

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

IN THE MATTER OF:)	
)	<u>ADMINISTRATIVE ORDER</u>
ADVERTISING.COM, INC.)	
)	No. <u>SB-04-02</u>

CONSENT AGREEMENT AND SETTLEMENT ORDER

The Commissioner of the District of Columbia Department of Insurance, Securities, and Banking (formerly the Department of Insurance and Securities Regulation), having the authority to administer and provide for enforcement of the Securities Act of 2000, D.C. Official Code § 31-5601.01 et. seq., upon due consideration of the subject matter hereof, has determined as follows:

Statement of Facts

1. ADVERTISING.COM, INC. ("Respondent"), a Maryland corporation, is an Internet direct marketing company that serves as an intermediary between online advertisers and websites.
2. On March 30, 2004, Respondent made a filing with the Department's Securities Bureau concerning the issuance of stock options under an employee stock option and incentive plan ("the Plan") offered by the Respondent.
3. The filing submitted by the Respondent requested that the offering be exempted from registration under D.C. Official Code § 31-5604.01(10)(A). That exemption may be available in the District of Columbia where a security is offered in connection with a written compensatory benefit plan including a stock option or similar employee benefits plan.

4. In order to be eligible for the exemption found in § 31-5604.01(10)(A), issuers must provide notice to the Department at least 20 days prior to the offering date, pursuant to D.C. Mun. Reg. § 1943.5. The requirements found in D.C. Mun. Reg. § 1943 have been in effect since June 1, 2001.
5. The Securities Bureau requested and received a list of all transactions that occurred in the District with respect to the Plan between June 1, 2001 and March 30, 2004, the date on which the Respondent filed its notice under Rule 401(10).
6. In total two (2) option grants¹ were made by the Respondent in the District between June 1, 2001 and March 30, 2004 as part of an offering that was neither registered with the Department of Insurance, Securities and Banking nor properly exempted from registration.
7. Respondent acknowledged to the Securities Bureau in its filing that its filing was being made less than 20 days prior to the applicable offering, and indicated through counsel that the Respondent's failure to file in a timely manner was the result of Respondent's lack of knowledge regarding the requirement to file at least twenty days prior to the offering of options to employees pursuant to its stock option plan. Respondent's counsel also informed the Securities Bureau that it had taken affirmative steps to immediately file for the required notice as soon as it was made aware of the matter.
8. The Securities Bureau requested that the Respondent provide assurances that it was in good standing with the District of Columbia in all other respects to conduct business in this jurisdiction.
9. In its letter dated June 3, 2004 Respondent provided an assurance to the Bureau that Advertising.com, Inc. is a Maryland corporation and that it is in good standing in Maryland. The Respondent stated that it is not in the business of effecting transactions in securities in the District, other than the issuance of securities under the Plan. The Respondent further provided an assurance that it does not owe back taxes and is not subject to any liens in the District.
10. Respondent is desirous of settling this matter and agrees to voluntarily waive all right to a hearing upon entry of this Order and, solely for the purposes of this proceeding and without admitting or denying the existence of a violation, Respondent has consented to the entry of this Order.

¹ On January 4, 2001 there was a grant made to Jae Martin of options to purchase 50 shares of common stock, strike price of \$6.00. This option was not counted toward the number of options granted in the District of Columbia since it occurred prior to June 1, 2001.

11. In view of the circumstances, the Securities Bureau determined that a fine in the amount of One Thousand dollars (\$1,000) is appropriate.

CONCLUSIONS OF LAW

1. Respondent failed to provide notification to the Department of Insurance, Securities and Banking in connection with its issuance of stock option plans that were offered in the District of Columbia.
2. The failure of Respondent to notify the Department of stock options granted to District of Columbia residents at least 20 days prior to the first offering is a violation of D.C. Mun. Reg. 1943.5.

ORDER

WHEREAS, the Department, based on information submitted by the Respondent is satisfied that the exceptions alleged, supra, were not willful and that the corrective action is now being taken;

WHEREAS, Respondent wishes to resolve alleged violations by entering into a Consent Agreement with the Department of Insurance, Securities and Banking, subject to the approval of the Commissioner, as follows:

- A. The Respondent waives its right to further notice and hearing in this matter.
- B. The Respondent shall pay administrative fine in the amount of One Thousand dollars (\$1,000) made payable to the D.C. Treasurer.
- C. The Department of Insurance, Securities and Banking hereby accepts the administrative fine and agrees not to pursue other administrative remedies available under its administrative authority relating to matters alleged in this agreement.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. That Respondent shall ensure that proper procedures are effected to preclude any future non-compliance with the Act.
2. That in lieu of revoking the exemption available to Respondent, the Commissioner will agree to accept an administrative penalty and will take no other enforcement action with respect to the offers made prior to notification.

3. Respondent shall pay an administrative penalty in the amount of One Thousand dollars (\$1,000) made payable to the D.C. Treasurer.
4. The Commissioner finds this Order necessary and appropriate and in the public interest for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

Agreed and Consented to:

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

BY: 
Theodore A. Miles,
Director

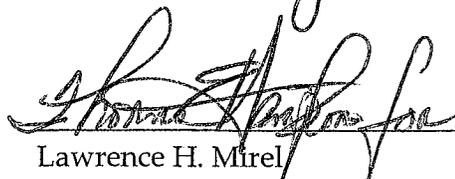
RESPONDENT

BY: 
Thomas P. McMahon
on behalf of ADVERTISING.COM, INC.

SO ORDERED:

Dated this 22nd day of July, 2004.

APPROVED and so ORDERED:
In Witness Whereof, I have hereunto
set my hand and affixed the official seal. Of
this Department in the District of Columbia,
this 22 day of July, 2004.


Lawrence H. Mirel
Commissioner