

2005 BCSECCOM 673

Settlement Agreement

XRAYMEDIA, Inc. and Raymond Christopher Dabney

Securities Act, RSBC 1996, c. 418

¶ 1 XRAYMEDIA, Inc. (XRAYMEDIA) and Raymond Dabney (Dabney) have settled the following issues with the Executive Director.

Agreed Statement of Facts

¶ 2 As the basis for the undertakings and orders referred to in this settlement, XRAYMEDIA and Dabney acknowledge the following facts as correct:

1. XRAYMEDIA was incorporated in Minnesota, Minneapolis, USA on November 27, 1968. Its securities trade on the National Association of Securities Dealers Over the Counter Bulletin Board. It has never been registered, and is not a reporting issuer, under the *Act*.
2. XRAYMEDIA's executive offices, operations offices and computer servers are located at 555 West Hastings Street, Suite 1560, Vancouver, British Columbia. XRAYMEDIA's ten employees work at the Vancouver office. XRAYMEDIA is not registered in British Columbia as an extra-provincial company under the *Company Act*, R.S.B.C. 1996, c. 62.
3. XRAYMEDIA purports to be a traditional full-service advertising agency and, also, claims that it hosts an internet-based marketplace for buying and selling advertising which XRAYMEDIA lists and refers to as "media inventory".
4. Dabney has been a director of XRAYMEDIA since 1999, and is its majority shareholder, president and chief executive officer. He is a resident of British Columbia and works at XRAYMEDIA's office in Vancouver where he directs operations. He has never been registered under the *Act* or any other securities legislation.
5. Between March 2003 and September 2003, and on behalf of XRAYMEDIA, Dabney issued twenty-two press releases (the Press Releases). The Press Releases contained misrepresentations in that they stated or implied that large amounts of media inventory were being sold through XRAYMEDIA's internet-based marketplace and that XRAYMEDIA was, as a result, generating significant revenues and profits. None of this was true.

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6. In reality:
 - (a) XRAYMEDIA did not own any of the media inventory reported in the Press Releases, but only listed it for sale on its website;
 - (b) the represented value of the media inventory was the cost of the advertising to end customers, not what it was worth to XRAYMEDIA in terms of revenue;
 - (c) XRAYMEDIA only earned commissions on the sale of media inventory;
 - (d) almost none of the media inventory listed on its website had even been sold;
 - (e) a company in the United States touted in the Press Releases as having contracted with XRAYMEDIA refused to honour its media inventory agreement with XRAYMEDIA and the company's alleged \$1.1 billion media inventory with XRAYMEDIA was not listed on its website;
 - (f) XRAYMEDIA's commissions were payable in artwork;
 - (g) however, the artwork could only be sold for a fraction of its purported value, and in any event, the majority of it was in the possession of an individual in the United States and he refused to provide the balance to XRAYMEDIA; and
 - (h) based on generally accepted accounting principles, XRAYMEDIA had no revenues or profit.

7. On July 23, 2003 on behalf of XRAYMEDIA, Dabney issued a press release which included an undertaking that its shares would yield a profit of \$0.02 per share (the July 23, 2003 Press Release).

Public Interest

8. In issuing the Press Releases, Dabney and XRAYMEDIA made misrepresentations contrary to section 50(1)(d) of the Act.

9. In issuing the July 23, 2003 Press Release, Dabney and XRAYMEDIA made a prohibited representation, contrary to section 50(1)(b) of the Act.

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Mitigating Factors

10. The Executive Director has taken into account the fact that Dabney and XRAYMEDIA actively cooperated with staff of the Commission in the course of this investigation as mitigating the sanctions which would otherwise have applied in the public interest.

Undertakings

11. Dabney undertakes:

- (a) to pay to the Commission the sum of \$30,000; and
- (b) not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Order

12. Dabney and XRAYMEDIA each consent to an order by the Executive Director (the Order) that:

- (a) under section 161(1)(a) of the Act, Dabney and XRAYMEDIA comply fully with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations, policies and guidelines;
- (b) under section 161(1)(b) of the Act, Dabney cease trading in any securities or exchange contracts for the later of five years and the date by which Dabney has paid \$30,000 to the Commission;
- (c) under section 161(1)(d) of the Act, Dabney resign any position he may hold as a director or officer of any issuer and be prohibited from becoming or acting as a director or officer of any issuer for the later of five years, the date by which Dabney has paid \$30,000 to the Commission and the date by which Dabney has completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers; and
- (d) under section 161(1)(d) of the Act, Dabney be prohibited from engaging in investor relations activities for the later of five years and the date by which Dabney has paid \$30,000 to the Commission.

Waiver

- ¶ 3 XRAYMEDIA and Dabney waives any right they may have, under the Act or

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otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

¶ 4 November, 15, 2005

¶ 5 “XRAYMEDIA, INC”
XRAYMEDIA, Inc. (Signing Authority)

“John Fiddick”)
Witness Signature)
John Fiddick)
Witness Name (please print))
800 – 885 W. Georgia Street)
Vancouver, BC)
Address)
Lawyer)
Occupation)

¶ 6 November 15, 2005

¶ 7 “Raymond Christopher Dabney”
Raymond Christopher Dabney

“John Fiddick”)
Witness Signature)
John Fiddick)
Witness Name (please print))
800 – 885 W. Georgia Street)
Vancouver, BC)
Address)
Lawyer)
Occupation)

¶ 8 November 15, 2005

“Brenda M. Leong”

¶ 9 Brenda M. Leong
Executive Director