MICHAEL A. PIAZZA, pro hac vice
JOHN B. BULGOZDY, Cal. Bar No. 219897
JOSE F. SANCHEZ, Cal. Bar No. 161362
ANDREW J. DUNBAR, Cal. Bar No. 203265
ELIZABETH P. SMITH, Cal. Bar No. 210732
KAROL L. K. POLLOCK, Cal. Bar No. 77009
ROBERT H. CONRRAD, Cal. Bar No. 199498

Attorneys for Plaintiff
Securities and Exchange Commission
Randall R. Lee, Regional Director
Sandra J. Harris, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036-3648
Telephone: (323) 965-3998
Facsimile: (323) 965-3908

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. PETER C. BOYLAN, Defendant.	Case No. CV **COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS**

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) and 78aa. Defendant has, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of

business alleged in this Complaint.

2. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices and courses of conduct constituting violations of the laws alleged herein occurred within this district.

SUMMARY

3. Beginning in 1999 and continuing through 2002, Gemstar-TV Guide International, Inc. ("Gemstar"), materially overstated its revenues and other financial results and misled investors about the company's financial performance in public filings submitted to the Commission and issued to investors. During that time period, Gemstar fraudulently overstated its revenues by at least $248 million. On July 12, 2000, Gemstar merged with TV Guide, Inc., at which time defendant Peter C. Boylan became Co-President, Co-Chief Operating Officer, a Member of the Office of the Chief Executive, and a member of the Board of Directors of Gemstar.

4. During the relevant period, Gemstar fraudulently overstated its revenues, particularly its revenues in the highly touted Licensing Sector and Interactive Platform ("IP") Sector, by improperly recording and reporting revenue under expired, disputed, or non-existent agreements. Gemstar also recorded and reported amounts from multiple-element transactions as if they were not part of the same transaction, some of which included round-trip transactions (*i.e.*, Gemstar paid money to a third-party and then received it back). Gemstar improperly recorded and reported IP Sector advertising revenue from non-monetary and barter transactions. Finally, Gemstar switched revenues from the Media and Licensing Sectors to the IP Sector. The recording and reporting of these revenues in this manner was not in accordance with generally accepted accounting principles ("GAAP"). In 2003, Gemstar reversed and restated its revenue for the relevant period.

5. Boylan participated in Gemstar's recording and reporting of revenue from multi-element transactions as if the advertising that was purchased was not part of those transactions, and had fair value. Specifically, Boylan was directed to and did negotiate and structure a major settlement agreement and a major asset sale agreement that required, as a condition to closing each transaction, an agreement to purchase advertisements on Gemstar's various advertising platforms. In this manner, Gemstar fraudulently increased its IP Sector results to meet earnings expectations.

6. Gemstar's misstatements of revenue were material. As set forth in greater detail below, Gemstar's overstatements of revenue from the settlement agreement and advertising agreement that Boylan and others negotiated and structured each constituted a substantial percentage of Gemstar's IP Sector revenue for the relevant time period.

7. In Gemstar's public filings and public statements in conference calls and press releases, Boylan and others failed to disclose material facts about the transactions that are the subject of this Complaint. These public statements misrepresented Gemstar's financial performance, failed to disclose material information about that performance, and failed to include material facts to make the statements made not misleading. Specifically, Boylan failed to disclose that Gemstar had entered into transactions that he had negotiated and structured for the purpose of creating IPG advertising revenue to increase reported revenues.

THE DEFENDANT

8. Peter C. Boylan is a resident of Tulsa, Oklahoma. After the July 2000 merger between Gemstar and TV Guide, Boylan became Co-President, Co-Chief Operating Officer, and a Director of Gemstar. Boylan also served as Co-Chairman, Chief Executive Officer, and Co-President of Gemstar's wholly-owned subsidiary, TV Guide, Inc. Boylan resigned from Gemstar effective April 1, 2002, pursuant to a Separation and Consulting Agreement effective March 4, 2002.

9. Boylan reaped financial benefits as a result of his conduct in the form of increased compensation approved by Gemstar's then Chairman and Chief Executive Officer, Henry Yuen, and Gemstar's then Chief Financial Officer, Elsie Leung. Both Yuen and Leung are defendants in *Securities and Exchange Commission v. Yuen, et al.* (Case No. CV 03-4376 MRP (PLAx)), an action currently pending before the United States District Court in the Central District of California.

10. As more specifically alleged below, Boylan was involved in the transactions alleged herein and knew, or was reckless in not knowing, that the recorded and reported revenues of Gemstar were overstated and that the periodic filings and other statements to the public either contained materially false information or failed to disclose material facts.

RELATED ENTITY

11. Gemstar is a Delaware corporation with its principal place of business in Los Angeles, California. Gemstar's securities are registered with the Commission pursuant to Section 12(g) of the Exchange Act. Gemstar's common stock is traded on the Nasdaq Stock Market under the symbol "GMST," and its stock is covered by Wall Street analysts who routinely issue quarterly and annual earnings estimates. In June 2004, Gemstar entered into a settlement with the Commission concerning an action the Commission had brought against Gemstar involving the same transactions, among others, set forth in this Complaint.

GEMSTAR'S FINANCIAL REPORTING

12. Public companies such as Gemstar report the financial results of their operations in periodic reports filed with the Commission. Gemstar reported its financial results in quarterly reports on Form 10-Q, and in annual reports on Form 10-K filed with the Commission.

13. Gemstar licensed for a fee an interactive program guide for television ("IPG") that allowed viewers to navigate through and select television programs.

After the TV Guide merger, Gemstar reported licensing revenue from the IPG as Licensing and Technology Sector ("Licensing Sector") revenue. Gemstar also sold advertising on the IPG, which was a new advertising medium, and Gemstar reported revenue from IPG advertising as Interactive Platform Sector ("IP Sector") revenue. Gemstar reported *TV Guide* magazine revenue as Media and Services Sector ("Media Sector") revenue.

14. Gemstar reported its financial results in financial statements purportedly prepared in accordance with GAAP. In its financial reports beginning with the quarter ended September 30, 2000, in addition to providing investors with financial statements purportedly prepared in accordance with GAAP, Gemstar included "pro forma" financial results, *i.e.*, results of operations not prepared in accordance with GAAP. Beginning in early 2001, Gemstar reported pro forma financial results for its three major business sectors, namely (1) the Licensing Sector, (2) the IP Sector, and (3) the Media Sector. Gemstar also reported "EBITDA," which it used as a measure of cash flow (the term "EBITDA" is an acronym that generally refers to earnings before interest, taxes, depreciation, and amortization; however, Gemstar defined EBITDA as operating income before non-cash stock compensation expense, depreciation, amortization, and non-recurring expenses). During the relevant period, Gemstar's financial results generally showed slight declines in consolidated revenues, but substantial increases in Licensing and IP Sector revenues and in EBITDA.

15. Gemstar improperly recorded and reported revenues from the transactions alleged herein in Forms 10-K for the fiscal years ended December 31, 2000 and December 31, 2001, and in quarterly reports on Forms 10-Q for the quarters ended March 31, 2001, June 30, 2001, September 30, 2001, and March 31, 2002, among others. Those public statements misrepresented Gemstar's financial performance, failed to disclose material information about that performance, and failed to include material facts necessary to make the statements made not

misleading.

16. Although he was not the chief financial officer, and did not manage the financial and accounting departments, Boylan, along with Yuen, Leung, and other former Gemstar executives, was a participant in allowing Gemstar to account for its revenue improperly. While Yuen was involved in structuring transactions, approving the form of transactions, directing others concerning ways to increase IP Sector revenues, and providing information to Leung, and Leung was involved in overseeing Gemstar's accounting, including its recording and reporting the recognition of revenue, Boylan was, among other things, involved in negotiating and structuring transactions in order to create IP Sector revenue.

17. Along with Yuen, Leung, and other former Gemstar executives, Boylan played a role in Gemstar's financial reporting. While Yuen and Leung reviewed, edited, and approved all Commission filings and earnings press releases, Boylan reviewed and edited certain Commission filings and earnings press releases, spoke on Gemstar's behalf on certain analyst conference calls, and signed Gemstar's Form 10-K for the year ended December 31, 2001.

