

## SEC Enforcement Actions Against Companies for Misleading COVID-19 Claims

*Posted by Kenneth M. Silverman, Morgan E. Spina, and Robert C. Gagne, Olshan Frome Wolosky LLP, on Wednesday, July 22, 2020*

**Editor’s note:** Kenneth M. Silverman is a partner and Morgan E. Spina and Robert C. Gagne are associates at Olshan Frome Wolosky LLP. This post is based on their Olshan memorandum.

The U.S. Securities and Exchange Commission (the “SEC”) filed enforcement actions on May 14, 2020, against two unrelated companies, Turbo Global Partners, Inc. (“Turbo”) and Applied BioSciences Corp. (“APPB”). The SEC charged both companies with securities fraud based on alleged materially misleading statements that the companies were offering and shipping products to combat the coronavirus (COVID-19). These actions taken by the SEC are consistent with approaches taken by other regulators, including the Federal Trade Commission and Food and Drug Administration (the “FDA”), with regard to misleading statements made in connection with coronavirus-related products. On the whole, regulators appear to be particularly cognizant of businesses and individuals seeking to take improper advantage of the circumstances created by the global pandemic, and as such are taking action against such companies and individuals.

The SEC’s **complaint** against APPB, filed in federal court in the Southern District of New York, alleges that, on March 31, 2020, APPB issued a materially misleading press release (the “APPB Press Release”) in which it falsely claimed to be offering and shipping a COVID-19 home test kit to the general public for private use. Specifically, the complaint alleges that APPB announced in the APPB Press Release that it had “began shipping” a line of home test kits for coronavirus detection that delivered reliable results in under 15 minutes using only a finger prick and were “to be used for Homes . . . or anyone wanting immediate and private results.”

In fact, as alleged, APPB did not offer or intend to sell the test kit for home or private use by the general public, and had not begun shipping any test kits as of March 31, 2020. Rather, per the complaint, the test kit was only intended for use by nursing homes, schools, military, and first responders, in each case in consultation with a medical professional. In addition, the complaint alleges the APPB Press Release was false and materially misleading because it failed to disclose that the FDA had not approved or authorized the sale of any COVID-19 at-home test kits, despite APPB allegedly knowing the test kits were subject to FDA approval. According to the complaint, the APPB Press Release impacted the trading market for APPB’s stock, the stock price spiking almost 80% on the same day the release was issued.

The SEC is seeking injunctive and civil monetary penalties against APPB.

In its **complaint** against Turbo and its chief executive officer and chairman, Robert W. Singerman, filed in federal court in the Middle District of Florida, the SEC alleges that Turbo issued false and

materially misleading press releases on March 30 and April 3, 2020 (the “Turbo Press Releases”), in which it claimed to be actively selling “equipment that scans large crowds to detect individuals with elevated fevers” that would combat the spread of coronavirus via “early identification of elevated fever, one of the key early signs of COVID-19.” The complaint further alleges that Turbo stated in the Turbo Press Releases that it had partnered with another company, BeMotion, Inc. (“BeMotion”) which purportedly was the “front facing partner in [a] multi-national public-private partnership” for the technology. In addition, according to the complaint, the Turbo Press Releases included statements falsely attributed to the CEO of BeMotion, including that the technology was “99.99% accurate” and that orders would ship within five days of receipt.

In fact, the SEC alleges, there was no agreement between Turbo and BeMotion to sell the product, BeMotion had no partnerships with government entities, and the CEO of BeMotion did not make or authorize the statements attributed to him in the Turbo Press Releases. The complaint alleges further that Mr. Singerman drafted the Turbo Press Releases knowing they were false, and the false statements materially affected the trading market for Turbo’s stock, as evidenced by the jumps in trading volume and share price following each press release.

The SEC is seeking injunctive and civil monetary penalties against Turbo and a director and officer bar against Mr. Singerman.

## Takeaway

Like other regulators, the SEC is taking aim at companies making materially false claims regarding business related to the coronavirus outbreak. These enforcement actions should be a cautionary tale to publicly traded companies that the SEC is on the lookout for such claims and will take action if it deems such action necessary.