

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO. _____

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

6:08-CV-275-ORL-18KRS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GMC HOLDING CORPORATION, and
RICHARD BRACE,

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges:

I. INTRODUCTION

1. The Commission brings this action against Defendants GMC Holding Corporation ("GMC") and its chief executive officer, Richard Brace, for defrauding investors by issuing false press releases touting the company's development of a motor technology device capable of generating unlimited energy and its negotiations to sell this technology for hundreds of millions of dollars. GMC's false press releases artificially pumped up the company's share price and trading volume and helped GMC raise more than \$2 million from investors through the company's illegal unregistered stock offerings, which provided GMC's only source of revenue.

2. The press releases in 2005 and 2006 falsely claimed tests on the motor device showed it was able to produce more energy than it consumed, while omitting key facts, including that it was a one-time test that lasted just a few minutes. They also made up alleged negotiations with unnamed S & P 500 corporations.

3. Through their conduct, GMC and Brace each have violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a); and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. Based on the nature of their violations and the scienter the Defendants have demonstrated through their willful and wanton disregard for the federal securities laws, the Defendants have shown they will continue to violate the law unless the Court grants the injunctive relief the Commission seeks.

II. JURISDICTION AND VENUE

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

5. The Court has personal jurisdiction over the Defendants and venue is proper in the Middle District of Florida because many of the Defendants’ acts and transactions constituting violations of the Securities Act and the Exchange Act occurred in the Middle District of Florida. In addition, the principal place of business of GMC is in the Middle District of Florida, and Brace resides in the Middle District of Florida.

6. In connection with the conduct alleged in this Complaint, the Defendants, directly and indirectly, singly or in concert with others, have made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation and communication in interstate commerce, and the mails.

III. DEFENDANTS

7. GMC is an inactive Florida corporation with its principal place of business in Casselberry, Florida. GMC was formed in 1982 under a predecessor name, and changed its name to GMC in 1997. Its common stock was quoted on the Pink Sheets under the symbol "GMCC." On March 8, 2006 the Commission temporarily suspended trading in GMC's securities. On April 5, 2006, the Commission issued an order deregistering GMC's securities pursuant to Section 12(j) of the Exchange Act, finding the company had failed to file the required reports of a publicly traded company.

8. Brace, 64, resides in Casselberry, Florida. He currently serves as GMC's chief executive officer and served as president from November 2001 through June 2005.

IV. BACKGROUND

9. In a June 1998 registration statement filed with the Commission, GMC claimed to be in the business of producing home shopping television programming. From 2000 to 2004, GMC issued a series of press releases announcing a variety of other purported business ventures, including the acquisition of Internet companies in Asia and prepaid calling card companies in Florida.

10. GMC reinvented itself again in November 2004, announcing it was developing high-efficiency generators based on its proprietary "Rare Earth Magnetic Amplification Technology" ("REMAT") through which it had "achieved a major revolutionary breakthrough in solving the world's energy needs." GMC subsequently issued a series of press releases touting its energy technology.

11. As GMC's CEO, Brace drafted and had final approval authority over all the press releases, including those discussed below.

V. GMC'S FALSE PRESS RELEASES

A. 2005 Press Releases Touting New “REMAT” Technology

12. On June 27 and July 1, 2005, GMC issued press releases touting independent tests confirming the company’s purported achievement in motor technology.

13. The June 27, 2005 release claimed these tests verified the “enormous” potential value of the company’s REMAT mechanism and its ability to contribute energy to U.S. power grids “at a cost and efficiency heretofore not seen.” The press release directed investors to GMC’s website (www.rematinc.com) to view the test results. The site contained a signed copy of a report supposedly issued by a licensed professional engineer named Eugene Augustin. The website also contained a photo of GMC’s REMAT motor, attached as Exhibit A to this Complaint. The day after the June 27 press release, GMC’s share price increased 38% to an all-time high of \$2.75.

14. GMC issued another press release on July 1, 2005, providing even more detail about the purported independent test results and directly quoting Augustin’s report. The release cited Augustin’s evaluation that GMC’s technology achieved 150% power efficiency, meaning it produced more energy than it consumed – an achievement that, if real, would have been a stunning advance over existing power generation technology.

15. The July 1, 2005 release quoted Augustin as stating “[t]hese observations were demonstrating a ‘greater than unity performance’ device, which I thought that I would never see in my lifetime. In my 50 years of professional experience . . . I believed that ‘greater than unity devices’ were an impossibility. I am now convinced that REMAT devices need to be explored, researched and tested so that this unique technology can be utilized for the world.” GMC’s share price rose almost 13% the day GMC issued the press release.

16. GMC’s representations in these press releases are false and misleading. First, while Augustin prepared a report for GMC, the actual document contains none of the above-

referenced statements the July 1 press release attributed to him. GMC and Brace altered Augustin's report to include the quotes.

17. In addition, Brace and GMC altered the Augustin report to exclude important limitations – the motor's amazing efficiency lasted only a few minutes, and GMC was unable to duplicate this feat in subsequent tests. Brace and GMC posted the changed Augustin report on GMC's website.

18. These press releases also failed to disclose that Augustin's professional engineering license for the State of Florida expired in 2003, two years before he issued his report, and that Augustin had asked GMC to stop using and distorting his report.

B. 2006 Press Releases Claiming the Imminent Sale of GMC's Technology

19. During February and March 2006, GMC issued three press releases claiming a multi-million dollar sale of the company's technology was imminent, which caused GMC's stock price to spike again.

