ADMINISTRATIVE PROCEEDING
FILE NO. 3-4395

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
SCIENTRONIC CORPORATION	:
24W-3141	:

FILED
JUL 15 1974
SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

July 15, 1974
Washington, D.C.

Ralph Hunter Tracy
Administrative Law Judge

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APPEARANCES: William R. Schief, Edward A. Kwalwasser and Vernon J. Vander Weide of the Washington, D.C. Regional Office of the Commission for the Division of Enforcement.

Eli Raitport, President, Scientronic Corporation for the Company

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

Scientronic Corporation (Scientronic), incorporated in Pennsylvania on January 12, 1970, filed with the Commission on May 23, 1973, a Notification and Offering Circular for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933 (Securities Act) pursuant to Section 3(b) thereof and Regulation A thereunder, with respect to a public offering of 1,000 10% convertible debentures at $500 each for an aggregate offering of $500,000. Each debenture is convertible into 50 shares of no par value common stock on or before July 30, 1978. On July 2, 1973, Scientronic filed a purported amendment to its Regulation A filing.

On November 21, 1973, the Commission issued an Order pursuant to Rule 261 of Regulation A temporarily suspending the exemption. The Order alleges, in substance, that the $500,000 ceiling available under Regulation A would be exceeded because of Scientronic's failure to properly escrow shares required to be escrowed by Rule 253(c); that the Notification and Offering Circular were deficient in that they contained untrue statements of material facts and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; that the terms and conditions of Regulation A have not been complied with; and that the offering if made, would have been in violation of Section 17 of the Securities Act.

The issuer filed an answer denying the allegations generally and requesting a hearing to determine whether to vacate the Order or to enter an order permanently suspending the exemption.

Scientronics was represented by its president, Eli Raitport, who is not an attorney. Proposed findings of fact and conclusions of law and briefs in support were filed by the parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

ISSUER

According to the Offering Circular the issuer was organized to engage in the business of manufacturing and marketing protective devices for automobiles, but it has not commenced operations on a commercial basis. Its principal efforts have been in furthering the development of Raitport's Snap Devices as safety protection devices for vehicles. The company states that initially it intends to manufacture and market "Hercules Bumpers" for cars; that it has two patents issued and one pending; and that the management believes that the patent position of the company is very strong.

On May 23, 1973, Scientronic filed the Notification and Offering Circular referred to above. By letter of June 8, 1973, the Washington Regional Office (WRO) informed Eli Raitport (Raitport), Scientronic's president and treasurer, that:

> "The deficiencies in your filing are such as to render the submission of a detailed letter of comment impractical . . . "

The letter went on to suggest to Raitport that he obtain counsel and schedule a conference with the staff or that he withdraw Scientronic's Regulation A filing without prejudice to a subsequent filing.

On June 18, 1973, Raitport met with members of the WRO and the staff suggested various amendments to Scientronic's Offering Circular to correct its deficiencies.

On June 25, 1973, Scientronic sent to the SEC Commissioners a "petition" which proposed that the Commission adopt certain accounting methods as acceptable for use in financial statements, even though the the proposed methods differed from generally accepted accounting principles. The "petition" did not mention Scientronic's pending Regulation A filing, although it dealt, inter alia, with accounting for "research and development" and other matters in dispute between Scientronic and the WRO in connection with the accounting methods to be used in the Offering Circular.

On July 2, 1973, Scientronic filed amendments to the Offering Circular. On the same day the WRO received a copy of the "petition" which Scientronic had directed to the Commissioners.

On July 10, 1973 the WRO again wrote to Raitport saying:

> "We have examined the amendments and it is the view of this office that our oral comments submitted to you in our meeting of June 18, 1973, have not been complied with. . . . Under these circumstances, this filing should be withdrawn. . . ."

On July 17, 1973, the WRO held another meeting with Raitport. At that meeting Raitport stated that he wished to postpone a decision with respect to his continuing with the filing until the Commission answered Scientronic's "petition" to the Commissioners of June 25, 1973.

On August 23, 1973, J.C. Burton, the Commission's Chief Accountant, wrote to Raitport stating that he had sent a copy of Raitport's "petition" to the newly established Financial Accounting Standards Board (FASB) and that, although the Commission has statutory authority with respect to prescribing methods of accounting to be followed in filings with it, the Commission has looked to the accounting profession to develop and establish accounting principles and practices, and that the FASB had been newly

established as the chief rule-making body of the accounting profession.

On September 7, 1973, the WRO wrote Raitport again requesting that he either properly amend his filing or withdraw it without prejudice to a later filing.

On September 13, 1973, Raitport wrote to the Chief Accountant requesting that Scientronic "be allowed to prepare" its Offering Circular in accordance with the proposals set forth in the "petition" of June 25, 1973. The Chief Accountant referred this letter to the WRO.

On September 14, 1973, Raitport replied to the WRO's letter of September 7, 1973, enclosing a copy of his letter to the Chief Accountant and stating:

> "We cannot afford to withdraw either, because we need the money to start manufacturing. Therefore, we have no choice but but to force our way and hope that a full disclosure <u>the way we see it</u> would help to sell the stock. Consequently we have now to wait for Mr. J.C. Burton's reply to our letter of September 13, 1973." (underscoring supplied).

On September 21, 1973, the WRO wrote Raitport again advising him that Scientronic's filing was unacceptable and stating that:

> ". . . any deviation from the standards established by the accounting profession cannot be accepted by this Commission, and may be grounds for the entry of an order temporarily suspending Scientronic Corporation's exemption under Regulation A. Your filing should be amended so as to comply with the requirements of full and fair disclosure as well as generally accepted accounting practices or withdrawn.
>
> "Your prompt attention to this matter is requested, and any delay may result in a recommendation by this office to the Commission that the subject's exemption under Regulation A be suspended."

On September 26, 1973, Raitport replied to the WRO stating that "As far as our registration is concerned, we are going to file our petition with the court of appeals. . ."

By letter of October 4, 1973, the WRO again pointed out the deficiencies in Scientronic's Offering Circular and stated:

> "Your filing should be amended so as to comply with the requirements of full and fair disclosure as well as generally accepted accounting practices or withdrawn, on or before October 23, 1973."

On October 16, 1973, Scientronic filed its appeal to the United States Court of Appeals for the Third Circuit. The appeal purports to be from a "decision" stated in the letter of September 21, 1973, from the WRO.

On November 21, 1973, the Commission entered its Order temporarily suspending the Regulation A exemption.

DEFICIENCIES IN REGULATION A FILING

Failure to Escrow Securities Pursuant to Rule 253

The Offering Circular discloses that Scientronic has 664,300 shares of its common stock outstanding; that Eli Raitport is the record and beneficial owner of 525,000 shares which were sold to him at 15¢ a share; that directors were given options to purchase up to 10,000 shares at $2.00 a share; and that the remaining shares were sold at prices ranging from $5 to $9 a share.

Rule 253 of Regulation A provides that where, as here, an issuer was incorporated more than one year prior to the date of a Regulation A offering and has not had a net income from operations, of the character in which the issuer intends to engage, for at least one of the last 2 fiscal years, then in computing the amount of securities to be offered

it must include all securities issued prior to the filing of the Notification to any director, officer or promoter of the issuer. However, such securities need not be included in the computation if, as provided in the Rule, they are escrowed or otherwised immobilized to assure against there being offered to the public for at least one year after the commencement of the Regulation A offering.

Scientronics has never had a net income from operations since its incorporation in 1970. The Offering Circular states that $612,346 has been received from the sale of the 664,300 shares of issuers stock but this figure is probably inaccurate as some of the shares were issued for services. In any event Scientronic's only income to date has been from the sale of its shares.

Item 11 of the Form 1-A Notification under Regulation A requires certain exhibits to be filed including the instruments defining the rights of security holders and any escrow or other similar arrangement relied upon to meet the requirements of Rule 253. Raitport has made no attempt to comply with the escrow provisions of Rule 253 and has not offered any explanation for his failure to do so. The record supports a finding that the provisions of Rule 253 were applicable under the circumstances herein and that no effort was made to comply with them. Accordingly, such refusal to comply renders the Regulation A exemption unavailable pursuant to Rule 261.[1]

1/ Rule 261 promulgated under the Securities Act of 1933 provides that the exemption shall be suspended if --

"(1) . . . any of the terms or conditions of this regulation have not been complied with . . .
(2) The notification, the offering circular or any other sales literature contains any untrue statement of material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading;
(3) The offering is being made or would be made in violation of Section 17 of the Act . . ."

It is axiomatic that the burden of establishing the availability of an exemption from registration rests upon the one who claims it.[2] "The exemption afforded by Regulation A is a conditional one based on compliance with express conditions and standards, and Rule 261 specifically provides that we may suspend an exemption in the event of non-compliance."[3]

False and Misleading Statements in Offering Circular

The Offering Circular states that Scientronic has received consideration in the amount of $612,346 for the 664,300 shares purportedly outstanding. However, the record shows that $300,000 represents services of questionable value for which Scientronic has promised to issue 30,000 shares but that these shares have not been issued. Also, there is no evidence in the record regarding the value, if any, of the consideration received for the remaining 634,300 shares outstanding.