1. <u>The Motorola Settlement and Improperly Recorded IPG Advertising Revenue</u>

18. Motorola, Inc. ("Motorola") is a Delaware corporation with its principal place of business in Schaumburg, Illinois. In 1992, predecessors of Gemstar and Motorola entered into a license and technical assistance agreement that enabled Motorola to use Gemstar's IPG technology. The original 1992 agreement was between General Instrument Corp. and StarSight Telecast, Inc. Motorola merged with General Instrument in January 2000. Gemstar acquired StarSight in May 1997. (For purposes of this Complaint, the Commission refers only to the successor companies Motorola and Gemstar.)

19. In May 1997, Gemstar commenced an arbitration alleging a breach of the 1992 agreement and misappropriation of technology and trade secrets by

Motorola, and in November 1998, Gemstar filed a patent infringement suit against Motorola. In the fall of 1999, Gemstar and Motorola commenced negotiations to settle the arbitration and litigation. Gemstar obtained a favorable arbitration award in March 2000. In May 2000, Motorola filed a court action to set aside the award, and Gemstar counterclaimed in June 2000.

20. During the arbitration and litigation, from the fall of 1999 through approximately August 2000, Gemstar and Motorola negotiated to reach a compromise of the various claims. During that period, the negotiations did not include any provision for Motorola to purchase advertising from Gemstar.

21. After Gemstar merged with TV Guide, Inc., at Yuen's request Boylan became Gemstar's lead negotiator in talks with Motorola. In or after August 2000, Gemstar proposed to Motorola that a portion of the one-time, non-refundable fee the parties were negotiating as part of the settlement could be paid by Motorola in the form of prepaid advertising on Gemstar's platforms. At about that time, Yuen had informed Leung that he wanted to have an advertising component included in any settlement with Motorola. Also at about the same time, Yuen communicated to Boylan that the top officers of Gemstar needed to obtain IPG advertising revenue under Gemstar's "partners program" in order for Gemstar to meet analysts expectations for the IP Sector. The agreement provided that Gemstar should have final discretion over timing and placement of any advertising.

22. In or about October 2000, Motorola and Gemstar reached a settlement of all the issues between the parties. The settlement included an agreement by Motorola that $17.5 million would be prepaid for advertising to be run over four years. The settlement was approved by Gemstar's Board of Directors. While Gemstar had to coordinate the timing and placement of the advertising with Motorola, Gemstar retained final discretion as to the advertising's timing and placement. This allowed Gemstar to determine when the advertising would be aired, and on which of Gemstar's various platforms, such as the IPG or *TV Guide*

magazine. Thus, Gemstar had the ability to air the advertising on particular platforms and in certain quarters to increase revenues, as it desired.

23. In an October 16, 2000 press release and conference call, Gemstar disclosed that it had reached a settlement with Motorola. Boylan reviewed and edited the press release before it was issued. In the press release, Gemstar disclosed that it had entered into a "long-term make-and-sell license agreement for Gemstar-TV Guide's IPG technology and patents to interface with GMST's IPG's." The press release stated: "Specific terms of the agreement are confidential but include payments to Gemstar-TV Guide International, Inc. relating to the settled litigations as well as license fees going forward." The press release failed to disclose that the settlement agreement included $17.5 million in prepaid advertising to be aired at Gemstar's discretion.

24. Boylan, along with Yuen and Leung, represented Gemstar at the October 16, 2000 conference call to announce the Motorola settlement. During the call, Boylan outlined the "primary terms" of the settlement, stating that Motorola had "entered into a global in scope, long term make and sell only license agreement. . . ." Boylan also stated that Motorola "agreed to certain payment obligations under this agreement that approach approximately $200 million." During the conference call neither Boylan nor any other Gemstar representative disclosed that $17.5 million of the settlement had been designated for prepaid advertising to be aired at Gemstar's discretion.

25. Boylan knew that the prepaid advertising was important to Gemstar, as shown by Yuen's insistence that it be included in the settlement. Nevertheless, Boylan and others omitted to disclose the advertising component, which was necessary in order to make the statements made not otherwise misleading.

26. In Gemstar's Form 10-K for the fiscal period ended December 31, 2000, Gemstar disclosed that it had received approximately $190 million from Motorola related to the settled arbitration, litigation, and future license fees.

Gemstar, however, failed to disclose that the settlement included $17.5 million in prepaid advertising, or any advertising component, which information was necessary to make the statements made not otherwise misleading. Boylan and others reviewed and commented on the Form 10-K.

27. Yuen instructed Leung that all of the Motorola advertising was to run on the IPG, and so would be recorded as IP Sector revenue. Leung determined each quarter the dollar amount of the advertising run by Gemstar under the Motorola agreement, and her staff then determined the number of impressions to run on the IPG platform during the period. At the end of each quarter, Leung and her staff determined the amount to invoice Motorola for IPG advertising.

28. Beginning with the quarter ended March 31, 2001, and ending four quarters later with the quarter ended March 31, 2002, Gemstar recorded and reported all $17.5 million of the four-year Motorola advertising commitment as IP Sector advertising revenue. The revenue was material to Gemstar's financial reports, as shown in the chart below:

Period	Amount	% Sector Revenue
Q 3/31/01	2,930,000	19.9
Q 6/30/01	4,500,000	21.9
Q 9/30/01	5,000,000	17.1
Q 12/31/01	2,000,000	5.4
FYE 12/31/01	14,430,000	14.2
Q 3/31/02	3,070,000	13.9

29. Gemstar's accounting for the Motorola IPG advertising did not comport with GAAP because the fair value of the IPG advertising provided by Gemstar was not realizable, verifiable, or objectively determinable. Under GAAP, for "multiple element" transactions (*i.e.*, those involving the delivery or performance of multiple products or services), revenue is not allocated among the elements until sufficient objective evidence of the fair value of an individual

element exists, regardless of any separate prices stated in the applicable agreement, because of the possibility that prices of different elements can be altered in negotiations without affecting the aggregate payment. Accordingly, this revenue was not properly recorded and reported as IP Sector revenue in Gemstar's periodic filings.

30. Boylan knew, or was reckless in not knowing, that certain of Gemstar's public statements, including periodic filings, press releases, and conference calls, contained material misstatements and omitted to state material facts concerning the recording and reporting of revenue from Motorola.

31. Gemstar's IP Sector revenues were materially overstated because of the improper recognition of the Motorola revenue. In March 2003, Gemstar restated its financial statements to recognize the $17.5 million as licensing revenue over the ten-year term of the agreement, and restated the IP Sector revenues.

2. <u>Sale of WGN and Improperly Recorded IPG Advertising Revenue</u>

32. The Tribune Company ("Tribune") is a Delaware corporation based in Chicago, Illinois, that operates various media businesses, including the WGN TV station. Under a 1990 agreement, Tribune supplied Gemstar with a WGN signal for nationwide distribution.

33. In or about December 1999, before consummation of the merger between TV Guide and Gemstar, Tribune informed TV Guide that it wanted to end the relationship by buying TV Guide's WGN distribution business. Boylan represented TV Guide in its negotiations with Tribune. After Gemstar and TV Guide merged, Boylan acted as Gemstar's lead negotiator in its talks with Tribune. Boylan kept Yuen, Leung and others fully informed of the progress of the negotiations. In or about August 2000, after the merger with TV Guide, Gemstar sent a proposal to Tribune to sell the WGN distribution business for about $300 million. Up until this point, the parties had not included an advertising element as part of their negotiations. In October 2000, Tribune rejected this valuation.

34. On or about November 21, 2000, Yuen directed Boylan to send a proposal to Tribune for the sale of the WGN rights for $224 million, of which 50% was to be paid by a five-year, $112 million advertising purchase by Tribune that would be controlled by Gemstar in its sole discretion. Tribune responded with a counter-proposal that included an advertising purchase, which was presented to Gemstar's Board of Directors, and which then approved the transaction. In December 2000, Tribune terminated the existing distribution agreement.

35. In early January 2001, Gemstar and Tribune reached an agreement in principle for the tax-free sale and purchase of the WGN distribution business that allowed Tribune to pay for the business through the purchase of stock and through the purchase of advertising on Gemstar's platforms. After reaching this agreement in principle, Tribune sent a confirming letter. As a result of tax and other considerations, Boylan, on behalf of Gemstar, requested that Tribune create two term sheets, one for the stock purchase and one for the advertising purchase, in order to eliminate all "linkage" between the advertising deal and the sale of the WGN distribution rights with the understanding that the advertising deal would "never be executed without the other deal." Boylan, on behalf of Gemstar, subsequently sent Tribune an email informing Tribune that Gemstar had "eliminated all prior email references to a single document . . . so we have a clean trail on our records for tax and audit purposes with the two separate transactions."

36. During the course of negotiations, the parties included a provision in the agreement prohibiting both parties from making public announcements relating to the transaction, with limited exceptions. The final agreement was structured so that neither party could disclose the existence of the advertising agreement, except to comply with accounting and SEC disclosure obligations. At one point during the negotiations, Boylan informed Tribune that the non-disclosure provision was a "deal breaker" and stated that Gemstar would not enter into a deal at the agreed-upon price if Tribune insisted on announcing the specific terms of the transaction.

37. In or about April 2001, Gemstar and Tribune finalized a transaction to end Gemstar's distribution of the WGN signal. The final transaction included two agreements: one in which Tribune agreed to pay $106 million in cash to Gemstar for the stock of the WGN distribution business, and a second in which Tribune committed to purchase $100 million of advertising from Gemstar over a six year period.

38. The final advertising agreement provided that Tribune would pay Gemstar $100 million over six years, whether or not Tribune used the advertising. It further provided that Gemstar had sole discretion over the timing and placement of the advertising, provided that Gemstar could not run more than 50% of any year's advertising in any one quarter, and at least 15% of the advertising had to be run in *TV Guide* magazine. The final stock agreement provided that Tribune could not disclose the existence of the advertising commitment except as required to comply with accounting and SEC disclosure obligations.

39. On May 14, 2001, Gemstar issued a press release announcing its financial results for the quarter ended March 31, 2001. Boylan, along with Yuen and Leung, reviewed and edited the press release. In the press release, Gemstar disclosed, among other things, its transaction with Tribune: "The Company entered into an agreement to transfer its interest in WGN to Tribune Company effective April 2001 in a taxable transaction. Specific terms of the transaction are not disclosed due to confidentiality, however the transaction is not material to either company." That disclosure was misleading, however, because it failed to include information that was necessary in order to make the statements made not misleading, namely, it failed to disclose the $100 million (over six years) advertising agreement.

40. On May 14, 2001, Gemstar convened an analyst conference call to announce and discuss financial results for the quarter ended March 31, 2001. Boylan, Yuen, and Leung, among others, participated on Gemstar's behalf on the

conference call. During the conference call, Boylan disclosed the Tribune transaction: "Finally, I wanted to note that we have recently completed the sale of Superstation WGN to the station's owner, Tribune Company. . . . Upon completion of the Gemstar TV Guide merger, this business really became non-strategic to our new company in [sic] terms of the transaction confidential per the agreement and not material to either company in any case." During the same call, Yuen disclosed only that the business was sold for "cash and other consideration." Boylan's disclosure was misleading, however, because it failed to include information that was necessary in order to make the statements made not misleading, namely, it failed to disclose the $100 million advertising agreement and its contribution to Gemstar's IP Sector financial results.

41. Beginning with the quarter ended June 30, 2001, Gemstar recorded and reported revenue from the Tribune transaction that was a material amount of Gemstar's IP Sector revenue, as shown in the chart below:

Period	Amount	% Sector Revenue
Q 6/30/01	4,000,000	19.5
Q 9/30/01	5,000,000	17.1
Q 12/31/01	3,000,000	8.1
FYE 12/31/01	12,000,000	11.9
Q 3/31/02	5,000,000	22.7
Q 6/30/02	4,500,000	20
Q 9/30/02	4,500,000	20

42. Gemstar improperly recorded and reported this revenue under GAAP, because the fair value of the IPG advertising provided by Gemstar was not realizable, verifiable, or objectively determinable. Because this was a "multiple element" transaction, revenue could not be allocated among the elements until sufficient evidence of the fair value of an individual element existed. Most of the IPG advertising revenue associated with the Tribune transaction should have been

allocated to the sale of the WGN distribution business and to interest income over the six-year contract term. Accordingly, Gemstar's periodic filings improperly recorded and reported this revenue.

43. Boylan knew, or was reckless in not knowing, that Gemstar's public statements, including periodic filings and press releases, contained material misstatements and omitted to state material facts concerning the recording and reporting of revenue from Tribune necessary to make the statements made not misleading.

44. Boylan failed to disclose that, in fact, the Tribune advertising purchase was related directly to the sale of the WGN distribution rights, that Gemstar had complete discretion over running the advertising, that Gemstar ran the Tribune advertising to meet its quarterly goals, and that the advertising was part of a multiple-element transaction. Boylan also failed to disclose that the advertising was not sold at fair value. Boylan knew, or was reckless in not knowing, that Gemstar's public statements, including periodic filings and press releases, failed to include material information and were otherwise false.

45. Gemstar subsequently reversed the recognition of $26 million in IPG advertising revenue and allocated it to the sale of the WGN distribution business and interest income.

FIRST CLAIM FOR RELIEF

FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES

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

46. The Commission realleges and incorporates by reference ¶¶ 1 through 45 above.

47. Boylan, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of

means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

a. employed devices, schemes, or artifices to defraud;

b. made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

48. By engaging in the conduct described above, Boylan violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

<u>SECOND CLAIM FOR RELIEF</u>

VIOLATIONS OF COMMISSION PERIODIC REPORTING REQUIREMENTS

Aiding and Abetting Violations of Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder

49. The Commission realleges and incorporates by reference ¶¶ 1 through 45 above.

50. Gemstar violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder, by filing with the Commission materially false and misleading annual reports on Form 10-K for the fiscal years ended December 31, 2000, and December 31, 2001.

51. Boylan knowingly provided substantial assistance to Gemstar's violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

52. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Boylan aided and abetted Gemstar's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20 and 13a-1 thereunder, 17 C.F.R. §§ 240.12b-20 and 240.13a-1.

<u>THIRD CLAIM FOR RELIEF</u>

RECORD-KEEPING VIOLATIONS

Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act and Violations of Rule 13b2-1 thereunder

53. The Commission realleges and incorporates by reference ¶¶ 1 through 45 above.

54. Gemstar violated Section 13(b)(2)(A) of the Exchange Act by failing to make or keep books, records and accounts that in reasonable detail accurately and fairly reflected its transactions and disposition of its assets.

55. Boylan knowingly provided substantial assistance to Gemstar's violation of Section 13(b)(2)(A) of the Exchange Act.

56. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Boylan aided and abetted Gemstar's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

57. By engaging in the conduct described above, Boylan violated Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified Gemstar's books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act. Unless restrained and enjoined, Boylan will continue to violate Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

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FOURTH CLAIM FOR RELIEF

INTERNAL CONTROL VIOLATIONS

Violations of Section 13(b)(5) of the Exchange Act

58. The Commission realleges and incorporates by reference ¶¶ 1 through 45 above.

59. By engaging in the conduct described above, Boylan violated Section 13(b)(5) of the Exchange Act by circumventing or failing to implement a system of internal accounting controls or by knowingly falsifying any book, record or account described in Section 13(b)(2) of the Exchange Act. Unless restrained and enjoined, Boylan will continue to violate Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5).

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Boylan committed the violations alleged and charged herein.

II.

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Boylan and his agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from violating Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, and 13b2-1 thereunder.

III.

Order Boylan to disgorge all ill-gotten gains from his illegal conduct, together with prejudgment interest thereon.

IV.

Order Boylan to pay a civil penalty under Section 21(d)(3) of the Exchange

Act, 15 U.S.C. § 78u(d)(3).

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: August __, 2004

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Michael A. Piazza
Attorney for Plaintiff
Securities and Exchange Commission