

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. SECURITIES AND EXCHANGE COMMISSION

100 F ST NE
WASHINGTON DC 20549-5030 Plaintiff,
v.

Case: 1:11-cv-00258
Assigned To : Howell, Beryl A.
Assign. Date : 1/31/2011
Description: General Civil

MAXWELL TECHNOLOGIES INC.,

Defendant.

Plaintiff, U.S. Securities and Exchange Commission ("Commission"), alleges:

COMPLAINT
SUMMARY

1. Maxwell Technologies Inc. ("Maxwell") is a manufacturer of energy storage and power delivery products. From 2002 through May 2009, Maxwell violated the anti-bribery, books and records and internal control provisions of the Foreign Corrupt Practices Act ("FCPA") when it repeatedly paid bribes to Chinese officials in order to obtain and retain sales contracts for high voltage capacitors from several Chinese state-owned entities. Maxwell engaged in bribery to maintain its high-voltage capacitor business in China, which accounted for material revenue and profits during the relevant time period.

2. From 2002 through May 2009, Maxwell, through its wholly-owned Swiss subsidiary, Maxwell Technologies SA ("Maxwell SA"), paid over \$2.5 million in kickback payments to officials at several Chinese state-owned entities through a third-party sales agent ("Chinese Agent"). The Chinese Agent made these payments with the purpose and effect of improperly influencing decisions by foreign officials to assist Maxwell to obtain and retain sales contracts for high voltage capacitors produced by

Maxwell SA. The illicit payments were made with the knowledge and tacit approval of certain former Maxwell officers. Maxwell failed to accurately record these payments on its books and records, and failed to implement or maintain a system of effective internal accounting controls to detect or prevent the payments.

3. In all, the improper payments generated nearly \$15.4 million in sales contracts, from which Maxwell realized profits of over \$5.6 million. These sales contracts were included in Maxwell revenues during the relevant period.

4. Maxwell violated Section 30A of the Securities Exchange Act of 1934 (“Exchange Act”) by engaging in widespread bribery of government officials in China in order to sell its high-voltage capacitors to several Chinese state-owned enterprises. Maxwell violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder by failing to disclose in its annual and periodic filings that the material revenues and profits associated with its long-standing bribery scheme enabled Maxwell to better financially position itself until new products could be commercially developed and sold. Maxwell violated Section 13(b)(2)(B) of the Exchange Act by failing to maintain internal controls to prevent or detect the bribes paid to officials at Chinese state-owned-entities. Finally, Maxwell violated 13(b)(2)(A) of the Exchange Act by failing to accurately reflect the nature of the improper payments in Maxwell’s books, records, and accounts.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. Maxwell, directly and indirectly, made use of the means or instrumentalities of interstate commerce, of the

mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

6. Venue is appropriate in the Court under Section 27 of the Exchange Act [15 U.S.C. §§ 78aa] because certain of the acts or transactions constituting violations by Maxwell occurred in this district.

DEFENDANT

7. **Maxwell Technologies Inc.** ("Maxwell"), a manufacturer of energy storage and power delivery products, is incorporated in Delaware, headquartered in San Diego, California and has manufacturing facilities in the United States and Switzerland, and contract manufacturing relationships in China. Maxwell's shares are registered with the Commission pursuant to Section 12(b) of the Exchange Act. Maxwell's shares trade on the NASDAQ under the symbol "MXWL." Maxwell files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

RELEVANT PARTIES

8. **Maxwell Technologies SA** ("Maxwell SA"), previously known as Montena Components Ltd. ("Montena"), a wholly-owned subsidiary of Maxwell acquired in 2002, manufactures and sells high-voltage capacitors in several countries, including China. Maxwell SA is incorporated and headquartered in Switzerland. Maxwell SA's financial results were consolidated with those of Maxwell throughout the relevant period.

9. **Executive A**, a Swiss national, was the Senior Vice President, General Manager of Maxwell SA during the relevant period. Executive A had overall responsibility for Maxwell's global high voltage capacitor business. Executive A left the

company in July 2009.

10. **Chinese Agent**, a Chinese national, was Maxwell SA's third-party agent responsible for high-voltage capacitor sales to Chinese customers from at least 2002 until May 2009.

