IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	**Civil Action**
	:	**File No. CV-04-P-1052-S**
v.	:	
ERIC TYRA, SCOTT WYNNE, PETER BERMAN, SCOTT CAREY,	:	
Defendants.	:	

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The Securities and Exchange Commission ("Commission") files this Complaint for Injunctive and Other Relief and alleges as follows:

INTRODUCTION

1. This case involves fraudulent accounting practices by Just for Feet, Inc. ("Just for Feet"), a company with publicly traded securities. In the spring of 1999, Just for Feet, Inc., a former national retailer of athletic and outdoor footwear and apparel, overstated its income through various schemes and artifices to defraud involving the use of bogus receivables and revenues from its outside vendors and the understatement of inventory reserves.

2. Defendants Eric Tyra, Scott Wynne, Peter Berman and Scott Carey made or aided and abetted the making of false entries in Just for Feet's books and records necessary to inflate artificially Just for Feet's earnings and engaged in other misconduct as detailed below.

3. Defendants Tyra, Wynne and Berman have engaged in, and unless restrained and enjoined by this Court, will continue to engage in, acts and practices which constitute and will

constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 promulgated thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2], and acts and practices that aid and abet violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13].

4. Defendant Carey has engaged in, and unless restrained and enjoined by this Court, will continue to engage in, acts and practices which aided and abetted violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], Rule 10b-5 promulgated thereunder [17 C.F.R. 240.10b-5], and Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-1 promulgated thereunder [17 C.F.R. 240.12b-20 and 240.13a-1].

JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

6. This Court has jurisdiction of this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

7. Defendants, directly and indirectly, have made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

8. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Just For Feet was based in this district, many of the acts constituting the scheme occurred within this district, and the offer and sale of Just for Feet's securities during the relevant period occurred within this district.

THE DEFENDANTS

9. Eric Tyra, 52, of Birmingham, Alabama, is a former Georgia Certified Public Accountant ("CPA") who let his license lapse on December 31, 1995. He became Just for Feet's Executive Vice President-Finance and Chief Financial Officer in May 1997. He remained in that position until June of 1999 when he was reassigned to the role of Vice President-Administration. He resigned from Just for Feet on October 30, 1999. He was formerly a partner with Deloitte & Touche LLP and currently works for a private marketing company in Birmingham.

10. Scott Wynne, 35, of Birmingham, Alabama, joined Just for Feet in 1985. He was named as Vice President-Operations in February 1997 and remained in that capacity until he became President of the Superstore Division in September 1999. He left Just for Feet in March of 2000.

11. Peter Berman, 42, of Birmingham, Alabama, became the Just for Feet Controller in July of 1998 and remained in that position until June of 2000. He is an accountant and held many high-level financial positions prior to his employment at Just for Feet. He is currently the CFO of Amalgamated Concepts, a privately held company.

12. Scott Carey, 49, of Tarpon Springs, Florida, was, between 1998 and early 1999, the Strategic Account Manager for the Southeastern United States for Nike, Inc., a shoe and sportswear company publicly traded on the New York Stock Exchange (NYSE). Carey left Nike in June of 1999 and is now the Vice President of Sales at Brooks Sports, Inc., a privately held sports shoe manufacturer.

ISSUER INVOLVED

13. Just for Feet, Inc., a Delaware corporation based during the relevant period in Birmingham, Alabama, was a national retailer of athletic and outdoor footwear and apparel.

14. On January 25, 1994, the Company's securities were registered with the Commission pursuant to Section 12(g) of the Securities Act [15 U.S.C. § 78l] and traded on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") under the symbol "FEET." Just for Feet is no longer traded on NASDAQ.

15. Despite presenting a favorable financial picture in its fiscal 1998 Form 10-K, filed on April 30, 1999, Just for Feet filed for protection in November of 1999 under Chapter 11 of the Bankruptcy Code. This was converted to a Chapter 7 liquidation proceeding in 2000.

