

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

Civil Action No.:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAMES N. TUREK,
PLASTICON INTERNATIONAL, INC.,

Defendants,

LEXREAL CO. LLC,
PROMOTIONAL CONTAINERS, INC.,
and TELCOBLUE, INC.

Relief Defendants.

COMPLAINT

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

I. SUMMARY

- 1) Between at least January 2005 and April 2007, James N. Turek (“Turek”) of Lexington, Kentucky fraudulently misappropriated for personal use at least \$2.8 million of proceeds from an \$8 - \$11 million unregistered, multi-state securities offering by Plasticon International Inc. (“Plasticon”), a public company that Turek controlled. Turek previously represented to investors that the offering proceeds would be used in furtherance of Plasticon’s business. Additionally, between at least May 2005 and April

2006, Turek and Plasticon made false or misleading statements in press releases concerning Plasticon's financial condition, Plasticon's ownership of certain patents and the value of those patents, and Plasticon's outstanding shares. During that period, and apparently in response to those false and misleading statements, Plasticon's stock price increased dramatically. Lastly, the Plasticon offering did not qualify for any exemptions from registration, and Turek and Plasticon therefore engaged in an unregistered, non-exempt distribution of Plasticon shares in violation of the securities laws' registration provisions.

- 2) Through the activities alleged in this Complaint, Turek and Plasticon, directly and indirectly, have engaged in, and unless restrained and enjoined by this Court, will in the future engage in, transactions, acts, practices, and courses of business that violate Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].
- 3) As detailed below, the Commission seeks an order: restraining and enjoining Turek and Plasticon from violating relevant sections of the federal securities laws; requiring Turek, Plasticon, and three companies that Turek owned or controlled and that received proceeds from Plasticon's unregistered securities offering—LexReal Co. LLC ("LexReal"), Promotional Containers, Inc. ("Promotional Containers"), and TelcoBlue, Inc. ("TelcoBlue")—to provide a sworn accounting of proceeds from that offering; requiring Turek, LexReal, Promotional Containers, and TelcoBlue to disgorge all ill-gotten gains, with prejudgment interest; requiring Turek to pay a civil penalty; barring Turek from

serving as an officer or director of a publicly held company; barring Turek from participating in any offering of penny stock; and granting such other relief as is necessary and appropriate.

II. JURISDICTION AND VENUE

- 4) The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].
- 5) This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].
- 6) In connection with the transactions, acts, practices, and courses of business described in this Complaint, Turek and Plasticon, directly and indirectly, have made use of the means, instruments, or instrumentalities of transportation or communication in interstate commerce, or of the mails.
- 7) Certain of the transactions, acts, practices, and courses of business constituting the violations of the federal securities laws occurred within this district. A substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Kentucky, Central Division. Moreover, at the time of the acts alleged in this complaint, Turek resided, and Plasticon, LexReal, Promotional Containers, and TelcoBlue did business and had their corporate headquarters, in Lexington, in the Central Division.

III. DEFENDANT PARTIES

A. Defendants

- 8) **James N. Turek** is a resident of Lexington, Fayette County, Kentucky. Turek has been president, chief executive officer, chairman of the board of directors, and majority shareholder of Plasticon since approximately 1988. Until the appointment of a bankruptcy trustee in October 2007, Turek exercised complete control over Plasticon's affairs.
- 9) **Plasticon International, Inc.** was incorporated in Delaware in 1981 and redomiciled in Wyoming in 2004. Its principal place of business is in Lexington, Fayette County, Kentucky. Since approximately May 2004, the company has purported to be engaged in manufacturing products made from recycled plastics, including rebar supports used in concrete applications. Plasticon's common stock was registered with the Commission pursuant to Exchange Act Section 12(g) until November 21, 2007, when the Exchange Act registration of Plasticon's securities was revoked pursuant to Exchange Act Section 12(j) based on Plasticon's failure to file required periodic reports. Plasticon's common stock was quoted in the Pink Sheets until September 21, 2007, when the Commission suspended trading in Plasticon securities pursuant to Exchange Act Section 12(k). Plasticon filed for Chapter 11 bankruptcy protection on May 16, 2007. That case was subsequently converted to a Chapter 7 case.

B. Relief Defendants

- 10) The following defendants received and had the benefit of proceeds from investors raised by Turek and Plasticon without consideration and continue to hold at least some, if not all, of those funds and thus unlawfully hold funds raised through a fraudulent scheme:

- 11) **LexReal Co. LLC** is a Kentucky limited liability company with its principal place of business in Lexington, Fayette County, Kentucky. LexReal, which is wholly owned by Turek, received proceeds from Plasticon's unregistered securities offering. LexReal is named as a relief defendant because it received proceeds of the unauthorized sale of stock and should be required to account for and disgorge those sums.
- 12) **Promotional Containers, Inc.** is a Nevada corporation with its principal place of business in Lexington, Fayette County, Kentucky. Promotional Containers, which is wholly owned by Turek, received proceeds from Plasticon's unregistered securities offering. Promotional Containers is named as a relief defendant because it received proceeds of the unauthorized sale of stock and should be required to account for and disgorge those sums.
- 13) **TelcoBlue, Inc.** is a Delaware corporation with its principal place of business in Lexington, Fayette County, Kentucky. TelcoBlue, which is controlled by Turek, received proceeds from Plasticon's unregistered securities offering. TelcoBlue is named as a relief defendant because it received proceeds of the unauthorized sale of stock and should be required to account for and disgorge those sums.

IV. FACTS

A. False Statements in Private Offering

- 14) Between approximately January 2005 and April 2007, Plasticon raised between \$8.2 million and \$11.2 million through an unregistered securities offering involving at least 30 investors in multiple states. In most cases, William B. Howe, an individual hired by Plasticon and Turek to raise capital and consult on other matters, identified and

communicated with the investors. Other times, Turek communicated with investors directly.

- 15) Turek or Howe told the investors, or otherwise led them to believe, that the proceeds from the offering would be used by Plasticon for business matters, including acquiring other companies and purchasing equipment. Turek or Howe also instructed the investors to send their money to a bank account in the name of LexReal, a company wholly-owned by Turek, rather than to Plasticon.
- 16) Turek used at least \$2.8 million of investor proceeds for matters wholly unrelated to Plasticon's business and contrary to what was represented to the investing public. For example, Turek used at least \$800,000 for matters related to his personal bankruptcy case and he transferred at least \$1.8 million to two other companies that he owned or controlled—Promotional Containers and TelcoBlue. Turek also "loaned" some of the proceeds back to Plasticon with interest, and gave some of the proceeds to one or both of his sons.

B. False and Misleading Statements in Press Releases

- 17) During the same period in which Turek and Plasticon raised money from investors, and in order to assist those efforts, Turek and Plasticon issued multiple press releases that contained false or misleading statements about Plasticon's revenue and income, Plasticon's outstanding shares, and Plasticon's ownership of certain patents and the value of those patents. Turek provided Howe with the information for the press releases; Howe drafted the press releases based on the information given to him by Turek; and Turek approved the releases for dissemination.

- 18) Turek and Plasticon knew or were reckless in not knowing that the statements in the press releases were false and Turek and Plasticon knew or were reckless in not knowing that the falsity of the statements in the press releases was concealed from the investing public by failure to timely file SEC filings required under the Exchange Act.

1. Press Releases Misstating Plasticon's Profitability

- 19) On June 17, 2005, Turek and Plasticon issued a press release stating that Plasticon had "achieved profitability as of the end of the second quarter of 2005."
- 20) On June 21, 2005, Turek and Plasticon issued a press release stating, "Plasticon International recently announced that as of the second quarter of 2005, the company is profitable."
- 21) On August 24, 2005, Turek and Plasticon issued a press release stating, "Plasticon recently announced that it is profitable as of the second quarter in 2005."
- 22) On October 4, 2005, Turek and Plasticon issued a press release stating, "[the company] has demonstrated profitability."
- 23) Turek and Plasticon knew or were reckless in not knowing that all four releases were false or misleading. Plasticon's Form 10-QSB for the quarter ended June 30, 2005, was due August 14, 2005 but was not filed with the Commission until July 27, 2006, twelve months delinquent and ten to fifteen months after the false press releases were issued. In this Form 10-QSB filed delinquent on July 27, 2006 Plasticon reported a net loss of over \$3 million on revenue of a paltry \$135,244.
- 24) Similarly, in its Form 10-QSB for the quarter ended September 30, 2005, which was not filed with the Commission until July 31, 2006, Plasticon reported a net loss of nearly \$11 million on revenue of \$136,965.

25) Based on quarterly financial information beginning with the quarter ended March 31, 2005, which is the first quarter for which Plasticon reported such information, Plasticon has never had a profitable quarter. Plasticon did not even have a bank account until February 2006.

2. Press Releases Misstating the Number of Outstanding Shares

26) Between May 2005 and April 2006, Turek and Plasticon issued numerous press releases falsely stating or suggesting that Plasticon would not issue additional shares or would, in fact, reduce its outstanding shares.

27) On August 24, 2005, Turek and Plasticon issued a press release entitled “Plasticon International Inc. to Retire 200 Million Shares.”

28) On December 30, 2005, Turek and Plasticon issued a press release stating that Plasticon had “retired 200 million shares in 2005 as the first step in a share restructuring program.”

29) On August 24, 2005, Turek and Plasticon issued a press release stating that Plasticon was “committed to a program designed to enhance shareholder value” and planned to “undertake a buy back program for still additional outstanding shares.”

30) In press releases dated January 24 and April 25, 2006, Turek and Plasticon reiterated Plasticon’s intent to undertake a buyback program.

31) On May 27, August 3, and August 10, 2005, Turek and Plasticon issued three press releases stating that Plasticon’s anticipated acquisition of two other companies would involve “no dilution” for Plasticon shareholders.

32) Turek and Plasticon knew or were reckless in not knowing that the statements regarding retirement of shares and a planned share buyback were false. Plasticon did not retire shares during 2005 or engage in a buyback program.

- 33) The statements regarding lack of dilution of existing shareholders were likewise false. Turek and Plasticon explicitly told investors in the private offering discussed above that offering proceeds would be used to acquire two companies.
- 34) Moreover, Turek and Plasticon knew or were reckless in not knowing that all of the foregoing statements were misleading because, between September 2005 and April 2006, the period during which Plasticon issued the releases, Plasticon increased its outstanding shares by 150 percent, from 2 billion to 5 billion shares. Indeed, in February 2006, only weeks after the company first reiterated its intention to undertake a buyback program, and May 2006, only weeks after the company reiterated that intention a second time, the company issued 1.27 billion shares and 1 billion shares, respectively. Plasticon continued issuing shares thereafter, increasing its outstanding shares from 6 billion in May 2006 to 9.4 billion in February 2007.
- 35) Turek and Plasticon failed to file current reports with the SEC disclosing the issuance of those shares, failed to respond to repeated requests for information about Plasticon's outstanding shares from Pink Sheets and investors, and denied that Plasticon had engaged in any securities offerings between January 31, 2004 and February 10, 2006. Turek and Plasticon knew or were reckless in not knowing that failure to file the current reports with the SEC concealed the falsity of the information in the press releases from the investing public.

3. Press Releases Misstating Ownership and Value of Patents

- 36) On May 18, 2005, Turek and Plasticon issued a press release stating, “[o]ur patents were recently valued at \$16 million.” If such a valuation were true it would have made the patent portfolio Plasticon's most valuable asset.

- 37) On September 12, 2005, Turek and Plasticon issued a press release stating, “[t]he PAC Chair III is the most recent patent that the company has received,” and “[a]ccording to an independent appraiser and the federal courts, Plasticon’s recycled plastic product patents are valued at \$20 million.”
- 38) On September 19, 2005, Turek and Plasticon issued a press release stating, “we recently received patent confirmation for a number of new products, such as the ‘PAC Chair III.’”
- 39) On April 25, 2006, Turek and Plasticon issued a press release stating, “[a]t present, an independent appraisal of the Company’s patents and molds is in excess of \$20,000,000.”
- 40) Turek and Plasticon knew or were reckless in not knowing that all of the statements regarding the ownership and value of patents were false, as Plasticon did not own, or have rights to, any of the four patents for which it claimed ownership.
- 41) Turek himself had assigned three of those patents to his sons and Promotional Containers in 2004, before the press releases went out.
- 42) The fourth patent, a Canadian patent, lapsed in May 2004, one to two years before the press releases were issued.
- 43) United States and Canadian patent records show that Plasticon has never owned a patent.
- 44) Turek and Plasticon knew or were reckless in not knowing that the value ascribed to the patents was false because the values were based on three letters written in 1993, 1998, and 2000 by an “independent consultant to the plastics industry.” But those letters (1) did not identify the patents to which they pertained, (2) were old by the time the press releases were issued and therefore did not reflect the diminution in value of the patents that naturally occurred as those patents approached expiration, and (3) offered little information regarding the consultant’s qualifications to render an opinion regarding the

value of the patents or the methodology used to value the patents. Based thereon, Turek and Plasticon could not have reasonably relied on those letters.

C. Stock Price Movement Shows the Misstatements were Material

- 45) Between May 1, 2005 and April 30, 2006, the average closing price of Plasticon stock was \$.0095, an approximately 217 percent increase over the previous six months' average closing price of \$.0030. During this time, the average daily trading volume of Plasticon stock was 39,605,647 shares, an approximately 400 percent increase over the previous six months' average daily trading volume of 7,983,532 shares.
- 46) Further, during May 2005, when many of the false or misleading statements were first made, the closing price of Plasticon's stock climbed from \$.0030 to \$.0185 (an increase of over 500 percent).
- 47) Between May 1, 2006 and September 20, 2007, the day before the Commission suspended trading in Plasticon's stock, Plasticon filed delinquent SEC filings and made no further press statements and the price of Plasticon's stock declined from \$.0046 to \$.0001 (a decline of approximately 98 percent).

D. Unregistered Securities Offering

- 48) As discussed above, between January 2005 and April 2007, Plasticon raised at least \$8.2 million through stock offerings involving investors in multiple states.
- 49) Plasticon sold securities on a continuous basis. At no time did six months pass between sales.
- 50) In most cases, Plasticon issued shares to Turek or LexReal, purportedly in exchange for services or to extinguish pre-existing debt obligations. Turek or LexReal then sold those shares a short time later to the investors in exchange for cash. Turek and Plasticon

represented to the investors in stock purchase agreements, which Turek signed, that the shares were “free trading.” Upon information and belief, based on those representations, many of the investors sold some or all of their shares on the open market within weeks or months of receiving the shares.

- 51) No registration statement was on file or in effect with regard to the offering and Turek and Plasticon did not provide the investors with financial statements or other information of the type that would be contained in a registration statement.
- 52) Moreover, Turek and Plasticon knew or were reckless in not knowing that the investing public did not have access to information about Plasticon due to Plasticon’s practice of failing timely to file reports with the SEC with respect to its periodic reporting obligations.

FIRST CLAIM FOR RELIEF
(Violations of Section 17(a)(1) of the Securities Act)
[15 U.S.C. § 77q(a)(1)]
(Turek and Plasticon)

- 53) Paragraphs 1 through 52 are hereby realleged and incorporated by reference.
- 54) Defendants Turek and Plasticon, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, with scienter, employed a device, scheme, or artifice to defraud.
- 55) By reason of the foregoing, Turek and Plasticon violated and unless restrained and enjoined will violate Section 17(a)(1) of the Securities Act.

SECOND CLAIM FOR RELIEF

(Violations of Section 17(a)(2) and (3) of the Securities Act)

[15 U.S.C. §§ 77q(a)(2) and (3)]

(Turek and Plasticon)

- 56) Paragraphs 1 through 52 are hereby realleged and incorporated by reference.
- 57) Defendants Turek and Plasticon, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
- 58) Defendants Turek and Plasticon, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities.
- 59) By reason of the foregoing, Turek and Plasticon violated and unless restrained and enjoined will violate Sections 17(a)(2) and (3) of the Securities Act.

THIRD CLAIM FOR RELIEF

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

[15 U.S.C. § 78 j(b) and 17 C.F.R. § 240.10b-5]

(Turek and Plasticon)

- 60) Paragraphs 1 through 52 are hereby realleged and incorporated by reference.
- 61) Defendants Turek and Plasticon, directly or indirectly, with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of Plasticon securities, have employed devices, schemes, or artifices to defraud; have made untrue statements of material fact or omitted to state material facts

necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or have engaged in acts, practices, or courses of business which have been and are operating as a fraud or deceit upon the purchasers or sellers of such securities.

- 62) By reason of the foregoing, Turek and Plasticon violated and unless restrained and enjoined will violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

FOURTH CLAIM FOR RELIEF

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

[15 U.S.C. §§ 77e(a) and (c)]

(Turek and Plasticon)

- 63) Paragraphs 1 through 52 are hereby realleged and incorporated by reference.
- 64) Turek and Plasticon, directly or indirectly, by use of the means or instruments of transportation and communication in interstate commerce or by use of the mails, offered to sell or sold securities or carried or caused such securities to be carried through the mails or in interstate commerce, for the purpose of sale or delivery after sale.
- 65) No valid registration statement was filed with the Commission or in effect and no exemption from registration existed with respect to the securities and transactions described in this Complaint.
- 66) By reason of the foregoing, Turek and Plasticon violated and unless restrained and enjoined will violate Sections 5(a) and (c) of the Securities Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

- 1) Find that Turek and Plasticon committed the violations alleged;
- 2) Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Turek and Plasticon, their subsidiaries,

officers, directors, agents, servants, employees, and attorneys-in-fact, and all persons in active concert or participation with them, from violating, directly or indirectly, the provisions of law and rules alleged in this Complaint;

- 3) Order that Turek, Plasticon, LexReal, Promotional Containers, and TelcoBlue each provide a sworn accounting of proceeds from Plasticon's unregistered securities offering;
- 4) Order that Turek, LexReal, Promotional Containers, and TelcoBlue disgorge all ill-gotten gains, with prejudgment interest;
- 5) Order that Turek pay a civil penalty;
- 6) Order that Turek be barred from serving as an officer or director of a publicly held company;
- 7) Order that Turek be barred from participating in any offering of penny stock; and
- 8) Grant such other relief as this Court may deem just or appropriate.

Dated: September 29, 2008

Respectfully submitted,

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