

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84964 / December 26, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18956

In the Matter of

**Nutriband, Inc.,
Gareth Sheridan and
Serguei Melnik**

Respondents.

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

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Nutriband, Inc., (“Nutriband”), Gareth Sheridan (“Sheridan”) and Serguei Melnik (“Melnik”) (“Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Sections 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

This proceeding involves reporting violations by Nutriband, a development-stage Florida-based company, its CEO, Sheridan and its CFO, Melnik. From approximately July 2016 until May 2018, Respondents made misleading statements in the company's public filings concerning the jurisdiction of the Food and Drug Administration ("FDA") over Nutriband's products and failed to disclose that its products could not be lawfully marketed in the U.S. without FDA approval.

Respondents

1. **Nutriband**, incorporated in Nevada, with its principal place of business in Oviedo, Florida, develops and sells transdermal patches that provide nutritional supplements. Nutriband's stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Nutriband's common stock began being quoted on the the Over-the-Counter Bulletin Board under the symbol "NTRB" in November 2017. According to the company's annual reports filed on Form 10-K for the fiscal years ended 2017 and 2018, Nutriband has no revenue and has incurred a net loss of approximately \$2.7 million. Nutriband has two full-time employees, Sheridan and Melnik.

2. **Sheridan**, age 29, is a citizen of Ireland who currently resides in Salt Lake City, Utah. He has been Nutriband's CEO and a director since its inception.

3. **Melnik**, age 46, is a resident of Oviedo, Florida. He has been Nutriband's CFO and a director since its inception.

Background

4. Since approximately January 2016, Nutriband has offered for sale transdermal patches, including a vitamin patch, a weight-loss patch, and an energy patch.

5. Under the Federal Food, Drug and Cosmetic Act a transdermal patch has been determined by the FDA to be a combination product, consisting of a device combined with a drug or biological product that the device is designed to deliver. Depending on the specific transdermal patch, the FDA will require a new drug application ("NDA") or abbreviated new drug application before the patch can legally be sold.

6. Nutriband's transdermal patches consist of a drug and a delivery device, and such drug-device combination products would require an NDA or abbreviated new drug application in order to be lawfully marketed in the U.S.

7. Nutriband never sought marketing authorization from the FDA prior to marketing its products in the U.S.

8. From July 8, 2016 through May 1, 2018, the following six Nutriband public filings with the SEC contained misleading statements about the FDA's jurisdiction over its products or failed to state that the company's products could not be marketed in the U.S. without FDA approval: Amendment 1 to Form 10 filed July 8, 2016, Amendment 2 to Form 10 filed July 27, 2016, Amendment 3 to Form 10, filed August 11, 2016, Amendment 4 to Form 10 filed August 25, 2016, Form 10-K for the fiscal year ended January 31, 2017 (filed May 5, 2017) and Form 10-K for the fiscal year ended January 31, 2018 (filed May 1, 2018) (collectively "Nutriband's Public Filings").

9. Various Nutriband Public Filings mischaracterized the company's products as "dietary supplements" not subject to FDA regulation and approval. Other Public Filings stated that the FDA may in the future determine to regulate transdermal patches. This was misleading because in fact the FDA already regulates Nutriband's products.

10. On July 24, 2018, Nutriband finally disclosed in a Form 8-K that it had retained FDA counsel who provided an opinion stating that Nutriband's products are regulated as drugs by the FDA and "must receive market approval before being sold in the U.S., which may significantly limit Nutriband's projected sales targets."

11. As the company's CEO and CFO and only two employees, Sheridan and Melnik, respectively, caused Nutriband's reporting violations because they drafted, reviewed, and approved the misstatements at issue.

12. Both Sheridan and Melnik signed Nutriband's annual report on Form 10-K for the fiscal year ended 2017 and confirmed, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 ("SOX"), that the report did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report. Sheridan likewise signed Nutriband's annual report on Form 10-K for the fiscal year ended 2018 and repeated this confirmation.

13. As a result of the conduct described above, Nutriband violated Exchange Act Sections 12(g) and 13(a) and Rules 12b-20 and 13a-1 thereunder which require an issuer to file with the Commission accurate annual and current reports, and that such reports contain such material information as may be necessary to make the required statements in light of the circumstances under which they are made not misleading.

14. As a result of the conduct described above, Sheridan and Melnik violated Exchange Act Rule 13a-14, which among other things requires an issuer's principal executive and principal financial officer to attest that the company's "report does not contain any untrue statements of material fact."

15. As a result of the conduct described above, Sheridan and Melnik caused Nutriband's violations of Exchange Act Sections 12(g) and 13(a) and Rules 12b-20 and 13a-1 thereunder which requires an issuer to file with the Commission accurate current reports and that such reports contain such material information as may be necessary to make the required statements in light of the circumstances under which they are made not misleading.

IV.

In view of the foregoing, the Commission deems it appropriate, and for the protection of investors to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Nutriband cease and desist from committing or causing any violations and any future violations of Exchange Act Sections 12(g) and 13(a) and Rules 12b-20 and 13a-1 promulgated thereunder.

B. Respondents Sheridan and Melnik cease and desist from committing or causing any violations and any future violations of Exchange Act Sections 12(g) and 13(a) and Rules 12b-20, 13a-1, and 13a-14 promulgated thereunder.

C. Sheridan shall pay a civil penalty of \$25,000 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). Payment shall be made in the following installments:

- (1) \$15,000 shall be due and payable within 30 days of the entry of this Order;
- (2) an additional \$2,500 shall be due and payable within 90 days of the entry of this Order;
- (3) an additional \$2,500 shall be due and payable within 180 days of the entry of this Order;
- (4) an additional \$2,500 shall be due and payable within 270 days of the entry of this Order; and
- (5) the final \$2,500 shall be due and payable within one year of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. §3717, shall be due any payable immediately, without any further application.

D. Melnik shall, within 30 days of the entry of this Order, pay a civil money penalty of \$25,000 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.

E. Sheridan and Melnik's payments must be made in one of the following ways:

- (1) Transmit payments electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) 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 the payee 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 Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

F. 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, Sheridan and Melnik agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of their payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Sheridan and Melnik agree that they 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 Respondents 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Sheridan and Melnik, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Sheridan and Melnik under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Sheridan and Melnik of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary