UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10907 / December 17, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 90714 / December 17, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4199 / December 17, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20175

In the Matter of **Apex Global Brands Inc., FKA Cherokee Inc.** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 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 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Respondent, Apex Global Brands Inc., formerly known as Cherokee Inc.

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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-

and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and 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. This proceeding concerns material misstatements by Apex Global Brands Inc.[2] ("Apex" or "the Company") regarding its primary asset and only revenue source, trademarks held by the company. From at least January 2017 to April 2018 Apex materially overstated its financial statement by failing to timely recognize impairments of its trademarks. During the time of overstatement, Apex's trademarks provided the company's sole source of revenue of approximately $29 million to $35 million. By January 2017, three of Apex's trademarks were impaired, but impairment charges were not recognized until February 3, 2018 when it impaired these three trademarks for a total of $34.5 million.

2. Apex's misstatements were due to inappropriate quarterly and annual impairment assessment of the 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. Apex was also aware as early as August 2016 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. In Apex's fiscal year 2017 annual report and three subsequent quarterly reports, the Company misreported to investors, including in an offering, significantly inflated values for its trademarks. This information was material. Investors would reasonably expect to know if a company's major asset and revenue source was materially impaired. As a result, Apex violated the antifraud Sections 17(a)(2) and 17(a)(3) of the Securities Act. In addition, Apex violated the reporting, internal accounting controls and books and records provisions of the Exchange Act.

Respondent

[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.

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

Facts

Apex's Trademarks Performed Poorly

5. 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. At fiscal yearend 2016 (January 2016), the carrying values of the trademarks were as follows:

Trademark	Carrying Value (in $ millions)
Liz Lange	14.0
Hawk	19.0
FFS	11.5

6. Both Liz Lange and 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 and both eventually lost their primary licensees. Similarly, the 2015 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.

Apex Failed to Perform Adequate Impairment Assessments of its Trademarks

7. Throughout the relevant period, Apex was required to 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. 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.

8. Throughout the relevant period, Apex's annual and quarterly impairment assessments consisted only of updating a memo that outlined a list of potential impairment triggers. Company personnel without firsthand knowledge of many of the events impacting the individual trademarks and with no prior experience or training related to the relevant area of accounting devised and performed the assessments. Apex had no written policies and procedures to ensure relevant information was collected and considered during the assessments, and there was little or no supervision of the process.

9. Moreover, Apex's quarterly impairment assessment memos did not address all the relevant considerations laid out in the applicable accounting standard and included several items which did not comport with those accounting standards. The Company's annual assessment memos did list the potential impairment triggers laid out in the applicable accounting literature. However, the memos either did not address triggering events affecting specific trademarks or dismissed them with brief explanations that did not address critical issues. Further, the Company did not consistently follow the internal procedures it had for documenting impairment assessments. For example, contrary to Company procedures, the impairment memos from several periods did not include the initials of all the relevant executives, making it unclear whether they had reviewed and agreed with the assessments. Moreover the executives were unclear about what their roles were in the impairment process and what their initialing the memo signified.

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

10. By fiscal year end 2017 there were multiple clear indicators of impairment of the Liz Lange, Hawk and FFS trademarks.

Loss of Major Contracts

11. 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.

12. 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.

13. 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.

14. 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. However, Apex did not fully consider them in its impairment analysis of either trademark at fiscal yearend 2017, or in the first three quarters of fiscal 2018.

Declining Financial Performance

15. 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 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.

16. 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.

17. 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, by September 2017, Apex had begun discussing the sale of the FFS business and trademark and finally disposed of both in June 2018 for slightly more than $4 million; a loss of nearly $8 million from the purchase price.

18. These significant departures from the planned financial performance of FFS, as well as management's evolving strategic views vis-à-vis the desirability of owning the trademark, provided strong indicia of impairment of FFS by fiscal year end 2017. While Apex acknowledged the slipping financial performance in its fiscal year end 2017 analysis, it dismissed the losses as related to one time advertising expenses and legal expenses and failed to address the fact that the primary metric on which the carrying value was based-- growth in store numbers—was in significant decline.

Deterioration of Business Environment

19. 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. Although the Company acknowledged the difficult business environment, it did not consider it in assessing impairment.

Change in Business Strategy

20. 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. The Company, however, did not consider its change in strategy in assessing impairment.

Third-Party Firm Valuation Report

21. 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).

22. The fact that 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. Nonetheless, Apex did not perform a quantitative assessment of the value of any of its trademarks and continued to look only at qualitative factors which it dismissed as not indicative of impairment.

Impairment Recognized Fiscal Year End 2018

23. Apex changed its external auditor just prior to the filing of the 10-Q for the second quarter of Apex's fiscal 2018 (the quarter-ended July 2017). Apex engaged a different third party firm ("Subsequent Third Party Firm") to perform a quantitative impairment assessment of its trademarks and goodwill as of November 15, 2017. The quantitative assessment found Apex's trademarks, including the three at issue, were impaired by a total of approximately $35.5 million. Specifically, the Subsequent Third-Party Firm assessment found the Liz Lange, Hawk and the FFS trademarks were impaired by $12.2, $14, and $8.3 million, respectively.

24. 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.

25. By failing to recognize the impairments in the appropriate period, Apex materially understated its net loss before taxes and the carrying values of its trademarks as reported in its 10-K for fiscal year 2017, and continued to materially overstate the carrying values of its trademarks as reported in its quarterly 10-Qs in the first three quarters of its fiscal 2018.

26. In determining whether to accept Apex's Offer, the Commission has considered the Company's current financial condition.

Violations

27. As a result of the conduct described above, Apex violated:

a. Section 17(a)(2) of the Securities Act, which makes it unlawful for "any person in the offer or sale of securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."

b. Section 17(a)(3) of the Securities Act, which makes it unlawful for "any person in the offer or sale of any securities . . . to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

c. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

d. 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.

e. Section 13(b)(2)(B) of the Exchange Act thereunder, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Apex cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and (3) of the Securities Act, Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

By the Commission.

Vanessa A. Countryman
Secretary