

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

TOM FORESE - Chairman
BOB BURNS
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JUN 28 2017

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In the matter of:

DRHORSEPOWER, INC., a California corporation,

STEVEN SCHOLL and SANDRA JONES, husband and wife,

BRUCE GUERCIO, a single man,

Respondents.

DOCKET NO. S-21015A-17-0200

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO CEASE
AND DESIST, ORDER FOR RESTITUTION,
AND ORDER FOR ADMINISTRATIVE
PENALTIES**

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents DrHorsepower Inc., Steven Scholl, Sandra Jones, and Bruce Guercio have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Steven Scholl and Sandra Jones are persons directly or indirectly controlling DrHorsepower, Inc. within the meaning of A.R.S. § 44-1999 so that they are jointly and severally liable to the same extent as DrHorsepower, Inc. for violations of the antifraud provisions of the Securities Act.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

1. Respondent DrHorsepower, Inc. ("Dr. Horsepower") is a corporation organized under the laws of the state of California.

2. Respondent Steven Scholl ("Scholl") is a resident of San Diego County, California.

3. At all relevant times, Scholl was the president, chief executive officer, and a member of the board of directors of Dr. Horsepower.

4. Respondent Sandra Jones ("Jones") is a resident of San Diego County, California.

5. At all relevant times, Jones was an executive officer and member of the board of directors of Dr. Horsepower.

6. Respondent Bruce Guercio ("Guercio") is a resident of Pima County, Arizona.

7. Dr. Horsepower, Scholl, Jones, and Guercio may be referred to collectively as "Respondents."

8. Jones was at all relevant times the spouse of Respondent Scholl. In addition to being named as Respondents based on their own individual liability, Scholl and Jones are each joined in this action under A.R.S. § 44-2031(C) for purposes of determining the liability of the marital community.

9. At all relevant times, Respondents Scholl and Jones were acting for their own benefit and for the benefit or in furtherance of each other and their marital community.

10. In their capacity as spouses of Respondents, Scholl and Jones may be referred to as "Respondent Spouses."

11. None of the Respondents have been registered with the Commission as a securities salesman or securities dealer.

III.**FACTS**

12. From 2007 to 2013, Dr. Horsepower and other entities purporting to sell Dr. Horsepower products engaged in a nation-wide offering of shares of stock. More than \$500,000 was obtained from approximately 40 investors during the offering.

13. During the offering, Dr. Horsepower, Scholl, and Guercio offered and sold unregistered shares of Dr. Horsepower common stock to investors in Arizona by making material misrepresentations to potential investors.

14. At all times material to this matter, each of the investors referenced hereinafter were residents of Arizona and were within Arizona at the time they were offered and sold shares of Dr. Horsepower stock by Guercio, Scholl, and Dr. Horsepower.

15. On or around December 27, 2007, Scholl incorporated Dr. Horsepower as a California corporation.

16. Dr. Horsepower held itself out to potential investors as “an intellectual property company” which would sell energy drinks, health supplements, apparel, cosmetics, auto supplies, and other merchandise bearing the brand names “Dr. Horsepower,” “La Bandita,” and “Pride.”

17. In or around early 2008, Scholl began to seek investment in Dr. Horsepower and promote Dr. Horsepower to potential investors and salespersons.

18. Scholl’s efforts to promote Dr. Horsepower included the creation of a website and the production of various marketing materials (“the Marketing Materials”), including a brochure and press releases.

19. The Marketing Materials contained numerous misrepresentations. For example, the brochure:

a) Misrepresented that Harvey Hershkowitz, attorney Marcy Kaye, attorney Andrew Skale, and U.S. Navy Captain Jim “Mudcat” Grant were members of Dr. Horsepower’s board of directors;

1 b) Featured photographs of Forte-brand automotive products which had been
2 digitally altered to replace the Forte logo with a Dr. Horsepower logo;

3 c) Featured photographs of exhibition vehicles which had been digitally altered
4 to show a Dr. Horsepower logo on the vehicles, and included captions such as “DrHorsepower™
5 Sets Land Speed Records” and “DrHorsepower™ Competes at Lemans, France”;

6 d) Stated that Dr. Horsepower offers energy drinks privately labeled for the U.S.
7 military, that a market capture of 20% would yield a \$24,000,000 annual profit, and that an 80%
8 capture rate was expected;

9 e) Misrepresented that brokerage houses, law firms, and financial institutions
10 estimated Dr. Horsepower’s value to range from \$100 million to \$1 billion and valued its stock at a
11 minimum of \$100 per share;

12 f) Misrepresented that shareholder royalties would range from \$12,500 to
13 \$100,000 daily based on its “very conservative” market capture rates of 1/4 percent to 1 percent;

14 g) Described an upcoming Dr. Horsepower launch party aboard the U.S.S.
15 Midway in San Diego Harbor, featuring ZZ Top, Joan Jet, and over 1,000 guests;

16 h) Misrepresented that Dr. Horsepower’s customers included Applebee’s, Wal-
17 Mart, and the U.S. Navy; and

18 i) Stated that Dr. Horsepower’s first year net profit was projected to exceed
19 \$9,000,000, and its net profit was projected to reach nearly \$900,000,000 by the end of year 5.

