

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

United States District Court
Southern District of Texas
FILED

MAY 12 2000

MICHAEL N. MILBY CLERK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

**Y2K HIGHWAY, INC. and
ROBERT J. KUNTZ**

Defendants.

Civil Action No.: **C - 00 - 187**

United States District Court
Southern District of Texas
FILED

MAY 12 2000

MICHAEL N. MILBY CLERK

COMPLAINT

Plaintiff, United States Securities and Exchange Commission ("Commission"), for its Complaint against Defendants Y2K Highway, Inc. ("Y2K" or the "company") and Robert J. Kuntz ("Kuntz"), alleges as follows:

SUMMARY

1. In this action, the Commission charges Defendants Y2K and Kuntz, its chief executive officer, with perpetrating an investment fraud using the Internet and other means to target individuals throughout the United States and numerous foreign countries.

2. In the course of offering and selling Y2K's unregistered securities, the Defendants made numerous misrepresentations and omissions of material fact concerning, among other things, Y2K's business activities and prospects, its potential revenue and its available funding. The Defendants falsely represented, for example, that the company was in partnership negotiations with AT&T Broadband & Internet Services, and other major Internet businesses and cable companies. In reality, no partnership discussions were ever entertained between Y2K and these companies.

3. By engaging in the conduct detailed in this Complaint, the Defendants, directly or indirectly, singly or in concert, have engaged, and, unless enjoined and restrained, will

continue to 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 Rule 10b-5, [17 C.F.R. §240.10b-5], promulgated thereunder.

JURISDICTION AND VENUE

4. Y2K common stock offered and sold by the Defendants, and the Y2K convertible promissory notes offered by the Defendants, constitute “securities” under Section 2(1) of the Securities Act, [15 U.S.C. §77b], and Section 3(a)(10) of the 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 preliminarily and permanently enjoin Defendants from future violations of the federal securities laws. To prevent further investor losses, the Commission seeks an order of this Court which: 1) preliminarily and permanently enjoins Defendants Y2K and Kuntz, 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)], of Section 10(b) of the Exchange Act, [15 U.S.C. §78j(b)], and of Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]; 2) requires Y2K and Kuntz to disgorge their ill-gotten gains plus prejudgment interest; 3) freezes the assets of Y2K and Kuntz, which were received directly or indirectly from Y2K investors; 4) orders the Defendants to provide an accounting; 5) prohibits the destruction of records; and 6) provides such other equitable relief that may be deemed appropriate. In addition, the Commission seeks civil penalties 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)].

6. This Court has jurisdiction over this action, and venue is proper, pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77(b), 77t(d), and 77v(a)], and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 77u(e) and 78aa].

7. The Defendants, directly or indirectly, singly or in concert, 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 Southern District of Texas.

DEFENDANTS

8. **Y2K Highway, Inc.**, a Texas corporation located in Corpus Christi, Texas, was incorporated on October 13, 1999. In December 1999, the Pennsylvania Securities Commission issued a cease-and-desist order against Y2K and Kuntz for the offer and sale of unregistered securities in that state. Y2K securities are not registered with the Commission or any state.

9. **Robert J. Kuntz**, age 31, and a resident of Corpus Christi, is the founder, chief executive officer and a director of Y2K.

THE DEFENDANTS' SCHEME TO DEFRAUD

10. In 1997, Y2K began operating as a small Internet company, offering resource marketing tools and web page designs. In mid-1999, the company purportedly began development of a technology that would enable "entire homes to be wired and connected to the Internet." The company has no patent or patent application pending for this supposed technology, and has generated no revenues from it.

11. From June 1999 to March 2000, the Defendants offered and sold shares of unregistered Y2K common stock, raising approximately \$275,000 from approximately 360 investors located in 25 states and 6 foreign countries. While the Defendants' methods of offering and selling these securities varied, they all included the use of false representations of material

fact, and failed to disclose material information, as detailed below. The methods of soliciting investors included the following:

a. The Defendants solicited persons to invest in an “Executare Membership Program” offered by the Defendants, which purportedly allowed participants to have access to free Internet advertising and obtain unregistered “free” Y2K common stock in return for a payment of funds to Y2K. Notwithstanding, numerous participants in the program paid funds to Y2K solely to receive its common stock, relying upon the false representations set forth below.

b. The Defendants offered and paid a ten percent commission to any person who recruited participants in the Executare Program, which facilitated the distribution of unregistered Y2K stock.

c. The Defendants conducted a general solicitation of prospective investors with “spammed” electronic mail, that is, misleading and unsolicited Internet communications, which were calculated to attract investments in Y2K.

d. The Defendants maintained an Internet web site, which was visited by thousands of prospective investors. The site contained numerous false representations as detailed below.

12. In addition, from April 2000 to May 5, 2000, the Defendants offered Y2K stock and convertible promissory notes through the public distribution of a “Private Placement Memorandum.”

