

LendingTree common stock and 225 out-of-the-money Lending Tree call option contracts, and Mead purchased a total of 10,200 shares of LendingTree common stock.

3. From the foregoing insider trading, Ricks, Woody, and Mead realized illicit profits of \$62,102.50, \$86,612.50, and \$62,756, respectively.

4. By engaging in this conduct, Defendants breached their fiduciary duty to LendingTree and its shareholders and violated the antifraud provisions of the Securities Exchange Act of 1934 (the “Exchange Act”) (Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5]) thereunder. Unless enjoined, Defendants are likely to commit such violations again in the future.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to Exchange Act §§ 21(d), 21(e), 21A, and 27 [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa]. Venue is proper because certain acts or transactions constituting the violations occurred within this judicial district.

6. Defendants Ricks, Woody, and Mead directly and indirectly, made use of the means and instrumentalities of interstate commerce and the mails in connection with the conduct alleged herein.

THE DEFENDANTS

7. Michael J. Ricks, age 32, resides in North Salt Lake, Utah. During the relevant period, Ricks was employed by LendingTree as the Senior Director of Strategy and Sales.

8. John H. Woody, age 30, resides in Highlands Ranch, Colorado. During the relevant period, Woody was employed by LendingTree as the Senior Director of Sales and Product Management.

9. Mark P. Mead, age 36, resides in Charlotte, North Carolina. During the relevant period, Mead was employed by LendingTree as the Vice President of National Accounts.

RELEVANT ENTITIES

10. LendingTree was a Delaware corporation, headquartered in Charlotte, North Carolina, that provided an online network where participating lenders competed for consumer-credit requests. At all relevant times, LendingTree's common stock was registered with the Commission pursuant to §12(g) of the Exchange Act [15 U.S.C. §78k(g)], and quoted on the Nasdaq National Market System. On August 8, 2003, InterActiveCorp, formerly named USA Interactive, completed its acquisition of LendingTree. LendingTree is now a subsidiary of InterActiveCorp.

11. USA Interactive is a Delaware corporation with its executive offices in New York, New York, that operates through its subsidiaries as a diversified media and electronic commerce company. At all relevant times, USA Interactive's common stock was registered with the Commission pursuant to §12(g) of the Exchange Act [15 U.S.C. §78k(g)], and quoted on the Nasdaq National Market System. On June 23, 2003, USA Interactive changed its name to InterActiveCorp.

STATEMENT OF FACTS

Background

12. On December 20, 2002, the Chief Executive Officer ("CEO") of USA Interactive, and other members of the senior management of USA Interactive, met the CEO of LendingTree, as well as members of LendingTree's Executive Committee, at LendingTree's headquarters to discuss business transactions between the two companies.

13. In February 2003, senior management of LendingTree and USA Interactive began to discuss a possible merger of the two companies.

14. As a result of ongoing negotiations, LendingTree accepted a tentative offer from USA Interactive on April 16, 2003. That day, LendingTree's Board of Directors accepted a tentative offer

from USA Interactive pursuant to which USA Interactive would exchange shares of its common stock for each outstanding share of LendingTree's common stock.

15. Over the next two to three weeks, USA Interactive completed due diligence and worked on finalizing the terms of the merger, obtaining board approvals, and preparing the joint press release for the Announcement.

16. Before trading opened on Monday, May 5, 2003, LendingTree and USA Interactive announced that the two companies had signed a binding merger agreement whereby USA Interactive agreed to exchange .6199 shares of its common stock for each outstanding share of LendingTree's common stock – a premium for LendingTree shareholders of approximately 47.5% over the closing price on May 2 of \$14.69.

17. Following the Announcement, LendingTree's stock opened at \$21.30 per share -- up more than 45% -- from its previous trading day's closing price of \$14.69. LendingTree's stock reached a high of \$21.36 that day, closing at \$20.72 on extremely heavy volume.

Heightened Activity Concerning the Merger

18. At all relevant times, LendingTree's headquarters was an open, one-floor office building where LendingTree employees -- including Defendants -- worked out of cubicles.

19. Ricks and Woody sat adjacent to one another in close proximity to the CEO's office and two of LendingTree's conference rooms: the "Bermuda" conference room and the "Athens" conference room.

20. In this extremely open atmosphere, Defendants observed all operations and overheard all conversations within their respective areas of LendingTree headquarters. They also worked and interacted with LendingTree personnel who were aware of the merger before the public announcement.

