

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12493

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
December 19, 2006

In the Matter of	:	
	:	
DETOUR MEDIA GROUP, INC.,	:	
DRIVINGAMERICA.COM, INC.,	:	ORDER DENYING MOTION
LEGENDS ENTERPRISES, INC.,	:	TO ENTER A DEFAULT
OXIR INVESTMENTS, INC.,	:	
SPINPLANET.COM, INC. (n/k/a	:	
ENTERTAINMAX WORLDWIDE,	:	
INC., and	:	
TESSA COMPLETE HEALTH CARE,	:	
INC.	:	

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on December 1, 2006. The Chief Administrative Law Judge then assigned the matter to my docket and scheduled a hearing for December 27, 2006.

On December 18, 2006, the Division of Enforcement (Division) filed a motion to adjourn the hearing and to schedule a telephonic prehearing conference. That request will be granted. The Division also moved for the entry of an order of default against all six Respondents or, in the alternative, for leave to file a motion for summary disposition as to all six Respondents. That request will be denied as premature.

The Division asserts that valid service of the OIP was made on all six Respondents no later than December 5, 2006.¹ The record supports the Division's claim as to three Respondents: Detour Media Group, Inc.; DrivingAmerica.com, Inc.; and Tessa Complete Health Care, Inc. As discussed below, I deem a fourth Respondent, Spinplanet.com, Inc., to have received valid service of the OIP on December 8, 2006. Under the terms of the OIP, these four Respondents had ten days to file Answers. No Answers have been received and the time for filing has now expired.

Consistent with the Commission's preference, as expressed in Richard Kern, 84 SEC Docket 2923, 2924 (Feb. 1, 2005), a show cause order will precede the entry of a default order against these four Respondents. "[I]t is a long-standing and helpful—although not explicitly required—practice in cases where a Respondent is apparently in default for the law judge to

¹ Because Respondents are issuers of securities registered with the Commission, confirmation of attempted delivery at the most recent address shown on an issuer's most recent filing with the Commission is sufficient notice of the institution of a proceeding. See Rule 141(a)(2)(ii) of the Commission's Rules of Practice.

order a respondent to show cause within a brief period why [it] should not be found in default.”
Id.

For the reasons explained below, the record does not support the Division’s assertion that valid service of the OIP was effectuated as to the other two Respondents by December 5, 2006. If the circumstances warrant, the Division may renew its motion for default orders after the time for filing Answers has expired as to these Respondents.

Legends Enterprises, Inc.

The Division has demonstrated that delivery of the OIP was attempted as to Legends Enterprises, Inc. (Legends Enterprises), at that corporation’s most recent filing address in Concord, Massachusetts. The United States Postal Service (USPS) tracking receipt confirms that delivery was first attempted on December 5, the date identified by the Division. However, the tracking receipt also states:

We attempted to deliver your item at 2:02 p.m. on December 5, 2006, in Concord, MA 01742 and a notice was left. A second delivery attempt will be made. If unsuccessful, we will hold it for five business days and then it will be returned to the sender.

The USPS made a second attempt to deliver the OIP to Legends Enterprises on December 6, 2006, and it left another notice when the second attempt was unsuccessful. The USPS then held the OIP for five business days at the Concord post office. On December 14, 2006, the USPS returned the unclaimed OIP to the Commission.

The Division’s motion for default rests on the premise that service has been perfected if an issuer/addressee is not physically present when the USPS makes its very first delivery attempt.² However, the USPS practice in delivering certified or express mail is not that harsh, and neither is the Commission’s approach to entering orders of default. Under the Division’s interpretation of Rule 141(a)(2)(ii), a Respondent who received notice of the OIP from a second delivery attempt, or a Respondent who visited the local post office to claim the OIP during the five-day grace period, would have very little time to file an Answer before becoming subject to a default.

² Under Rule 220(b) of the Commission’s Rules of Practice, answers to OIPs are due within twenty days after service, except where a different period is provided by rule or order. This proceeding was instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934. OIPs in Section 12(j) proceedings routinely provide the full twenty days—when the proceedings are prosecuted by the Division’s regional and district offices. See, e.g., Admin. Pro. No. 3-12431, World Information Technology, Inc.; Admin. Pro. No. 3-12414, Indigenous Global Development Corporation; Admin. Pro. No. 3-12285, MCSi, Inc.; Admin. Pro. No. 3-12224, M & A West, Inc. In contrast, OIPs in Section 12(j) proceedings brought by the Division’s headquarters staff, such as this one, routinely afford Respondents only ten days to file an answer. If the Division’s proposed interpretation of “attempted delivery” is combined with the shorter response time, the fundamental fairness of the administrative process is potentially compromised.

I conclude that, in this instance, “attempted delivery” within the meaning of Rule 141(a)(2)(ii) was not perfected until after the USPS made its second delivery attempt and, when that second attempt proved unsuccessful, then held the item for five business days at the local post office. As to Legends Enterprises, the date of “attempted delivery” is deemed to be the date the USPS returned the unclaimed OIP to the Commission: December 14, 2006. The due date for Legends Enterprises to file and serve its Answer to the OIP will be computed from that date.

OXIR Investments, Inc.

The Division has demonstrated that the USPS first attempted to deliver the OIP to OXIR Investments, Inc. (OXIR), at that corporation’s most recent filing address in Las Vegas, Nevada, on December 5, 2006. The USPS tracking record offered by the Division states that the item was “undeliverable as addressed.” It further recites that the item “is being returned if appropriate information is available.”

A more current tracking record, of which I take official notice, demonstrates that USPS forwarded the item from Las Vegas to an address in Port Washington, New York, where delivery was attempted on December 6 and 7, 2006, and notices were left. Thereafter, the item was held at the Port Washington post office for five business days and ultimately returned to the Commission as unclaimed on December 16, 2006.

The present record does not demonstrate why the USPS considered the OIP undeliverable as addressed, or why it rerouted the OIP from Las Vegas to Port Washington after stating that it would return the OIP to the Commission. Absent an inspection of the express mail envelope, I cannot determine the date of attempted delivery.³ The Office of the Secretary has not yet had sufficient time to file the express mail envelope in the record. The public interest will not be harmed by a brief delay to permit it to do so.

Spinplanet.com, Inc.

The Division has demonstrated that the USPS first attempted to deliver the OIP to Spinplanet.com, Inc. (Spinplanet), at that corporation’s most recent filing address on December 5, 2006. However, there are discrepancies between the USPS tracking record and the express mail envelope that has been returned to the Commission. According to the tracking record, the USPS left a notice for Spinplanet on December 5, 2006. The OIP was “refused” on December 6 and 7, 2006, and the USPS then returned it to the Commission on December 8, 2006. According to the express mail envelope, delivery was attempted on December 5 and 6, 2006. The envelope was then returned to the Commission marked “attempted—not known” and “refused.” Out of an abundance of caution, I will deem the “attempted delivery” to have been perfected on December 8, 2006.


³ The declaration submitted by Division counsel on December 8, 2006, states that the OIP was mailed to zip code 89101. The correct zip code is 89109. At this time, I cannot determine whether this was a typographical error in counsel’s declaration, or whether the mailing envelope was improperly addressed.

ORDER

IT IS ORDERED THAT Detour Media Group, Inc., DrivingAmerica.com, Inc., Spinplanet.com, Inc., and Tessa Complete Health Care, Inc., shall each show cause, on or before January 5, 2007, why they should not be held in default and the proceeding resolved against them. Any responses to this Order must include the overdue Answers to the OIP. If these four Respondents oppose default orders, they shall also show cause why the Division should not be granted leave to file motions for summary disposition;

IT IS FURTHER ORDERED THAT a telephonic prehearing conference will be held on January 18, 2007, at 2:00 p.m., E.S.T. The Division shall make the necessary arrangements and obtain a court reporter; and

IT IS FURTHER ORDERED THAT the hearing previously scheduled for December 27, 2006, is postponed to a date to be determined at the telephonic prehearing conference.



James T. Kelly
Administrative Law Judge