

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BARRIERMED, INC.,
BARRIERMED GLOVE CO. and
VICTOR J. RAGUCCI,

Defendants.

6-09-CV-102-ORC-28 KRS

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges:

I. INTRODUCTION

1. The Commission brings this action against BarrierMed, Inc., its subsidiary BarrierMed Glove Co. ("BM Glove") (collectively, "the Companies"), and Victor J. Ragucci, the Companies' founder, President and CEO, for violating the antifraud and registration provisions of the federal securities laws in offering and selling BarrierMed and BM Glove securities.

2. From at least 2003 through February 2007 ("the Relevant Period"), Ragucci and the Companies raised more than \$11 million from hundreds of investors nationwide by offering and selling unregistered securities through a series of private offerings.

3. The Companies claimed to develop and sell water-based, powder- and latex-free gloves for medical use that offered "a fit and feel comparable to latex," while avoiding latex's associated allergic reactions.

4. While offering and selling the Companies' securities during the Relevant Period, Ragucci, and, under his direction, the Companies, knowingly and willfully misled investors

about the Companies' operating results, revenues, and future profits, the nature and impact of certain contracts, the viability of the Companies' products and production capabilities, the Companies' ability to conduct an initial public offering, Ragucci's background and credentials, and the amount of Ragucci's salary.

5. The Defendants fraudulently depicted the Companies as having a growing and lucrative business, when they actually had serious financial and operational problems and could not come close to achieving the projections and results the Defendants dangled in front of investors.

6. Through their conduct, the Defendants each violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a); and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. Unless restrained and enjoined, Ragucci and the Companies will likely engage in future violations of the federal securities laws.

II. DEFENDANTS

7. BarrierMed is a Florida corporation formed in February 1993, with its principal office in Lake Mary, Florida. It was administratively dissolved for failing to file annual reports on September 26, 2008. It is now controlled by a group of shareholders.

8. BM Glove is a Florida corporation formed in February 1998, with its principal office in Lake Mary, Florida. It was administratively dissolved for failing to file annual reports on September 26, 2008. It is now controlled by a group of shareholders.

9. Ragucci, 62, resides in Lake Mary, Florida. Ragucci served as BarrierMed and BM Glove's CEO and president, and directed the Companies' activities in offering and selling their securities until his resignation on February 15, 2007.

III. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a); and Sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

11. The Court has personal jurisdiction over the Defendants and venue is proper in the Middle District of Florida because many of the Defendants' acts and transactions constituting violations of the Securities Act and the Exchange Act occurred in the Middle District of Florida.

12. In addition, Ragucci resides in the Middle District of Florida, and BarrierMed and BM Glove had their main offices in the Middle District of Florida during the Relevant Period.

13. Ragucci and the Companies, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

IV. THE DEFENDANTS' FRAUDULENT OFFERING

A. Overview of the Fraudulent Offering

14. BarrierMed and BM Glove purported to be in the business of developing latex-free gloves, and marketing and selling them for medical use.

15. The Companies were under-capitalized and constantly raising money, through at least five related offerings employing offering materials that included private placement memoranda ("PPMs") dated July 21, 2003, August 22, 2003, December 1, 2003, December 1, 2004, and September 1, 2006. These offerings were part of a single plan of financing their business operations, with the Companies comingling proceeds from investors. The Companies'

offerings frequently overlapped in time (with never more than six months between any two offerings), and usually involved investors paying money to receive the Companies' securities.

16. Between 2003 and February 2007, the Defendants raised more than \$11 million from hundreds of investors nationwide, including more than 35 non-accredited investors. Ragucci approved and directed the creation and distribution of all the Companies' offering materials, including the five PPMs, correspondence, financial statements, and pro forma financial statements.

17. The Companies' PPMs were substantially similar. Ragucci periodically updated each entity's PPM, keeping most of the information from prior versions. Ragucci usually updated the PPMs for both Companies at the same time. Ragucci and the Companies mailed out PPMs to investors

18. The offerings included the sale of common stock in both Companies, the sale of 12% convertible preferred stock in BM Glove, and the issuance of loans or promissory notes that included a purchase or gift of common stock as part of their terms. For example, for a \$50,000 loan one investor provided BarrierMed, Ragucci promised 12% interest for three years and 10,000 shares of BarrierMed stock at \$5 a share. Additionally, at the end of a loan period, the Defendants commonly asked investors to convert their right to receive their principal back into additional common shares of BarrierMed stock.