20. A February 8 press release, entitled "GMC Holding Corp. Announces Pending Asset Sale," announced GMC was negotiating the sale of REMAT to multiple corporations, including S&P 500 entities. GMC maintained that because of the "sensitive nature" of REMAT, the company could not provide details regarding any potential acquirers.

21. The press release also said preliminary negotiations indicated a transaction in the "\$350 - \$500 million range," with 96% of the revenue from the sale going directly to GMC shareholders.

22. GMC's share price increased 219% on the news to close at \$0.99 per share, with trading volume increasing from 7,000 shares the day before to more than 500,000 shares on February 8.

23. GMC further primed the market with two more press releases touting the fake pending asset sale. On February 22, 2006, the company announced it had started interviewing top corporate legal firms to negotiate “the impending asset acquisition” of its motor technology. That day, trading in GMC shares closed 44% higher at a price of \$2.30 per share.

24. On March 7, GMC issued another press release claiming it had engaged a New York law firm to “assist in the negotiations regarding the asset sale.”

25. These press releases were all utterly false. GMC and Brace never contacted, much less negotiated with, an S&P 500 corporation (or any other company) regarding selling GMC’s energy technology. None of the claimed negotiations concerning the price of this hypothetical transaction ever occurred, nor was this fictitious deal ever “pending” or “impending.”

VI. GMC’S UNREGISTERED STOCK OFFERINGS

26. From at least 2005 through the Commission’s March 2006 trading suspension of GMC stock, GMC relied on stock offerings to investors that illegally circumvented the registration requirements of the federal securities laws to finance the company’s operations. GMC never registered these offerings with the Commission. Moreover, the offerings, which were GMC’s sole source of funding, did not qualify for any exemption from registration requirements of the federal securities laws.

27. Brace directed GMC to engage in a scheme to make improper unregistered sales of non-restricted GMC stock in which the company exchanged restricted stock it held for purported free trading shares a GMC director held, which GMC then sold directly to investors without registering those sales with the Commission.

28. GMC should have registered its stock offerings and sales with the Commission, since they did not qualify as private placements and failed to meet any of the exemptions from the registration requirement of the federal securities laws.

29. Neither Brace nor GMC provided investors with private placement memoranda, any written materials containing material information or risk disclosures about GMC, or meaningful access to information equivalent to that found in registration statements.

30. Brace alone decided which investors received restricted shares or purportedly unrestricted shares - even among those investors that purchased shares on the same day. Additionally, neither Brace nor GMC made inquires concerning the net worth of these private investors to determine whether these potential shareholders qualified as accredited investors.

31. From June 2005 through March 2006, GMC raised more than \$2 million almost exclusively from these private stock sales to investors. The company used the vast majority of those funds to pay an array of employees' salaries, purported consultants and engineers, legal fees, and office expenses.

32. During this time period, Brace and his consulting firms siphoned off approximately \$214,100 from GMC investor proceeds, \$100,000 of which Brace paid himself after the Commission suspended trading in GMC's securities. In May 2006, Brace also entered into a loan agreement between himself and GMC, which retroactively treated all income he received from the company as a no-interest loan to be repaid at some future unspecified date. To date, Brace has not repaid these funds to GMC.

VII. CLAIMS FOR RELIEF

COUNT I

Sales of Unregistered Securities in Violation of Sections 5(a) and 5(c) of the Securities Act

33. The Commission repeats and realleges paragraphs 1 through 8 and 26 through 32 of its Complaint.

34. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities and transactions described in this Complaint, and no exemption from registration exists with respect to the securities and transactions described in this Complaint.

35. Starting no later than June 2005, the Defendants, directly and indirectly, have been: (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise; (b) carried securities or caused such securities to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or (c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, without a registration statement having been filed or being in effect with the Commission as to such securities.

36. By reason of the foregoing, the Defendants have violated, and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

COUNT II

Fraud in Violation of Section 17(a)(1) of the Securities Act

37. The Commission repeats and realleges paragraphs 1 through 25 of its Complaint.

38. Starting no later than June 2005, the Defendants directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this Complaint, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

39. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT III

Fraud in Violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act

40. The Commission repeats and realleges paragraphs 1 through 25 of its Complaint.

41. Starting no later than June 2005, the Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities: (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (b) engaged in transactions, practices and courses of business which operated and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

42. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3).

COUNT IV

Fraud in Violation of Section 10(b) and Rule 10b-5 of the Exchange Act

43. The Commission repeats and realleges paragraphs 1 through 25 of its Complaint.

44. Starting no later than June 2005, the Defendants, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, have been knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

45. By reason of the foregoing, the Defendants have directly or indirectly 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, 17 C.F.R. § 240.

VIII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine and find that the Defendants have committed the violations of the federal securities laws alleged herein.

II.

Permanent Injunctions

Issue Permanent Injunctions enjoining the Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, and Section 10(b) and Rule 10b-5 of the Exchange Act, as indicated above.

III.

Disgorgement

Issue an Order directing the Defendants to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

IV.

Penalties

Issue an Order directing the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

V.

Penny Stock Bar

Issue an order barring Defendant Brace from participating in any offering of penny stock, pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), for the violations alleged herein.

VI.

Officer and Director Bar

Issue an Order pursuant to Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), barring Defendant Brace from serving as an officer or director of a public company.

VII.

Further Relief

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

VIII.

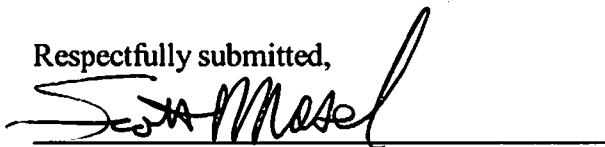
Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

February 21, 2008

Respectfully submitted,

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