20 20. The Marketing Materials also included press releases which misrepresented that:

21 a) Dr. Horsepower was being sold in more than 125 locations in Mexico; and

22 b) Applebee’s Mexico was exclusively selling Dr. Horsepower energy drinks.

23 21. The Marketing Materials also included financial disclosures misrepresenting that:

24 a) Dr. Horsepower’s “Scheduled in the USA to Date” monthly profit was
25 \$5,364,836; and
26

1 b) Dr. Horsepower's "Scheduled in Mexico to Date" monthly profit was
2 \$400,356.

3 22. After creating the Marketing Materials, Scholl sent the materials to salesmen in
4 Arizona to provide to potential investors.

5 23. Guercio became acquainted with Dr. Horsepower in 2010 after responding to an
6 advertisement on Craigslist, and shortly thereafter Guercio agreed to offer shares of Dr. Horsepower
7 stock to potential investors on behalf of Scholl and Dr. Horsepower.

8 24. Pursuant to the agreement between Guercio and Scholl, Guercio received a 20%
9 commission on the investment capital that he brought in to Dr. Horsepower.

10 25. From January 2010 through December 2011, Guercio offered shares of Dr.
11 Horsepower stock to at least seven investors ("the Guercio Investors") who went on to purchase at
12 least \$59,250 of common stock from Scholl and Dr. Horsepower.

13 26. During the offering process, Guercio gave Marketing Materials to potential investors
14 which had been provided to him by Scholl.

15 27. Guercio also referred potential investors to the Dr. Horsepower website, which
16 featured an electronic version of the brochure.

17 28. Guercio also misrepresented to certain investors that large quantities of Dr.
18 Horsepower energy drinks were already being sold in Mexico, Europe, and Russia.

19 29. Following the offering, the Guercio Investors sent their investment funds to Scholl,
20 and in return received a copy of the Common Stock and Warrant Purchase Agreement ("the
21 Agreement") signed by Scholl, and a stock certificate representing shares in Dr. Horsepower which
22 was signed by Scholl and Jones.

23 30. In addition to the Guercio Investors, between April 2008 and December 2011, Scholl
24 and Dr. Horsepower offered and sold Dr. Horsepower stock to an additional fifteen investors ("the
25 Scholl Investors") in exchange for \$82,083.33.

1 31. During the offering process, at least three of the Scholl Investors received an
2 Investment Marketing Memorandum ("IMM") for Dr. Hip Intellectual Properties, Inc. ("Dr. HIP"),
3 a Delaware corporation formed in October 2010.

4 32. In the IMM, Dr. HIP purported to own the Dr. Horsepower, La Bandita, and Pride
5 brands, and held itself out as a company which sold energy drinks, apparel, and other products
6 bearing those brands. In addition, the IMM:

7 a) Misrepresented that its board of directors included Richard Weiner, Richard
8 Murlowski, James O'Leary, and John De Puy;

9 b) Estimated an 80% capture rate of the military's energy drink consumption and
10 stated that a 20% capture, a "hyper-conservative scenario," would yield a \$2,400,000 monthly profit;
11 and

12 c) Projected a net income of more than \$5,000,000 for 2012 which grew to more
13 than \$70,000,000 by 2016.

14 33. Scholl and Dr. Horsepower also gave at least two of the additional 15 investors a
15 Corporate Valuation ("the Valuation") which:

16 a) Identified Dr. Horsepower, La Bandita, and Pride as Dr. HIP's brands, and
17 described Dr. HIP as a company which sold energy drinks and other products bearing those brands;

18 b) Valued Dr. HIP at \$13,800,000 to \$17,800,000; and

19 c) Projected revenue of \$75,000,000 for the first year and \$500,000,000 by the
20 fifth year.

21 34. During the offering process, at least nine Dr. Horsepower investors were presented
22 with documents requiring investors to provide information which would provide a basis to determine
23 whether the investors were accredited. These documents were titled Accredited Investor
24 Questionnaire and Purchaser Questionnaire ("the Questionnaires").

1 35. In response to the Questionnaires, at least six investors responded that they did not
2 meet the financial requirements to be considered accredited investors, but Scholl and Dr. Horsepower
3 sold stock to the unaccredited investors anyway.

4 36. Like the Guercio Investors, the Scholl Investors sent their investment funds to Scholl,
5 and in return received a copy of the Agreement signed by Scholl, and a stock certificate representing
6 shares in Dr. Horsepower which was signed by Scholl and Jones.

7 37. Pursuant to the Agreement, Dr. Horsepower agreed to issue and sell a certain number
8 of shares of Dr. Horsepower common stock to a "purchaser" at the purchase price set forth in the
9 Agreement.

10 38. The Agreement misrepresented that "Other than [A&R Marketing, Inc. and certain
11 employees of the Company], neither the Company nor any Purchaser has engaged any person or
12 entity who is or may be entitled to a broker's commission, finder's fee, investment banker's fee or
13 similar payment for arranging the transaction contemplated hereby or introducing the parties to each
14 other."

15 39. Between November 17, 2008, and May 29, 2009, two Dr. Horsepower investors
16 received three checks totaling \$184.16 from Dr. Horsepower. The checks were accompanied by a
17 statement which identified the first payment as a "dividend," the second payment as a "profit-sharing
18 disbursement," and the third payment as a "royalty disbursement."

19 40. Other than the \$184.16 returned to two investors, upon information and belief, no
20 other Dr. Horsepower investors in Arizona have received any return of their investments.

21 41. Upon information and belief, Dr. Horsepower never generated a profit between 2007
22 and 2013.

23 42. Upon information and belief, Dr. Horsepower had no sales from 2009 to 2013.

24 43. Although investors were led to believe that the investment proceeds would be used to
25 increase production, between 2007 and 2014, Scholl and Dr. Horsepower misappropriated more than
26 \$100,000 of the investment proceeds in the form of purported loans to Scholl.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

44. From on or about April 2008 to December 2011, Dr. Horsepower, Scholl, and Guercio offered or sold securities in the form of shares of stock within or from Arizona.

45. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

46. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

47. Dr. Horsepower, Scholl, and Guercio offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

48. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

49. In connection with the offer or sale of securities within or from Arizona, Dr. Horsepower, Scholl, and Guercio directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes the following:

a) Misappropriation of more than \$100,000 of the money obtained from investors to Scholl in the form of a purported loan;

1 b) Misrepresenting to investors that large quantities of Dr. Horsepower energy
2 drinks were being sold although Dr. Horsepower had sales which were modest at best in 2008 and no
3 sales thereafter;

4 c) Misrepresenting to investors that Dr. Horsepower's customers included
5 Applebee's, Wal-Mart, the U.S. Navy, and other well-known establishments although they were not;

6 d) Misrepresenting to investors that Dr. Horsepower did not agree to pay
7 commissions to Guercio or other third-party salesmen, while paying Guercio commissions of 20%;

8 e) Misrepresenting to investors that Harvey Hershkowitz, attorney Marcy Kaye,
9 attorney Andrew Skale, U.S. Navy Captain Jim "Mudcat" Grant, and others were members of Dr.
10 Horsepower's board of directors, although only Scholl and Jones were ever members of the board;

11 f) Representing to certain investors that Dr. Horsepower owned the Dr.
12 Horsepower, La Bandita, and Pride brands while representing to other investors that the brands were
13 owned by Dr. HIP;

14 g) Misrepresenting to investors that certain Dr. Horsepower-branded products, such
15 as automotive care products, were available for sale by including digitally altered photographs in the
16 Marketing Materials;

17 h) Misrepresenting to investors via digitally altered images that Dr. Horsepower
18 had sponsored exhibition vehicles and was launching its product at an upcoming party on the U.S.S.
19 Midway featuring ZZ Top and Joan Jet;

20 i) Misrepresenting to investors that brokerage houses, law firms, and financial
21 institutions estimated Dr. Horsepower's value to range from \$100 million to \$1 billion and valued its
22 stock at a minimum of \$100 per share;

23 j) Misleading investors by offering unreasonably optimistic and baseless financial
24 projections while failing to disclose Dr. Horsepower's poor sales and financial history.

25 50. This conduct violates A.R.S. § 44-1991.
26

VII.**CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

51. At all relevant times, Scholl has been and/or held himself out as the president and chief executive officer of Dr. Horsepower.

52. At all relevant times, Jones has been and/or held herself out as an officer and member of the board of directors of Dr. Horsepower.

53. At all relevant times, Scholl and Jones directly or indirectly controlled Dr. Horsepower within the meaning of A.R.S. § 44-1999. Therefore, Scholl and Jones are jointly and severally liable to the same extent as Dr. Horsepower for its violations of A.R.S. § 44-1991.

VIII.**REQUESTED RELIEF**

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital communities of Respondents and Respondent Spouses be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

IV.

HEARING OPPORTUNITY

Each Respondent, including Respondent Spouses, may request a hearing pursuant to A.R.S. § 44-1972, and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting Respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon, ADA Coordinator, voice phone number (602) 542-3931, e-mail kcannon@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

XV.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona

1 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
2 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
3 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

4 Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant
5 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
6 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
7 addressed to Chris Nichols.

8 The Answer shall contain an admission or denial of each allegation in this Notice and the
9 original signature of the answering Respondent or Respondent's attorney. A statement of a lack of
10 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
11 denied shall be considered admitted.

12 When the answering Respondent intends in good faith to deny only a part or a qualification
13 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall
14 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

15 The officer presiding over the hearing may grant relief from the requirement to file an Answer
16 for good cause shown.

17 Dated this 28 day of June, 2017.

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20 Matthew J. Neubert
21 Director of Securities
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