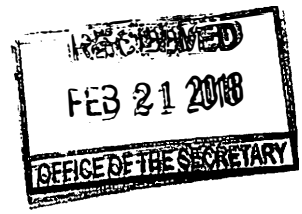
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17990



In the Matter of

Digital Brand Media & Marketing Group, Inc., *et al.*,

Respondents.

DIVISION OF ENFORCEMENT'S RESPONSIVE POST-HEARING BRIEF

The Division of Enforcement ("Division"), by counsel, pursuant to the Court's Notice to the Parties and Order Following Remand dated December 6, 2017, respectfully submits its Responsive Brief to Respondent Digital Brand Media and Marketing Group, Inc.'s ("Digital Brand") January 5, 2018 Response to the Initial Order of November 16, 2017 ("Initial Order"), the Remand Order of December 6, 2017 ("Remand Order") (hereinafter "Digital's January 5 Response"), and Digital Brand's Submission of Confidential Post Hearing Evidence dated February 6, 2018 (hereinafter "Digital's February 6 Submission").

I. Argument

A. The Court properly recognized that Digital Brand has never made a profit when it analyzed the *Gateway* factors in its initial decision.

Digital Brand complains about the Court's findings that: (1) from 2003 to 2014, Digital Brand never made a profit; and (2) one cannot accept the company's

representations that it will comply with its periodic filing obligations in the future because it lacks the resources to do so. (Digital's January 5 Response at 4). Digital Brand's criticism is not grounded in fact or law. According to Digital Brand, "[t]he model for the digital industry is a focus on cash flow and revenues, not profit. Companies operate at a loss, yet have high valuation" and "[p]rofit focus is the old manufacturing model, however cash flow is the digital technology, 21st century model used by all financial analysts." (Digital's January 5 Response at 3). In support of its argument, Digital Brand cites to a Fox Business website article dated October 30, 2015.

While obviously holding zero precedential or evidentiary value, the Fox Business article states that Amazon's earnings "are significant and large, but the company chooses to put most of its revenues back into the business to keep propelling growth." However, according to EDGAR, Amazon reported a net income of $2.3 million for the year ended December 31, 2016. Thus, the Fox Business article does not clearly support Digital Brand's contention, and it certainly does not invalidate the Court's factoring of the company's unprofitability into the *Gateway* factors.[1]

Indeed, there was testimony from Digital Brand's executive director that she was going to get $61,000 and $250,000 cash from two unnamed private parties after the August 9, 2017 hearing to bring the filings up to date. (Perry Tr. 109:4-24). In essence, Digital Brand has to rely on the kindness of strangers to give it money to get current in its periodic reports given its perpetual lack of profitability.

[1] Digital Brand also cited Twitter as another example of the digital industry's "focus on cash flow and revenues, not profit." (Digital's January 5 Response at 3). However, on February 8, 2018, Twitter, Inc. filed a Form 8-K on EDGAR announcing that it achieved a net income of $91 million for the fourth quarter of 2017.

The unsworn and unaudited collection of financial statements, checks, bank statements, engagement letters, and other items making up Digital's February 6 Submission are not relevant given the continuing failure to file periodic reports. It has now been over six months since the hearing in this case, and Digital Brand has yet to file a single delinquent periodic report that was the subject of the hearing. Moreover, EDGAR establishes that Digital Brand has now also failed to file its Form 10-K for the year ended August 31, 2017 and its Form 10-Q for the period ended November 30, 2017, and will soon have its Form 10-Q for the period ended February 28, 2018 due.[2]

B. It is too late for Digital Brand to catch up on its delinquent filings and become current.

Digital Brand claims that: (1) funding has been received by its accountants at the Boisseau firm; (2) they have completed the audit support packages; and (3) a new auditor has been retained. (Digital's January 5 Response at 5). But, none of this is particularly relevant to the issue at hand. Digital Brand fails to explain how it can overcome the Commission's decision in *Absolute Potential, Inc.*, Exchange Act Rel. No. 71866, 2014 WL 1338256, at *3-*8 (April 4, 2014), which found, among other things, that "even where the delinquent issuer became current in its periodic reports during summary disposition briefing, the public interest still required revocation of its securities registration as a deterrent to other issuers that might become delinquent." *Digital Brand*, Initial Decision Rel. No. 1226 at 12 (Nov. 16, 2017).

[2] Digital Brand complains that the Initial Decision "negates to mention that DBMM has obeyed the prior order of the Commission to reaudit its financial statements." (Digital's January 5 Response at 4). Section 1.3 of the Initial Decision on p. 4 accurately describes the facts concerning the re-audit issue, and Div. Ex. 19 establishes that Digital Brand obeyed a Commission staff letter about the re-audit, not an "order of the Commission."

C. Digital Brand, not the Initial Decision, made several misstatements of the facts in this case.

Digital Brand, not the Court, is mistaken regarding the "several misstatements" alleged by Digital Brand. (Digital's January 5 Response at 6). First, the Division established, and the Court found, that Respondent's Ex. D is not a request for the hardship exemption. The Court explained the hardship exemption on p. 13 of the Initial Decision, and Respondent's Ex. D does not meet those requirements. Second, the Court clearly rejected Digital Brand's claims that Assurance Dimensions was retained as its auditor. (Initial Decision at 5.)[3]

D. Digital Brand claims of *Brady* violations are offered without evidence and have been considered and roundly rejected.

The Court has already rejected Digital Brand's previous claims of violations of *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and that it was not provided with copies of all the trial witness subpoenas, and offers no new evidence of these claims. For the same reasons the Initial Decision rejected these claims, the Court should do so again. (Initial Decision at 8-9.)

Finally, the Division was unable to find anything explaining or supporting Digital Brand's bewildering "undefended case law" theory. (Digital's January 5 Response at 8.) The Court should reject this argument as meritless.

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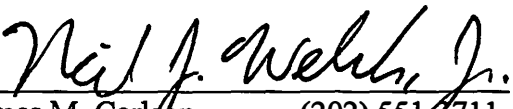
[3]Digital Brand also argues that *Impax Labs., Inc.*, Exchange Act Rel. No. 57864, 2008 WL 2167956 (May 23, 2008), is inapplicable to this case and claims the Initial Decision erred by relying on it. This argument is meritless, and Digitial Brand's attempt to minimize or somehow distinguish *Impax* fails.

II. Conclusion

For the reasons set forth above, and in its initial and final Post-Hearing Briefs, the Division respectfully requests that the Administrative Law Judge ratify and affirm the Initial Decision issued on November 16, 2017, revoking the registration of each class of Digital Brand's securities registered under Exchange Act Section 12.

Dated: February 21, 2018

Respectfully submitted,



James M. Carlson (202) 551-5711
Neil J. Welch, Jr. (202) 551-4731
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-6010

COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

I hereby certify that true copies of the Division of Enforcement's Responsive Post-Hearing Brief were served on the following on this 21st day of February, 2018, in the manner indicated below:

By Email:

The Honorable Jason S. Patil
Administrative Law Judge
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-2557
alj@sec.gov

Marshal Shichtman, Esq.
Marshal Shichtman & Associates, P.C.
1 Old Country Rd., Suite 360
Carle Place, NY 11514
(Counsel for Respondent)
marshal@lawmsa.com

Neil J. Welch, Jr.