16. Just for Feet's fiscal year ran from February 1 through January 31. In January of 1999, however, Just for Feet changed the ending date for fiscal 1998 to January 30.

THE SCHEME TO OVERSTATE INCOME

Fictitious Rogers Rebate Receivable

17. One of the plans orchestrated at Just for Feet by defendants Wynne and Tyra, and others, allowed the Company to increase its assets and earnings through the creation of false and fraudulent receivables in the form of rebates from Rogers Advertising, Inc., the Company's outside advertising agency.

18. The Company used these false and fraudulent rebates to increase reported assets and earnings before taxes by $730,000 and $3 million for the fiscal years ended January 31, 1997 and 1998, respectively. For the fiscal year ended January 30, 1999, Just for Feet used this plan to increase reported assets and earnings before taxes in the first, second and third quarters by $1

million each, and by a total of $5.3 million as of the end of that fiscal year.

19. Each rebate agreement was actually for discounted advertising services to be rendered on a going forward basis in the next fiscal year. Just for Feet nonetheless immediately booked these anticipated future discounts as receivables in the then current fiscal year, using them to immediately increase assets and earnings before taxes, the latter by crediting the future discounts against current advertising expenses.

20. These discounts or rebates were explicitly made contingent because their payment depended on Just for Feet's continued business relationship with Rogers Advertising, and so the receivables and related income were recognized prematurely and, in accordance with Generally Accepted Accounting Principles ("GAAP"), should not have been booked.

21. In furtherance of this scheme, on December 3, 1997, defendant Wynne had Rogers Advertising execute a credit memo granting Just for Feet a $3 million credit in the billing month of January of 1998. Just for Feet then fraudulently booked the $3 million receivable and related revenue through a reduction of expenses at year-end.

22. As a further part of the scheme, defendant Wynne and a fellow Just for Feet officer also directed a series of fraudulent "round trip" transactions each year wherein Just for Feet provided its own money to Rogers Advertising in order to give Rogers funds to pay down the payable that Rogers Advertising owed to Just for Feet as a result of the credit memos that had been executed.

23. In furtherance of this plan, at their December 1997 meeting, defendant Wynne informed Rogers Advertising that the payment plan in the upcoming year would change, in that during 1998, notwithstanding the $3 million rebate agreement, Rogers Advertising was to bill Just for Feet for the full gross monthly advertising amount placed with media sources as it previously

had done. After Rogers Advertising received payment from Just for Feet, it was to pay the bills of the media sources, keep a $185,000 retainer for itself, and then submit a check back to Just for Feet for the remaining difference. Defendant Wynne thus put into place a plan that would enable Just for Feet to eliminate the fraudulent $3 million receivable during the year through "round trip" transactions by providing its own money to Rogers Advertising to pay down the debt. During the fiscal year, at least $2 million in excess payments were returned to Just for Feet and applied against the receivables pursuant to this plan.

24. In January 1998, defendant Wynne had Rogers Advertising fraudulently credit Just for Feet's advertising bill for $730,000 to remove an earlier bogus receivable from fiscal year 1997. Wynne then allowed Rogers Advertising to over bill for a nearly identical amount in the following month.

25. In May of 1998, Just for Feet's Advertising Department estimated that based upon the amount of anticipated advertising placed through Rogers Advertising, the advertising company would grant a $6 million rebate at the end of that fiscal year. Thereafter, at defendant Tyra's direction, the Company began accruing for this receivable during the fiscal year, even though he knew or was reckless in not knowing that it was contingent in nature because Rogers Advertising had not yet even agreed to give such a $6 million rebate for fiscal year 1998.

26. Pursuant to the above-described scheme, in May of 1998 defendant Tyra caused the Just for Feet accounting staff to book $1 million of this $6 million Rogers Advertising rebate receivable (and related revenue through a reduction of expenses) for the first quarter based on the estimated amount. The journal entry recording this receivable includes a note from the Company's Director of Financial Reporting stating that the entry was purportedly based solely on an oral agreement between Just for Feet's CEO and Rogers Advertising and that it was

relayed to him by defendants Tyra and Wynne. No supporting documentation was supplied.

27. Pursuant to the instructions of defendants Wynne and Tyra, Just for Feet thereafter fraudulently accrued $333,000 of this purported Rogers Advertising rebate receivable per month. In this fashion, the Company fraudulently accrued $3 million of this receivable by the end of the third quarter of 1998, even though Wynne and Tyra knew that Rogers had not actually granted any rebate at that time.

28. Wynne and Tyra knew or were severely reckless in not knowing that accruing such receivables before they were earned or even granted by Rogers Advertising constituted the recognition of a contingent asset, which is not in accordance with GAAP. The effect of this premature recognition of assets was to falsely and fraudulently inflate the reported before-tax earnings and assets in Just for Feet's Forms 10-Q for the first, second and third quarters of 1998 by approximately $1 million per quarter.

29. In December 1998, Just for Feet's CEO and Rogers Advertising agreed on a rebate of $5.3 million for the following fiscal year. Again, the rebate was intended to apply to advertising services to be rendered during fiscal year 1999 but, at the direction of defendants Wynne and Tyra, was applied by the Company to fiscal year 1998 financial reporting. The $2.3 million of this amount which Just for Feet had not yet accrued as of December was added to the Company's accounts receivable at year-end. Just for Feet thus used this receivable on its balance sheet as of January 30, 1999, to falsely and fraudulently increase both its assets and its earnings before taxes by $5.3 million each, the latter increase achieved through reducing its advertising expenses.

30. For Fiscal 1999, defendant Wynne devised a fraudulent plan whereby Rogers Advertising was to over bill Just for Feet $250,000 per month beginning in May 1999 and then pay back these extra funds to Just for Feet under the guise of paying down the fraudulent $5.3 million

rebate that had been recognized in the previous fiscal year. Again, the Just for Feet scheme gave Rogers Advertising Just for Feet's own funds to use as payment to the Company.

Fictitious Co-Op Revenue

31. By the nature of its business, Just for Feet incurred large amounts of advertising expenses. Most of its vendors offered financial assistance through unwritten agreements with Just for Feet to help pay for these advertising expenses. This assistance was termed "advertising co-op" or "vendor allowances." If Just for Feet promoted a particular vendor's products in one of its advertisements, that vendor typically would consider agreeing to provide advertising co-op credit to the Company to share the costs of the advertisement.

32. Just for Feet offset this co-op revenue against advertising expense on its income statement, thereby increasing its net earnings.

33. Although every vendor agreement was somewhat different, Just for Feet's receipt of advertising co-op revenue was contingent upon subsequent approval by the vendor. Under established practices, the Company typically had to submit the advertisement to the vendor for approval after Just for Feet had already paid for it. If the vendor approved the advertisement, it would usually issue the co-op payment to Just for Feet in the form of a credit memo offsetting expenses on Just for Feet's merchandise purchases from that vendor (hereinafter "co-op dollars").

34. As was typical in the industry, most vendors limited the amount of advertising co-op dollars allowed to Just for Feet based upon the amount of merchandise that Just for Feet purchased from that particular vendor.

35. During fiscal year 1998, defendants Tyra, Wynne and Berman directed the Company's

accounting department to book co-op receivables and related revenues that they knew, or were extremely reckless in not knowing, were not owed by certain vendors at the end of fiscal year 1998.

36. Defendants Tyra, Wynne and Berman knew, pursuant to GAAP, co-op receivables should not be recognized until earned yet all three defendants fraudulently instructed employees to book co-op that the defendants knew was unearned, even though they had no written documentation to support the entries.

