

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10285/ January 18, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 79827/ January 18, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17799

In the Matter of

**Mer Telemanagement
Solutions Ltd.**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Mer Telemanagement Solutions Ltd. (“MTS” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

SUMMARY

1. This proceeding concerns two materially false and misleading press releases issued on October 15, 2013 and on January 22, 2014 by MTS which operated as a fraud upon investors. MTS furnished these press releases to the Commission as attachments to its Forms 6-K and incorporated them into two Form S-8 registration statements previously filed with the Commission.

2. The October 15, 2013 press release made it appear that MTS had entered into a significant three-year contract with a large and established telecommunications company called SBC Communications, LLC ("SBC"). In fact, SBC had little to no operations. The press release falsely described SBC—whose name was almost identical to SBC Communications, Inc., which merged with and then changed its name to AT&T—as a "United States telecommunications holding company" and a "large... provider of internet, cable TV, home phone and wireless services [with] services nationwide". The press release also failed to disclose the minimum contract value, which was not a material amount for MTS.

3. Following this announcement, MTS's share price increased from \$1.84 to as high as \$3.44 in morning trading, an increase of 87%, and closing at \$2.70, an increase of 47%. This dramatic increase in share price demonstrates that the announcement of the agreement with SBC was material to investors.

4. On January 22, 2014, MTS announced that the agreement with SBC had been terminated. Despite multiple red flags to the contrary, MTS continued to falsely describe SBC as a provider of diverse telecommunications services. That day, MTS's share price decreased from \$2.45 to \$2.09, a 15% drop, which further demonstrates that the first announcement of the agreement was material to investors.

RESPONDENT

5. **MTS**, an Israeli corporation based in Ra'anana, Israel, provides technology solutions related to telecommunications and video advertising. MTS operates in the U.S. through its wholly owned subsidiary, MTS IntegraTRAK Inc., located in River Edge, NJ. MTS stock is registered under Section 12(b) of the Exchange Act and trades on the NASDAQ Capital Market (ticker: MTSL). MTS is a foreign private issuer that files with the Commission annual reports on Forms 20-F and furnishes to the Commission Forms 6-K, pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

FACTS

Background

6. In the 2013 timeframe, MTS provided services in two primary markets, one of which was the Mobile Virtual Network Enabler (“MVNE”) market and involved the sale of software and services to mobile virtual network operators (“MVNOs”). MVNOs resell wireless services purchased wholesale from mobile network operators (“MNOs”).

7. In late August 2013, a representative of SBC sent an email to MTS inquiring about MTS’s MVNE services. At the time, SBC had a wireless wholesale agreement with an MNO. MTS did not perform any due diligence on SBC, its creditworthiness, or the extent of its operations.

8. About two weeks after SBC’s first email to MTS, MTS’s U.S. subsidiary and SBC signed a contract with a minimum contract value of \$424,000 over three years pursuant to which MTS was to provide MVNE services to SBC. This amount was not a material amount for MTS. SBC never paid any amounts due under the contract, however, and MTS terminated the agreement with SBC in January 2014.

MTS’s Press Release and Form 6-K Announcing SBC Agreement Was False and Misleading

9. On October 15, 2013, MTS issued a false and misleading press release, which was furnished as an attachment to a Form 6-K. MTS incorporated the Form 6-K relating to SBC into two Form S-8 registration statements it filed with the Commission on May 24, 2000 and March 15, 2005.

10. The October press release stated that MTS had entered into a three-year agreement with SBC, whose name was almost identical to SBC Communications, Inc., which merged with and then changed its name to AT&T. The press release falsely described SBC as a “large U.S. based service provider of internet, cable TV, home phone and wireless services” and a “telecommunications holding company [providing] services nationwide.” In fact, SBC had little to no operations and the address that it provided to MTS was the address of a UPS store.

11. MTS’s then-CEO knew of the potential for confusion relating to SBC’s name. For instance, when SBC first approached MTS several weeks earlier, the then-CEO clarified in an internal email that “[t]his is a different SBC.” Yet, MTS did not disclose or otherwise made clear *to investors* that this was a different SBC.

12. The press release touted the three year contract without disclosing the minimum contract value (of \$424,000 over three years) nor did it disclose that this amount was not material.

13. MTS's then-CEO also accessed SBC's website, which was simplistic and inconsistent with a company with extensive operations.

