

ADMINISTRATIVE PROCEEDING
FILE NO. 3-6493

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
MILITARY ROBOT CORPORATION
825 W. 3rd Avenue
Longmont, Colorado 80501

INITIAL DECISION

Washington, D.C.
June 27, 1985

David J. Markun
Administrative Law Judge

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Before the
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In the Matter of	:	
MILITARY ROBOT CORPORATION	:	INITIAL DECISION
825 W. 3rd Avenue	:	
Longmont, Colorado 80501	:	

APPEARANCES:

Jerry A. Isenberg and Ida C. Wurczinger, Esqs.,
Washington, D.C., for the Division of Enforcement.

Bernard C. Lumbert, director and sole officer,
for Respondent.

BEFORE: David J. Markun, Administrative Law Judge.

I. THE PROCEEDING

On March 22, 1985, the Commission, pursuant to Section 8(d) of the Securities Act of 1933, as amended [15 U.S.C. §77h(d)] ("Securities Act"), ^{1/} - instituted public proceedings and ordered that a hearing be held to determine whether a stop order should issue suspending the effectiveness of the amended registration statement of Military Robot Corporation. A hearing was held on April 2, 1985, in Washington, D.C.

The Division of Enforcement ("Division") made timely filings of its proposed findings of fact, conclusions of law, and supporting brief.

Respondents' proposed findings, conclusions and supporting brief, due June 14, 1985, were never filed, and no request for an extension of time has been received.

II. FINDINGS OF FACT AND MIXED FACT AND LAW

On July 23, 1984, a registration statement on Securities Act Form S-18 ("Form S-18") was filed with the Commission for an initial public offering of one million shares of \$0.10 par

1/ Subsection 8(d) provides in pertinent part as follows:

(d) If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may *** after opportunity for hearing *** issue a stop order suspending the effectiveness of the registration statement. ***

value common stock by a Colorado corporation named "Military Robot Corporation" ("Military Robot I"). The first page of the registration statement contained what is known as a "delaying amendment," stating that its effective date, which under Section 8(d) of the Securities Act would be the 20th day after its filing, would be delayed until 20 days after the filing of an amended registration statement explicitly invoking the provisions of Section 8(a) of the Securities Act.

On March 4, 1985, an amended registration statement on Form S-18 was filed with the Commission for an initial public offering of five million shares of \$0.01 par value common stock by a Delaware corporation named "Military Robot Corporation" ("Military Robot II"). The amended registration statement stated in part that "this registration statement shall hereafter become effective in accordance with the provisions of Section 8(a) of the Securities Act of 1933." This registration statement thus became effective on March 23, 1985.

The sole officer and director of Military Robot I and Military Robot II is Bernard C. Lumbert ("Lumbert"). Lumbert caused Military Robot I and Military Robot II to be formed and, since their formation, has exercised control over those entities.

During 1984, Lumbert sold approximately \$15,000 of common stock in Military Robot I to approximately 21 people. In connection with the sale of the \$15,000 of Military Robot I

stock, Lumbert sent solicitation materials concerning Military Robot I to between 300 and 400 people.

At the time of the sale of the approximately \$15,000 of Military Robot I stock, no registration statement with respect to a securities offering by Military Robot I had become effective pursuant to the Securities Act or the rules and regulations promulgated thereunder.

The sale of the approximately \$15,000 of unregistered Military Robot I stock mentioned above created a contingent liability against Military Robot I, due to rescission rights afforded to the purchasers of such securities pursuant to Section 12 of the Securities Act.

Military Robot I is currently a corporate shell, whose name may be sold to another company according to Lumbert's testimony.

The intended business of Military Robot I was no different from the proposed business of Military Robot II, and the Military Robot I registration statement is virtually identical to the Military Robot II amended registration statement in its description of the company, its products, and its business plan.

The business and assets of Military Robot I have been acquired by Military Robot II. Based on the record herein, Military Robot I is a predecessor corporation of Military Robot II.

Under the generally accepted accounting principles ("GAAP"), the sale of approximately \$15,000 of Military Robot I stock is a contingent liability against Military Robot II. This is a material fact required to be disclosed in the footnotes to the Military Robot II financial statements.

The amended registration statement of Military Robot II fails to disclose, in footnotes to the Military Robot II financial statements or in any other manner, the approximately \$15,000 in contingent liabilities arising out of the sale of Military Robot I stock.

During 1983 and 1984, Lumbert also sold approximately \$25,000 in options to purchase the common stock of a corporation called Universal Military Robot Corporation ("Universal") to approximately 20 people.