37. In this fashion, Just for Feet's accounting department booked for fiscal year 1998 approximately $971,135, $4.3 million, and $6.8 million in unearned co-op receivables from Asics, New Balance and Reebok, respectively, when in fact these companies owed Just for Feet nothing.

38. Additionally, the Company booked approximately $1.3 million in unearned co-op from Timberland when in fact Timberland owed the Company only $105,000, a difference of approximately $1.2 million.

39. For the fiscal year 1998, the fraudulent practices described above resulted in over $19 million in false and fictitious pretax earnings being reported, out of total pretax income of approximately $43 million and resulted in Just for Feet presenting financial statements that were not in conformity with GAAP.

40. Defendant Berman personally prepared a journal entry booking over $2 million of fraudulent co-op receivables without any supporting documentation.

Scott Carey

41. Defendant Scott Carey, Nike's Strategic Account Manager for the Southeast, wrote and

sent to Just for Feet two confirmation letters in March of 1999. In the first letter, Carey falsely and fraudulently confirmed that Just for Feet had $2.15 million in "available" co-op funds from Nike as of January 30, 1999.

42. Defendant Carey signed this letter at the request of Just for Feet's Executive Vice President, who explained that the Company's outside audit firm was performing an audit of Just for Feet's financial statements.

43. In truth and in fact, Just for Feet had only approximately $600,000 in available co-op allowances at the end of January 1999 that the Company had not even yet earned. Nike therefore owed nothing to Just for Feet as of that time.

44. Defendant Carey's second letter falsely and fraudulently confirmed that Just for Feet had accrued, as of January 30, 1999, $509,000 in "Margin enhancement Co-Op," a type of co-op payment given by a vendor to a retailer to support the latter's profit margins when goods were sold at lower than expected prices. In truth and in fact, Nike had not typically offered margin enhancements to customers in the course of its business and had not done so in this case.

45. Defendant Carey knew that these letters were part of the audit of Just for Feet's financial statements. He also knew, or by any reasonable exercise of due care could have learned, that his firm in fact owed no such payments to Just for Feet.

46. By signing these confirmations, defendant Carey falsely and fraudulently confirmed the validity of nonexistent accounts receivable which Just for Feet used to boost its reported assets and earnings in its Form 10-K for fiscal 1998, Form S-8 filed in May of 1999, a Form S-4 filed in June of 1999, and to boost its reported assets in its Forms 10-Q for the first and second quarters of 1999. He therefore fraudulently provided knowing and substantial assistance to Just

for Feet and aided and abetted the Company's violations of the federal securities laws.

Just For Feet's Excess Inventory Problem

47. Just for Feet's balance sheet at January 30, 1999, showed that the Company had $399.9 million of merchandise inventory. This was nearly double the amount reported for the previous fiscal year, when the balance sheet stated $206.1 million of merchandise inventory.

48. The Company's inventory turned over only 1.5 times during the year.

49. By the end of fiscal 1998, Just for Feet had stored millions of dollars in excess inventory from company-wide sources in its New Jersey warehouse.

50. Defendants Tyra, Wynne and Berman fraudulently failed to make any adjustment to Just for Feet's inventory obsolescence reserves from $150,000 at the end of fiscal year 1997, to reflect increases in excess and/or obsolete inventory that they knew existed at the end of the 1998 fiscal year.

51. Defendants Tyra, Wynne and Berman failed to ensure proper disclosure of the inadequate reserves or excess inventory in the Company's Form 10-K for the fiscal year ended January 30, 1999 prior to the filing of that document on April 30, 1999. This enabled Just for Feet to falsely and fraudulently report at least approximately $14.6 million in inflated earnings and net income.

52. Defendants Tyra and Berman fraudulently signed the April 1999 management representation letter to Deloitte which they knew stated falsely that "[P]rovision has been made to reduce excess or obsolete inventories to their estimated net realizable value."

53. Defendants Tyra, Wynne and Berman failed to cause the preparation of an adequate aging analysis as of the end of the fiscal year 1998, to conceal the excess or obsolete nature of a significant portion of the Company's inventory.

54. Just for Feet's ability to conceal its excess inventory problems began to erode early in fiscal 1999. In a June 1999 press release, the Company disclosed that it had over $50 million in excess inventory as of May 1, and later revealed an additional $20 million of excess inventory from its previous acquisition in the summer of 1998 of Sneaker Stadium, a large shoe merchandiser in the Northeast.

Fictitious Booth Income

55. Beginning in December 1996, defendants Tyra, Wynne, and others, caused vendors to bill Just for Feet for the purchase of display booths which the vendors had previously located in Just for Feet stores at no expense to Just for Feet.

56. In December 1996, defendant Wynne informed the Executive Vice President-Merchandising that Just for Feet was going to start buying the booths from the vendors. He devised and participated in the fraudulent changes to Just for Feet's procedures on booth accounting by creating a bogus billing system that allowed Just for Feet to "round trip" its funds through the vendors back to the Company in the form of offsets to advertising expense.

57. Just for Feet initially made payment to the vendors for the booth charges, but in return obtained an offsetting credit on merchandise purchases in amounts approximating the payments made. This fraudulent accounting enabled the Company to decrease its expenses and thereby increase net earnings before taxes. Just for Feet thus engaged in fraudulent "round-trip" transactions by receiving back the funds it used to "buy" these booths and then recognizing these funds as reductions in expenses, thereby increasing income.

58. During fiscal year 1998, at defendant Wynne's direction, Just for Feet changed the accounting system for booth assets and income to eliminate the involvement of the vendors entirely. At the beginning of fiscal year 1998, Just for Feet projected the dollar amount of booths

it wanted to receive during the year, divided the amount by twelve months, and started booking $174,362 per month of booth income through projected reductions of advertising expense. The corresponding entry was a debit or reduction in accounts payable, resulting in an increase in net assets.

59. For October 1998, the last month of the third quarter, in addition to the above-mentioned $174,362 per month, Wynne caused Just for Feet to book an additional $5.2 million of booth income for a total of approximately $5.4 million for the month of October. There was no supporting documentation attached to the fraudulent journal entry.

60. Just for Feet then fraudulently booked an additional $2.25 million of booth income over the remaining three months of the fiscal year.

61. In this fashion, although no cash or co-op credits actually changed hands between Just for Feet and the vendors, the Company nonetheless fraudulently increased its net earnings by $9 million during fiscal year 1998.

62. Defendant Tyra, the Company's Chief Financial Officer, attended quarterly meetings where booth accounting was discussed and knowingly or recklessly allowed the fraudulent booth income to be booked in fiscal 1998 without supporting documentation and not in accordance with GAAP.

63. Defendant Tyra took no steps to ensure that the booth accounting complied with GAAP, despite being warned of possible problems by his former controller.

64. Tyra also allowed the Company to fraudulently "round-trip" its own funds through its vendors and then recognize the returned funds as offsets to advertising expense, thereby increasing net earnings.

65. At January 30, 1999, in order to substantiate $9 million of booth income through reductions of advertising expense, defendant Wynne caused the Company's auditors to prepare confirmations to the vendors after year-end to verify the dollar amount of booths received during the year.

66. With their extensive accounting knowledge, defendants Wynne and Tyra knew, or were severely reckless in not knowing, that the method for accounting for booth assets was fraudulent and did not conform to GAAP.

67. The Defendants' acts had a material effect on Just for Feet's financial results as reported and repeated in its fiscal 1998 Form 10-K, Forms 10-Q for the first and second quarters of 1999, the May 1999 Form S-8 and the June 1999 Form S-4, and resulted in Just for Feet financial statements that were not prepared in conformity with GAAP.

