

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	
APPIANT TECHNOLOGIES, INC.,	:	
COBALIS CORP.,	:	INITIAL DECISION AS TO
FUTURELINK CORP.,	:	COBALIS CORP. ¹
STM WIRELESS, INC.,	:	November 22, 2010
SUPERMAIL INTERNATIONAL, INC.	:	
(n/k/a PBHG, INC.), and	:	
WOMEN FIRST HEALTHCARE, INC.	:	

APPEARANCES: Neil J. Welch, Jr., David S. Frye, Paul Kisslinger for the
Division of Enforcement, Securities and Exchange Commission

Warren Nemiroff for Cobalis Corp.

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision revokes the registration of the registered securities of Cobalis Corp. (Cobalis). The revocation is based on Cobalis's failure to file required periodic reports with the Securities and Exchange Commission (Commission or SEC). Although Cobalis represents that it plans to return to compliance, at this time, it has not filed past-due and current periodic reports, and it is not possible to predict a date when this might occur.

I. INTRODUCTION

A. Procedural Background

The Commission initiated this proceeding with an Order Instituting Proceedings (OIP), pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act), on August 10,

¹ The proceeding has ended as to the five remaining captioned Respondents. Appiant Techs., Inc., Exchange Act Release No. 62926 (A.L.J. Sept. 17, 2010).

2010. At a September 20, 2010, telephonic prehearing conference (PHC), the parties requested leave to file motions for summary disposition and consented to an initial decision based on the pleadings. Leave was granted, pursuant to 17 C.F.R. § 201.250(a); the due date for the Division of Enforcement's (Division) motion for summary disposition (Motion) was October 7, 2010; for Cobalis's opposition and cross-motion for summary disposition (Opposition), October 21, 2010; for the Division's opposition and reply, October 28, 2010 (Division's Reply); and for Cobalis's reply (Cobalis's Reply), November 4, 2010. Appiant Techs., Inc., Admin. Proc. No. 3-13998 (A.L.J. Sept. 21, 2010) (unpublished). The pleadings were timely filed.²

This Initial Decision is based on Cobalis's Answer to the OIP, the Division's Motion, Cobalis's Opposition, the parties' replies, and the Commission's public official records concerning Cobalis, of which official notice is taken pursuant to 17 C.F.R. § 201.323. There is no genuine issue with regard to any material fact, and this proceeding may be resolved by summary disposition, pursuant to 17 C.F.R. § 201.250. Any other facts in Cobalis's pleadings have been taken as true, in light of the Division's burden of proof and pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Cobalis's securities are registered with the Commission pursuant to Section 12(g) of the Exchange Act and that Cobalis is delinquent in its periodic filings with the Commission, having repeatedly failed to file timely periodic reports. The Division requests that the registration of Cobalis's securities be revoked.

Cobalis argues that it should not be penalized for failing to file the periodic reports, stating that it has been the victim of a nefarious creditor and stockholder, YA Global Investments, LP (f/k/a Cornell Capital Partners LP), and related entities (collectively, YA Global). Cobalis states that YA Global has forced it into bankruptcy, such that it will be unable to raise capital, through dubious financial maneuvers and misrepresentations, in part intended to drive Cobalis's stock price to zero and to enable YA Global to steal Cobalis's intellectual property. Cobalis states, without providing detail, that new accountants and auditors are working on the matter and that all filings will be up-to-date shortly. Cobalis argues that this proceeding should be dismissed, or at least that summary disposition should be denied, to give Cobalis time to best YA Global and eventually file past-due and current reports.

C. Exhibits Admitted into Evidence

The following items, attached as Exhibits 3-6, 8-12, and 14 to the Division's Motion and as Exhibit 15 to the Division's Reply, are admitted as Division Exhibits 3-6, 8-12, 14-15:

² Cobalis filed an opposition to the Division's Motion but did not file a cross-motion for summary disposition because it "wants a hearing." Opposition at 5. However, as discussed below, there is no genuine issue with regard to any material fact to warrant a hearing.

Print-out from www.otcquote.com listing Cobalis's market makers and its market status as of August 5, 2010 (Div. Ex. 3);

Letter from Sandra W. Lavigna (Lavigna), the Commission's Regional Bankruptcy Counsel for the Los Angeles Regional Office, to Chaslav Radovich (Radovich), President, Cobalis Corporation, dated January 28, 2008 (Div. Ex. 4);

Letter from Lavigna to Cobalis's attorneys, Robert P. Goe and Elizabeth A. Larocque, dated August 25, 2009 (Div. Ex. 5);

Cobalis's Disclosure Statement, describing its reorganization plan, filed August 3, 2009, in Cobalis Corp., No. 8:07-bk-12347-TA (Bankr. C.D. Cal.) (Div. Ex. 6);

Cobalis and YA Global's Joint Disclosure Statement, describing each one's reorganization plan, filed January 20, 2010, in Cobalis Corp., No. 8:07-bk-12347-TA (Bankr. C.D. Cal.) (Div. Ex. 8);

