

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20007

<p>In the Matter of</p> <p>Smartag International, Inc.,</p> <p>Respondent.</p>

DIVISION OF ENFORCEMENT’S REPLY BRIEF IN
FURTHER SUPPORT OF MOTION FOR SUMMARY DISPOSITION

Smartag International, Inc. (“SMRN”), a company which has not filed periodic reports for over two years, has failed to raise an issue of material fact that undercuts the Division’s analysis detailing how the factors laid out by the Commission in *Gateway International Holdings, Inc.*, Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288, at *26 (May 31, 2006), support revocation of the company’s registration.¹

The Affidavit of SMRN’s CEO (“Affidavit”), which comprises its entire opposition to summary disposition, argues that the company has updated its filings with Nevada’s Secretary of State and OTCIQ Link, and thus SMRN has somehow cured its deficiencies. Affidavit ¶ 2. Even if true, those actions are irrelevant to this proceeding which relates to SMRN’s repeated failure to comply with 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

¹ The parties have submitted a Joint Stipulation of Undisputed Facts (“Stipulation”) in connection with the summary disposition briefing.

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.” *Telestone Technologies Corp.*, Initial Decision Rel. No. 1078, 2016 SEC LEXIS 4185, at *4 (November 9, 2016) (emphasis added). *See also Gateway International Holdings, Inc.*, 2006 SEC LEXIS 1288 at *26 (“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.”).

Even if SMRN submitted its delinquent reports in accordance with the Exchange Act, which it has not, the Commission has noted time and time again that a lesser sanction than revocation would not be warranted. *See Law Enforcement Associates Corp., et al. [as to Sonnen Corp.]*, Initial Decision Rel. No. 487, 2013 SEC LEXIS 1436, at *12-13 (May 15, 2013) (“dismissal or a lesser sanction [than revocation] would reward issuers who fail to file required periodic reports over an extended period and become current only after enforcement proceedings are brought against them, essentially providing an automatic lengthy postponement of the prescribed filing dates for such issuers to the detriment of the public interest and investors”); *Nature's Sunshine Products, Inc.*, Securities Exchange Act of 1934 Rel. No. 59268, 2009 SEC LEXIS 81, at *34 (January 21, 2009) (“Dismissal [in this case] would reward those issuers who fail to file required periodic reports when due over an extended period of time, become the subject of Exchange Act Section 12(j) revocation proceedings, and then, on the eve of hearings before the law judge or, in this case, oral argument on appeal, make last-minute filings in an effort to bring themselves current with their reporting obligations, while prolonging indefinitely

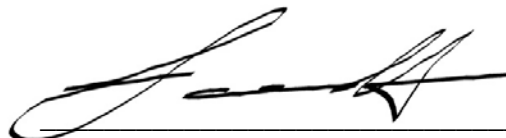
the period during which public investors would be without accurate, complete, and timely reports”); *Tamir Biotechnology, Inc.*, Initial Decision Rel. No. 488, 2013 SEC LEXIS 1489, at *3-4 (May 22, 2013) (Elliot, ALJ) (issuer’s registration revoked where it was less than two year’s delinquent and brought itself current after institution)

SMRN’s final argument is that the continued delinquency is due to COVID travel restrictions. Affidavit ¶ 3. However, as noted in the Division’s Motion for Summary Disposition at 14, SMRN’s delinquency preceded the travel ban. Stipulation ¶ 5. By February 2020, the date that SMRN’s CEO became trapped in Malaysia, Affidavit ¶ 3, SMRN had failed to file a year’s worth of periodic reports. Stipulation ¶ 5. Its last disclosure of any kind was an 8-K filed eleven months before the travel ban, and therefore any purported claim by SMRN that COVID impacted its Exchange Act compliance lacks credibility. Declaration of Sandhya C. Harris in Support of the Division of Enforcement’s Motion for Summary Disposition and Brief in Support at Ex. 8.

The Division requests that the Division’s Motion for Summary Disposition be granted and that the Commission revoke the registrations of each class of SMRN’s Exchange Act Section 12 registered securities.

Dated: March 5, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the Division of Enforcement's Reply Brief in Further Support of Motion for Summary Disposition to be served on the following on this 5th day of March, 2021, in the manner indicated below:

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Sandhya C. Harris