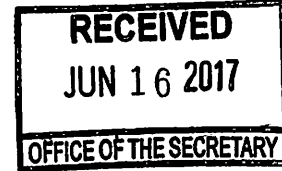


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17990



In the Matter of

Digital Brand Media & Marketing
Group, Inc., *et al.*,

Respondents.

**DIVISION OF ENFORCEMENT'S REPLY ON
MOTION FOR RULING ON THE PLEADINGS**

1. Introduction.

The Division of Enforcement (“Division”), by counsel, pursuant to Commission Rule of Practice 250(a), respectfully submits this Reply on its Motion for Ruling on the Pleadings against respondent Digital Brand Media and Marketing Group, Inc. (“Digital Brand”). Digital Brand’s response to the motion, like its Answer, denies none of the allegations against it in the Order Instituting Proceedings (“OIP”), and fails to overcome the Division’s case on the pleadings for revocation of its securities registration under Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”). Moreover, even if the unfortunate events described in Digital Brand’s Answer to the OIP, and repeated and summarized in the “Answer to Motion for Ruling on the Pleadings” (hereinafter “Digital Brand’s Brief”), did occur, they fail to overcome the case on the pleadings for revocation, nor do they establish that Digital Brand is entitled to a hardship exemption

from the Administrative Law Judge as established by the regulation Digital Brand relied on in its Answer, 17 CFR §232.202. (Answer, ¶ 10.)

2. Argument.

As demonstrated in the Commission’s opening brief, revocation is the appropriate remedy. Digital Brand fails to make a viable argument to the contrary. Digital Brand does not dispute the serious and egregious nature of its filing failures. Digital Brand simply admits that it was an “easy choice” for the company to make to not file its periodic reports because the company’s reports could always be “filed at a later date,” (Digital Brand’s Brief at 7), although Digital Brand has yet to make those filings.

With respect to the recurrent nature of its violations, Digital Brand argues that its violations “are an isolated occurrence because being behind in the multiple filings stemmed from one directive of the Commission to refile its financial statements due to the disbaring of [its] prior auditor,” and “are in accord one act.” (Digital Brief at 7-8.) This is the same argument made by Impax Laboratories, Inc., which had missed eight periodic reports but argued that while “each failure to file a required report is technically a separate violation,” “its violations are isolated to the extent that they resulted solely from ‘the Company’s inability to complete an unfortunately long and cumbersome process of developing a new accounting method for recognition of revenues.’” The Commission found Impax Laboratories’ violations to be recurrent, not isolated in nature. *Impax Laboratories, Inc.*, Securities Exchange Act Rel. No. 57864, 2008 SEC LEXIS 1197 at *24-*26 (May 23, 2008). The same conclusion is appropriate here.

Digital Brand claims it “was a victim of circumstance without any culpability whatsoever.” (Digital Brief at 8.) This is a patently deficient assertion and shows that

its officers are unwilling to accept their own responsibility in causing the company to miss its filings. It was the issuer and its officers that made the determination that it was more important to engage in its litigation efforts rather than comply with the regulatory filing requirements of the Exchange Act and the Commission.

Digital Brand says it had a choice between filing its periodic reports, or preventing “irreparable harm” from Asher Enterprises, Inc., and it chose not to make its filings, claiming the seriousness of its Exchange Act Section 13(a) violations “pales in comparison to the alternative of the seriousness of letting a multiple time sanctioned Asher [Enterprises, Inc.] have their way.” (Digital Brief at 7.) Digital’s Answer establishes that rather than recognizing the seriousness of its violations and its responsibilities as a public company to file its periodic reports for its investors, it has been obsessed and concerned with the litigation it describes having with Asher Enterprises, which it determined was more important than the Exchange Act’s and the Commission’s filing requirements.

Digital Brand characterizes its conduct as having chosen to “pick up the sword where the Commission left off and protect the investors from immediate harm [from its antagonist Asher],” rather than paying for audits and making its required periodic filings. (Digital Brief at 6.) The Commission, however, has made it clear that an issuer’s attempt to “blame” others “and a variety of mishaps” for failure to file reports should result in a revocation of registration of securities. *See AIC Intl., Inc.*, Initial Dec. Rel. No. 324, 2006 SEC LEXIS 2996at *18-*19 (Dec. 27, 2006).

Digital Brand has provided no realistic assurance of future compliance. It still claims limited resources and its Answer establishes that its delinquencies will continue

since Asher now has a judgment against Digital Brand and the respondent “still is aggressively fighting Asher Enterprises” and “cannot perform everything at once”. (Digital Brand’s Answer ¶¶ 6, 9-10.) It is thus clear that Digital Brand’s delinquencies will remain uncorrected for some time.

Digital Brand asserts that it “qualifies for a Continuing Hardship Exemption as specified in 17 CFR §232.202” based on its listed hard-luck events. (Answer ¶ 10; Digital Brief at 12.) Digital Brand’s Answer then “requests that the Hardship exemption be granted and the Commission withdraw proceedings to enforce Section 12(j) of the Exchange Act pursuant to the authority granted in 17 CFR §232.202.” (Digital Brand’s Answer ¶ 10 and Wherefore Clause.) Fundamentally, however, even assuming that the claimed events did occur as described in the Answer, Digital Brand is not entitled to a hardship exemption. Respondent’s assertion is entirely unfounded as is evident by the very language of the regulation which it incorporates into its pleading and upon which it bases its hardship defense.

The asserted regulation provides that an electronic filer may apply in writing for a continuing hardship exemption for a filing required to be submitted in electronic format if the filing cannot be filed without undue burden or expense. As provided by the regulation, such written application **shall be made at least ten business days before the required due date of a filing** or within such shorter period as may be permitted. 17 CFR §232.202(a).¹

¹ If a request is granted, then the electronic filer must submit the document for which the continuing exemption is granted in paper format on the required due date with the following legend on the cover page of the paper document:

IN ACCORDANCE WITH RULE 202 OF REGULATION S-T, THIS (specify document) IS BEING FILED IN PAPER PURSUANT TO A CONTINUING HARDSHIP EXEMPTION. [17 CFR §232.202(c)(1).]

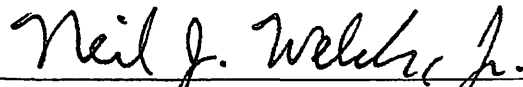
Digital Brand has not filed any periodic reports since the period ended May 31, 2015. (OIP, ¶ II.A.1.) In its Answer, Digital Brand requests that a hardship exemption now be granted as to all of its delinquent filings, ignoring the very specific timing requirement of the regulation, *i.e.*, that written application must be made at least ten business days before the required due date. Based on the clear language of 17 CFR §232.202, there is no authority for such a request. Hence, any assertion of hardship provides Digital Brand with no escape from the Division's motion on the pleadings.

3. Conclusion.

For the reasons set forth above, and in its initial brief, the Division respectfully requests that the Commission grant the Division's motion for ruling on the pleadings and revoke the registration of each class of Digital Brand's securities registered under Exchange Act Section 12.

Dated: June 16, 2017

Respectfully submitted,



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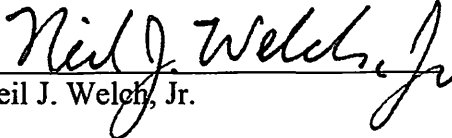
CERTIFICATE OF SERVICE

I hereby certify that true copies of the Division of Enforcement's Reply on Motion for Ruling on the Pleadings and Brief in Support were served on the following on this 16th day of June, 2017, in the manner indicated below:

By Email:

The Honorable Jason S. Patil
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