Letter from Marva D. Simpson (Simpson), Special Counsel, Office of Enforcement Liaison, Division of Corporation Finance, to Radovich, dated September 30, 2009 (Div. Ex. 9);

Letter from Radovich to Simpson, dated October 30, 2009 (Div. Ex. 10);

Print-out of press release, dated April 6, 2010, downloaded September 7, 2010, from www.marketwire.com (Div. Ex. 11);

Print-out of screenshot, downloaded October 6, 2010, from Cobalis's website, www.cobalis.com, identifying Kabani & Company, Inc., as the company's auditor (Div. Ex. 12);

Chart prepared by the Division showing a running total of the number of outstanding shares on each date that Cobalis either issued or cancelled shares between December 19, 2006, and September 7, 2010 (Div. Ex. 14); and

Declaration of Michaelie Wingo with attached records of Corporate Stock Transfer, Inc., concerning Cobalis stock (Div. Ex. 15).

The following item, attached as Exhibit A to Respondent's Opposition, is admitted as Respondent Exhibit A:

October 4, 2010, Second Amended Complaint, Cobalis Corp. v. Cornell Capital Partners, LP, No. 8:09-ap-01705-TA, relating to Cobalis Corp., No. 8:07-bk-12347-TA (Bankr. C.D. Cal.) (Resp. Ex. A).

II. FINDINGS OF FACT

Cobalis (CIK No. 1166414)³ is a Nevada corporation located in California, with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Answer at 2; official notice. The Commission's public official records contained in EDGAR show that Cobalis is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the quarter ended December 31, 2007.⁴ Cobalis represents, without providing details, that "new accountants and new auditors are working on the matter, and all filings will be up-to-date shortly." Cobalis's Reply at 2. However, the Commission's public official records show that, to date, Cobalis has not filed any past-due or current reports.

Cobalis's independent accountant that audited the financial statements contained in Cobalis's Form 10-KSB for the year ended March 31, 2007, Kabani & Company, Inc., resigned or was dismissed. PHC Tr. 15. Thereafter, Silberstein Ungar, PLLC, was engaged, but it too resigned or was dismissed. PHC Tr. 6, 14-15; Div. Ex. 11. Thereafter, another firm, identified as "Chang" was engaged. PHC Tr. 5-6, 16. However, the Commission's public official records show that Cobalis has not filed Forms 8-K to disclose these four events, as specified in Form 8-K Item 4.01.⁵

Cobalis was forced into bankruptcy in 2007 by creditor (and stockholder) YA Global. Answer at 2, Opposition at 6, Cobalis's Reply at 2; Cobalis Corp., No. 8:07-bk-12347-TA (Bankr. C.D. Cal. Aug. 1, 2007). The Chapter 7 proceeding was converted into a Chapter 11 proceeding on November 16, 2007, and Cobalis's plan of reorganization was approved on June 9, 2010. Cobalis Corp., No. 8:07-bk-12347-TA (Bankr. C.D. Cal.), appeal pending, Nos. CC-10-1236, 1246 (B.A.P. 9th Cir.). Additional litigation associated with the bankruptcy proceeding is ongoing. Cobalis Corp. v. Cornell Capital Partners, LP, No. 8:09-ap-01705-TA (Bankr. C.D. Cal.), Cobalis Corp. v. Gryphon Master Fund LP, No. 8:09-ap-01728-TA (Bankr. C.D. Cal.), YA Global Invs., L.P. v. Montenegrex, No. 8:10-ap-01452-TA (Bankr. C.D. Cal.)

Forcing Cobalis into bankruptcy was one of YA Global's several iniquitous actions, including manipulative short sales by which YA Global profited, as well as other tactics employed to steal Cobalis's intellectual property. Opposition at 6-7; Resp. Ex. A, passim. Because of YA Global's nefarious control of Cobalis, the company did not have access to crucial information that it needed to file periodic reports containing accurate information. Answer at 2,

³ The CIK number is a unique identifier for each corporation in EDGAR. The user can retrieve filings of a corporation by using its CIK number.

⁴ Correspondence from Commission staff reminded the company once in 2008 and twice in 2009 of its obligation to file periodic reports. Div. Ex. 4, Div. Ex. 5 at 2, Div. Ex. 9.

⁵ As of October 6, 2010, Cobalis's website still identified Kabani & Company, Inc., as its auditor. Div. Ex. 12.

Opposition at 12-14, Cobalis's Reply at 2-4. The Commission's public official records show, however, that company did not file any Forms 12b-25 to explain this as the reason for its failure to file timely periodic reports.

III. CONCLUSIONS OF LAW

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder require public corporations to file annual and quarterly reports with the Commission. "Compliance with those requirements is mandatory and may not be subject to conditions from the registrant." America's Sports Voice, Inc., 90 SEC Docket 879, 885 (Mar. 22, 2007). Scierter, which is often described as "a mental state embracing intent to deceive, manipulate, or defraud," is not required to establish violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. See SEC v. McNulty, 137 F.3d 732, 740-41 (2d Cir. 1998); SEC v. Wills, 472 F. Supp. 1250, 1268 (D.D.C. 1978). It is undisputed that Cobalis failed to file its required periodic reports for any period after the quarter ended December 31, 2007. Accordingly, Cobalis violated Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13.