FACTUAL ALLEGATIONS

Background

11. Maxwell manufactures energy storage and power delivery products. Its wholly-owned Swiss subsidiary, Maxwell SA, manufactures and sells high-voltage capacitors in several countries, including China. Maxwell's high-voltage capacitors, which are used mainly in the electric utility industry, prevent high-voltage arcing that can damage equipment that transmits, distributes, or measures electricity.

12. Maxwell is the market leader in the high-voltage capacitor business and the high-margin product line is consistently profitable. The product is also one of the most mature products that Maxwell manufactures and sells. In October 2009, Maxwell's current CEO succinctly described the importance of the company's high-voltage product line to investors:

Last year [2008], we had just under \$40 million in sales. It's about a 50-year-old business to us. It's a mature technology. We have a dominant market share in the world. In 2008, about 30% of that revenue was shipped to China.¹

13. During the relevant period, Maxwell's revenues in this dominant but mature product line helped offset losses that Maxwell has incurred to develop new products, such as ultracapacitors (essentially smaller energy storage and power delivery products), that are now expected to become Maxwell's future source of revenue growth. Historically,

¹ Remarks of Maxwell Technologies CEO dated October 13, 2009 (final transcript).

Maxwell SA used a single third-party agent, the Chinese Agent, to market and sell its high voltage capacitors to Chinese customers, substantially all of which are Chinese state-owned entities.

Maxwell's Bribery Scheme

14. From 2002 through May 2009, Maxwell repeatedly paid bribes through the Chinese Agent to officials at state-owned entities in China. During the relevant period, the Chinese Agent would request quotes from Maxwell SA on behalf of prospective Chinese state-owned entities. Upon instruction by the Chinese Agent, an "extra" 20% was added to the quoted amounts to arrive at a higher price for the high voltage equipment. The artificially inflated amount was then added to the purchase orders. Maxwell SA then invoiced the Chinese state-owned entities for equipment at the higher-priced rate, which the entities paid upon receipt of the equipment. The Chinese Agent then would invoice Maxwell SA for the "extra" 20% added to the quoted prices, which he classified in his invoices to Maxwell SA as either "Extra Amount" or "Special Arrangement" fees (collectively referred to as "Extra Amount" or "Extra Amounts"). Upon receipt, the agent would pay the Extra Amounts to officials at the Chinese state-owned entities.

15. This arrangement was knowingly perpetuated and approved by Executive A, who had a long-standing working relationship with the Chinese Agent. Executive A approved the Chinese Agent sales contracts with the Chinese state-owned entities knowing that the purchase orders were inflated by 20% with the intention that the 20% be paid as bribes to Chinese foreign officials to obtain the contracts.

16. Certain former U.S. officers at Maxwell knew about the improper payments at

least as far back as November 2002. For example, in a November 2002 email, Maxwell's former controller, a U.S. citizen, indicated concern that a payment made in connection with doing high-voltage business in China appeared to be "a kick-back, pay-off, bribe, whatever you want to call it, This type of payment is in violation of US trade laws." In response, Maxwell's former CEO, a U.S. citizen, replied "[T]his is a well know[n] issue. I will ask [Maxwell's former V.P. Sales] to assist you guys, he has familiarity with the issues and solutions. No more emails please"

17. In October 2003, Maxwell's former controller received an email from a former Maxwell SA officer that provided, in part: "we should not have indicated the name of the company in the wiring as this money is not supposed to go back to the company. . . . the general rule re. extra amounts is that [the] name of beneficiary must not be the one of the company," which suggested that the former controller knew, or should have known, that the Extra Amounts were bribes and not commissions meant for the Chinese Agent. Other documents and email also show that Maxwell knew or should have known of the bribery scheme.

