

### BCSC Reaches First-Ever Settlement Agreements for Violation of Section 52(2) of the Securities Act

#### Summary

In September 2021, the British Columbia Securities Commission (the BCSC) issued a Notice of Hearing against an investor relations (IR) firm called Stock Social Inc. (Stock Social), its sole director, and five of its clients and their officers and directors for allegedly breaching section 52(2) of the Securities Act<sup>1</sup> by failing to clearly and conspicuously disclose that the promotional materials prepared by Stock Social were disseminated on behalf of clients (the Stock Social NOH).<sup>2</sup>

The Stock Social NOH was the first time the BCSC issued allegations of a breach of section 52(2) of the Act, which states that “a person engaged in investor relations activities, and an issuer or security holder on whose behalf investor relations activities are undertaken, must ensure that every record disseminated, as part of the investor relations activities, by the person engaged in those activities clearly and conspicuously discloses that the record is issued by or on behalf of the issuer or security holder.”<sup>3</sup>

Between July and September 2022, five of Stock Social’s clients and, in certain instances, their officers, directors, or representatives entered into settlement agreements in relation to the allegations outlined in the Stock Social NOH. These settlement agreements are the first public application of this kind of IR-related disclosure and demonstrate the BCSC’s expectations in terms of how section 52(2) will apply to both issuers, their officers, directors, and employees, and IR companies.

#### Settlement Agreements

Three of the settlement agreements were substantially similar. Each of Hello Pal International Inc. (Hello Pal)<sup>4</sup> Bearing Lithium Corp. (formerly Bearing Resources Ltd.) (Bearing Lithium)<sup>5</sup>, and MGX Minerals Inc. (MGX)<sup>6</sup> admitted that they contravened section 52(2) of the Act because the advertorials and social media posts disseminated by Stock Social did not disclose that they were issued on behalf of the issuer. Hello Pal additionally admitted that it failed to ensure that two advertorials that indicated payment of a distribution fee clearly and conspicuously disclosed they were issued on behalf of the Hello Pal. Each of the issuers undertook to pay \$25,000 to the BCSC.

Additionally, each of Hello Pal, Bearing Lithium, and MGX’s respective officers and/or directors admitted that they were vicariously liable for the issuer’s contravention of section 52(2) and therefore contravened the same provision by operation of section 168.2 of the Act. Each of the reporting issuers’ officers undertook to pay \$10,000 to the BCSC.

The two most recently published settlement agreements involved John-David Alexander Belfontaine, Phivida Holding Inc.’s (Phivida) president, director, and Chief Executive Officer,<sup>7</sup> and Chad McMillan, ImagineAR Inc.’s (ImagineAR) senior strategic advisor.<sup>8</sup> Belfontaine undertook to pay \$10,000 to the BCSC for failing to ensure that Stock Social’s IR activities clearly and conspicuously disclosed they were being conducted on behalf of Phivida. McMillan also admitted to being vicariously liable for the issuer’s contravention of section 52(2) and undertook to pay \$10,000 to the BCSC as he reviewed and approved Stock Social’s advertorials which failed to disclose that they were issued on behalf of ImagineAR. Neither Phivida nor ImagineAR were parties to the settlement agreements.

In September, the Commission held a hearing in relation to the remaining parties who did not enter



Jeremy Gellis

Member

jgellis@cozen.com  
Phone: (236) 317-6215  
Fax: (236) 317-6702



Brigeeta Richdale

Co-Chair,  
Luxury Brand  
Protection and  
Enforcement

brichdale@cozen.com  
Phone: (236) 317-5565  
Fax: (604) 674-9245

#### Related Practice Areas

- Securities Litigation & SEC Enforcement
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into settlement agreements. At the commencement of the hearing, Stock Social and its sole officer and director, Kyle Johnson, and ImagineAR entered into agreed statements of fact in which they each admitted liability for contravening section 52(2) of the Act. The Commission has not yet ruled on whether the parties actually contravened the Act, but we expect it will have no difficulty in accepting the parties' admissions of liability.

## Take Away

These settlement agreements send a strong message to IR firms, issuers, and their officers, directors, and employees that any IR activities conducted on behalf of an issuer, whether conducted by a third party or otherwise, must clearly and conspicuously disclose that the IR material is disseminated on behalf of the issuer. If they do not, the issuer may be found to have breached section 52(2), and the issuer's officers, directors, or employees who authorized the impugned IR activity may, in turn, be found to have correspondingly breached the Act.

Finally, these settlement agreements and the upcoming decision regarding Stock Social's conduct are made ahead of the anticipated adoption of the BCSC's proposed instrument 51-519, which attempts to establish a tailored framework for conducting promotional and IR activity in British Columbia. In particular, the proposed instrument attempts to address the following concerns:<sup>9</sup>

- a. Promotional campaigns that provide unbalanced or unsubstantial material claims about the issuer's business and the corresponding opportunity for profit by investing in the issuer;
- b. Opinion-based content, hyperbole, or unbalanced or unsubstantiated claims about the issuer's prospects;
- c. Content placing too much significance or emphasis on immaterial business activity;
- d. Content disguised as independent analysis or news to encourage readers to make a decision to invest quickly; and
- e. Activity undertaken in order to artificially promote interest in the issuer's securities, which artificially increase the issuer's share price and trading volume.

If you have any questions about any of the forgoing or if you need assistance navigating the regulatory requirements as they relate to promotional or IR activities, please do not hesitate to contact any member of our team.

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<sup>1</sup> RSBC 1996 C 418 [the Act].

<sup>2</sup> 2021 BCSECCOM 376.

<sup>3</sup> [Emphasis Added].

<sup>4</sup> 2022 BCSECCOM 258.

<sup>5</sup> 2022 BCSECCOM 293.

<sup>6</sup> 2022 BCSECCOM 374.

<sup>7</sup> 2022 BCSECCOM 367.

<sup>8</sup> 2022 BCSECCOM 373.

<sup>9</sup> For more information, see BC Notice 2021/03, "*Proposed British Columbia Instrument 51-519 Promotional Activity Disclosure Requirements.*"