.S.C. 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder.

**II.**

Issue an Order requiring Defendant Happ to pay disgorgement in an amount equal to the losses avoided as a result of his illegal trading, plus prejudgment interest thereon.

**III.**

Issue an Order requiring Defendant Happ to pay civil penalties under the Insider Trading Sanctions Act of 1984, codified at Section 21A of the Exchange Act, as amended [15 U.S.C. 78u-1(a)], of up to three times the amount of the losses he avoided as a result of his illegal trading.

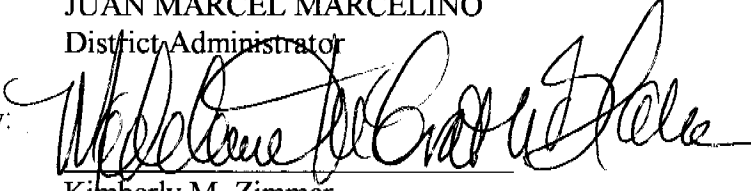
**IV.**

Grant such other relief as this Court deems just and equitable under the circumstances.

Respectfully submitted,

JUAN MARCEL MARCELINO  
District Administrator

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