18. The long-standing bribery scheme enabled Maxwell to report reduced losses and increased revenues that became material as the illegal activities grew during the relevant period. For example, although the illegal activity dated back to at least 2002, Maxwell SA's high voltage capacitor sales obtained through bribery steadily increased during the latter years 2005 to first quarter of 2009:

Year	Bribery-related Sales (\$USD)	% of Maxwell Reported Total Revenues	Gross Profit (\$ USD)	% of Reported Loss
2005	\$1,227,737	2.7%	\$360,726	5.7%
2006	\$767,986	1.4%	\$312,402	2.0%
2007	\$1,649,776	3.0%	\$652,119	4.2%
2008	\$5,399,339	6.7%	\$2,309,829	15.6%
1Q-09	\$3,213,288	13.9%	\$1,049,979	35.4%

19. Maxwell greatly depended on the revenue from Maxwell SA's high-voltage capacitor sales to China in order to help fund Maxwell's expansion into new product lines that are now expected to become Maxwell's future source of revenue. Maxwell engaged in the bribery scheme because it enabled the company to obtain material revenue needed to financially position itself to help fund the very products that today are sustaining Maxwell's future growth. Even after including profits generated from the bribery, Maxwell historically generated net losses that required it to raise additional capital from investors to fund its operations. From 2002 through 2009, Maxwell did not experience a year in which it generated both net profits and positive cash flows from operations, although it may reverse that trend in 2010.

20. In all, from 2002 through 2009, Maxwell paid over \$2.5 million in bribes to Chinese official of state-owned enterprises. During the relevant period, Maxwell accounted for the bribe payments as sales commission expenses in its financials. In the Form 10-Q filing for the quarter ended March 31, 2009, Maxwell reclassified the kickbacks for current and prior periods as a reduction in revenue.

Discovery of the Illicit Payments

21. Potential FCPA and accounting concerns came to the attention of Maxwell's finance department in September 2008, during an internal review of Maxwell SA's commission expenses involving the Chinese Agent. Maxwell's management team asked about these commission payments after learning of the unusually high Chinese Agent commissions, which included the Extra Amounts. During this review, Executive A informed Maxwell's finance department that the payments made to the Chinese Agent were recorded as sales commissions. Maxwell's finance department then sought and obtained a signed FCPA certificate from the Chinese Agent in which he represented that he was familiar with the U.S. FCPA and "local laws and regulations regarding corrupt payments"; and:

■ certifies that he has not in the past and will not in the future make any payment of anything of value to:

(i) any government official, member of a political party or candidate for political office (as defined in the FCPA), for the purpose of influencing such government official or causing such official to use influence to obtain business or secure an improper advantage for Maxwell S.A. or its affiliates; or

(ii) to any other person knowing that the payment will be used for the foregoing purpose.

22. After obtaining the representations, Maxwell's finance department took no further corrective action regarding the commissions and Extra Amounts paid to the Chinese Agent in 2008.

23. During a business trip to China in February 2009, a new Maxwell SA sales director was informed by the Chinese Agent that the agent was passing the overwhelming majority of the Extra Amounts back to the "customers", *i.e.*, officials of Chinese state-owned entities. This information was then relayed to Maxwell's new CEO, who immediately notified Maxwell's audit committee and outside counsel. The Chinese Agent soon thereafter informed Maxwell that Executive A had known and approved of

the Extra Amount arrangement throughout the relevant period. In response, Maxwell disclosed the potential FCPA issues in its Form 10-Q filing for the quarter ended March 31, 2009.

24. During the relevant period, Maxwell's controls designed to prevent illicit payments to foreign officials were wholly inadequate. At the time, Maxwell's Code of Conduct contained a brief section on FCPA issues, but there is no evidence that employees received any FCPA training prior to the company's remedial steps.

Maxwell's Violations

25. Maxwell committed anti-bribery violations when its former senior management knowingly permitted its third-party agent to make illicit payments to officials at Chinese state-owned entities as *quid pro quo* for Maxwell SA contracts with those entities. Certain former U.S. officers and senior managers of Maxwell had knowledge of the bribes paid by Maxwell SA and its agent since at least November 2002. Maxwell did nothing to stop these payments until questions resurfaced in late 2008 and again in February 2009. Maxwell was headquartered in California at the time of the illicit conduct, and some of Maxwell's former officers and senior managers were located in California at the time that they knowingly permitted the illicit payments. Maxwell also routinely made use of U.S. mails and interstate commerce to carry out the scheme.

26. Maxwell failed to make and keep accurate books, records, and accounts. Many of the bribes were mischaracterized in invoices using generalized descriptions such as "Extra Amount" or "Special Arrangement" and the improper payments were recorded as legitimate commissions.

