

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11120 / October 19, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 96106 / October 19, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21212

In the Matter of

NEWAGE, INC.,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against NewAge, Inc. (“NewAge” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

From approximately July 2017 through April 2019 (the "relevant period"), NewAge, Inc. ("NewAge" or the "Company"), through its former Chief Executive Officer ("CEO") and Director Brent D. Willis, made numerous false and misleading public statements concerning NewAge's business operations and activities. These false and misleading public statements concerned a wide range of matters, including NewAge's alleged development of a portfolio of CBD-infused beverages and its purported product distribution deals with the U.S. military and a number of large domestic and international distributors and retailers. Willis orchestrated this multiyear fraud and disseminated the false and misleading public statements to create the illusion that NewAge was a pioneer and first mover in the potentially lucrative CBD beverage market and that its overall beverage portfolio was gaining traction with major retailers and distributors around the world. These false and misleading public statements were made knowingly and/or recklessly over a two-year period to artificially inflate NewAge's stock price, improve its financial position, and financially benefit Willis.

Respondent

1. **NewAge, Inc.** (known as "New Age Beverages Corporation, Inc." during the relevant period) is a Delaware corporation based in Midvale, Utah. NewAge's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. During the relevant period, the Company traded on the NASDAQ under the ticker symbol "NBEV." NASDAQ filed to delist NewAge on September 14, 2022 and the Company currently trades on the OTC Market under the ticker symbol "NBEVQ."

Other Relevant Person

2. **Brent D. Willis**, age 62, is a resident of Denver, Colorado. During the relevant period, Willis was NewAge's CEO and a member of its Board of Directors. Willis' employment with NewAge ended on January 10, 2022.

Facts

3. During the relevant period, NewAge was a developer and global seller of "organic and healthy products," including numerous beverage product lines.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. During the relevant period, former CEO and Director Willis controlled the flow of information that was disclosed to the public, including Company press releases, earnings and other investor calls, investor presentations, and media appearances. Willis was directly involved in the creation, approval, and release of all of the false and misleading public statements upon which this action is based.

False and Misleading Public Statements Concerning CBD-Infused Beverages

5. Between September 19, 2018 and January 16, 2019, NewAge, through Willis, knowingly and/or recklessly, made numerous false and misleading public statements concerning NewAge's purported development of a portfolio of CBD-infused beverages. These false and misleading public statements were made to create the illusion that NewAge was a science-based leader and first mover in the CBD product space, had received numerous retail orders and commitments for its CBD products, and that it was poised to capitalize on the potentially lucrative market for CBD beverages once these products became legal to sell in both the U.S. and internationally.

6. These false and misleading public statements included:

- a. A September 5, 2018 investor presentation stating that NewAge had been testing a CBD beverage over the previous six months.
- b. A September 19, 2018 press release stating that NewAge had tested and developed a portfolio of CBD-infused beverages that it planned to unveil at the National Association of Convenience Stores ("NACS") trade show in Las Vegas, Nevada in October 2018, and stating that NewAge's Health Sciences Division ("Health Sciences") was "overseeing and carefully controlling product production, quality, and its supply chain and sales channel partners."
- c. Sell sheets distributed by NewAge at an off-site meeting hosted by Willis and attended by retailers, distributors, and investors during the October 2018 NACS show in Las Vegas that stated that NewAge's "full spectrum" CBD products were manufactured via a "proprietary production process," that the purported products were a "proprietary in-house formula developed by Health Sciences," that "every batch" of the purported products "is third-party tested," and that the purported products benefited from a "full spectrum nano technology-amplified entourage effect."
- d. An October 10, 2018 press release announcing NewAge's debut of its purported portfolio of "full spectrum" CBD-infused beverages "from its Health Sciences Division" at the October 2018 NACS trade show in Las Vegas and including a quote attributed to its Chief Medical Officer

attesting to NewAge’s “scientifically and medically grounded” approach to its CBD beverage portfolio.

- e. An October 16, 2018 press release stating that NewAge’s “portfolio of 9 CBD-infused products generated initial retail distribution commitments spanning more than 110,000 points of distribution” and that NewAge was now privately engaged in “launch plans” for its CBD beverage portfolio “with some of the largest convenience and grocery retailers in North America.”
- f. A November 14, 2018 press release stating that NewAge’s CBD portfolio was “in production for launch before Christmas.”
- g. A November 14, 2018 earnings call stating that NewAge “had commitments of over 125,000 points of distribution” for its CBD beverage portfolio and that this CBD beverage portfolio was developed by Health Sciences.
- h. A December 4, 2018 investor call wherein Willis stated that NewAge had gained 125,000 points of distribution of either preorders or commitments for its CBD products, that NewAge had three CBD manufacturers in different parts of the U.S. “already lined up” and that NewAge would be launching its CBD-infused beverages by Christmas 2018.
- i. A December 6, 2018 interview with TheStreet.com wherein Willis stated that NewAge’s CBD portfolio was in production and that he expected to have NewAge’s CBD products in stores before Christmas 2018.
- j. A December 12, 2018 press release wherein NewAge announced that it expected to complete initial product runs for its CBD beverage portfolio by Christmas 2018, that NewAge was prepared to start selling these products via independent market and direct store delivery (“DSD”) distributors starting in January 2019, and that the Company had already received major commitments from retailers and distributors spanning over 125,000 points of distribution.
- k. A January 16, 2019 earnings call wherein it was stated (i) that NewAge had produced its portfolio of CBD-infused beverages by Christmas 2018; (ii) that this purported portfolio of beverages would be available in certain key regional stores starting in March and April 2019; (iii) that every grocery retailer that NewAge met with at the January 2019 Winter Fancy Food Show in San Francisco, California had placed an order of NewAge’s CBD beverage products; (iv) that major Japanese retailer FamilyMart had placed an order with NewAge to sell NewAge’s CBD beverage products

in 15,000 outlets; (v) that NewAge had organized and structured its supply chain to meet the needs of customers for its CBD beverage portfolio; and (vi) that NewAge would begin shipments of its CBD-infused beverage portfolio in the first quarter of 2019 and that its portfolio would have a material impact on NewAge's financial statements during its 2019 fiscal year.

1. A January 16, 2019 interview with Fox Business News wherein Willis told show host Stuart Varney that NewAge's CBD beverages were currently available for purchase at major Japanese retailer FamilyMart.

7. Each of these public statements contained materially false and misleading information. In fact, NewAge began development of its CBD portfolio just days before its September 19, 2018 announcement and had taken only preliminary steps towards the development of a CBD-infused beverage by that date. While touting that NewAge's Health Sciences division was overseeing the development of the CBD portfolio, in fact Health Sciences had no role at this time and participated minimally, if at all, in the process thereafter. Between September 2018 and January 2019, NewAge's public statements about its projected timelines for launching the CBD beverage portfolio were unrealistic based on the stage of development of the portfolio during this time period. To date, NewAge has never completed the development of a CBD beverage product and has never received orders or commitments from retailers for any CBD beverage products.

Other False and Misleading Public Statements Concerning NewAge's Business Activities

8. From 2017 to 2019, NewAge, through Willis, intentionally and/or recklessly, issued numerous other false and misleading press releases and made false and misleading public statements concerning NewAge's business activities. Willis had direct involvement in drafting and disseminating all of these false and misleading public statements.

9. These false and misleading public statements included:
 - a. A July 13, 2017 press release announcing NewAge's alleged new distribution of 15 different beverage products across four different product lines throughout Canada with major retailers 7-Eleven, Loblaw, and Sobeys. There was no factual basis for these public statements at the time they were made and an expansion of this scope did not occur.
 - b. A July 21, 2017 press release announcing NewAge's alleged expansion of its relationship with 7-Eleven, whereby its Xing Tea product would be sold across the 1,400 stores of 7-Eleven's "Heartland Division." However, 7-Eleven only sold NewAge's Xing Tea products within the State of Colorado (constituting approximately 250 stores) and an expansion of this scope did not occur.

- c. An October 10, 2017 press release announcing NewAge’s alleged expansion of its relationship with Ahold Delhaize, whereby NewAge would purportedly expand the selling of its Aspen Pure Probiotic product to the more than 2,000 Ahold Delhaize banner stores across 23 states, and stating that NewAge had begun shipment and shelf placement of its Aspen Pure Probiotic water product across 700 Ahold Delhaize banner stores. There was no factual basis for these public statements at the time they were made and at its peak, Ahold Delhaize sold Aspen Pure Probiotic water in less than 100 stores.
- d. A November 1, 2017 press release announcing that NewAge had allegedly entered into a written agreement with Unified Strategies Group (“USG”) to expand distribution of its beverage portfolio to USG’s “more than 1 million vending machines, 5,000 micro markets, and over 1,800 client dining facilities throughout the United States.” There was no factual basis for these public statements at the time they were made, there was never such a written agreement between NewAge and USG, and at its peak, NewAge’s products were sold by USG members at a total of approximately 90-100 vending machines.
- e. A series of false and misleading public statements concerning NewAge’s purported expansion of its relationship with the U.S. military, including:
 - i. Statements made by Willis at an investor conference on January 8, 2018 that the military has “taken 21 of our SKUs² across NewAge’s entire portfolio, across all military commissaries worldwide.”
 - ii. A January 18, 2018 press release announcing a “new distribution agreement” with the U.S. military and a “new U.S. military initiative in partnership with NewAge” whereby 21 NewAge SKUs across its five product lines were purportedly “shipping out now and throughout the 1st quarter to all commissary locations worldwide.” The press release described the scope of the distribution agreement as including 240 military commissaries and 3,100 exchanges in more than 30 countries across the world. The press release further stated that “[t]he new distribution agreement is expected to have a material impact on the financial results of New Age.”

² The term “SKU” stands for stock keeping unit and refers to each distinct item for sale.

- iii. Statements made by Willis in a May 15, 2018 NewAge earnings call wherein he stated “This is why we picked up the military business worldwide.”
- iv. Statements by Willis in an August 14, 2018 earnings call wherein he stated “And in the military channel with DECA (sic). . . Coco-Libre, Marley, Bucha and overall 21 core SKUs in that account that they believe is as big as Walmart in total sales throughout.”³

10. A February 1, 2018 press release announcing NewAge’s alleged “expansion to all banners” within the Canadian grocery chain Loblaws and alleged expansion “throughout both Sobeys and Safeway” grocery stores in Canada. There was no factual basis for these public statements at the time they were made and an expansion of this scope did not occur.

11. A February 13, 2018 press release announcing, among other things, that NewAge “has signed a major distribution agreement for expansion of its Bucha Live Kombucha brand with the largest food and beverage distributor in South Korea to expand to all major retail outlets throughout the country effective immediately.” There was no factual basis for these public statements at the time they were made, there was never a distribution agreement with the distributor or retailers referenced in the press release, and distribution of this scope did not occur.

12. An April 8, 2019 press release announcing NewAge’s purported expansion of its distribution of the Marley beverage line with Walmart, including statements that NewAge had “begun shipments to Walmart distribution centers across the U.S.,” that each its three Marley Mate flavors would be available at all Walmart stores in the beginning of April 2019, and that NewAge would be running significant marketing efforts “across Walmart stores.” There was no factual basis for these public statements at the time they were made, and at its peak, Walmart sold Marley brand products in fewer than 10% of its stores.

Selective Disclosures of Material, Nonpublic Information

13. Willis, acting on behalf of NewAge, made the following selective disclosures of material, nonpublic information concerning NewAge’s business activities:

- a. Statements made by Willis at a January 8, 2018 investor conference concerning an alleged expansion of the military’s relationship with NewAge that would include the sale of 21 NewAge SKUs to commissaries worldwide, made in advance of NewAge’s January 18, 2018

³ In reality, NewAge never entered into a “distribution agreement” or “initiative in partnership” and never had plans in place to sell NewAge products at all commissaries and exchanges worldwide. In fact, the only new initiative with the military during the relevant period was to sell NewAge products at two individual stores for a trial period.

press release concerning its alleged worldwide distribution agreement with the military;

- b. Statements made in emails sent by Willis to select analysts on or about September 18, 2018 concerning NewAge's purported development, testing, and debut of CBD beverage products, made in advance of NewAge's September 19, 2018 press release announcing this information.

14. As a result of the conduct of Willis, NewAge did not publicly disclose the material, nonpublic information referenced in paragraphs 13(a) and (b) simultaneously with or promptly after the selective disclosures.

Violations

15. As a result of the conduct of Willis on behalf of the Company described above, Respondent violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. These provisions prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities. As a result of the conduct of Willis on behalf of the Company described above, Respondent also violated Regulation FD and Section 13(a) of the Exchange Act, which prohibit selective disclosure of material, non-public information about the issuer.

Respondent's Remedial Efforts and Cooperation

16. In determining to accept the Offer, the Commission considered remedial steps taken by Respondent and cooperation afforded the Commission staff.

Undertakings

17. Respondent (including its officers, directors, and employees, and third-party consultants within its control) shall continue to cooperate fully with the Commission with respect to this action or any related judicial proceeding or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party and subject to compliance with applicable law. Respondent agrees that such cooperation shall include, but is not limited to:

- a. agreeing to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice;
- b. accepting service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff;

- c. appointing Respondent's attorney as agent to receive service of such notices and subpoenas;
- d. with respect to such notices and subpoenas, waiving the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and
- e. consenting to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer:

Accordingly, it is hereby ORDERED that pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent NewAge shall cease and desist from committing or causing any violations and any future violations of Sections 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 13(a) of the Exchange Act, and Regulation FD.

By the Commission.

Vanessa Countryman
Secretary