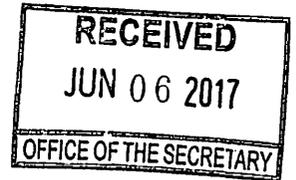


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17990

In the Matter of

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

Respondents.

**DIVISION OF ENFORCEMENT'S
MOTION FOR RULING ON THE PLEADINGS AND BRIEF IN SUPPORT**

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MOTION FOR RULING ON THE PLEADINGS

The Division of Enforcement (“Division”), by counsel, pursuant to Commission Rule of Practice 250(a), respectfully moves for a ruling on the pleadings against respondent Digital Brand Media and Marketing Group, Inc. (“Digital Brand”). Digital Brand’s Answer denies none of the allegations against it in the Order Instituting Proceedings (“OIP”). Rule of Practice 220(c) provides that: “Any allegation not denied shall be deemed admitted.” Accordingly, even accepting all of Digital Brand’s factual allegations as true and drawing all reasonable inferences in Digital Brand’s favor, the Division is entitled to an order revoking each class of securities of Digital Brand registered with the Commission pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”) as a matter of law.

BRIEF IN SUPPORT

I. Statement of Facts

Digital Brand is a Florida corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). (OIP, ¶ II.A.1). Digital Brand has failed to file its periodic reports for two years, *i.e.*, any of its periodic reports after its Form 10-Q for the period ended May 31, 2015, which reported a net loss of \$673,852 for the prior nine months. (OIP, ¶ II.A.1; EDGAR¹). As of May 11, 2017, the company’s stock (symbol “DBMM”) was quoted on OTC Link operated by OTC Markets Group, Inc., had six market makers, and was

¹ The Division requests that the Court take official notice of Digital Brand’s filings on EDGAR, which is permissible on a motion for a ruling on the pleadings. *See Adrian D. Beamish, CPA, Admin. Proceedings Rulings Rel. No. 4504 at 1, 2017 SEC LEXIS 47, at *1-2 (Jan. 6, 2017)* (“Such motions must be decided based only on the pleadings, matters subject to judicial notice, matters of public record (such as the contents of the Federal Register), and documents attached to, or incorporated by reference in, the complaint.”) The Division submits that Digital Brand’s EDGAR filings are matters of public record and can be the subject of official notice by the ALJ under Rule of Practice 323, which is equivalent to judicial notice.

eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3). (OIP, ¶ II.A.1).

II. Argument

This administrative proceeding was instituted under Section 12(j) of the Exchange Act. Section 12(j) empowers the Commission to either suspend (for a period not exceeding twelve months) or permanently revoke the registration of a class of securities if the respondent has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder.

A. The Division is Entitled to a Ruling on the Pleadings Against Digital Brand for Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder.

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Section 13(a) is the cornerstone of the Exchange Act, establishing a system of periodically reporting core information about issuers of securities. The Commission has stated:

Failure to file periodic reports violates a central provision of the Exchange Act. The purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions. Those requirements are “the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities.” Proceedings initiated under Exchange Act Section 12(j) are an important remedy to address the problem of publicly traded companies that are delinquent in the filing of their Exchange Act reports, and thereby deprive investors of accurate, complete, and timely information upon which to make informed investment decisions.

Gateway International Holdings, Inc., Securities Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288 at *26 (May 31, 2006) (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)).

As explained in the initial decision in the *St. George Metals, Inc.* administrative proceeding:

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Rule 13a-1 requires issuers to submit annual reports, and Exchange Act Rule 13a-13 requires issuers to submit quarterly reports. No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder.

St. George Metals, Inc., Initial Decision Rel. No. 298, 2005 SEC LEXIS 2465, at *26 (Sept. 29, 2005); accord *Gateway*, 2006 SEC LEXIS 1288 at *18, *22 n.28; *Stansbury Holdings Corp.*, Initial Decision Rel. No. 232, 2003 SEC LEXIS 1639, at *15 (July 14, 2003); and *WSF Corp.*, Initial Decision Rel. No. 204, 2002 SEC LEXIS 1242 at *14 (May 8, 2002).

Since Digital Brand does not dispute the allegations in the OIP, it is established by the pleadings that Digital Brand has failed to file its periodic reports for two years, *i.e.*, any of its periodic reports after its Form 10-Q for the period ended May 31, 2015.

B. Revocation is the Appropriate Sanction for Digital Brand's Serial Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder.

