

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,  
100 F Street, N.E.  
Washington, D.C. 20549

Plaintiff,

vs.

JOSEPH P. KEENEY,

Defendant.

Case: 1:07-cv-01703  
Assigned To : Robertson, James  
Assign. Date : 9/25/2007  
Description: General Civil

**COMPLAINT**

Plaintiff Securities and Exchange Commission (the "Commission") alleges that:

**NATURE OF THE ACTION**

1. Between September and November 2006, Joseph P. Keeney ("Keeney"), then a consultant to Frederick's of Hollywood, Inc. ("Frederick's"), engaged in illegal insider trading by purchasing shares of Movie Star, Inc. ("Movie Star") on the basis of material, nonpublic information concerning both the merger of Frederick's with Movie Star that was announced to the public on December 19, 2006, as well as the financial projections for Movie Star that had been entrusted to Keeney during the course of the merger negotiations.

2. Between September 14 and November 20, 2006, Keeney purchased a total of 157,000 shares of Movie Star with an average cost basis of \$0.97 per share.

3. In a quarterly report filed with the Commission on November 14, 2006, Movie Star disclosed that it was engaged in "discussions with a private apparel company

with respect to a possible combination of the companies,” but without disclosing Frederick’s by name. On December 19, 2006, both Movie Star and Frederick’s publicly announced that the two companies had entered a merger agreement.

4. During the six-week period from October 1, 2006, through November 14, 2006, when Movie Star filed the quarterly report, the closing price of MSI ranged from \$0.77 to \$0.87. From Wednesday, November 15, 2006, through Monday, December 18, 2006, the closing price of MSI ranged from \$0.97 to \$1.28. Following the public announcement of the merger transaction on December 19, 2006, MSI increased to close at \$1.46 later that day.

5. Keeney knew, or was reckless in not knowing, that he purchased shares of Movie Star based on material, nonpublic information and in breach of a duty of trust and confidence he owed to Frederick’s.

6. By purchasing shares of Movie Star on the basis of material, nonpublic information, Keeney had imputed profits of \$77,540.50.

7. By engaging in such conduct, defendant violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

8. Unless restrained and enjoined by this Court, defendant will continue to engage in transactions, acts and practices that violate these provisions of the federal securities laws. The Commission seeks permanent injunctions against future violations and other relief requested in this Complaint.

## JURISDICTION

9. This Court has jurisdiction over this action pursuant to Sections 21(d)(1), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(1), (e), and 78aa].

10. In connection with the transactions, acts, and practices described in this Complaint, defendant, directly or indirectly, used the means or instrumentalities of interstate commerce, the mails, or the facilities of a national securities exchange.

## DEFENDANT

11. Joseph P. Keeney, age 46, is a resident of Arlington, Virginia. From February 21, 2006 until his resignation on January 24, 2007, Keeney was retained by Frederick's as a consultant on its business operations and on a possible merger with Movie Star.

## OTHER RELEVANT ENTITIES

12. Frederick's of Hollywood, Inc. is a subsidiary of FOH Holdings, Inc., a Delaware corporation, with headquarters in Hollywood, California, that markets women's intimate apparel. Frederick's is a privately held company.

13. Movie Star, Inc. is a New York corporation headquartered in New York, New York that markets women's intimate apparel. The common stock of the company is registered with the Commission under Section 12(b) of the Exchange Act and is listed on the American Stock Exchange under the ticker symbol "MSI." Movie Star files quarterly and annual reports with the Commission pursuant to Section 13 of the Exchange Act.

## FACTS

14. On March 4, 2004, Frederick's and Movie Star signed a Confidentiality and Non-Circumvention Agreement (the "March 2004 Confidentiality Agreement"),

Section 3.1 of which provided that Frederick's and its agents "shall not, either directly or indirectly, individually or by action in concert with others . . . use any such Confidential Information [provided by Movie Star during the negotiation of the possible merger] for the benefit of any Person other than" Movie Star.

15. On February 21, 2006, Keeney signed a consulting agreement with Frederick's. The next day, he signed an agreement with Frederick's to maintain the confidentiality of information he received during his consultancy. From the outset, Frederick's retained Keeney's consulting services to help Frederick's improve its business operations, and Frederick's later expanded Keeney's retainer to encompass his services with respect to the possible merger with Movie Star.

16. On March 8, 2006, Keeney met with the Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer of Movie Star.

17. On May 3, 2006, Keeney received an email from the Chief Financial Officer of Movie Star attaching nonpublic financial projections for Movie Star through its fiscal year 2010, together with the message that "as I know you are aware, Movie Star is a publicly traded Company and this document should be treated as confidential."

18. On May 17, 2006, Keeney participated in a meeting at which Frederick's board of directors formally launched the efforts of its special committee to negotiate the proposed merger with Movie Star. During the meeting, counsel to Frederick's special committee generally advised the attendees not to trade in the securities of Movie Star and not to tip others about the possible merger until either the merger was consummated or merger negotiations were terminated.

19. Beginning in June 2006, the special committees of Frederick's and Movie Star, together with their respective legal and financial advisors, including Keeney on behalf of Frederick's, met repeatedly to discuss and negotiate the possible merger. In this process, Keeney was charged with maintaining open and regular communication between Frederick's special committee and Movie Star's special committee.

20. In August 2006, Frederick's and Movie Star engaged in mutual due diligence.

21. On October 5, 2006, Keeney signed an acknowledgement to Frederick's that he had received a copy of the March 2004 Confidentiality Agreement and that he had agreed to be bound by its terms.

22. Between September 14 and November 20, 2006, Keeney purchased 157,000 shares of Movie Star at a total cost of \$151,679.50, for an average cost basis of \$0.97 per share, through the following transactions:

<u>Trade Date</u>	<u>Quantity of MSI</u>	<u>Price per Share</u>
September 14	10,000	\$0.84
September 19	10,000	\$0.86
September 20	10,000	\$0.87
November 3	10,000	\$0.83
November 3	7,000	\$0.84
November 6	35,000	\$0.85
November 15	2,500	\$0.99
November 15	7,500	\$1.01
November 15	7,000	\$1.05
November 15	5,000	\$1.0899
November 15	33,000	\$1.10
November 17	2,500	\$1.13
November 20	5,000	\$1.14
November 20	12,500	\$1.15

23. At the times of each of these purchases of shares of Movie Star, Keeney knew, or was reckless in not knowing, that he made these purchases based on material,

nonpublic information concerning both the possible merger and Movie Star's financial projections, and in breach of a duty of trust and confidence he owed to Frederick's.

24. In a quarterly report filed with the Commission on November 14, 2006, Movie Star disclosed that it was engaged in "discussions with a private apparel company with respect to a possible combination of the companies," but without disclosing Frederick's by name.

25. On December 19, 2006, both Movie Star and Frederick's publicly announced that the two companies had entered a merger agreement, pursuant to which Frederick's parent company would merge with a wholly-owned subsidiary of Movie Star, Frederick's shareholders would receive newly issued Movie Star stock, and the combined company would be called "Frederick's of Hollywood Group Inc."

26. On December 20, 2006, Movie Star filed a Form 8-K with the Commission that attached the full merger agreement, among other exhibits.

27. During the six-week period from October 1, 2006, through November 14, 2006, when Movie Star filed the quarterly report, the closing price of MSI ranged from \$0.77 to \$0.87. From Wednesday, November 15, 2006, through Monday, December 18, 2006, the closing price of MSI ranged from \$0.97 to \$1.28. Following the public announcement of the merger transaction on December 19, 2006, MSI increased to close at \$1.46 later that day.

28. By purchasing shares of Movie Star on the basis of material, nonpublic information, Keeney had imputed profits of \$77,540.50.

**CLAIM**

**Insider Trading in Connection with Purchase or Sale of a Security**

**(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])**

29. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 28 above.

30. By engaging in the foregoing conduct, Keeney violated 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].

**RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court enter a judgment against Keeney that:

1. enjoins Keeney from violating 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];
2. orders Keeney to disgorge all ill-gotten gains, with prejudgment interest;
3. orders Keeney to pay appropriate civil penalties under Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

4. grants such other and further relief as this Court may deem just and proper.

Dated: Sept. 24, 2007

Respectfully submitted,

Nina B. Finston

Scott W. Friestad  
Robert B. Kaplan  
Nina B. Finston, D.C. Bar No. 431825  
Stephen G. Yoder

Attorneys for Plaintiff  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-6041  
(202) 551-4961 (Finston)  
(202) 772-9346 (fax)