27. As evidenced by the extent and duration of illegal payments Maxwell made to

officials of Chinese state-owned entities through Maxwell SA, Maxwell failed to devise and maintain an effective system of internal controls to prevent or detect illegal payments. In addition, Maxwell (1) failed to question why the contract prices were artificially inflated by 20% above the bid prices; (2) did not request supporting documentation for the invoices or track where the commission payments ultimately were distributed; (3) performed no due diligence on the agent; (4) did not require FCPA training for all relevant employees; and (5) failed to take any action even though it appears that certain former officers and senior managers of Maxwell had knowledge of the bribes paid by Maxwell SA and its agent since at least November 2002.

28. Maxwell failed to disclose that the material revenues and profits associated with its long-standing bribery scheme enabled the company to enhance its financial position until new products could be commercially developed and sold. Maxwell's bribery scheme generated nearly \$15.4 million in high-voltage capacitor sales contracts, from which Maxwell realized profits of over \$5.6 million. These sales and profits helped Maxwell offset losses that the company incurred to develop new products now expected to become Maxwell's future source of revenue growth. In addition, from 2002 through 2008, Maxwell accounted for all payments to the agent as sales commission expenses in its financials, which Maxwell corrected in the Form 10-Q filing for the quarter ended March 31, 2009.

CLAIMS FOR RELIEF

FIRST CLAIM

Maxwell Violated Exchange Act Section 30(A)

29. Paragraphs 1 through 28 are realleged and incorporated by reference herein.

30. As described above, Maxwell, through its officers, agents, and subsidiaries, corruptly offered, promised to pay, or authorized payments to one or more persons, while knowing that all or a portion of those payments would be offered, given, or promised, directly or indirectly, to foreign officials for the purpose of influencing their acts or decisions in their official capacity, inducing them to do or omit to do actions in violation of their official duties, securing an improper advantage, or inducing such foreign officials to use their influence with foreign governments or instrumentalities thereof to assist Maxwell in obtaining or retaining business.

31. By reason of the foregoing, Maxwell violated, and unless enjoined will continue to violate, Section 30(A) of the Exchange Act [15 U.S.C. § 78dd-1].

SECOND CLAIM

Maxwell Violated Exchange Act Sections 13(a) and Exchange Act Rules 13a-1, 13a-13, and 12b-20

32. Paragraphs 1 through 31 are realleged and incorporated herein by reference.

33. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports. Exchange Act Rule 12b-20 provides that in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

34. As described above, Maxwell failed to disclose that the material revenues and profits associated with its long-standing bribery scheme enabled Maxwell to enhance its financial position until new products could be commercially developed and sold and that Maxwell inaccurately recorded the associated sales commissions.

35. By reason of the foregoing, Maxwell violated, and unless restrained and enjoined will continue to violate Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Exchange Act Rules 13a-1, 13a-13, and 12b-20 [17 C.F.R. §§240.13a-1, 240.13a-13, and 240.12b-20].

THIRD CLAIM

Maxwell Violated Exchange Act Section 13(b)(2)(A)

36. Paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. As described above, Maxwell, through its officers, agents, and subsidiaries, failed to keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets.

38. By reason of the foregoing, Maxwell violated, and unless enjoined will continue to violate, Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)].

FOURTH CLAIM

Maxwell Violated 13(b)(2)(B) and Exchange Act

39. Paragraphs 1 through 38 are realleged and incorporated herein by reference.

40. As described above, Maxwell failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; and (ii) transactions were recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for its assets.

41. By reason of the foregoing, Maxwell violated, and unless enjoined will

continue to violate, Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §78m(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

A. Permanently restraining and enjoining Maxwell from violating Sections 30(A), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of Exchange Act [15 U.S.C. §§ 78dd-1, 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Exchange Act Rules 13a-1, 13a-13, and 12b-20 [17 C.F.R. §§240.13a-1, 240.13a-13, and 240.12b-20];

B. Ordering Maxwell to disgorge ill-gotten gains wrongfully obtained as a result of its illegal conduct, with prejudgment interest; and

C. Granting such further relief as the Court may deem just and appropriate.

Dated: January 31, 2011

Respectfully submitted,


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