Exchange Act Section 12(j) provides that the Commission may revoke or suspend a registration of a class of an issuer's securities where it is "necessary or appropriate for the protection of investors." The Commission's determination of which sanction is

appropriate “turns on the effect on the investing public, including both current and prospective investors, of the issuer’s violations, on the one hand, and the Section 12(j) sanctions on the other hand.” *Gateway*, 2006 SEC LEXIS 1288, at *19-*20. In making this determination, the Commission has said it will consider, among other things: (1) the seriousness of the issuer’s violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer’s efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer’s assurances against future violations. *Id.*; see also *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (setting forth the public interest factors that informed the Commission’s *Gateway* decision). Although no one factor is controlling, *Stansbury*, 2003 SEC LEXIS 1639, at *14-*15; and *WSF Corp.*, 2002 SEC LEXIS 1242 at *5, *18, the Commission has stated that it views the “recurrent failure to file periodic reports as so serious that only a strongly compelling showing with respect to the other factors we consider would justify a lesser sanction than revocation.” *Impax Laboratories, Inc.*, Exchange Act Rel. No. 57864, 2008 SEC LEXIS 1197 at *27 (May 23, 2008). An analysis of the factors above confirms that revocation of Digital Brand’s securities is appropriate.

1. Digital Brand’s violations are serious and egregious.

As established by the pleadings in this proceeding, Digital Brand’s conduct is serious and egregious. Digital Brand has not filed any periodic reports since it filed a Form 10-Q for the period ended May 31, 2015. Given the central importance of the reporting requirements imposed by Section 13(a) and the rules thereunder, Administrative Law Judges have found violations of these provisions of the same and of less duration to be egregious, and Digital Brand’s violations support an order of

revocation for each class of its securities. See *WSF Corp.*, 2002 SEC LEXIS 1242, at *14 (respondent failed to file periodic reports over two-year period); and *Freedom Golf Corp.*, Initial Decision Release No. 227, 2003 SEC LEXIS 1178, at *5 (May 15, 2003) (respondent's failure to file periodic reports for less than one year was egregious violation).

2. Digital Brand's violations of Section 13(a) have been not just recurrent, but continuous.

Digital Brand's violations are not unique and singular, but continuous. Digital Brand has failed to file any of its periodic reports since the period ended May 31, 2015. Thus, Digital Brand has failed to file two Forms 10-K and four Forms 10-Q. The serial and continuous nature of Digital Brand's violations of Exchange Act Section 13(a) further supports the sanction of revocation here.

3. Digital Brand's degree of culpability, including its Officers' and Directors' Section 16 violations, supports revocation.

For many of the same reasons that Digital Brand's violations were long-standing and serious, they suggest a high degree of culpability. In *Gateway*, the Commission stated that, in determining the appropriate sanction in connection with an Exchange Act Section 12(j) proceeding, one of the factors it will consider is "the degree of culpability involved." The Commission found that the delinquent issuer in *Gateway* "evidenced a high degree of culpability," because it "knew of its reporting obligations, yet failed to file" its periodic reports. *Gateway*, at 10, 2006 SEC LEXIS 1288, at *21. Similar to the respondent in *Gateway*, according to EDGAR, Digital Brand has failed to file six periodic reports.

Moreover, Exchange Act Section 16(a) requires that an individual file a Form 3

within ten days of becoming an officer, director, or ten percent beneficial owner of a company. According to EDGAR, Digital Brand filed a Form 10-K for the fiscal year ended August 31, 2014 stating that Neil Gray has served as Chairman and Executive Director since April 1, 2010, Reggie James has served as Senior Vice President of Marketing and Communications and Executive Director as of April 1, 2011, and Linda Perry served as President, Chief Executive Officer, and Director until March 31, 2010, and as Executive Director and Chair Nominations/Compensation and Audit Committees since April 1, 2010. (Digital Brand Form 10-K for the fiscal year ended August 31, 2014 at pp. 34-35.) However, EDGAR shows that none of these three officers/directors has ever filed a Form 3 disclosing that they were an officer or director of Digital Brand.

