

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9216 / June 8, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14415

In the Matter of

Michael Migliozi II and
Brian William Flatow

Respondents.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
8A OF THE SECURITIES ACT OF 1933,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) against Michael Migliozi II and Brian William Flatow (“Migliozi” and “Flatow,” respectively, “Respondent,” individually, or, “Respondents, ” collectively).

II.

In anticipation of the institution of these proceedings, each Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, each Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

These proceedings stem from the Respondents' making an unregistered offering of securities in violation of Section 5 of the Securities Act during the period November 2009 through April 2010.

Respondents

1. Michael Migliozi II, age 45, resides in California and, during the relevant period, was the Managing Partner and sole owner of Forza Migliozi, an advertising agency.
2. Brian William Flatow, age 41, resides in Connecticut and, during the relevant period, was the President of The Ad Store, an advertising agency.

Facts

3. In November 2009, Migliozi, in his capacity as Managing Partner and sole owner of Forza Migliozi, and Flatow, in his capacity as President of The Ad Store, jointly created the BuyaBeerCompany.com website. The stated purpose of the website was to solicit investors via crowdsourcing to invest \$300 million to purchase Pabst Brewing Company ("Pabst") from its owner, a private charitable trust which was then looking for a buyer. Crowdsourcing is the use of social media and the Internet to organize a large group of individuals to achieve a common goal, in this instance, to raise capital.

4. The BuyaBeerCompany.com website explained that the solicitation was to be effected in two stages. The first stage sought pledges. The only information required to be supplied by each pledgor was an e-mail address, first name, last name, and pledge amount. Each pledgor received a confirmation e-mail and his or her information was stored on a server. The website featured a countdown timer which identified how much money remained to be pledged to meet the \$300 million goal, and explicitly stated, "SEND NO MONEY!" If \$300 million in pledges were received, the second stage would consist of collecting the pledges and undertaking to purchase Pabst.

5. In the event the \$300 million threshold was met and the monies collected, the BuyaBeerCompany.com website further explained that each investor would receive a "crowdsourced certificate of ownership," as well as beer of a value equal to the amount invested.

6. In addition to publicizing the offering through the BuyaBeerCompany.com website, Migliozi and Flatow created a Facebook page and a Twitter account to advertise the website.

¹ The findings herein are made pursuant to the Respondents' Offers of Settlement, and are not binding on any other person or entity in this or any other proceeding.

They also issued press releases relating to the BuyaBeerCompany.com website, which referred to pledging parties as “investors” who would receive “crowdsourced ownership in Pabst”

7. The BuyaBeerCompany.com website elicited \$14.75 million in pledges during its first three weeks of operation.

8. The Respondents announced in a subsequent February 22, 2010 press release that the BuyaBeerCompany.com website had received over \$200 million in pledges from more than five million pledgors. In the same release, they also announced that their search for a firm to assist in the acquisition was underway. Flatow subsequently met with an attorney in New York on or about February 26, 2010, to discuss how to go about collecting the pledges by incorporating an acquisition vehicle. The possibility of an initial public offering was discussed.

9. A March 15, 2010 article in The Daily Deal reported that Migliozi and Flatow had retained counsel and planned to incorporate Buy a Beer Company LLC. Thus, in lieu of a certificate of ownership, pledgors would receive stock in the acquisition corporation. The entity was never incorporated.

10. The BuyaBeerCompany.com website continued to solicit pledges until the Respondents took the website down in April 2010. No monies were ever collected.

Legal Discussion

11. Securities Act Section 5(c) makes it unlawful for any person, directly or indirectly, to make use of any means or instrument of transportation or communication in interstate commerce to offer to sell any security unless a registration statement has been filed with the Commission. Scierter is not an element of a Section 5 violation. *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 859-60 (S.D.N.Y. 1997), *aff'd*, 159 F.3d 1348 (2d Cir. 1998).

12. Section 2(a)(3) of the Securities Act defines “offer to sell,” “offer for sale,” and “offer” to include, “every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value.”

13. The Respondents made use of the jurisdictional means to effect an offering of securities. *American Library Ass'n. v. Pataki*, 969 F. Supp. 160, 173 (S.D.N.Y. 1997) (“[T]he Internet represents an instrument of interstate commerce”).

14. The Respondents failed to register the offering with the Commission and there was no applicable exemption from registration.

15. Since the offer of the securities was not registered with the Commission, nor exempt from registration, Migliozi and Flatow violated Section 5(c) of the Securities Act.

IV.

In view of the foregoing, the Commission deems it appropriate to accept Migliozi's and Flatow's Offers of Settlement.

Accordingly, pursuant to Section 8A of the Securities Act, it is hereby ORDERED that:

Respondents Michael Migliozi II and Brian William Flatow cease and desist from committing or causing any violations and from committing or causing any future violations of Section 5(c) of the Securities Act.

By the Commission.

Elizabeth M. Murphy
Secretary