

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

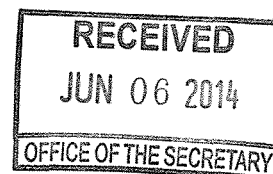
ADMINISTRATIVE PROCEEDING

File No. 3-15758

In the Matter of

Ads in Motion, Inc., *et. al*,

Respondents.



**REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION**

The Division of Enforcement (“Division”), by counsel, pursuant to Rules 154 and 250 of the Commission’s Rules of Practice, hereby files its reply in support of its motion for an order of summary disposition against Respondent Premier Beverage Group, Inc. (“PBGC”). Respondent’s Motion in Opposition to the Division’s Motion for Summary Disposition (“PBGC Brief”) offers nothing to undermine the Division’s case. In fact, inadvertently to be sure, many of the company’s efforts to rebuff the Division’s assertions only reinforce the need for a remedial sanction.

**BRIEF IN SUPPORT**

PBGC seems to believe that, now that it has belatedly made its delinquent filings, other factors bearing on its conduct shrink to insignificance. This is, of course, not the law – in fact the other factors identified by the Commission in *Gateway*, are still critical to this Court’s decision. As the Commission recently made clear in a case where, as here, the respondent belatedly made all of its delinquent filings:

[W]e apply a strong presumption in favor of revocation whereby a ‘recurrent failure to file periodic reports’ is ‘so serious that only a strongly compelling showing with respect to the other factors we consider would justify a lesser sanction than revocation.’

*Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.)*, Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193 at \*24 (April 4, 2014)(citations omitted). Thus, the following undisputed facts, all occurring since current management took control of the registrant, weigh heavily against permitting PBGC to maintain its status as a Commission registrant:

- PBGC missed ten consecutive periodic filing deadlines.
- PBGC filed only one of the ten required Notifications of Late Filings.
- PBGC repeatedly set its own self-defined filing deadlines and failed to meet any of them.
- Mr. Kallamni failed to comply with Exchange Act Sections 13(d) and 16(a).
- PBGC has experienced substantial net losses, negative cash flow from operations, and, in three consecutive opinions, its auditors have expressed doubts about PBGC’s ability to continue as a going concern due to its working capital deficiency and recurring losses from operations.
- PBGC has relied on infusions of cash from outside sources to meet its operating expenses. Given PBGC’s history of losses, the likelihood that such infusions will continue indefinitely is doubtful at best.

Given the dismissive attitude toward this proceeding permeating the PBGC Brief, the Division sees no need to respond to every assertion made therein, but few things better exemplify its indifference than its assertion that it is “unaware of any assurances

that [PBGC has] provided regarding future compliance with the securities laws.” In the same vein, PBGC blithely states that “further assurances [concerning future compliance] are unnecessary.” PBGC Brief at 9-10. If these admissions do not carry the Division’s burden on the *Gateway* factor addressing the credibility and adequacy of PBGC’s assurances of future compliance, Division’s counsel don’t know what will. Indeed, PBGC practically boasts that such assurances have neither been made nor are relevant.

PBGC’s Brief exhibits so little comprehension of the *Gateway* factors, and of the relevant facts in this case, that sometimes it seems like a ship passing this proceeding in the night. At page 7 it finds “puzzling” several items from the Division’s brief that go to the heart of the *Gateway* factors, for example:

- “Many public companies have never had a profitable quarter” – This is, of course, true, but unprofitable companies with registered classes of securities still must comply with the reporting requirements, and a company’s profitability, or lack thereof, shines a bright light on the ability of the company to, and the credibility of any assertions that it will, meet its reporting obligations going forward.
- “Management did not ‘gain’ control of the company: it continued the control it had of the private beverage company . . .” – As the Court well knows, this completely misses the point – the “company” we speak of is the registered public entity acquired by Kallamni and which was obligated to file timely and complete periodic and other reports. It is the conduct of Kallamni since that time that is at the heart of this proceeding.
- “The Division is unqualified to judge whether or not our business model is viable” – Maybe so, but we can read financial statements, which show that the

company has never made a profit and has experienced recurring net losses and negative cash flow from operations since Kallamni gained control of the registered shell in 2011. We can also read audit reports, which have included “going concern” paragraphs for the past three years, based on the company’s working capital deficiency and recurring net losses from operations. These undisputed facts are highly relevant to the *Gateway* factors on the likelihood that PBGC’s violations will re-occur.

A recurrent theme in the PBGC Brief is its effort to lay the blame for its delinquency at the feet of the person who allegedly sold them PBGC’s corporate shell and then reneged on a promise to provide the funding necessary to make its periodic filings. Even if this claim were supported by cognizable evidence, which it is not,<sup>1</sup> it is irrelevant and unavailing. The Commission has repeatedly declined to absolve registered companies of their reporting obligations based upon such excuses, especially where the respondent blames its inability to file on third-party actions. *See, e.g., America’s Sports Voice, Inc.*, Securities Exchange Act of 1934 Rel. No. 55511, 2007 SEC LEXIS 534, at \*4-5 (March 22, 2007) (holding that electrical fire, removal of equipment, and change of auditors did not constitute a valid excuse from filing); *Indigenous Global Development Corp.*, Initial Decision Rel. No. 325, 2007 SEC LEXIS 47, at \*8 -9 (Jan. 12, 2007)

---

<sup>1</sup> The PBGC Brief is unaccompanied by any affidavits, declarations or exhibits, other than a copy of an unsworn complaint from an unrelated proceeding. Unsworn, unauthenticated allegations do not constitute persuasive evidence that the Commission should entertain in this proceeding. *See Lorsin, Inc.*, Initial Decision Rel. No. 250, 2004 SEC LEXIS 961, at \*4 (May 11, 2004) quoting *SEC v. Lybrand*, 200 F. Supp. 2d 384, 391 (S.D.N.Y. 2002) (“A non-moving party must produce evidence in the record and ‘may not rely simply on conclusory statements or on contentions that the affidavits supporting the motion are not credible.’”); *see also, Jersey Central Power & Light Co. v. Township of Lacey*, 772 F.2d 1103, 1109-10 (3<sup>rd</sup> Cir. 1985) (“Legal memoranda and oral argument are not evidence and cannot by themselves create a factual dispute sufficient to defeat a summary judgment motion.”)

(misconduct by disgruntled employees, including work slowdown and deletion of financial records, did not excuse the issuer from making its filings). Thus, even assuming the truth of these allegations, they provide no support for PBGC's position. In fact, the Commission has found that a company's efforts to shift the blame for its delinquency to others work against it, and demonstrate a lack of credibility in its assurances of future compliance. *See, e.g., Eagletech Communications, Inc.*, Securities Exchange Act of 1934 Rel. No. 54095, 2006 SEC LEXIS 1534, at \*12-13 (July 5, 2006) (“[Respondent] has claimed that criminal conduct by others has caused [respondent’s] failure to file. This further demonstrates that [respondent] does not appreciate the wrongful nature of its conduct. Nor does [respondent] accept responsibility for its failure to meet its filing obligations. The likelihood of future violations is quite high.”); *iBiz Technology Corp.*, Initial Decision Rel. No. 312, 2006 SEC LEXIS 1406, at \*9 (June 16, 2006) (“iBiz has not offered credible assurances against further violations or accepted responsibility for failing to meet its reporting obligations.”).

PBGC's arguments concerning its failures to file Notifications of Late Filing and Schedules 14A and/or 14C seem to imply that these filings are optional. They are not, and its cavalier attitude towards these requirements further demonstrates its complete lack of contrition. Specifically as to the requirements of Exchange Act Sections 14(a) and 14(c), there is no exception in the Exchange Act for companies that have a sole director and a controlling shareholder from filing the proxy or information statement.

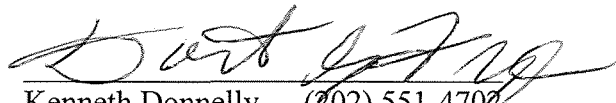
Similarly, there is no exception in Nevada law for single member boards of directors from the requirement that at least one-fourth of the board be elected annually.<sup>2</sup>

**III. Conclusion**

For the reasons set forth above, and the entire record in this proceeding, the Division respectfully requests that the Administrative Law Judge return an initial decision revoking the registration of each class of PBGC's securities registered under Exchange Act Section 12.

Dated: June 6, 2014

Respectfully submitted,



Kenneth Donnelly (202) 551-4702  
David S. Frye (202) 551-4728  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-6010

COUNSEL FOR  
DIVISION OF ENFORCEMENT

---

<sup>2</sup> Incidentally, as to the Division's argument that PBGC should have filed Forms 8-K concerning the appointment of Buttles as Chief Financial Officer, even assuming that PBGC's unsubstantiated assertion that he is not an officer of the corporation is true, that point is hardly the linchpin of the Division's case. In any case, as noted in the Division's opening brief at 12, Item 5.02(c) of Form 8-K requires PBGC to report not only the appointment of the person holding the title of principal financial or accounting officer but also that of a "person performing similar functions." If PBGC's bald assertion that Buttles does not perform such functions is true, it needs to clean up its website which indicates that he is "responsible for financial operations and capital strategies". (Frye Decl. Ex. 21 at 4).