68. Defendant Tyra signed a fraudulent January 30, 1999, Form 10-K and fraudulent Forms 10-Q for each quarter of 1998 and the first quarter of 1999. At the time that he signed the forms, Trya knew, or was severely reckless in not knowing, that his actions resulted in the inclusion of false and misleading information in Just for Feet's Form 10-Q for the first and second quarters of 1999.

69. Defendant Tyra also signed Just for Feet's Form S-8 and Form S-4 registration statements filed with the Commission on May 3, 1999, and June 14, 1999, respectively, which included the misleading financial statements or incorporated them by reference.

CLAIMS FOR RELIEF

COUNT I--FRAUD

Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]

and Aiding and Abetting Violations of Section 17(a) of the Securities Act

[15 U.S.C. § 77q(a)]

70. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

71. Defendants Tyra, Wynne and Berman, aided and abetted by defendant Carey, in connection with the offer or sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

(a) employed devices, schemes, and artifices to defraud;

(b) obtained money or property by means of untrue statements of material facts and omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in transactions, practices, and courses of business which operated and would operate as a fraud or deceit upon the purchasers of securities, all as more particularly described in the paragraphs above.

72. Defendants Tyra, Wynne and Berman knowingly, intentionally or with severe recklessness, engaged in the aforementioned devices, schemes and artifices to defraud. Defendant Carey knowingly provided substantial assistance. In engaging in such conduct, Defendants acted with scienter, that is, with an intent to deceive, manipulate and defraud or with a severe reckless disregard for the truth.

73. By reason of the foregoing, Defendant Carey aided and abetted violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and unless enjoined will continue to do so.

74. By reason of the foregoing, Defendants Tyra, Wynne and Berman, violated and unless enjoined, will continue to violate and cause the violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

COUNT II--FRAUD

Violations of Section 10(b) of the Exchange Act [15. U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and

Aiding and Abetting Violations Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5

Thereunder [17 C.F.R. § 240.10b-5]

75. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

76. Defendants Tyra, Wynne and Berman, aided and abetted by defendant Carey, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a) employed devices, schemes, and artifices to defraud;

b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described in the paragraphs above.

77. Defendants Tyra, Wynne and Berman, intentionally, or with severe recklessness engaged

in the aforementioned conduct. Defendant Carey knowingly provided substantial assistance.

78. In engaging in such conduct, Defendants acted with scienter, that is, with an intent to deceive, manipulate and defraud or with a severe reckless disregard for the truth.

79. By reason of the foregoing, Defendant Carey aided and abetted violations of Section 10(b) of the Exchange Act [15 USC § 78j(b)] and Rule 10b-5 thereunder [17 CFR § 240.10b-5], and unless enjoined will continue to do so.

80. By reason of the foregoing, Defendants Tyra, Wynne and Berman, violated and unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT III-REPORTING PROVISIONS

Aiding and Abetting Just for Feet's Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]

81. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

82. Defendants Tyra, Wynne, Berman and Carey aided and abetted Just for Feet's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1 and 240.13a-13], which occurred when Just for Feet filed annual and periodic reports that contained financial statements that were not prepared in conformity with GAAP and contained material misstatements.

83. Through the conduct described in the above paragraphs, the Defendants knowingly or with severe recklessness substantially assisted Just for Feet's violations of this section and rules.

84. By reason of the foregoing, Defendants Tyra, Wynne, Berman and Carey, aided and

abetted and unless enjoined, will continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1 and 240.13a-13].

COUNT IV- RECORD-KEEPING VIOLATIONS

Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and Violations of Rule 13b2-1 [17 C.F.R. § 240.13b2-1]

85. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

86. Defendants Tyra, Wynne and Berman aided and abetted Just For Feet's violations of Section 13(b)(2)(A) of the Exchange Act, which occurred when Just for Feet failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of Just for Feet's assets.

87. Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing the falsification of any such books, records or accounts.

