UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90716 / December 17, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4200 / December 17, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20176

In the Matter of Jason Boling, CPA Respondent.	ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, 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 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Respondent, Jason Boling.

II.

In anticipation of the institution of these proceedings, 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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease- and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. From at least January 2017 to December 2017, Jason W. Boling the Chief Financial Officer ("CFO") of Apex Global Brands Inc.[2] ("Apex" or "the Company"), failed to ensure the accuracy of Apex's books and records regarding its primary asset and only revenue source, trademarks held by the company. By January 2017, three of Apex's trademarks were impaired, but impairment charges were not recognized until February 3, 2018 (Apex's 2018 fiscal year end) when it impaired these three trademarks for a total of $34.5 million.

2. Apex's inaccurate books and records were due to its failure to timely recognize impairment of certain trademarks, while the Company was experiencing a series of significant setbacks in its business and industry environment, licensing business, and market valuation. Apex performed only limited qualitative impairment assessments that failed to appropriately take into account negative information indicating that the trademarks were more likely than not impaired. Such an indication would have required a quantitative assessment of value, which Apex did not perform. As early as August 2016, there were indications that the values of certain of Apex's trademarks were more likely than not materially lower than the carrying values on the Company's books.

3. Boling was Apex's CFO from March 2013 to December 2017 and oversaw Apex's impairment assessments of trademarks. Boling was aware during this period of information indicating that certain of Apex's trademarks were more likely than not impaired and, as a consequence, should have known that Apex's books and records did not accurately reflect the value of those trademarks.

4. As a result of the conduct described in this Order, Boling caused Apex's violations of Section 13(b)(2)(A) of the Exchange Act.

Respondent

5. **Jason W. Boling**, 50, is a CPA licensed in California and served as CFO of Apex from March 2013 until he resigned effective December 2017.

Relevant Entity

6. **Apex Global Brands Inc**., formerly known as Cherokee Inc., is a Delaware corporation established in 1973 and headquartered in Sherman Oaks, California. Apex owns and licenses various fashion and lifestyle brands. As Cherokee, the common stock was registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and initially

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] For clarity, the Order refers to Apex throughout. However, Apex was called Cherokee Inc. during the relevant period. Cherokee changed its name to Apex Global Brands Inc. as of June 27, 2019.

traded on the Nasdaq Global Select Market under the symbol "CHKE." Cherokee rebranded as Apex Global Brands effective June 27, 2019, and until it was delisted on November 5, 2020, traded on NASDAQ Capital Markets under the ticker symbol "APEX." Apex files periodic reports, including Forms 10-K and 10-Q, pursuant to Section 13(a) of the Exchange Act and related rules thereunder. Apex's fiscal year comprises a 52 or 53 week period ending on the Saturday nearest to January 31.

Facts

Apex's Trademarks Performed Poorly

7. In September 2012, Apex acquired the Liz Lange trademark for $14 million. It followed this purchase with the acquisition of the Tony Hawk ("Hawk") trademark for $19 million in January 2014, and the acquisition of the Flip Flop Shops ("FFS") business for $12 million in October 2015. Along with a fourth trademark, these trademarks formed the core of Apex's business.

8. During the relevant period, Apex's Liz Lange and Tony Hawk ("Hawk") trademarks were booked on Apex's balance sheet at values that equaled their purchase prices, determined on the basis of earnings expectations that were dependent on the continuation and success of their respective contracts with two large retail chains (Retail Chain A and B.) Subsequently, however, neither Liz Lange nor Hawk performed in accordance with purchase expectations. By fiscal year end 2017, Boling should have been aware that both Retail Chains would terminate their respective licenses. Similarly, the 2015 Flip Flop Shops ("FFS") acquisition performed poorly from the time it was acquired, never achieving the income and expansion assumptions that formed the basis of its acquisition cost and carrying value.