14. Nevertheless, MTS did not conduct any due diligence on SBC. For instance, MTS did not perform a credit check on SBC, relied on information provided by a representative of SBC, and did not take any steps to confirm SBC's claims about its nationwide operations. No one from MTS visited SBC's office, met anyone from SBC in person, and MTS personnel spoke with only one representative of SBC. Had MTS looked into SBC, it could have easily discovered that its purported address was the address of a UPS store, that it had been incorporated only at the beginning of 2013, and that there was no Dun & Bradstreet (D&B) report on SBC, all of which are inconsistent with SBC conducting legitimate large-scale business.

15. The day that the agreement with SBC was announced, MTS's share price rose from the previous closing price of \$1.84 reaching as high as \$3.44 in morning trading on October 15, 2013, an increase of 87%, and closing at \$2.70, an increase of 47%. This dramatic increase in share price demonstrates that the announcement of the agreement with SBC was material to investors. In response to a NASDAQ inquiry about the spike in MTS share price the day after the announcement, MTS acknowledged that the market may have confused SBC with an entity related to AT&T.

16. In addition, following the press release, an investor reached out to MTS stating that the agreement with SBC appeared significant and inquiring about its terms. MTS admitted to the investor that the agreement did not provide for material minimum deliverables. On November 7, MTS released its third quarter 2013 financial results which stated that none of MTS's previously announced contracts (including the one with SBC) "on a standalone basis, provides for material minimum deliverables."

MTS's Press Release and Form 6-K Announcing Termination of SBC Agreement Was False and Misleading

17. SBC never paid any amounts it owed MTS under the agreement. Between October and December 2013, SBC gave MTS a series of changing explanations for why it had not paid. For example, on one occasion SBC claimed to have a brokerage account, that it takes a few days to process a wire, but that the wire had been processed. A couple of weeks later, SBC in turn claimed that its funds have been frozen during due diligence related to an IPO, but that the payment would be forthcoming once SBC transitioned from its investment bank to another bank. Yet, SBC never made any payments to MTS.

18. In late November 2013, MTS learned that the MNO with which SBC had an agreement had a concern about the SBC project. A few days later, MTS learned that the MNO suspended its activity with SBC and, like MTS, had not been paid by SBC. MTS also put a hold on work with SBC until it received payment.

19. Starting in about December 2013, SBC became unresponsive to emails and phone calls, and mail sent from MTS to SBC was returned. An MTS employee noted in an email to

MTS's then-CEO that SBC's website did not list its address, only referring a city and state, and that mail sent to SBC was returned because the "[r]ecipient [was] not at this address."

20. On January 22, 2014, MTS announced in another press release and Form 6-K that it had terminated its agreement with SBC. Notwithstanding the additional red flags indicating that SBC was not a legitimate large-scale business, MTS's January 2014 press release continued to falsely describe SBC as a "U.S. based service provider of internet, cable TV, home phone and wireless services." The Form 6-K containing this press release was incorporated into two Form S-8 registration statements on file with the Commission.

21. The day MTS announced the termination of the SBC contract, its share price dropped by 14.7 % from \$2.45 to \$2.09, which further demonstrates that the statements in the first press release were material to investors.

VIOLATIONS

22. As a result of the conduct described above, MTS violated Section 17(a)(3) of the Securities Act, which makes it unlawful for any person in the offer or sale of any securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

23. Also as a result of the conduct described above, MTS violated Section 13(a) of the Exchange Act and Rules 13a-16 and 12b-20 thereunder. Section 13(a) of the Exchange Act and Rule 13a-16 thereunder require foreign private issuers of a security registered pursuant to Section 12 of the Exchange Act to furnish to the Commission certain reports on a Form 6-K. An issuer violates these provisions if it furnishes a report to the Commission that contains materially false or misleading information. *See SEC v. Falstaff Brewing Corp.*, 629 F.2d 62, 72-73 (D.C. Cir. 1980); *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1159-61, 1165 (D.C. Cir. 1978). Rule 12b-20 requires that such reports contain such further material information as may be necessary to make the required statements not misleading.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent MTS's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent MTS cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act and Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-16 thereunder.

B. Respondents shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Mer Telemanagement Solutions Ltd. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5720.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed

an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary