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12 **UNITED STATES DISTRICT COURT**  
 13 **CENTRAL DISTRICT OF CALIFORNIA**  
 14 **SOUTHERN DIVISION**

15  
 16 **SECURITIES AND EXCHANGE**  
**COMMISSION,**

17 Plaintiff,

18 vs.  
 19

20 **AIRTRAC, INC., CLARENCE**  
**FRIEND, and CHRISTOPHER BRYAN,**

21 Defendants.  
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Case No.: SACV06-582 JVS(RNBx)

**COMPLAINT FOR VIOLATIONS OF THE  
 FEDERAL SECURITIES LAWS**

1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as  
2 follows:

3 JURISDICTION AND VENUE

4 1. This Court has jurisdiction over this action pursuant to Sections 20(b),  
5 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.  
6 §§ 77t(b), 77t(d)(1), & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of  
7 the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),  
8 78u(d)(3)(A), 78u(e), & 78aa. Defendants have, directly or indirectly, made use of  
9 the means or instrumentalities of interstate commerce, of the mails, or of the  
10 facilities of a national securities exchange, in connection with the transactions,  
11 acts, practices, and courses of business alleged in this complaint.

12 2. Venue is proper in this district pursuant to Section 22(a) of the  
13 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.  
14 § 78aa, because certain of the transactions, acts, practices, and courses of conduct  
15 constituting violations of the federal securities laws occurred within this district.

16 SUMMARY

17 3. This case involves a fraudulent and unregistered offer and sale of  
18 stock by AirTrac, Inc., its founder, Clarence Friend, and its principal salesman,  
19 Christopher Bryan (collectively hereinafter, the “defendants”). AirTrac purports to  
20 develop and market voice-activated applications that allow users to access the  
21 Internet and check e-mail through cellular telephones and personal digital  
22 assistants, such as a Blackberry. Between January 2004 and April 2005, the  
23 defendants offered and sold AirTrac stock and raised nearly \$1.8 million from over  
24 200 investors nationwide.

25 4. The defendants solicited prospective investors through unsolicited  
26 “cold calls” and offering documents. The defendants made several materially false  
27 and misleading statements. First, they falsely represented that AirTrac would use  
28 73% of the investor funds to develop and market its purported technology, 18% on

1 fundraising efforts, and the remaining 9% on miscellaneous expenses. In reality,  
2 AirTrac spent at most 38%, or about \$685,000, on its technology, and 43%, or  
3 about \$765,000, on fundraising efforts, including approximately \$140,000 to Bryan  
4 in salary and commissions. Additionally, Friend misappropriated more than 15%,  
5 or about \$270,000, for his own personal use, including lease payments on his  
6 luxury home and his daily living expenses.

7 5. Second, the defendants falsely represented that AirTrac was on the  
8 verge of signing contracts with several large, well-known telecommunications  
9 companies – such as SBC, Cingular, and Alltel – that would purportedly net  
10 AirTrac tens of millions of dollars per month in revenue. In fact, AirTrac had had  
11 at most only preliminary discussions with these companies and was not on the  
12 verge of signing contracts with any of them.

13 6. Third, the defendants also falsely represented that AirTrac was  
14 preparing to conduct an initial public offering (“IPO”). The defendants told  
15 investors that they were working with an underwriter and had applied for listing its  
16 stock on Nasdaq. In fact, AirTrac had not filed a registration statement and had no  
17 certified audit, which are necessary before either an IPO can proceed or a stock can  
18 be listed on Nasdaq. Moreover, AirTrac had not applied for listing with Nasdaq,  
19 and it was not prepared to file a registration statement, be audited, or apply for  
20 listing.

21 7. The defendants’ conduct violated the antifraud, securities registration,  
22 and broker registration provisions of the federal securities laws. By this action, the  
23 Commission seeks permanent injunctive relief, disgorgement with prejudice  
24 interest of the defendants’ ill-gotten gains, and civil penalties.

#### 25 THE DEFENDANTS

26 8. AirTrac, Inc. is a Nevada corporation, formed in September 2000 and  
27 based in Irvine, California. It purports to develop and market voice-activated  
28 applications that allow users to access the Internet and check e-mail through

1 wireless devices, such as cellular telephones and personal digital assistants. Since  
2 at least 2004, the company has not generated any revenues from the sale of any of  
3 its applications. On September 29, 2005, AirTrac and Friend stipulated to the  
4 entry of a Desist and Refrain Order entered by the California Department of  
5 Corporations related to their sale of unregistered securities within the state.  
6 AirTrac and Friend agreed to pay a joint and several penalty of \$10,000 for  
7 violations of California securities laws. AirTrac is not registered with the  
8 Commission, and no registration statement has been filed or is in effect with  
9 respect to its stock offering.

10 9. Clarence Friend, age 64, is a resident of Fountain Valley, California.  
11 Friend is the founder, controlling shareholder, and CEO of AirTrac. He is not  
12 registered with the Commission.

13 10. Christopher Bryan, age unknown, is a resident of Santa Monica,  
14 California. Bryan was the executive vice-president of AirTrac until April 2005,  
15 when he left the company. Bryan was in charge of the stock sales efforts at  
16 AirTrac and acted as Friend's second-in-command while at the company. He is  
17 not registered with the Commission.

## 18 THE FRAUDULENT SCHEME

### 19 THE AIRTRAC STOCK OFFERING

20 11. Between January 2004 and April 2005, the defendants raised nearly  
21 \$1.8 million from over 200 investors nationwide through a purported private  
22 offering of AirTrac stock. According to AirTrac's offering documents, the  
23 offering was for 1.5 million shares of stock at \$3.50 per share, for a total of \$5.25  
24 million. Friend prepared and approved the offering documents, which represented  
25 that AirTrac was a "wireless telecommunications provider" and that its product  
26 allowed users to access the Internet and check e-mail using voice commands via  
27 devices, such as cellular telephones and personal digital assistants.

28 \*

1           12. The offering documents described AirTrac's planned use of investor  
2 funds. They stated that AirTrac would spend 73% of the investor funds to market  
3 and develop its purported technology. Specifically, they represented that 33% of  
4 the funds raised would be used for "technology acquisitions," 21% would be used  
5 as working capital, and 19% would be spent on the software platform upon which  
6 its technology was based. The offering documents also represented that 18% of  
7 the offering proceeds would be spent on overhead and costs related to the offering  
8 itself and that the remaining 9% would be spent on miscellaneous expenses. The  
9 offering documents did not contain financial statements, and AirTrac's offering  
10 was not registered with the Commission.

#### 11           THE SALES EFFORT

12           13. The defendants offered and sold AirTrac stock through the company's  
13 sales force, which ranged from fifteen to twenty people and included Bryan.  
14 Friend also solicited investors directly. Salespeople constituted 80% of the  
15 company's salaried employees. AirTrac purchased nationwide lead lists from  
16 various sources, which cold-callers, called "fronters," used to contact potential  
17 investors. Bryan drafted the sales scripts, which Friend approved.

18           14. Bryan headed the sales efforts. He spoke with most of the investors to  
19 discuss AirTrac's purported negotiations with telecommunications companies and  
20 the purported upcoming IPO. He met with "closers," who actually sold the stock,  
21 two to three times a week. And Bryan helped the closers convince potential  
22 investors to buy AirTrac stock. Bryan also approved the sales commissions, which  
23 were 3% for fronters and ranged from 10% to 17% for closers.

24           15. Friend was also heavily involved in the sales effort. Friend frequently  
25 walked the sales floor and tracked how much money the salespeople were raising.  
26 Friend led sales meetings with fronters every week-and-a-half, and he led weekly  
27 sales meetings with the closers. At the sales meetings, Friend and Bryan  
28 emphasized the need to follow the script and went over the key points to

1 emphasize with investors, namely the purported telecommunication company  
2 negotiations and the IPO. They also set solicitation and \$100,000-per-week  
3 fundraising goals. At the sales meetings, Bryan also repeated to the salespeople  
4 the information regarding the company's purported telecommunication  
5 negotiations and pending IPO.

6 16. Friend and Bryan provided the salespeople with various versions of  
7 the sales script, all of which included several similar themes. They emphasized  
8 contracts that AirTrac was purportedly negotiating with major telecommunications  
9 companies. Several scripts identified the telecommunications companies as SBC,  
10 Cingular, and Alltel. They also stated that AirTrac's pending contracts with the  
11 telecommunications companies could potentially net the company millions of  
12 dollars per month. Throughout the offering, Friend, Bryan, and the salespeople  
13 told prospective investors that AirTrac anticipated listing its stock on Nasdaq  
14 within sixty days to six months. Friend also told the salespeople that the company  
15 had been audited before, and was preparing to conduct another audit shortly in  
16 anticipation of its IPO.

17 **MISREPRESENTATIONS AND OMISSIONS**

18 **AIRTRAC AND FRIEND MISREPRESENTED THE USE OF INVESTOR**  
19 **FUNDS**

20 17. The description in AirTrac's offering documents of AirTrac's use of  
21 the proceeds from its stock offering was false and misleading when compared to  
22 AirTrac's actual use of investor funds. First, rather than spending the represented  
23 73% of the offering proceeds on development and marketing costs, AirTrac only  
24 spent 38%, or about \$685,000, on development and marketing costs. AirTrac used  
25 most of this amount to pay the salaries of its two computer programmers and for  
26 apparent marketing expenses for Friend, Bryan, and AirTrac's chief technology  
27 officer.

28 \*

1 18. Second, AirTrac spent 43% of the offering proceeds, or about  
2 \$765,000, on fundraising expenses, rather than the represented 18%. AirTrac spent  
3 about \$670,000 on salaries and commissions to its salespeople, including \$140,000  
4 to Bryan. AirTrac spent another approximately \$94,000 in fundraising costs,  
5 including purchasing leads, printing costs, and overnight courier expenses.

6 19. Third, Friend also misappropriated about \$270,000, or more than 15%  
7 of investor funds. He used the funds for personal expenses, including shopping  
8 and rental payments for his house in a wealthy coastal area of Orange County,  
9 California. AirTrac spent the remaining 4%, or \$70,613 of the investor funds  
10 raised, on miscellaneous expenses, such as legal expenses and bank fees.

11 20. Friend and, through him AirTrac, knew, or was reckless in not  
12 knowing, that AirTrac was misusing investor funds. Friend had signatory authority  
13 for the company's bank accounts, signed all of its checks, and maintained custody  
14 of AirTrac's financial records.

15 **THE DEFENDANTS' REPRESENTATIONS REGARDING PURPORTED**  
16 **NEGOTIATIONS WITH TELECOMMUNICATIONS COMPANIES WERE**  
17 **FALSE AND MISLEADING**

18 21. Contrary to the claims made to prospective investors, AirTrac was  
19 never close to signing a contract with any telecommunication company, including  
20 those listed in the sales scripts. Rather, its contacts with other companies were  
21 limited to a few introductory meetings.

22 22. Neither SBC nor Cingular signed any contracts or non-disclosure  
23 agreements (which are typically one of the first steps in any substantive business  
24 negotiation) with AirTrac. Neither did SBC or Cingular enter into serious contract  
25 discussions with AirTrac. Alltel only executed a confidentiality agreement with  
26 AirTrac in October 2000, and again in April 2005. AirTrac and Alltel, however,  
27 never entered into any other agreement or contract, and never entered into serious  
28 contract discussions with AirTrac.

23. Friend and Bryan, and through them AirTrac, knew, or were reckless in not knowing, that AirTrac was never close to negotiating a contract with a major telecommunications company. Friend and Bryan together made numerous preliminary sales calls to potential customers, such as SBC, Cingular, and Alltel. These meetings, however, were only preliminary, and none of the calls materialized into any substantive negotiations. Nevertheless, Friend and Bryan continued to represent in scripts and in their meetings with salespeople that an agreement was close at hand.

**AIRTRAC WAS NOT PREPARED TO CONDUCT AN INITIAL PUBLIC OFFERING AND IT NEVER APPLIED FOR LISTING ON NASDAQ**

24. Contrary to the defendants' statements to prospective investors, AirTrac was not prepared to conduct an IPO within sixty days to six months or to list its stock on Nasdaq.

25. In order to conduct an IPO or list on the Nasdaq, AirTrac would be required to file a registration statement, including audited financial statements. AirTrac, however, did not have audited financial statements, and none was forthcoming.

26. Friend, and through him AirTrac, knew, or was reckless in not knowing, that AirTrac's financial books and records were in disarray, virtually nonexistent, and were not ready to be audited. Friend, who had possession of the books and records, would not even let AirTrac's financial consultant review them. Furthermore, based upon information from the financial consultant, Bryan knew, or was reckless in not knowing, that Friend would not release AirTrac's financial books and records and that an audit would take a great deal of time to complete once the records were available, and that it would have taken more than six months to conduct an IPO or list on the Nasdaq. Nevertheless, Friend and Bryan continued to include the IPO and Nasdaq listing statements in the scripts and during the sales meetings.



1                    **CURRENT STATUS OF AIRTRAC'S OPERATIONS AND FRIEND'S LULLING**

2            27.    AirTrac initially ceased raising funds from investors in April 2005.  
3 As recently as mid-November 2005, however, Friend falsely represented that  
4 AirTrac was currently negotiating a contract with a large, unnamed cellular  
5 telephone company and would begin raising funds from investors when the  
6 contract was publicly announced. And between September 2005 and February  
7 2006, AirTrac and Friend offered and sold AirTrac stock by borrowing money  
8 through loan agreements, which allow the lender to convert AirTrac's repayment  
9 into stock.