Boling Oversaw Impairment Assessments of Apex's Trademarks

9. Throughout the relevant period, Apex was required to and did perform annual impairment assessments of its trademarks. These assessments also were required more frequently on an interim basis if events or changes in circumstances indicated it was more likely than not that the asset was impaired, pursuant to ASC 350-30-35. Boling oversaw these assessments. The Company was permitted to first perform a qualitative assessment to determine whether it was necessary to perform a quantitative impairment test. In a qualitative assessment, an entity assesses qualitative factors, sometimes referred to as "triggers," to determine whether it is more likely than not that an indefinite-lived intangible asset is impaired. If it is found that the indefinite-lived intangible asset is more likely than not impaired, the required quantified assessment determines the fair value of the asset. If the carrying amount of the indefinite-lived asset exceeds the fair value, an impairment is recognized in an amount equal to that excess.

Liz Lange, Hawk, and FFS were Impaired by Fiscal Year End 2017

By fiscal year end 2017 there were multiple indicators of impairment of the Liz Lange, Hawk and FFS trademarks. Boling was aware of the relevant facts and developments discussed below.

Boling regularly presented financial performance numbers at Apex Board meetings, including the performance of each trademark against budget. Although he was not responsible for

preparation of sales forecasts included in budgets, Boling was also present for the presentations to the Board that included information related to the unfavorable developments related to each of the trademarks.

Loss of Major Contracts

10. Liz Lange's $14 million purchase price (and carrying value) was based on a multiple of projected earnings with an expected 10% annual growth in revenue. Nearly all of the projected revenue was based on a continuing license relationship with Retail Chain A. Throughout the relevant period, Retail Chain A was by far Apex's primary licensee for the Liz Lange trademark, providing nearly 88% of the Company's annual revenue from that trademark. In November 2016, Retail Chain A told the Company that it would not renew its license for the Liz Lange brand when it expired in January 2018.

11. Similar to Liz Lange, Hawk's $19 million purchase price (and carrying value) was also based on projected earnings, nearly all of which was dependent on a licensing relationship with Retail Chain B. The Retail Chain B licensing relationship comprised more than 90% of Apex's revenue related to the Hawk brand. However, the Hawk brand did not perform well for Retail Chain B. Retail Chain B retail sales of Hawk branded products were below expectations, and Retail Chain B was paying $4.8 million in royalties that was based purely on a contractual annual minimum amount it was required to pay Apex throughout the relationship. In October 2016, Retail Chain B served notice that it would not renew the license.

12. As described below, replacing even a portion of the revenue from Retail Chain A and B proved difficult. Apex had no historical experience in replacing licensing revenue on this scale, and there was not a reasonable basis to believe that the revenue could be replaced after these licenses terminated.

13. The financial circumstances surrounding Retail Chain A's and Retail Chain B's license for the Liz Lange and Hawk trademark represented potential indicators of impairment, especially given the size of the license relationships.

Declining Financial Performance

14. With Retail Chain A's pivot away from the Liz Lange brand, Apex's revenue from the trademark shrank. As a result, Apex consistently showed declining revenues and missed budgeted revenue targets for this trademark. Apex had budgeted approximately a 7% increase in revenue for 2017. In fact, there was not an increase in revenue year over year, but a decline and Liz Lange missed its budgeted revenue by 26%. This trend was reflective of "declining financial performance metrics" referenced in the relevant accounting standards. For Hawk, the steady decline in retail sales precipitated the non-renewal of the Retail Chain B contract. Apex tracked retail sales of its licensees and knew at fiscal yearend 2017 that sales of Hawk merchandise at Retail Chain B had declined 29% from the prior year. Yet, Apex did not consider whether the declining financial performance of these trademarks impacted the value of the trademarks or affected the likelihood of impairment.

15. Apex also experienced clearly declining financial performance metrics with respect to FFS. Apex purchased the FFS business in October 2015 for $12 million based on

projected earnings. At the time of purchase, FFS had slightly over 90 stores. Yet, Apex's financial model for the acquisition assumed there would be 141 stores a mere fifteen months later, by fiscal year end 2017 (January 2017). However, Apex never realized these expectations. Instead the FFS business experienced significant setbacks, including delayed store openings, multiple store closings due to poor performance, and litigation initiated against a number of store operators for breach of contract and failure to pay franchise fees. Consequently, the number of FFS stores, instead of increasing to 141, fell from approximately 93 when acquired to 72 at the end of fiscal 2017.

16. During the course of Apex's ownership, FFS related revenue fell by 26%, never approaching the numbers assumed in the Company's pre-purchase valuation, and related losses more than tripled. FFS never produced net income for any period it was held by Apex. And, in June 2018, after Boling's departure from the company, Apex sold the FFS business and trademark for slightly more than $4 million; a loss of nearly $8 million from the purchase price. These significant departures from the planned financial performance of FFS, provided strong indicia of impairment of FFS by fiscal year end 2017.

Deterioration of Business Environment

17. Like all Apex's trademarks, Liz Lange, Hawk and FFS were impacted by an industry environment where retailers were increasingly turning away from licensing arrangements in favor of in-house brands. During the relevant period, Apex encountered significant difficulty in its attempts to sell licenses for trademarks domestically and abroad. Both in the case of Liz Lange and Hawk, Apex proved incapable of signing more than one licensee able to generate even 10% of the revenue the Company earned from the Retail Chain A Liz Lange license relationship and Retail Chain B Hawk license relationship on an annual basis. Deterioration of the business environment is a potential trigger of impairment.

Change in Business Strategy

18. The difficulty Apex experienced signing new licensees during fiscal 2017 precipitated a shift in its licensing strategy from a direct-to-retail to a wholesale model. Whereas Apex's direct-to-retail model involves licensed agreements directly with retailers for the sale of trademarked merchandise, the wholesale model involves signing license agreements with wholesalers who are free to market and sell trademarked merchandise to a wide assortment of retailers. However, Apex's wholesale licensing arrangements are generally subject to lower royalty rates and lower predictable or minimum guaranteed royalties. Overall, these factors further increased the uncertainty surrounding Apex's ability to recover from the loss of Retail Chain B and Retail Chain A relationships in connection with Hawk and Liz Lange, respectively.

Third-Party Firm Valuation Report

19. In the second half of 2016, Apex engaged Third-Party Firm to perform a market valuation of each of its trademarks in connection with the Company's ongoing efforts to obtain financing for a major trademark acquisition. The Third-Party Firm valuations were based on Apex's own data and optimistic projections. The report released by Third-Party Firm on August

22, 2016 indicated that Liz Lange and Hawk, two of Apex's four major trademarks, were more likely than not materially impaired by $3.3 million (Liz Lange) and $2.8 million (Hawk).

20. The fact that some of the Third-Party Firm valuations, which were based on Apex's own current projections, reflected values below carrying values for these trademarks was a strong indicator that the trademarks were more likely than not impaired.

21. In light of all the indicators of impairment described above, Apex should have conducted a quantitative impairment assessment by at least January 2017 for its 2017 fiscal year end. Had it done so, Apex would have found the trademarks were materially impaired. Apex ultimately reported a $35.5 million impairment charge in its 10-K for its 2018 fiscal year ended February 3, 2018, $34.5 million related to the three trademarks discussed.

22. In his role as CFO, Boling was responsible for the accuracy of Apex's books and records. Boling was aware of the facts discussed in paragraphs 10 -21 above which should have alerted him that certain of the trademarks were more likely than not impaired and, as a consequence, should have known that Apex's books and records did not accurately reflect the value of those trademarks.

Violations

As a result of the conduct described above, Boling caused Apex's violation of Section 13(b)(2)(A) of the Exchange Act, which requires all reporting companies to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Boling cease and desist from committing or causing any violations and any future violations of Section 13(b)(2)(A) of the Exchange Act.

B. Respondent Boling shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $10,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Jason Boling as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Carolyn Welshhans, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010A.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order,

consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary