

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 54099 / July 5, 2006

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2457 / July 5, 2006

ADMINISTRATIVE PROCEEDING

File No. 3-12356

In the Matter of

Craig M. Waggy

Respondent.

**ORDER INSTITUTING CEASE-
AND-DESIST PROCEEDINGS,
MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST
ORDER PURSUANT TO SECTION
21C OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Craig M. Waggy (“Waggy”).

II.

In anticipation of the institution of these proceedings, Waggy has submitted an Offer of Settlement (“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, Waggy consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Waggy’s Offer, the Commission finds that¹:

¹ The findings herein are made pursuant to Waggy’s offer of settlement and are not binding on any other person or entity in this or any other proceeding.

A. SUMMARY

From September 1997 to May 2002, Waggy was the Chief Financial Officer of TV Guide, Inc., which became a subsidiary of Gemstar-TV Guide International, Inc. (“Gemstar”) in July 2000. Prior to the merger, Waggy was responsible for TV Guide’s books and records; after the merger, Waggy, in consultation with Gemstar’s Chief Financial Officer, was responsible for TV Guide’s books and records, which were consolidated into Gemstar’s financial records.

From the quarter ended June 30, 2000, through the quarter ended March 31, 2002, Waggy caused TV Guide to recognize and record certain revenue and expenses that were subsequently determined not to be in accordance with Generally Accepted Accounting Principles (“GAAP”). Waggy reasonably should have known, based on information he had received or could have reasonably determined, that the expense or revenue was improperly recorded at TV Guide and that revenue would be improperly recognized, recorded, and reported by Gemstar. As a result, Waggy was a cause of Gemstar’s violations of the reporting and record-keeping provisions of the federal securities laws.

B. RESPONDENT

Craig M. Waggy is a resident of Tulsa, Oklahoma. Beginning in September 1997, Waggy was the CFO of TV Guide, which became a Gemstar subsidiary in July 2000. In May 2002, Waggy resigned from TV Guide.

C. RELATED PARTIES

Gemstar-TV Guide International, Inc. (“Gemstar”) is a Delaware corporation with its principal place of business in Hollywood, California. Gemstar’s common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and listed on the NASDAQ Stock Market.

TV Guide, Inc. (“TV Guide”) was a public company until Gemstar acquired it in July 2000.

D. FACTS

1. Background

Gemstar was the product of a July 2000 merger between Gemstar, a company that licensed an interactive program guide (“IPG”) for televisions and sold advertising on the IPG, and TV Guide, a company that published TV Guide magazine and owned various other media properties. IPG is a product that allows TV viewers to navigate through, sort, obtain information on, and select television programs. Gemstar reported revenue for IPG advertising as Interactive Platform Sector (“IP Sector”) revenue. From 1999 through the quarter ended September 30, 2002, Gemstar materially overstated its financial results by recording revenue not in accordance with GAAP. Some of the improperly recorded revenue is discussed below.

a. TV Guide Awards Show Advertising

In the quarter ended June 30, 2000, which was the quarter immediately preceding Gemstar's acquisition of TV Guide, Gemstar and TV Guide recognized and reported \$1.3 million IP Sector revenue and expense, respectively, for IPG advertising relating to the 2000 TV Guide Awards Show. Gemstar issued an invoice to TV Guide for the advertising, which was approved for payment by TV Guide's President and COO. However, the Awards Show had aired in the quarter ended March 31, 2000, and there was no evidence that Gemstar ever ran IPG advertising for the TV Guide Awards Show in the quarter ended June 30, 2000. Because Gemstar and TV Guide recorded the \$1.3 million in the pre-merger quarter, the revenue, but not the expense, carried forward to Gemstar's financial statements in its Form 10-K for the nine-months ended December 31, 2000. This revenue was material to Gemstar's separately reported IP Sector financial results.

Gemstar improperly recognized the \$1.3 million in advertising revenue for the 2000 Awards Show because the revenue was neither realized or realizable nor earned. See SFAC No. 5, ¶83-84; ARB No. 43, Chapter 1A, ¶1; APB Opinion No. 10, ¶12; SAB No. 101. TV Guide should not have recorded the \$1.3 million expense for the Awards Show IPG advertising because no economic benefit had been used up in delivering or producing goods, rendering services or other activities. See FASB Statement of Financial Accounting Concepts No. 5, "Recognition and Measurement in Financial Statements of Business Enterprises" ¶ 85. (expenses are generally recognized when an entity's economic benefits are used up in delivering or producing goods or rendering services). Gemstar reversed the recognition of this IP Sector revenue in March 2003.

b. Roush Corp.

In June 2000, TV Guide entered into an agreement with Roush Corp. ("Roush"), a private company that operated a NASCAR racing team, under which TV Guide agreed to provide Roush advertising on TV Guide media in exchange for Roush's agreement to provide TV Guide advertising and promotional services. In the quarter ended December 31, 2000, Gemstar ran IPG advertising for Roush, and TV Guide, in consultation with Gemstar's CFO, recognized, recorded, and, through Gemstar, reported \$1.4 million in IP Sector revenue from Roush. This revenue was material to Gemstar's separately reported IP Sector financial results.

Gemstar improperly recognized the \$1.4 million in IP Sector revenue from its non-monetary transaction with Roush, because the fair value of the IPG advertising was inaccurately determined. See EITF 99-17, Accounting for Advertising Barter Transactions (to determine the fair value of a barter transaction, a period not to exceed six months prior to the date of the barter transaction should be used to determine whether a historical practice exists of receiving cash for similar advertising). Gemstar reversed the recognition of this IP Sector revenue in March 2003.

c. Fantasy Sports

In June 2001, Gemstar entered into an agreement with Fantasy Sports Properties, Inc. ("Fantasy Sports"), a private company that created and operated Internet-based fantasy sports games. Under the agreement, Gemstar acquired Fantasy Sports' intellectual property for approximately \$20.75 million, of which \$750,000 was to be paid in cash and \$20 million was to be

paid in the form of advertising run by Gemstar at Gemstar's discretion in 2001. For the year 2001, Gemstar ran IPG advertising for Fantasy Sports and recorded and reported a total of \$20 million in IP Sector revenue from Fantasy Sports. No cash payment from Fantasy Sports to Gemstar for the \$20 million in purported advertising was ever made. TV Guide, in consultation with Gemstar's CFO and outside auditors, recorded and, through Gemstar, reported the \$20 million in 2001. The \$20 million in recorded and reported revenue from Fantasy Sports for 2001 was material to Gemstar's separately reported IP Sector financial results.

Gemstar's recognition of revenue from the Fantasy Sports transaction throughout 2001 did not conform with GAAP. First, the advertising revenue was never earned because it resulted from a transaction that lacked economic substance and was merely a pretext to permit Gemstar to record IP Sector revenue. Second, Gemstar lacked any reasonable basis to determine the fair value of the IPG advertising because Gemstar did not have stand-alone IPG advertising transactions with unrelated parties from which the company received cash in amounts comparable to those recognized in connection with the Fantasy Sports transaction. See APB Opinion No. 29 (revenue from non-monetary transactions must be based on fair value of assets involved). In November 2002, Gemstar reversed the recognition of the \$20 million in IP Sector revenue from Fantasy Sports.

d. Motorola and Tribune

In October 2000, Gemstar entered into an agreement with Motorola, Inc. ("Motorola"), under which Motorola agreed to pay Gemstar \$188 million in cash and to allow Gemstar to characterize \$17.5 million of that as advertising to be run over a 48 month period. Under the agreement, Gemstar retained final discretion as to timing and placement of the advertising. In April 2001, Gemstar and The Tribune Company ("Tribune") entered into a transaction which included, among others, two agreements: (1) a Stock Purchase Agreement in which Tribune paid \$106 million in cash to Gemstar for the stock of one of TV Guide's businesses; and (2) an Advertising Agreement in which Tribune committed to purchase \$100 million of advertising from Gemstar over a six-year period, regardless of whether Tribune used the advertising. The documentation for the transaction was split at the direction of Gemstar into these two component parts. Gemstar controlled the timing and placement of the advertising that it ran for Tribune. In 2001 and the quarter ended March 31, 2002, Gemstar ran IPG advertising for Motorola and Tribune and recognized and reported a total of \$34.5 million in IP Sector revenue. Of the \$34.5 million, TV Guide, in consultation with Gemstar's CFO, recognized, recorded, and, through Gemstar, reported \$17.9 million. This revenue was material to Gemstar's separately reported IP Sector results.

Gemstar improperly recognized the \$34.5 million in IP Sector advertising revenue from its transactions with Motorola and Tribune, because the fair value of the IPG advertising provided by Gemstar was not realizable, verifiable, or objectively determinable. See American Institute of Certified Public Accountants, Statement of Position 97-2, "Software Revenue Recognition," paragraph 10 ("[i]f an arrangement includes multiple elements, the fee should be allocated to the various elements based on vendor-specific objective evidence of fair value, regardless of any separate prices stated within the contract for each element"); SAB 101, Frequently Asked Questions and Answers, Question 4 (revenue from multi-element transaction

should be allocated to various elements based on fair value that is reliable, verifiable, and objectively determinable; prices listed in multi-element arrangement may not be representative of fair value because prices of different components of transaction can be altered in negotiations and still result in same aggregate consideration). In March 2003, Gemstar reversed the recognition of the \$34.5 million as IP Sector revenue and allocated it to other sectors.

2. Waggy's Conduct

From September 1997 to May 2002, Waggy was the CFO of TV Guide, which became a Gemstar subsidiary in July 2000. After July 2000 TV Guide's books and records were consolidated into Gemstar's financial statements and reported in Gemstar's periodic reports. Waggy was responsible for TV Guide's books and records, including causing TV Guide to record the Awards Show expense and the Roush, Fantasy Sports, Motorola, and Tribune revenue.

While performing his duties as TV Guide's CFO, including consulting with Gemstar's CFO and outside auditors, Waggy learned certain information regarding the Awards Show, Roush, Fantasy Sports, Motorola, and Tribune transactions and Gemstar's IPG advertising. In causing TV Guide to record the expense and revenue discussed above, Waggy was negligent in not knowing, based on information that he had received and/or could have reasonably determined, that the expense or revenue was improperly recognized and recorded at TV Guide and that revenue would be improperly recognized, recorded, and reported by Gemstar.

E. LEGAL DISCUSSION

1. Causing Gemstar's Violations of the Reporting Provisions of Section 13(a) of the Exchange Act, and Rules 12b-20, 13a-1, and 13a-13 Thereunder

Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act, such as Gemstar, to file with the Commission certain annual and quarterly reports. Implicit in these provisions is the requirement that the reports accurately reflect the issuer's financial condition and operating results. See SEC v. IMC Int'l, Inc., 384 F. Supp. 889, 893 (N.D. Tex.), aff'd mem., 505 F.2d 733 (5th Cir. 1974). Rule 12b-20 under the Exchange Act further requires the inclusion of any additional material information that is necessary to make required statements, in light of the circumstances under which they were made, not misleading. No showing of scienter is required to establish a violation of Section 13(a) of the Exchange Act. See SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978). Moreover, Regulation S-X requires that financial statements filed with the Commission pursuant to Section 13(a) of the Exchange Act be prepared in accordance with GAAP. See Peritus Software Services, Inc., Exchange Act Rel. No. 42673 (Apr. 13, 2001) (settled proceeding). Otherwise, such financial statements shall be presumed inaccurate.

Gemstar committed primary reporting violations by filing with the Commission periodic reports for 2000, 2001, and the first quarter of 2002 that improperly reported Awards Show, Roush, Fantasy Sports, Motorola, and Tribune IP Sector revenue. Waggy was a cause of those reporting violations, because he caused TV Guide to record IP Sector revenue from, or expenses for, the Awards Show, Roush, Fantasy Sports, Motorola, and Tribune, and he was negligent in

not knowing, based on information he had received and/or could have determined through additional inquiry, that the revenue or expense was improperly recognized and recorded at TV Guide and would be improperly reported by Gemstar.²

2. **Causing Gemstar’s Violations of the Record-Keeping Provisions of Section 13(b)(2)(A) of the Exchange Act and Committing Violations of Rule 13b2-1 Thereunder**

Section 13(b)(2)(A) of the Exchange Act requires reporting companies registered pursuant to Section 12 of the Exchange Act to “make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions . . . of the issuer.” No showing of scienter is required to establish a violation of Section 13(b)(2)(A). SEC v. World-Wide Coin Invs., Ltd., 567 F. Supp. 724, 751 (N.D. Ga. 1983). Rule 13b2-1 under the Exchange Act also prohibits any person from directly or indirectly falsifying any book, record, or account described in Section 13(b)(2)(A).

Gemstar committed primary violations of the record-keeping provisions of Section 13(b)(2)(A) of the Exchange Act by improperly recording Awards Show, Roush, Fantasy Sports, Motorola, and Tribune IP Sector revenue. Waggy was a cause of those record-keeping violations and violated Rule 13b2-1 under the Exchange Act, because he caused TV Guide to record IP Sector revenue from, or expenses for, the Awards Show, Roush, Fantasy Sports, Motorola, and Tribune, and he was negligent in not knowing, based on information he had received and/or could have determined through additional inquiry, that the revenue or expense was improperly recognized and recorded at TV Guide and Gemstar.

² Under Section 21C(a) of the Exchange Act, the standard for establishing that a person was a culpable cause of another person’s violation is that the person engaged in an act or omission that he “knew or should have known would contribute” to the primary violation. This standard requires negligence for causing the type of non-scienter violations at issue in this case. KPMG Peat Marwick, Exchange Act Rel. No. 43862 (June 19, 2001), *aff’d*, KPMG v. SEC, 289 F. 3d 109 (D.C. Cir. 2002).

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Waggy's Offer.³

Accordingly, it is hereby ORDERED that Waggy cease and desist from causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder and committing or causing any violations and any future violations of Rule 13b2-1 thereunder.

By the Commission.

Nancy M. Morris
Secretary

³ Waggy has agreed to pay a \$25,000 civil penalty in a civil action in the Central District of California entitled SEC v. Yuen, et al., Case No. CV 03-4376 MRP (PLAx).