This conduct of Digital Brand and its officers/directors, although not alleged in the OIP, provides further evidence of Digital Brand's culpability that the Court can and should consider when assessing the appropriate sanction for its admitted violations. *See Gateway* at 5, n.30 (Commission may consider other violations "and other matters that fall outside of the OIP in assessing appropriate sanctions"); *Citizens Capital Corp.*, Exchange Act Rel. No. 67313, 2012 SEC LEXIS 2024 at *32 (June 29, 2012) (management's failure to comply with Exchange Act Sections 13(d) and 16(a) "further brings into question the likelihood of the Company's future compliance with Section 13(a)"); *Ocean Resources, Inc.*, 2008 SEC LEXIS 81 at *15, Securities Act Rel. No. 59268 (Jan. 21, 2009) (ALJ found on summary disposition that respondent's assurances of future compliance achieved little credibility where its sole officer had ongoing

violations of Exchange Act Section 16(a) in both the respondent's and other companies' securities).²

4. **Digital Brand has made no efforts to remedy its past violations, nor has it made assurances against future violations.**

Digital Brand has made no efforts to remedy its past violations by, for example, filing any of its delinquent periodic reports, nor has it stated in its Answer that it has any intention to file any of its periodic reports.

C. **Revocation is the Appropriate Remedy for Digital Brand.**

As discussed above, a full analysis of the *Gateway* factors establishes that revocation is the appropriate remedy for Digital Brand's long-standing violations of the periodic filings requirements, particularly since the company's stock can continue to trade on the Pink Sheets both before and after its Form 15 becomes effective. Digital Brand's recurrent failures to file its periodic reports have not been outweighed by "a strongly compelling showing with respect to the other factors" which "would justify a lesser sanction than revocation." *Impax Laboratories, Inc.*, 2008 SEC LEXIS 1197 at *27.

Moreover, revocation will not be overly harmful to whatever business operations, finances, or shareholders Digital Brand may have. The remedy of revocation will not

² The Commission has applied the same principle in other contexts. *Robert Bruce Lohman*, Exchange Act Rel. No. 48092, 2003 SEC LEXIS 1521 at *17 n.20 (June 26, 2003) (ALJ may properly consider lies told to staff during investigation in assessing sanctions, though they were not charged in the OIP); *Stephen Stout*, Exchange Act Rel. No. 43410, 2000 SEC LEXIS 2119 at *57 & n.64. (Oct. 4, 2000) (respondent's subsequent conduct in creation of arbitration scheme, which was not charged in OIP, found to be relevant in determining whether bar was appropriate); and *Joseph P. Barbato*, Exchange Act Rel. No. 41034, 1999 SEC LEXIS 276 at *49-*50 (Feb. 10, 1999) (respondent's conduct in contacting former customers identified as Division witnesses found to be indicative of respondent's potential for committing future violations). See also *SEC v. Falstaff Brewing Corp.*, 629 F.2d 62, 78 (D.C. Cir. 1980) (district court's injunction against future securities violations upheld; court found noncompliance with Exchange Act Section 16(a) "does evince a disregard of the securities laws that may manifest itself in noncompliance elsewhere.").

cause Digital Brand to cease being whatever kind of company it was before its securities registration was revoked. The remedy instead will ensure that until Digital Brand becomes current and compliant on its past and current filings, its shares cannot trade publicly on the open market (but may be traded privately). *See Eagletech Communications, Inc.*, Exchange Act Rel. No. 54095, 2006 SEC LEXIS 1534, at *9 (July 5, 2006) (revocation would lessen, but not eliminate, shareholders' ability to transfer their securities). Revocation will not only protect current and future investors in Digital Brand, who presently lack the necessary information about Digital Brand because of the issuer's failure to make Exchange Act filings; it will also deter other similar companies from becoming lax in their reporting obligations.

A new registration process will place all investors on an even playing field. All current investors will still own the same amount of shares in Digital Brand that they did before registration, though their shares will no longer be devalued because of the company's delinquent status. All investors, current and future alike, will also benefit from the legitimacy, reliability, and transparency of a company in compliance. The time-out will protect the status quo, and will give Digital Brand the opportunity to come into full compliance, to calmly and thoroughly work through all of its remaining issues with its attorney, consultants, auditors, and management, and to complete its financial statements in compliance with Regulations S-K and S-X.

III. Conclusion

For the reasons set forth above, 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 6, 2017

Respectfully submitted,



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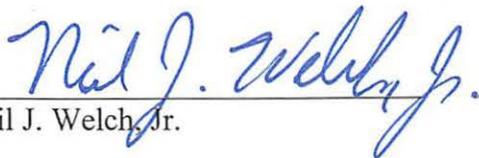
I hereby certify that true copies of the Division of Enforcement's Motion for Ruling on the Pleadings and Brief in Support were served on the following on this 6th day of June, 2017, in the manner indicated below:

By Hand:

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