

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19308

<p>In the Matter of</p> <p>Artisanal Brands, Inc., et al.,</p> <p>Respondents.</p>

MOTION FOR RULING ON THE
PLEADINGS AGAINST ARTISANAL
BRANDS, INC.

The Division of Enforcement (“Division”), by counsel, pursuant to Commission Rule of Practice 250(a), respectfully moves the Commission for a ruling on the pleadings against Artisanal Brands, Inc. (“Artisanal” or the “Company”). In its Answer to the Order Instituting Administrative Proceedings (“OIP”), Artisanal concedes that since filing a Form 10-Q for the period ended February 28, 2013, its only subsequent filings over the last six and a half years have been eleven Form 8-Ks. (Answer, ¶ 1). Accordingly, even accepting all of Artisanal’s factual allegations as true and drawing all reasonable inferences in its favor, the Division is entitled to an order revoking each class of the Company’s securities registered with the Commission pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”) as a matter of law.

BRIEF IN SUPPORT

I. Statement of Facts

Artisanal is a New York corporation located in Bronxville, New York, with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Artisanal has been listed as an “Inactive” corporation by the New York Department of State since June 2016 and remains so as of the date of this filing.

Artisanal has failed to file its periodic reports for over six years, *i.e.*, any of its periodic reports after its Form 10-Q for the period ended February 28, 2013, which reported a net loss of \$2,247,171 for the prior nine months. Prior to the Commission's Order of Suspension of Trading entered on August 5, 2019 (Release No. 34-86566), the company's stock (symbol "AHFP") was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3). (OIP, ¶ II.A.1).¹

II. Relevant Procedural History.

On August 5, 2019, the Commission issued its OIP as to Artisanal. On August, 20, 2019, Artisanal filed its Answer. Rule of Practice 250(a) provides for a motion for ruling on the pleadings within fourteen days of a respondent's answer where – as is the case here – even accepting all the non-movant's factual allegations as true and drawing all inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. 17 C.F.R. § 201.250(a).

III. Argument

This administrative proceeding was instituted under Section 12(j) of the Exchange Act. Section 12(j) empowers the Commission to either suspend (for a period not

¹ The Division requests that the Commission take official notice of Artisanal's filings on EDGAR, which is permissible on a motion for a ruling on the pleadings. *See Adrian D. Beamish, CPA*, Admin. Proceedings Rulings Rel. No. 4504, at 1, 2017 SEC LEXIS 47, at *1-2 (Jan. 6, 2017) ("Such motions must be decided based only on the pleadings, matters subject to judicial notice, matters of public record (such as the contents of the Federal Register), and documents attached to, or incorporated by reference in, the complaint.") The Division submits that Artisanal's EDGAR filings are matters of public record and can be the subject of official notice by the ALJ under Rule of Practice 323, which is equivalent to judicial notice. For similar reasons, the Commission can take notice of Artisanal's inactive corporate status in New York.

exceeding twelve months) or permanently revoke the registration of a class of securities if the respondent has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder. That relief is appropriate here.

A. The Division is Entitled to a Ruling on the Pleadings Against Artisanal for Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder.

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Section 13(a) is the cornerstone of the Exchange Act, establishing a system of periodically reporting core information about issuers of securities. The Commission has stated:

Failure to file periodic reports violates a central provision of the Exchange Act. The purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions. Those requirements are “the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities.” Proceedings initiated under Exchange Act Section 12(j) are an important remedy to address the problem of publicly traded companies that are delinquent in the filing of their Exchange Act reports, and thereby deprive investors of accurate, complete, and timely information upon which to make informed investment decisions.

Gateway International Holdings, Inc., Securities Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288, at *26 (May 31, 2006) (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)).

As explained in the initial decision in the *St. George Metals, Inc.* administrative proceeding:

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports

with the Commission. Exchange Act Rule 13a-1 requires issuers to submit annual reports, and Exchange Act Rule 13a-13 requires issuers to submit quarterly reports. No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder.

St. George Metals, Inc., Initial Decision Rel. No. 298, 2005 SEC LEXIS 2465, at *26 (Sept. 29, 2005). *Accord Gateway*, 2006 SEC LEXIS 1288, at *18, *22 n.28; *Stansbury Holdings Corp.*, Initial Decision Rel. No. 232, 2003 SEC LEXIS 1639, at *15 (July 14, 2003); *WSF Corp.*, Initial Decision Rel. No. 204, 2002 SEC LEXIS 1242, at *14 (May 8, 2002).

Artisanal averred in its Answer that since filing its Form 10-Q for the period ended February 28, 2013 it has only periodically filed Form 8-Ks. During this time period spanning over six years, Artisanal does not claim to have filed any filings satisfying the mandatory requirements of Section 13(a). Moreover, a search of the EDGAR system confirms that Artisanal's last periodic filing was for the period ended February 28, 2013. As a result, Artisanal cannot dispute the specific allegations in the OIP about not filing its required quarterly reports since 2013.

B. Revocation is the Appropriate Sanction for Artisanal's Serial Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder.

Exchange Act Section 12(j) provides that the Commission may revoke or suspend a registration of a class of an issuer's securities where it is "necessary or appropriate for the protection of investors." The Commission's determination of which sanction is appropriate "turns on the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions on the other hand." *Gateway*, 2006 SEC LEXIS 1288, at *19-20. In making

this determination, the Commission has said it will consider, among other things: (1) the seriousness of the issuer's violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer's efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer's assurances against future violations. *Id.*; see also *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (setting forth the public interest factors that informed the Commission's *Gateway* decision). Although no one factor is controlling (*Stansbury*, 2003 SEC LEXIS 1639, at *14-15; *WSF Corp.*, 2002 SEC LEXIS 1242, at *5, *18), the Commission has stated that it views the "recurrent failure to file periodic reports as so serious that only a strongly compelling showing with respect to the other factors we consider would justify a lesser sanction than revocation." *Impax Laboratories, Inc.*, Exchange Act Rel. No. 57864, 2008 SEC LEXIS 1197, at *27 (May 23, 2008). An analysis of the factors above confirms that revocation of Artisanal's securities is appropriate.

1. Artisanal's Violations Are Serious and Egregious.

As established by the pleadings in this proceeding, Artisanal's conduct is serious and egregious. Artisanal has not filed any periodic reports since it filed a Form 10-Q for the period ended February 28, 2013. Given the central importance of the reporting requirements imposed by Section 13(a) and the rules thereunder, the Commission and Administrative Law Judges have found violations of these provisions of the same and of less duration to be egregious, and Artisanal's violations support an order of revocation for each class of its securities. See *WSF Corp.*, 2002 SEC LEXIS 1242, at *14 (respondent failed to file periodic reports over two-year period); *Freedom Golf Corp.*, Initial Decision

Rel. No. 227, 2003 SEC LEXIS 1178, at *5 (May 15, 2003) (respondent's failure to file periodic reports for less than one year was egregious violation).

2. Artisanal's Violations of Section 13(a) Are Both Recurrent and Continuous.

Artisanal's violations are not unique and singular but continuous. The Company has failed to file any of its periodic reports since the period ended February 28, 2013. According to EDGAR, Artisanal also failed to file any Forms 12b-25 seeking extensions of time to make its periodic filings for any of its periodic reports from the period ended May 31, 2013 and thereafter, which is a total of twenty-four Forms 12b-25. Such blatant disregard of the filing requirements constitutes an egregious and recurrent violation. *See Investco, Inc.*, 2003 SEC LEXIS 2792, at *6 (delinquent issuer's actions were found to be egregious and recurrent where there was no evidence that any extension to make the filings was sought). The serial and continuous nature of Artisanal's violations of Exchange Act Section 13(a) further supports the sanction of revocation here.

3. Artisanal's Degree of Culpability Supports Revocation.

For many of the same reasons that Artisanal's violations were long-standing and serious, they also suggest a high degree of culpability. In *Gateway*, the Commission stated that, in determining the appropriate sanction in connection with an Exchange Act Section 12(j) proceeding, one of the factors it will consider is "the degree of culpability involved." The Commission found that the delinquent issuer in *Gateway* "evidenced a high degree of culpability," because it "knew of its reporting obligations, yet failed to file" twenty periodic reports and only filed two Forms 12b-25. *Gateway*, at 10, 2006 SEC LEXIS 1288, at *21. According to review of the Company's filings in the EDGAR database, Artisanal failed to file any required Forms 12b-25 seeking extensions of time to

make its periodic filings for any of its delinquent reports. This constitutes culpability even worse than that of the respondent in *Gateway*. In sum, Artisanal: (1) knew of its reporting obligations and nevertheless failed to file its periodic reports, and (2) failed to file any Forms 12b-25 to inform investors about the reasons for its continuing delinquencies and any plan to cure its violations. These actions more than demonstrate the sufficient culpability to support revocation.

4. Artisanal Has Made No Efforts to Remedy its Past Violations, Nor Has It Made Assurances against Future Violations.

Artisanal has made no efforts to remedy its past violations by, for example, filing any of its delinquent periodic reports. In its Answer to the OIP, Artisanal said it “had no source of revenue” in the past, but “now has the funds to become and stay current in its public filings” and “has begun the audit of its financial statements and will complete the audit and subsequent revised financial statements in a **timely manner.**” (Answer, ¶ 23) (emphasis added). However, by the Company’s own averments in its Answer summarizing its filed Form 8-Ks since 2013, Artisanal repeatedly has made such promises before and failed to achieve them. *See* Answer, ¶ 9 (“the company intended to revert to a full-reporting public company by May 2015”), ¶ 11 (“advising that it [Artisanal] intended to become fully reporting by mid-2016”), ¶ 12-13 (“the Company would become fully reporting upon completion of its equity offering” in 2017), ¶ 14-15 (“the Company intended to becoming fully reporting in 2018”), ¶ 16 (“Artisanal would begin the process to becoming a fully-reporting filer” in 2019.) Based on this ongoing track record of promising compliance, but failing to deliver, there is no credible reason to believe the company’s promises now when it is facing a Section 12(j) proceeding.

C. Revocation is the Appropriate Remedy for Artisanal.

As discussed above, a full analysis of the *Gateway* factors establishes that revocation is the appropriate remedy for Artisanal's long-standing violations of the periodic filing requirements, particularly since the company's stock can continue to trade on the Pink Sheets. Artisanal's recurrent failures to file its periodic reports have not been outweighed by "a strongly compelling showing with respect to the other factors" which "would justify a lesser sanction than revocation." *Impax Laboratories, Inc.*, 2008 SEC LEXIS 1197, at *27.

Moreover, revocation will not be overly harmful to whatever business operations, finances, or shareholders Artisanal may have. The remedy of revocation will not cause Artisanal to cease being whatever kind of company it was before its securities registration was revoked. The remedy instead will ensure that until Artisanal becomes current and compliant on its past and current filings, its shares cannot trade publicly on the open market (but may be traded privately). *See Eagletech Communications, Inc.*, Exchange Act Rel. No. 54095, 2006 SEC LEXIS 1534, at *9 (July 5, 2006) (revocation would lessen, but not eliminate, shareholders' ability to transfer their securities). Revocation will not only protect current and future investors in Artisanal, who presently lack the necessary information about the company and its operations because of its failure to make Exchange Act filings; it will also deter other similar companies from becoming lax in their reporting obligations.

A new registration process will place all investors on an even playing field. All current investors will still own the same amount of shares in Artisanal that they did before registration, though their shares will no longer be devalued because of the

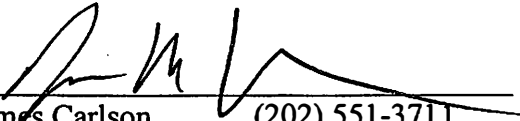
company's delinquent status. All investors, current and future alike, will also benefit from the legitimacy, reliability, and transparency of a company in compliance. The time-out will protect the status quo, and will give Artisanal the opportunity to come into full compliance, to calmly and thoroughly work through all of Artisanal's remaining issues with its attorneys, consultants, auditors, and management, and to complete its financial statements in compliance with Regulations S-K and S-X.

III. Conclusion

For the reasons set forth above, the Division respectfully requests that the Commission grant the Division's motion for judgment on the pleadings and revoke the registration of each class of Artisanal's securities registered under Exchange Act Section 12.

Dated: September 3, 2019

Respectfully submitted,


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CERTIFICATE OF SERVICE

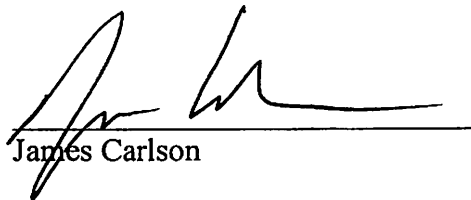
I hereby certify that true copies of the Division of Enforcement's Motion for Ruling on the Pleadings Against Artisanal Brands, Inc. and Brief in Support were served on the following on this 3rd day of September, 2019, in the manner indicated below:

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