21. The first meeting of USA Interactive's senior management at LendingTree headquarters (held on December 20, 2002) was held in LendingTree's "Athens" conference room, in plain view of Ricks' and Woody's cubicles. Immediately following the meeting, LendingTree employees began to engage in "water cooler talk" about the possibility of LendingTree being acquired by USA Interactive.

22. At this time, Ricks and Woody approached LendingTree management and asked whether LendingTree was going to be acquired by USA Interactive.

23. In the ensuing months, "heightened activity" at LendingTree headquarters generated additional rumors and triggered more frequent inquiries by LendingTree employees about a possible acquisition of LendingTree.

24. For example, in mid- to late April 2003, several people who were unknown to the LendingTree staff, joined by LendingTree's attorneys, started working out of the company's "Bermuda" conference room on matters related to the merger. The "Bermuda" conference room was adjacent to the CEO's office and had two interior glass windows that permitted LendingTree's employees to readily observe the individuals and boxes therein.

25. Materials related to the merger – including large legal binders labeled "due diligence" and "realty services" – were housed in the "Bermuda" conference room. The "Bermuda" conference room was also located near Ricks' and Woody's cubicles. As employees of LendingTree, Defendants had access to the confidential materials housed in the "Bermuda" conference room.

26. During this time period, it had also become common knowledge among LendingTree employees that the entire LendingTree Executive Committee (as well as several LendingTree employees) had been "brought over the wall" to work on a deal.

27. In mid-to late April 2003, as a part of due diligence for the merger, the LendingTree finance group began generating a large number of documents – suspicious timing, since the Company had already completed its annual budgeting and planning.

28. At around the same time period, a USA Interactive expert visited LendingTree headquarters to conduct technical due diligence of LendingTree.

29. Finally, certain LendingTree employees noted during this time period that the legal team had begun to use the only two copiers at headquarters (which were located in open areas of the building) 12 to 14 hours a day.

30. Just prior to the Announcement, Defendants approached LendingTree management and inquired as to whether the above-mentioned activities and information meant that LendingTree was going to be acquired.

LendingTree's Insider Trading Policy

31. Over the course of their employment at LendingTree, Defendants were provided with copies of LendingTree's policies on insider trading and the protection of confidential information (as well as revisions and updates to those policies). Defendants were asked to sign affirmations acknowledging that they had read, understood, and agreed to comply with those policies – and Defendants did execute such affirmations repeatedly.

32. LendingTree's insider trading policy prohibited, among other things, employees from trading in LendingTree securities, while in possession of “material, non-public information.” Furthermore, the policy defined information as “material” to include those circumstances where a “reasonable investor would consider it important in arriving at a decision to buy, sell, or hold securities.” In fact, the LendingTree insider trading policy specifically identified news of a proposed acquisition as

an illustrative example of material nonpublic information. Moreover, the policy prohibited employees from using any proprietary, confidential, or nonpublic information of any kind acquired as a result of their association with LendingTree.

33. Consequently, Defendants fully understood that as employees of a public company, they were prohibited from trading while in possession of material, non-public information obtained in the course of their employment.

Insider Trading in the Securities of LendingTree

34. Shortly before the merger announcement, Defendants learned the material nonpublic information that LendingTree was in advanced confidential merger negotiations with USA Interactive, that the merger would be announced soon and that LendingTree securities would be acquired at a premium over its then-current trading price.

35. The Defendants learned this information in the course of their employment at LendingTree where they worked in close proximity to LendingTree executives and employees who were involved in the merger negotiations, and in particular, through observing confidential activity concerning the pending merger, overhearing confidential information pertaining to the pending merger, reading confidential printed materials relating to the pending merger, or some combination thereof.

36. When Defendants became aware of LendingTree's confidential merger talks with USA Interactive, they knew, or were reckless in not knowing, that this information was confidential, that they were not permitted to trade securities while in possession of such information, and agreed to safeguard the confidentiality of the information and not misuse it.

37. In breach of the fiduciary duty they owed to LendingTree and its shareholders, Defendants purchased securities of LendingTree, while in possession of material, nonpublic information

concerning LendingTree's imminent merger with USA Interactive in advance of the public announcement.

38. On April 30, 2003, defendant Ricks used his on-line brokerage account to purchase 25 out-of-the-money LendingTree call option contracts that expired in June at a strike price of \$15.00. This was the first time that Ricks had ever purchased option contracts.

39. On May 1, 2003, two trading days prior to the merger announcement, Woody submitted a total of three online orders in his online brokerage account to purchase 5,000 shares of LendingTree common stock. Although the first two orders that Woody submitted were limit orders which were ultimately cancelled, the third order was a market order to purchase 5,000 shares of LendingTree.

40. Woody submitted the market order instead of another limit order to ensure that this order would be executed in its entirety before the market closed on May 2, 2003 -- the last trading day before the public announcement. In fact, this order was filled on May 2, 2003, at 9:30 a.m. in its entirety for \$14.80 a share (or approximately \$74,000). This was Woody's largest securities purchase and was his first purchase of LendingTree securities in the secondary market.

41. On or before May 2, 2003, Ricks and Woody agreed that Ricks would purchase 200 LendingTree call option contracts in his on-line brokerage account. The cost, proceeds, and option contracts were to be shared equally between Ricks and Woody.

42. On Friday, May 2, 2003, the last trading day before the Announcement, at approximately 6:30 a.m., pursuant to their agreement, Ricks began to submit online orders to his brokerage account to purchase LendingTree call options when his wife, who was pregnant, went into labor. Faced with the exigent circumstances of his wife's impending labor, Ricks, took the time to contact Woody and provide

him with the necessary account access information to ensure Woody could complete their agreed upon transactions in LendingTree securities in Ricks' brokerage account.

43. From approximately 9:00 a.m. until approximately 12:03 p.m. that morning, Woody, working with Ricks by telephone, entered six separate limit orders in Ricks' brokerage account. They purchased 200 out-of-the-money LendingTree call option contracts that expired in May and had a strike price of \$15.00, for an approximate cost of \$17,150.92. At 12:03 p.m., Woody submitted a market order to purchase an additional 1,000 shares of LendingTree equities, which was immediately filled in Rick's account. This was the first time that Woody had ever purchased option contracts, and the first purchase that Ricks had ever made in LendingTree equities in the secondary market.

44. On Friday morning, May 2, 2003 -- the last trading day before the merger announcement -- Mead entered orders on-line to purchase LendingTree equities in his brokerage accounts at two separate broker-dealers. In one account, Mead entered six on-line orders and purchased 3,400 shares of LendingTree for approximately \$51,021.52. Additionally, in his other account, Mead entered four on-line market orders and one limit order for \$14.25 to purchase 6,800 shares of LendingTree for approximately \$100,191.65. These were the first purchases of LendingTree securities that Mead had ever made in the secondary market, and as such, this was the first time that Mead had paid the full market price for LendingTree stock.

45. As a result of their insider trading, Ricks, Woody, and Mead realized illicit profits of \$62,102.50, \$86,612.50, and \$62,756, respectively.

CLAIM FOR RELIEF

Insider Trading

**Violations of Exchange Act Section 10(b)
and Exchange Act Rule 10b-5**

46. Paragraphs 1 through 45 are realleged and incorporated by reference.

47. Until the merger agreement between LendingTree and USA Interactive was publicly announced on the morning of May 5, 2003, information pertaining to that acquisition was both material and nonpublic.

48. On April 30 and/or May 2, 2003, Defendants, employees of LendingTree, purchased LendingTree securities shortly before the Announcement, while in possession of material, nonpublic information concerning LendingTree's pending merger with USA Interactive, in breach of the fiduciary duty they owed to LendingTree and its shareholders.

49. Defendants knew, or were reckless in not knowing, that the information they learned concerning the pending LendingTree transaction was material and nonpublic, and that they could not purchase or sell any securities of LendingTree while in possession of such information.

50. By reason of the foregoing, and in connection with their above-described purchases of LendingTree stock, Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, plaintiff SEC respectfully requests that this Court enter a judgment that:

- (i) permanently enjoins Ricks, Woody, and Mead from violating Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];
- (ii) orders Ricks, Woody, and Mead to disgorge, with prejudgment interest, all illicit profits realized from the above-described trading in LendingTree;
- (iii) orders Ricks, Woody, and Mead to pay civil monetary penalties pursuant to Exchange Act Section 21A [15 U.S.C. § 78u-1]; and
- (iv) grants such other and further relief as the Court deems just and appropriate.

Dated: November 19, 2004

Respectfully submitted,

Paul R. Berger
Robert B. Kaplan
Mark E. Wolfe

Attorneys for Plaintiff
Securities and Exchange Commission

SEC Division of Enforcement
450 Fifth Street, N.W.
Washington, DC 20549-0911
Tel. (202) 942-2803 (Kaplan)
Fax (202) 942-9630 (Kaplan)