88. Through the conduct described in the above paragraphs, Defendants Tyra, Wynne and Berman violated Rule 13b2-1 and aided and abetted violations of 13(b)(2)(A) of the Exchange Act and unless enjoined will continue to do so.

COUNT V – BOOKS AND RECORDS AND INTERNAL CONTROLS VIOLATIONS

Aiding and Abetting Violations of Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)] of the Exchange Act and Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]

89. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

90. Section 13(b)(5) of the Exchange Act prohibits any person from knowingly

circumventing and knowingly failing to implement a system of internal accounting controls and knowingly falsifying any book, record, or account required by Section 13(b)(2)(A) of the Exchange Act.

91. Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are executed in accordance with management's authorization and that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain accountability for assets.

92. Through the conduct described above, Defendants Tyra, Wynne and Berman aided and abetted violations of Section 13(b)(2)(B) and violated Section 13(b)(5) of the Exchange Act and unless enjoined will continue to do so.

COUNT VI – LYING TO ACCOUNTANTS

Violation of Rule 13b2-2 promulgated under the Exchange Act

[17 C.F.R. § 240.13b2-2]

93. Paragraphs 1 through 69 are hereby realleged and are incorporated herein by reference.

94. Rule 13b2-2 prohibits officers and directors from, directly or indirectly, making and causing to be made materially false and misleading statements or omitting to state, or causing another to omit to state, any material fact in order to make statements made not misleading to an accountant in connection with any audit or examination of the financial statements required to be filed with the Commission or the preparation or filing of any document or report to be filed with the Commission.

95. Through the conduct described above, Defendants Tyra, Wynne and Berman violated

Rule 13b2-2 promulgated under the Exchange Act and unless enjoined will continue to do so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining Defendants Tyra, Wynne and Berman and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, and each of them:

a. from violating Section 17(a) of the Securities Act [15 § U.S.C. 77q(a)];

b. from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

c. from violating Section 13(b)(5) of the Exchange Act [§ 78m(b)(5)]

d. from violating Rule 13b2-2 promulgated under the Exchange Act [17 C.F.R. § 240.13b2-2];

e. from aiding and abetting violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13];

f. from violating Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1]; and

g. from aiding and abetting violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

III.

Issue a permanent injunction enjoining Defendant Carey and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise:

a. from violating or aiding and abetting violations of Section 17(a) of the Securities Act [15 § U.S.C. 77q(a)];

b. from violating or aiding and abetting violations of Section 10(b) of the Securities Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and

c. from aiding and abetting violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 promulgated thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-1].

IV.

Issue an Order awarding disgorgement of ill-gotten gains and prejudgment interest thereon against Defendants Tyra, Wynne and Berman.

V.

Issue an Order requiring Defendants Tyra, Wynne, Berman and Carey, pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)(1)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] to pay civil monetary penalties.

VI.

Issue an Order pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C.§ 78u(d)(2)] permanently prohibiting Defendants Tyra, Wynne and Berman from acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to

Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C.§ 78o(d)].

VI.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VII.

Grant such other and further relief as may be necessary and appropriate.

Dated: May 20, 2004

RESPECTFULLY SUBMITTED,

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WILLIAM P. HICKS
DISTRICT TRIAL COUNSEL
Georgia Bar No. 351649
Tel: 404 842-7675

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MICHAEL J. O'LEARY
SENIOR TRIAL ATTORNEY
Georgia Bar No. 551025
Tel: (404) 842-7600

COUNSEL FOR PLAINTIFF
U. S. SECURITIES AND EXCHANGE COMMISSION
3475 Lenox Road, N.E., Suite 1000
Atlanta, Georgia 30326-1234
(404) 842-7600
(404) 842-7679 fax

Local Counsel:
ALICE H. MARTIN
UNITED STATES ATTORNEY

_____
by
ASSISTANT UNITED STATES ATTORNEY

1801 Fourth Avenue North
Birmingham, AL 35203-2103
(205) 244-2001
(205) 244-2171 (fax)