13. Y2K has not earned any profits since its inception and, throughout the relevant period, had no significant revenue.

THE DEFENDANTS’ MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACT

14. In connection with the Defendants’ initial securities offering, the Defendants’ made material misrepresentations and omissions, including, but not limited to:

a. that Y2K had pending partnership negotiations with major communication firms, including AT&T Broadband & Internet Services, Vario.Com, Broadcast.Com, MTV.Com, Delta Technologies, QVC, Inc., and Peapod.Com (“\$50 million deal”), when, in fact, no partnership negotiations had taken place or were even scheduled to take place.

b. that Y2K planned to conduct an initial public offering of its stock in the near future, which would generate enormous profits for shareholders, when, in fact, the Defendants had not taken any meaningful steps to conduct such an offering.

c. that Y2K had been pre-qualified for \$20 million in funding by a venture capital firm, when, in fact, no pre-qualification had been obtained and no venture capital agreement was reached.

d. that Y2K’s monthly revenues would reach \$20 million within one year, when, in fact, the Defendants had no reasonable basis for this projection.

e. that Y2K had a “huge potential to become worth ‘Billions’ of dollars,” when, in fact, the Defendants had no reasonable basis for this projection.

f. that Y2K was a “million-dollar Cyber-Giant,” when, in fact, since its inception, Y2K had not generated any significant revenue and had never made a profit.

15. In connection with the Defendants’ second securities offering, the Defendants made material misrepresentations and omissions, including, but not limited to:

a. that in 1999, Y2K had “revenues” of \$394,278, without disclosing that approximately 70% of the 1999 revenue figure represented proceeds from sale of Y2K’s stock.

b. that proceeds from the second securities offering would be used to fund a rescission offer to earlier dissatisfied Y2K investors.

CAUSES OF ACTION

FIRST CLAIM

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

16. The Commission repeats and realleges paragraphs 1 through 15 of this Complaint and incorporates them herein by reference as if set forth *verbatim*.

17. Y2K and Kuntz, 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.

18. As a part of and in furtherance of their scheme, Y2K and Kuntz, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, a web site, investor and other correspondence, and made oral representations 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.

19. The Defendants made the above-referenced misrepresentations and omissions knowingly or recklessly disregarding the truth.

20. By reason of the foregoing, Defendants Y2K and Kuntz have 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].

SECOND CLAIM

Violations of Section 17(a)(1) of the Securities Act

21. The Commission repeats and realleges paragraphs 1 through 15 of this Complaint and incorporates them herein by reference as if set forth *verbatim*.

22. Defendants Y2K and Kuntz, directly or indirectly, in 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, have: (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 light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

23. As part of and in furtherance of this scheme, the Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, a web site, investor and other correspondence, and made oral presentations, which contained untrue statements of material fact 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 statements and omissions set forth above.

24. The Defendants made the above-referenced misrepresentations and omissions knowingly or recklessly disregarding the truth.

25. By reason of the foregoing, Defendants Y2K and Kuntz have violated, and unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)].

THIRD CLAIM

Violations of Sections 17(a)(2) and (3) of the Securities Act

26. The Commission repeats and realleges paragraphs 1 through 15 of this Complaint and incorporates them herein by reference as if set forth *verbatim*.

27. Defendants Y2K and Kuntz, directly or indirectly, in 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, have obtained money and property by means of untrue statements of material fact and by 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.

28. The Defendants, directly or indirectly, in 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, have engaged in transactions, practices and courses of business, which operated and will operate as a fraud and deceit upon purchasers.

29. As part of and in furtherance of this scheme, the Defendants, directly and indirectly, prepared, disseminated or used contracts, promotional materials, a web site, investor and other correspondence and made oral presentations which contained untrue statements of material fact 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 statements and omissions set forth above.

30. The Defendants, directly or indirectly, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce made the above-referenced misrepresentations and omissions negligently.

31. By reason of the foregoing, Defendants Y2K and Kuntz have violated, and unless enjoined, will continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §77q(a)(2) and (3)].

FOURTH CLAIM

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

32. The Commission repeats and realleges paragraphs 1 through 15 of this Complaint and incorporates them herein by reference as if set forth *verbatim*.

33. Defendants Y2K and Kuntz, directly or indirectly, 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.

34. As described above, the investments in Y2K were offered and sold to the public through a general solicitation of investors. No registration statements have been filed with the Commission or are otherwise in effect with respect to these securities.

35. By reason of the foregoing, Defendants Y2K and Kuntz have 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 77e(c)].

REQUESTED RELIEF

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

I.

Enter an Order preliminarily and permanently enjoining Defendants Y2K and Kuntz, 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)], of 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];

II.

Enter an Order freezing the assets of Y2K and Kuntz, which they received, directly or indirectly, from investors in Y2K, and directing that all financial or depository institutions comply with the Court's Order.

III.

Enter an Order that the Defendants shall file with the Court and serve upon Plaintiff Commission, no later 20 days after entry of the Order of Preliminary Injunction, an accounting, under oath, detailing all of their assets and all funds or other assets received from investors and from one another.

IV.

Enter an Order that the Defendants be restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or documents relating to the matters set forth in the Complaint, or the books and records and such documents of any entities under their control, until further order of the Court.

V.

Enter an Order requiring the 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.

VI.


Enter an Order imposing civil penalties 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.

VII.

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

For the Commission, by its attorneys:

Dated this 12th day of May, 2000.



STEPHEN J. KOROTASH
Oklahoma Bar No. 5102
Southern District Bar No. 24607
Attorney-in-Charge for Plaintiff

SPENCER C. BARASCH
District of Columbia No. 388886
KAREN E. WHITAKER
Texas Bar No. 00785227
WILLIE C. BRISCOE
Texas Bar No. 24001788
Attorneys for Plaintiff

SECURITIES & EXCHANGE COMMISSION
801 Cherry Street, Suite 1900
Fort Worth, Texas 76102
(817) 978-3821/-6490
FAX: (817) 978-2700