The options to purchase Universal common stock provided that:

"Seller of this option guarantees that a duly authorized offering of the shares of [Universal], approved by the SEC, will be made prior to July 1, 1984, or any money paid will be refunded."

The Commission has not "authorized" or "approved" any securities offering by Universal and no registration statement for a securities offering by Universal has ever become effective pursuant to the Securities Act or the rules and regulations thereunder.

The sale of the unregistered options created a contingent liability against Universal due to the refund obligation described above and the rescission rights afforded to the purchasers of such securities pursuant to Section 12 of the Securities Act of 1933.

Universal is a Colorado corporation under the control of Lumbert, the corporate existence of which, he testified, will shortly be terminated. Universal's former business was comparable to that of Military Robot I and the difference between the two companies is "basically just a name change," according to Lumbert's testimony. In addition, the two companies' names are used interchangeably in Military Robot I's registration statement, and the Universal certificate of incorporation is appended to that registration statement in place of a certificate of incorporation for Military Robot I.

The business and assets of Universal were acquired by Military Robot I, whose assets were in turn acquired by Military Robot II. Based on the above findings, it is clear that Universal is a predecessor corporation of Military Robot I and also of Military Robot II.

Under GAAP, the sales of options to purchase Universal stock, referred to above, represent contingent liabilities against Military Robot II that are required to be reflected in the footnotes to the Military Robot II financial statements.

The amended registration statement of Military Robot II fails to disclose, in footnotes to the Military Robot II financial statements or in any other manner, the approximately \$25,000 in contingent liabilities arising out of the sale of options to purchase Universal stock.

The amended registration statement of Military Robot II also fails to contain any report or opinion of an independent certified or public accountant with respect to the Military Robot II financial statements.

The Military Robot II amended registration statement contains a projection of \$350,000 in United States sales for 1985 and \$25,000 in foreign sales for 1985, for which there is no reasonable basis.

The sales projections in the Military Robot II amended registration statement state that \$100,000 in sales were made during the last six months of 1984, when in fact no sales were made by Military Robot II during 1984.

The sales projections in the Military Robot II amended registration statement indicate that the company already has received commitments to purchase its products and services, when in fact no such commitments have been received by Military Robot II.

The sales projections in the Military Robot II amended registration statement do not include any cost-of-sales figures.

This creates the misleading impression that the entire projected \$375,000 will constitute net sales income rather than gross sales revenue.

The amended registration statement of Military Robot II fails to disclose the existence of the company's predecessors, Universal and Military Robot I, and the development of their business.

The amended registration statement of Military Robot II also fails to contain a description of the current status of the prototypes and products that the company has or is attempting to develop.

The amended registration statement of Military Robot II contains the unsupported statement that the company can succeed with one-half the administrative charges and general overhead expenses usually associated with government contracts.

The amended registration statement of Military Robot II also contains the unsupported claim that the sale of military robots to NATO countries will be significant before the end of this decade.

III. CONCLUSIONS OF LAW

Under Rule 473 of Regulation C under the Securities Act [17 C.F.R. §203.473], the delaying amendment in Military Robot

I's registration statement operated to delay the effectiveness of the registration until 20 days after the filing of the amended registration statement for Military Robot II. The effective date of the Military Robot II amended registration statement, as found above, was March 23, 1985.

The sales of the securities of Universal and Military Robot I were made outside of any available exemption to the registration requirements of Section 5 of the Securities Act [15 U.S.C. §77e] and in violation of Section 5 of the Securities Act.

As already noted, Section 12 of the Securities Act [15 U.S.C. §77e] gives the purchasers of the securities of Universal and Military Robot I the right to demand rescission of such purchases.

As found above, Universal and Military Robot I were predecessors of Military Robot II within the meaning of Rule 405 of Regulation C under the Securities Act [17 C.F.R. §230.405] ("Rule 405") and Military Robot II assumed the liabilities of Universal and Military Robot I.

Item 21 of Securities Act Form S-18 ("Form S-18") required that Military Robot II's amended registration statement disclose the sale of approximately \$25,000 in options to purchase Universal stock as a contingent liability of Military Robot II, and the failure to make such disclosure in the amended registra-

tion statement was an omission of a material fact required to be disclosed therein within the meaning of Section 8(d) of the Securities Act [15 U.S.C. §77h(d)] and Rule 405.

Item 21 of Form S-18 also required that Military Robot II's amended registration statement disclose the sale of approximately \$15,000 in unregistered Military Robot I stock as a contingent liability of Military Robot II, and the failure to make such disclosure in the amended registration statement was an omission of a material fact required to be disclosed therein within the meaning of Section 8(d) of the Securities Act and Rule 405.

Item 21 of Form S-18 required that Military Robot II's amended registration statement contain the report or opinion of an independent certified or public accountant with respect to its financial statements, and the failure to include such a report or opinion in the amended registration statement was an omission of a material fact required to be disclosed therein within the meaning of Section 8(d) of the Securities Act and Rule 405.

Regulation S-K, paragraph (b), under the Securities Act requires that Military Robot II have a reasonable basis for the sales projections included in its amended registration statement and that the projections be presented in a format that is not susceptible of misleading inferences. There is no reasonable

basis for the Military Robot II sales projections, and they were not made in good faith. In addition, the sales projections were presented in a format that makes it appear that Military Robot II had already sold products and services and had received commitments for the purchase of certain of its products and services, when no such sales had occurred and no commitments had been received. Further, the format of the sales projection failed to include any cost-of-sales figures, thereby allowing the misleading inference that the projections were for net sales revenue or net income rather than gross sales revenue. Thus, the sales projections in Military Robot II's amended registration statement constituted untrue statements of material fact within the meaning of Section 8(d) of the Securities Act and Rule 405.

Item 16 of Form S-18 required that Military Robot II's amended registration statement disclose the existence of and the development of the business of its predecessors, Universal and Military Robot I, and the failure to make such disclosure in the amended registration statement is an omission of a material fact required to be disclosed therein within the meaning of Section 8(d) of the Exchange Act and Rule 405.

Item 16 of Form S-18 requires that Military Robot II's amended registration statement describe the business done and

intended to be done by the company. Military Robot II's failure to make adequate disclosure of such in its amended registration statement is an omission of a material fact required to be disclosed therein within the meaning of Section 8(d) of the Exchange Act and Rule 405.

Regulation S-K, Item 303(a)(3)(ii), requires that in the "Management's Discussion and Analysis of [the Issuer's] Financial Condition and Results of Operations" section of a registration statement, there be a description of "any known trends or uncertainties that have had or that the [issuer] reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations." The unsupported claim, in the Military Robot II amended registration statement, that the sale of military robots to NATO countries will be significant before the end of this decade failed to satisfy the requirements of Regulation S-K, Item 303(a)(3)(ii), in that no supporting authority was provided for this claim and there was no indication as to how this purported trend will affect the sales or revenues of Military Robot II. Accordingly, the failure of the Military Robot II amended registration statement to satisfy these requirements of Regulation S-K, Item 303(a)(3)(ii), constituted an omission of a material fact required to be stated therein within the meaning of Section 8(d) of the Securities Act and Rule 405.

The failure to provide supporting authority for the claim in the Military Robot II amended registration statement that the company can succeed with one-half of the administrative charges and general overhead expenses usually associated with government contracts constituted an omission of material fact necessary in order to make the statement not misleading within the meaning of Section 8(d) of the Securities Act and Rule 405.

IV. RESPONDENT'S CONTENTION

Military Robot II has not seriously disputed any of the above findings as to its amended registration statement. At the hearing on this matter, Lumbert, the company's representative, stated "We came here prepared to say, look, we have goofed, we've transgressed." Lumbert's only defense in this matter appears to be the unsupported contention that suspending the effectiveness of its materially-deficient registration statement is selective or "prejudicial prosecution" and that he and the company have been "singled out". There is nothing in the record to establish that contention as a fact or as a viable defense.

The real issue in this case is simply whether Respondent Military Robot II has adequately informed the public of the facts bearing on the securities that it intends to sell. On this issue, the record is clear that Military Robot II's

amended registration statement falls far short of the relevant disclosure requirements under the Securities Act in numerous respects and would perpetrate a fraud upon those who would purchase Military Robot II's securities on the basis of the disclosures therein.

In view of the foregoing, it is concluded that the issuance of a stop order suspending the effectiveness of Military Robot II's amended registration statement is fully warranted and necessary in the public interest and for the protection of investors.

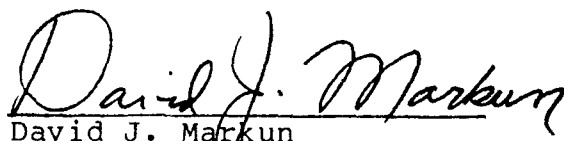
IV. ORDER

In accordance with the foregoing findings and conclusions, it is ordered that the effectiveness of the amended registration statement filed by Respondent Military Robot Corporation (the Delaware corporation) is hereby suspended.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice, 17 CFR §201.17(f).

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission pursuant

to Rule 17(c) determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party. ^{2/}


David J. Markun
Administrative Law Judge

Washington, D.C.
June 27, 1985

^{2/} All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the findings, conclusions and views stated herein they have been accepted, and to the extent they are inconsistent therewith they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.