According to the Offering Circular, Scientronic has extensive facilities, a skilled professional staff, an on-going program of research and development, and is about to begin manufacture of at least one new product which has been extensively tested. These representations are not supported by the evidence which shows that Scientronic has been dormant for a considerable period of time and there is considerable doubt as to whether a viable research and development program ever existed. There is no basis for the representation that Scientronic was "on the

2 / S.E.C. v. Ralston Purina, Inc., 346 U.S. 119 (1953)

3 / In the Matter of Texas-Augello Petroleum Exploration Co., 39 S.E.C. 292 (1959); See, also, S.E.C. v. Sunbeam Gold Mines, Inc., 95 F. 2d 699 (9th Cir. 1938).

verge of manufacturing." Regarding its "team of science and engineering specialists," Scientronic has no employees at present except Raitport and failed to produce any competent evidence that it ever did have such a staff.

Scientronic has no manufacturing facilities. Its so-called "engineering facilities" consist of about 500 square feet in the basement and garage of Raitport's personal residence. Its equipment consists of a single inoperable machine of doubtful utility. The only prototype of its principal product, the "Hercules Bumper", is a piece of sheet metal. The bumper has never been tested and Raitport admitted that it must be redesigned.

Scientronic's Offering Circular contains, on pages 24 and 25, a Balance Sheet as of May 15, 1973. An analysis of this Balance Sheet on the basis of the evidence in the record shows that it is grossly inaccurate and misleading. Under Assets, Cash on Hand and In Bank is shown as $4,744.00 when, as a matter of fact cash on hand on that date was actually $334.00. Under Fixed Assets, Machinery and Tooling is shown as $122,000.00 when there are no records of any kind to support such a figure. The one machine on the premises at the time of a staff inspection appeared to be of minimal value. An automobile is carried at $1,313.00 when, in fact, this automobile is not owned by Scientronic. An account entitled Research & Devleopment & Prototype & Testing is capitalized in the amount of $496,156.00. More than half of this figure is represented by services and Scientronic has no records to show what services were rendered. The balance of the research and development figure is composed of materials, supplies, rent and other expenses for which there is no supporting documentation.

Raitport issued "Certificates of Acknowledgement" which promised to pay so many dollars in stock for work performed, payment to be made at

a reasonable time following the registration of the stock. Certificates were to be exchanged for stock at $10 a share. The services for which these certificates were issued approximated $300,000 to May 15, 1973. No common stock has been issued in satisfaction of this liability. This $300,000 was included in the $496,156 shown under Research & Development. The Division's staff accountant testified that this $300,000 should have been reflected as a current liability rather than as an asset on the Balance Sheet. Thus, Scientronic's assets were overstated by $300,000, and the current liabilities were understated by $300,000.

In the "Stockholders Equity" section of the Balance Sheet it is stated that Scientronic has issued and outstanding 664,300 shares of common stock with a paid-in valuation of $612,346. In fact, 30,000 shares which were to have been issued for the $300,000 in services described above have not been issued so that the issued and outstanding common stock did not exceed 634,300 shares. The actual amount of paid-in capital is unknown and unascertainable as Scientronic has no books and records from which it might be determined.

On the basis of the evidence in the record, as partly described above, it is found that the Notification and Offering Circular of Scientronic contains untrue statements of material facts and omits to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

Failure to Comply with Regulation A

It is clear from the record that not only has Scientronic failed to comply with the terms and conditions of Regulation A but that it has no intention of doing so. Raitport has ignored every effort of the staff

to assist in achieving compliance and has resisted complying with generally accepted accounting practices to the extent of going to court. In addition, he has stated in a letter to the WRO that "we have no choice but to force our way and hope that a full disclosure the way we see it would help to sell the stock."

In view of the foregoing and Raitport's unwillingness to furnish any meaningful information concerning Scientronic's business and related matters it is found that the terms and conditions of Regulation A have not been complied with as alleged in the Order.

Section 17(a) of the Securities Act

As found above, the Offering Circular, filed on May 23, 1973, intended for use in Scientronic's proposed offering contains materially false and misleading statements concerning the issuer and its past, present and proposed activities. The use of the Offering Circular in connection with the offer and sale of Scientronic's convertible debentures, therefore, would operate as a fraud and deceit upon purchasers in violation of Section 17(a) of the Securities Act.

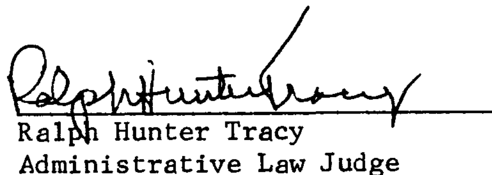
CONCLUSION

Each one of the violations found herein is sufficient to suspend the exemption. As previously stated, the obligation to comply with the terms and conditions of Regulation A rests with the one seeking to take advantage of it, in this case Scientronic. It is clear that Scientronic failed to comply with the terms and conditions of Regulation A. Therefore, it is concluded that the exemption of Regulation A should be permanently suspended, accordingly,

IT IS ORDERED, pursuant to Rule 261 of Regulation A under the Securities Act of 1933, that the exemption of Scientronic Corporation under Regulation A is permanently suspended.

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

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 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.[4/]



Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
July 15, 1974

4/ To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected.