

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
2 DIVISION OF FINANCE AND CORPORATE SECURITIES
3 SECURITIES SECTION
4 BEFORE THE DIRECTOR OF THE DEPARTMENT OF
5 CONSUMER AND BUSINESS SERVICES
6 STATE OF OREGON

7 In the Matter of:

8 TRACKER INTERNATIONAL,
9 INC., MARK LABERTEW, DAVID
10 CHENG, SOUTHPORT S.D.G.,
11 Inc., LES FLEISHMAN, KEN
12 GROSS, ANTHONY HALL, CRAIG
13 WILLIAMS,

14 Respondents.

O-99-0023

15 FINAL ORDER
16 TO CEASE AND DESIST
17 ASSESSMENT OF CIVIL
18 PENALTIES
19 AND
20 DENIAL OF EXEMPTIONS
21 ENTERED BY DEFAULT
22 AS TO RESPONDENT ANTHONY
23 HALL

24 On August 3, 1999, the Director of the Department of Consumer and
25 Business Services for the State of Oregon (the Director), acting by the authority
26 of the Oregon Securities Law, Chapter 59 of the Oregon Revised Statutes
(hereinafter cited as ORS Chapter 59), issued Administrative Order O-99-0023 to
Cease and Desist, with Assessment of Civil Penalties, Denial of Exemptions and
Notice of Right to a Public Hearing.

Respondent Anthony Hall was duly served with a certified copy of
Administrative Order O-99-0023 and Notice of Right to Hearing. Service was
effected by mailing the Order and Notice by certified mail and by regular mail,
with proper postage affixed to each, to the last known address for each named
respondent. Respondents Southport S.D.G., Inc., Les Fleishman, Ken Gross,
Anthony Hall, and Craig Williams shared the same last known address. Only
respondent Anthony Hall failed to make written request for a hearing in this
matter.

NOW THEREFORE, after consideration of the Investigation Report and
accompanying exhibits submitted in this matter by Anthony A. Behrens, the



1 Director hereby issues the following Findings of Fact, Conclusions of Law and
2 Final Order:

3 **FINDINGS OF FACT**

4 The DIRECTOR finds that:

5 1. Respondent Tracker International, Inc. ("Tracker") is a Delaware
6 corporation with principal offices at 4000 N. Scottsdale Road, Suite 200, Scottsdale,
7 Arizona, 85251 that purports to develop, market, distribute, lease, and sell global-
8 positioning-system tracking, monitoring, and data-retrieval units ("GPS units").

9 2. Respondent Mark E. Lebertew ("Lebertew") was at all times material
10 herein the President, Chief Executive Officer, and a Director of Tracker, and may
11 be served at the corporation's business address at 4000 N. Scottsdale Road, Suite
12 200, Scottsdale, Arizona, 85251.

13 3. Respondent David D. Cheng ("Cheng") was at all times material herein
14 the Senior Vice President, Chief Operating Officer, and a director of Tracker, and
15 may be served at the corporation's business address at 4000 N. Scottsdale Road,
16 Suite 200, Scottsdale, Arizona, 85251.

17 4. Respondent Southport S.D.G., Inc. ("Southport"), CRD # 46278, was at
18 all times material herein, Tracker's agent for purposes of selling shares of Tracker
19 stock. Southport is a California corporation with principal offices at 5199 East
20 Pacific Coast Highway, Suite 330N, Long Beach, California, 90804.

21 5. Respondent Les Fleishman ("Fleishman"), CRD # 8975931, was at all
22 times material herein, a director of Tracker and President of Southport. Fleishman
23 may be served at Southport's business address at 5199 East Pacific Coast
24 Highway, Suite 330N, Long Beach, California, 90804.

25 6. Respondent Ken Gross ("Gross") was at all times material herein a
26 salesperson and agent for Southport. Gross's business address is the same as the



1 address for the Southport.

2 7. Respondent Anthony Hall ("Hall") was at all times material herein a
3 salesperson and agent for Southport. Hall's business address is the same as the
4 address for Southport.

5 8. Respondent Craig S. Williams ("Williams") was at all times material herein
6 a salesperson and agent for Southport. Williams's business address is the same
7 as the address for Southport.

8 9. Tracker is not now nor has it ever been licensed to sell securities in
9 Oregon as a broker-dealer or as an issuer.

10 10. Southport is not now nor has it ever been licensed to sell securities in
11 Oregon as a broker-dealer.

12 11. Respondents Labertew, Cheng, Fleishman, Gross, Hall, and Williams
13 are not now licensed, nor have they ever been licensed, to sell securities in Oregon
14 as salespersons for any broker-dealer or for Tracker as an issuer.

15 12. On February 10, 1999, Tracker filed Form 440-2013 with the Division of
16 Finance and Corporate Securities for the State of Oregon ("DFCS") to register
17 10,000 shares (five units consisting of 2,000 shares each) of Tracker common stock
18 for sale in the State of Oregon. Tracker's registration was not, and to date has not
19 been, granted.

20 13. In October 1999, Respondent Hall, acting individually and as an agent
21 of Respondents Tracker and Southport cold-called Everett House ("House") of 40
22 NE 22nd Street; Gresham, OR 970303; (503) 665-2313, who had no pre-existing
23 relationship with Respondents Tracker or Southport and offered to sell him one unit
24 of Tracker stock consisting of 2,000 shares for \$5,000.00.

25 14. Following Hall's telephone call, House received written information in the
26 mail concerning Tracker. The information received by House failed to disclose the



1 following:

2 a. that the units being offered to House were not registered as securities for
3 sale in the State of Oregon;

4 b. that Fleishman, the President of Southport, was also a director for
5 Tracker; and

6 c. that neither Hall, Tracker, nor Southport were licensed to sell shares of
7 Tracker stock in the State of Oregon.

8 15. On or about October 21, 1998 House purchased one unit of Tracker
9 stock consisting of 2,000 shares for a total of \$5,000.00. House is not an accredited
10 investor.

11 16. In December 1998, Respondent Williams, acting individually and as an
12 agent of Respondents Tracker and Southport, cold-called Malcolm Elstad ("Elstad")
13 of 3515 Echo Drive NW; Salem, OR 97304; (503) 363-6487, who had no pre-
14 existing relationship with Respondents Tracker or Southport, and offered to sell him
15 one unit of Tracker stock consisting of 2,000 shares for \$5,000.00.

16 17. Following Williams's telephone call, Elstad received written information
17 in the mail concerning Tracker. The information received by Elstad stated the
18 following:

19 a. that J.D. Byrider, an automobile dealer, requested a proposal to
20 purchase 150-200 GPS units;

21 b. that Brinks Armored Transport, Inc. requested a proposal for installation
22 of 25 GPS units for their Phoenix, Arizona operation; and

23 c. that Poe & Brown Insurance received a demonstration of the GPS unit
24 and showed interest in purchasing units from Tracker.

25 18. After Elstad received the aforementioned written information, he was
26 contacted by Respondent Gross via the telephone. Gross stated that Tracker was



1 going to be purchased by Brinks in January of 1999.

2 19. At no time material herein was Elstad informed of the following:

3 a. that the units being offered to House were not registered as securities for
4 sale in the State of Oregon;

5 b. that Fleishman, the President of Southport, was also a director for
6 Tracker; and

7 c. that neither Williams, Gross, Southport, nor Tracker were licensed to sell
8 shares of Tracker stock in the State of Oregon.

9 20. In December of 1998, Elstad purchased one unit of Tracker stock
10 consisting of 2,000 shares for \$5,000.00. Elstad is not an accredited investor.

11 21. In December 1998, Respondent Gross, acting individually and as an
12 agent of Respondents Tracker and Southport, cold-called Neal Hausam
13 ("Hausam") of 2054 Mousebird NW; Salem, OR 97304; (503) 363-6487, who had
14 no pre-existing relationship with Respondents Tracker or Southport, and offered to
15 sell him one unit of Tracker stock consisting of 2,000 shares for \$5,000.00.

16 22. Following Gross's telephone call, Hausam received written information
17 in the mail concerning Tracker. The information received by Hausam stated the
18 following:

19 a. that J.D. Byrider, an automobile dealer, requested a proposal to purchase
20 150-200 GPS units;

21 b. that Brinks Armored Transport, Inc. requested a proposal for installation
22 of 25 GPS units for their operation in Phoenix, Arizona; and

23 c. that Poe & Brown Insurance received a demonstration of the GPS unit
24 and showed interest in purchasing units from Tracker.

25 23. After Hausam received the aforementioned written information, he was
26 contacted by Respondent Gross via the telephone. Gross stated that Tracker was

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1 going to be purchased by another company, possibly Brinks, in January of 1999.

2 24. At no time material herein was Hausam informed of the following:

3 a. that the units being offered to House were not registered as securities for
4 sale in the State of Oregon;

5 b. that Fleishman, the President of Southport, was also a director for
6 Tracker; and

7 c. that neither Gross, Southport, nor Tracker were licensed to sell shares of
8 Tracker stock in the State of Oregon.

9 25. In December of 1998, Hausam purchased one unit of Tracker stock
10 consisting of 2,000 shares for \$5,000.00. Hausam is not an accredited investor.

11 26. In truth and fact:

12 a. neither Brinks nor any other company ever expressed an interest in
13 purchasing Tracker;

14 b. J.D. Byrider never requested a proposal to purchase 150-200 GPS units;

15 c. Brinks Armored Transport, Inc. never requested a proposal for installation
16 of 25 GPS units for their Phoenix, Arizona operation; and

17 d. Poe & Brown Insurance never received a demonstration of the GPS unit
18 and never showed interest in purchasing GPS units from Tracker.

19 27. On February 16, 1999, in connection with an investigation into the offer
20 and sale of securities within the State of Oregon, Lisa Nuss ("Nuss"), at the time a
21 Securities Compliance Officer with DFCS, sent a letter to Labertew, President and
22 Chief Executive Officer of Tracker, via certified mail that was signed for by a
23 representative of Tracker on February, 18, 1999, requesting information pertaining
24 to the offer and sale of Tracker stock in the State of Oregon.

25 28. Neither Labertew nor Tracker responded to Nuss's request for
26 information.

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CONCLUSIONS OF LAW

Based upon the Findings of Fact, the DIRECTOR concludes that:

1. The common stock issued by Tracker is "stock" as that term is used under the definition of "security" in ORS 59.015 (19)(a).

2. The Tracker common stock, described herein, was never registered in Oregon.

3. Tracker, Southport, Gross, Hall, and Williams offered and/or sold unregistered securities in violation of ORS 59.055.

4. Pursuant to ORS 59.015(1), the offer and sale of Tracker common stock by Southport, as described herein, constitutes the transaction of securities business in Oregon by an unlicensed broker-dealer in violation of ORS 59.165(1).

5. Pursuant to ORS 59.015(18), the offer and sale of Tracker common stock by Gross, Hall, and Williams, as described herein, constitutes the transaction of securities business in Oregon by unlicensed salespersons in violation of ORS 59.165(1).

6. Tracker and Southport employed Gross, Hall, and Williams, unlicensed securities salespersons, to sell Tracker common stock in Oregon in violation of ORS 59.165 (3).

7. Tracker, Southport, Gross, Hall, and Williams, directly or indirectly in connection with the above described offers and sales of securities, made untrue statements of material fact and omitted to state material facts which were necessary in order to make the statements made in light of the circumstances under which they were made not misleading, in violation of ORS 59.135 (2).

8. Lebertew, Cheng, and Fleishman, officers and/or directors of Tracker and/or Southport directly or indirectly controlled the activities of Gross, Hall, and Williams and, pursuant to ORS 59.115, they are liable as control persons for their



1 actions as well as for the actions of Tracker and Southport.

2 9. In violation of ORS 59.235, Respondents Tracker and Lebertew failed to
3 provide records for examination upon request by DFCS pursuant to a lawful
4 investigation of Tracker's securities activities.

5 **ORDER**

6 1. Respondent Hall shall CEASE AND DESIST from violating Chapter 59 of
7 the Oregon Revised Statutes and Chapter 441 of the Oregon Administrative Rules.

8 2. Pursuant to ORS 59.045 (2), Respondent Hall is DENIED the use of any
9 statutory exemptions provided for in ORS 59.025 and 59.035.

10 3. Pursuant to ORS 59.995, Respondent Hall is ORDERED to PAY a CIVIL
11 PENALTY of \$20,000.00 for violations of ORS 59.055, ORS 59.135, and ORS
12 59.165(1).

13 Dated this 1st day of November, 1999, at Salem, Oregon; Nunc Pro Tunc
14 August 3, 1999.

15 

16 **MICHAEL GREENFIELD, DIRECTOR**
17 **DEPARTMENT OF CONSUMER &**
18 **BUSINESS SERVICES**
19 **STATE OF OREGON**
20 **by David C. Tatman, Chief of Enforcement**
21 **Division of Finance & Corporate**
22 **Securities State of Oregon**

23 **NOTICE TO PARTIES**

24 Pursuant to ORS 59.295(2), you are not entitled to judicial review of this
25 Order. Civil penalties imposed by this Order are due and payable ten (10) days
26 after the date this Order becomes final.

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