10                                    **FIRST CLAIM FOR RELIEF**

11                                    **UNREGISTERED OFFER AND SALE OF SECURITIES**

12                                    **Violations of Sections 5(a) and 5(c) of the Securities Act**

13                                    **(Against All Defendants)**

14            28.    The Commission realleges and incorporates by reference paragraphs 1  
15 through 27 above.

16            29.    The defendants, and each of them, by engaging in the conduct  
17 described above, directly or indirectly, made use of means or instruments of  
18 transportation or communication in interstate commerce or of the mails, to offer to  
19 sell or to sell securities, or to carry or cause such securities to be carried through  
20 the mails or in interstate commerce for the purpose of sale or for delivery after  
21 sale.

22            30.    No registration statement has been filed with the Commission or has  
23 been in effect with respect to the offering alleged herein.

24            31.    By engaging in the conduct described above, each of the defendants  
25 violated, and unless restrained and enjoined will continue to violate, Sections 5(a)  
26 and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

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**SECOND CLAIM FOR RELIEF**

**FRAUD IN THE OFFER OR SALE OF SECURITIES**

**Violations of Section 17(a) of the Securities Act**

**(Against All Defendants)**

32. The Commission realleges and incorporates by reference paragraphs 1 through 27 above.

33. The defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails:

- a. with scienter, employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

34. By engaging in the conduct described above, each of the defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

**THIRD CLAIM FOR RELIEF**

**FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES**

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

**(Against All Defendants)**

35. The Commission realleges and incorporates by reference paragraphs 1 through 27 above.

1           36. The defendants, and each of them, by engaging in the conduct  
2 described above, directly or indirectly, in connection with the purchase or sale of a  
3 security, by the use of means or instrumentalities of interstate commerce, of the  
4 mails, or of the facilities of a national securities exchange, with scienter:

- 5           a. employed devices, schemes, or artifices to defraud;
- 6           b. made untrue statements of a material fact or omitted to state a  
7           material fact necessary in order to make the statements made,  
8           in the light of the circumstances under which they were made,  
9           not misleading; or
- 10          c. engaged in acts, practices, or courses of business which  
11           operated or would operate as a fraud or deceit upon other  
12           persons.

13           37. By engaging in the conduct described above, each of the defendants  
14 violated, and unless restrained and enjoined will continue to violate, Section 10(b)  
15 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.  
16 § 240.10b-5.

**FOURTH CLAIM FOR RELIEF**

**FAILURE TO REGISTER AS A BROKER-DEALER  
Violation of Section 15(a) of the Exchange Act  
(Against Defendants Friend and Bryan)**

21           38. The Commission realleges and incorporates by reference paragraphs 1  
22 through 27 above.

23           39. Defendants Friend and Bryan, and each of them, by engaging in the  
24 conduct described above, directly or indirectly, made use of the mails or means or  
25 instrumentalities of interstate commerce to effect transactions in, or to induce or  
26 attempt to induce, the purchase or sale of securities, without being registered as a  
27 broker or dealer in accordance with Section 15(a) of the Exchange Act, 15 U.S.C.  
28 § 78o(a).

1 40. By engaging in the conduct described above, defendants Friend and  
2 Bryan each violated, and unless restrained and enjoined will continue to violate,  
3 Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Commission respectfully requests that the Court:

6 **I.**

7 Issue findings of fact and conclusions of law that the defendants committed  
8 the alleged violations.

9 **II.**

10 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),  
11 permanently enjoining defendant AirTrac and its officers, agents, servants,  
12 employees, and attorneys, and those persons in active concert or participation with  
13 any of them, who receive actual notice of the judgment by personal service or  
14 otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the  
15 Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), & 77q(a), and Section 10(b) of the  
16 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §  
17 240.10b-5.

18 **III.**

19 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),  
20 permanently enjoining defendant Friend and his officers, agents, servants,  
21 employees, and attorneys, and those persons in active concert or participation with  
22 any of them, who receive actual notice of the judgment by personal service or  
23 otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the  
24 Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), & 77q(a), and Sections 10(b) and 15(a)  
25 of the Exchange Act, 15 U.S.C. §§ 78j(b) & 78o(a), and Rule 10b-5 thereunder, 17  
26 C.F.R. § 240.10b-5.

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**IV.**

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining defendant Bryan and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), & 77q(a), and Sections 10(b) and 15(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) & 78o(a), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

**V.**

Order defendants AirTrac, Friend, and Bryan to disgorge all ill-gotten gains from their illegal conduct, together with prejudgment interest thereon.

**VI.**

Order defendants AirTrac, Friend, and Bryan to pay civil penalties under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).


**VII.**

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VIII.**

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: June 26, 2006

  
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