IV. SANCTION

The Division requests that the registration of Cobalis's securities be revoked.⁶ In proceedings pursuant to Section 12(j) of the Exchange Act against issuers that violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder, the determination "of what sanctions will ensure that investors will be adequately protected . . . 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 Int'l Holdings, Inc., 88 SEC Docket 430, 438-39 (May 31, 2006). The Commission "consider[s], among other things, the seriousness of the issuer's violations, the isolated or recurrent nature of the violations, the degree of culpability involved, the extent of the issuer's efforts to remedy its past violations and ensure future compliance, and the credibility of its assurances, if any, against further violations." Id. at 439.

The violations were serious in that failure to file periodic reports violates a crucial provision of the Exchange Act. The purpose of the periodic reporting requirements is to publicly disclose current, accurate financial information about an issuer so that investors may make informed decisions:

The reporting requirements of the Securities Exchange Act of 1934 is the primary tool which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities. Congress has extended the reporting requirements even to companies which are "relatively unknown and insubstantial."

⁶ The only remedies available in this proceeding, pursuant to Section 12(j) of the Exchange Act, to address the company's reporting violations are revocation or suspension of registration of its securities.

SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977) (quoting legislative history); accord e-Smart Techs., Inc., 57 S.E.C. 964, 968-69 (2004).

Cobalis's violations were recurrent in that it has repeatedly failed to file periodic reports. Cobalis failed to notify the Commission and its investors of its inability to timely file Forms 10-K and 10-Q on Forms 12b-25, as well as failing to report four events regarding auditors on Form 8-K, in violation of 17 C.F.R. §§ 240.12b-25, .13a-11.⁷ Concerning culpability, the record shows that Cobalis knew of its reporting obligations but failed to comply with them. Cobalis's efforts to remedy its past violations and ensure future compliance have not yet borne fruit in the form of past-due and current periodic reports. Its violations will continue until it becomes current.

Cobalis acknowledges its reporting violations, while pointing to YA Global's role in its difficulties. Cobalis argues that, by revoking the registration of its stock, the Commission would be "taking sides" in its conflict with YA Global. Additionally, it urges, there would be a negative impact on innocent Cobalis shareholders. Concerning the "taking sides" argument, as stated above, the purpose of the reporting requirements is to publicly disclose current, accurate financial information about an issuer so that investors may make informed decisions. The idea that the condition of Cobalis should be concealed from the public so as not to disadvantage Cobalis in its conflict with YA Global is inconsistent with that purpose. Regarding the negative impact of revocation on current investors, while both current and prospective investors are harmed by the lack of current, accurate financial information about an issuer, the interests of existing investors must not take precedence over those of prospective investors. See Nature's Sunshine Prods., Inc., 95 SEC Docket 13488, 13500 (Jan. 21, 2009), America's Sports Voice, 90 SEC Docket at 885-86, Gateway, 88 SEC Docket at 443. Further, at any time following the revocation, Cobalis may re-register its securities under Exchange Act Section 12(g) by filing a Form 10 with the Commission, using the audited financial statements that are in the process of preparation.

In sum, to whatever extent Cobalis has made efforts toward remedying its past violations and ensuring future compliance, the investing public still does not have access to complete past and current financial information, and the date when these deficiencies will be cured cannot be predicted. Thus, neither dismissal of the proceeding, as requested by Cobalis, nor a suspension of registration for a period of twelve months or less is an appropriate disposition.⁸ Rather,

⁷ Although the OIP does not allege violations based upon the Company's failure to file Forms 12b-25 or 8-K, "we may consider those failures, as well as other matters outside the OIP, in assessing appropriate sanctions." Gateway, 88 SEC Docket at 440 n.30.

⁸ Compare e-Smart Techs., Inc., 57 S.E.C. 964, 970 (2004), e-Smart, 84 SEC Docket 2979, 2984 (A.L.J. Feb. 3, 2005) stating that a company's "subsequent filing history is an important factor to be considered in determining whether revocation is 'necessary or appropriate for the protection of investors'" within the meaning of Section 12(j) of the Exchange Act. In the instant case, there are no subsequent filings of periodic reports, so that the investing public still does not have access to accurate financial information about the issuer.

revocation of the registration of Cobalis's registered securities will serve the public interest and the protection of investors, pursuant to Section 12(j) of the Exchange Act.

V. ORDER

IT IS ORDERED that, pursuant to Section 12(j) of the Securities Exchange Act of 1934, 15 U.S.C. § 78(j), the REGISTRATION of the registered securities of Cobalis Corp. IS REVOKED.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Carol Fox Foelak
Administrative Law Judge