19. During the Relevant Period, Ragucci and the Companies solicited investors using the mail and the telephone. To control the information investors received, Ragucci prohibited the Companies' officers and other employees from speaking to them. For example, one victim Ragucci personally and repeatedly solicited was a retired doctor in her 80s who ultimately

invested more than \$1 million in the Companies' offerings based on Ragucci's misrepresentations and omissions.

B. Misrepresentations and Omissions

20. In connection with the Companies' unregistered securities offerings during the Relevant Period, Ragucci and the Companies made numerous material misrepresentations and omissions regarding: the Companies' operating results and future profits; the nature and impact of certain sales-related contracts, product launches and production capabilities; preparations to conduct an initial public offering; and Ragucci's credentials and salary.

1. Misrepresentations Regarding Actual and Projected Sales and Future Profits

21. Many of the Defendants' misstatements and omissions concerned the Companies' actual or projected sales.

22. In a December 1, 2004 BarrierMed PPM Ragucci and the Companies mailed to at least one investor, Ragucci misrepresented the risk of investing in BarrierMed:

The Company's management has minimized the risk factors as a result of growing sales and the clinical acceptance of **BarrierPlus Gold** synthetic surgical glove[s] by the medical industry.
[emphasis in original]

23. In reality, through the date of this PPM the Companies' sales actually were declining.

24. Ragucci also misrepresented BM Glove's monthly sales figures. For example, in an e-mail Ragucci sent to a large shareholder in both Companies around October 31, 2005, Ragucci stated "sales are climbing (Sales [sic] of \$103,000 last month and \$55,000 this month) . . ."

25. In truth, as Ragucci knew or was extremely reckless in not knowing, BM Glove's monthly sales for September and October 2005 were \$28,572 and \$16,612, respectively.

26. In this same e-mail message sent around October 31, 2005, Ragucci also declared that “once our sales force closes all the pending hospital accounts, then we will be looking at annual sales to be around \$1,500,000.”

27. There was no reasonable basis for Ragucci’s claim that he anticipated annual sales close to \$1,500,000 for 2005 or for any year in the near future. Based on sales figures for 2004 and 2005, Ragucci knew or was extremely reckless in not knowing that this was a groundless projection. BM Glove had approximately \$174,000 in sales for 2004, and only approximately \$143,000 in sales through October 2005. Additionally, as explained below in Section IV.B.3, the Defendants misrepresented certain marketing contracts as sales agreements, when they knew or were reckless in not knowing that those types of contracts did not guarantee any actual sales.

28. The Defendants, through offering materials Ragucci reviewed and approved, also repeatedly made baseless projections regarding future profits. BarrierMed PPMs mailed to investors from 2003 through 2007 stated BarrierMed would earn a net profit of \$15 million for each year from 2003 through 2007.

29. In reality, as Ragucci and the Companies knew, or were extremely reckless in not knowing, for 2003-2005, BarrierMed and BM Glove each continuously operated at a net loss of more than \$1 million, and BM Glove’s cumulative net losses doubled from approximately \$4 million to \$8 million. Although BarrierMed never came close to meeting Ragucci’s net profit projections, Ragucci used them in the Companies’ January 21, 2003, August 22, 2003, December 1, 2003, December 1, 2004, and September 1, 2006 PPMs.

2. Use of Fraudulent Pro Forma Financial Statement

30. In 2005, Ragucci and the Companies used a groundless pro forma financial statement to raise more than \$3 million from at least one investor. Ragucci mailed the investor the pro forma financial statement, created at his direction, which comprised balance sheets, cash flow projections, income statements and “assumptions” that projected figures through 2008. This pro forma stated BM Glove had realized \$1.2 million in gross revenues for 2004, and would realize \$20 million in gross revenues for 2005, \$52 million in 2006, and \$81 million in 2007.

31. As Ragucci and BM Glove knew or were extremely reckless in not knowing, the pro forma financial statement’s claim of \$1.2 million in revenues for BM Glove in 2004 was utterly false: the company generated only \$174,585 in sales that year. Ragucci and BM Glove had no reasonable basis for the false revenue assumptions made in the pro forma financial statement. The pro forma financials failed to disclose the Companies’ lack of a manufacturing capacity and supply of raw materials necessary to fulfill those projections. At that time, the Companies’ manufacturing formula was not working, so they could not produce commercially viable gloves.

3. Misrepresentations and Omissions Regarding Sales Contracts

32. The Defendants also misled investors regarding the Companies’ group purchasing organization (“GPO”) contracts. A GPO is an entity that, through the collective buying power of its members, obtains vendor discounts. Most healthcare GPOs are funded by fees and rebates paid by vendors such as the Companies. From 2003 through 2006, Ragucci touted these contracts to investors in correspondence he sent to them such as one he mailed on July 18, 2003 claiming:

It’s an exciting time to be a *BarrierMed Inc. / BarrierMed Glove Co.* shareholder. We did it . . . again! It brings me pleasure to

announce: *** OUR SECOND NATIONAL GLOVE
CONTRACT *** [emphasis in original]

At the time, Ragucci concurrently sent correspondence to investors portraying these GPO contracts as actual sales contracts. In this same correspondence, Ragucci declared the Companies' first GPO contract was "in force," and they were experiencing growing sales and expecting a positive cash flow in the near future.

33. In reality, however, these GPO contracts resulted in minimal sales and were merely marketing agreements allowing the Companies to promote their products to certain hospitals and medical institutions. The GPO contracts did not obligate GPO members to buy gloves, and instead typically required the Companies to pay substantial fees that often exceeded the few sales the Companies obtained.

34. The Defendants failed to disclose this material information to investors, and instead continued to misrepresent the GPO contracts as generating immediate, significant, and growing sales.

4. Misrepresentations and Omissions Regarding Product Launches and Production Capabilities

35. The Defendants additionally made material misstatements and omissions to investors concerning the Companies' ability to launch and sell their purportedly specially-formulated gloves in 2003 and 2004. For example, on February 6, 2004, Ragucci mailed an announcement to shareholders of both Companies declaring:

Your emerging growth company is preparing to launch the "first to market" *BarrierPlus* Gold Orthopedic surgical glove and two examination glove lines *Synthalon* PC & PI all within the next forty-five days.

36. These claims were utterly false. As Ragucci and the Companies knew or were reckless in not knowing, in 2003 and 2004 the Companies were using a defective formula to

produce gloves that tore, and the Companies had not even submitted the required applications to the U.S. Food and Drug Administration (“FDA”) for marketing the gloves. The Companies did not even submit the necessary applications until October 2005 for two models of gloves and until March 2006 for a third. The Companies therefore could not have begun marketing or selling gloves in the time frame described in Ragucci’s February 6, 2004 announcement.

37. In PPMs for the Companies dated September 1, 2006, which the Defendants mailed to investors, the Defendants also falsely claimed BarrierMed’s Thailand production facility was successfully producing gloves on a continuous basis.

38. In reality, as Ragucci and the Companies knew or were reckless in not knowing, manufacturing at the Thailand factory had ceased because the Companies were unable to pay employees, and Thai labor officials had shut down the plant in August 2006. Ragucci and the Companies failed to disclose this to investors, even as they continued raising money through early 2007.

5. Baseless Claims that the Companies were Going Public in an IPO

39. Starting in 2003, Ragucci and the Companies also falsely claimed in letters mailed to investors the Companies’ were preparing to conduct an IPO. For example, on January 2, 2004, Ragucci sent a letter to shareholders urgently stating: **“I’m asking you to share this letter with a friend or friends and take advantage of what may be the last opportunity to invest before our Glove Company goes public!”** (Emphasis in original).

40. Ten days later, Ragucci sent another letter to shareholders announcing:

BarrierMed has hired a prominent venture partner investment group from Wall Street to represent your company investment to a select group of investment fund managers. These fund managers are willing to assist me in preparing BarrierMed Glove Co. for public offering within eighteen months.

More than a year later, on April 6, 2005, Ragucci sent yet another letter to at least one large shareholder noting “it is my ambition to position BarrierMed Glove Co. for [sic] IPO within a twelve month period.”

41. Contrary to Ragucci’s claims, neither BarrierMed nor BM Glove was ever prepared to conduct an IPO. The Companies took no steps to draft and file the required IPO registration statement, and neither entity ever developed any audited financial statements, much less the two years of statements required for an IPO at that time. The Defendants never disclosed this to investors.

42. Ragucci and the Companies belatedly attempted to get audited financials in December 2005, but Ragucci abandoned the audit when the auditors explained they would have to charge \$40,000 extra, due to the Companies’ dismal recordkeeping and the need to trace the flow of funds.

6. Misrepresentations about Ragucci’s Credentials

43. In PPMs from at least July 2003 through 2007, Ragucci and the Companies also misrepresented Ragucci’s educational background, claiming Ragucci obtained a Bachelor’s degree in business administration from Northeastern University and a Master’s degree in business administration from Bentley College.

44. As Ragucci and the Companies knew or were extremely reckless in not knowing, Ragucci obtained only an Associate’s degree from Northeastern University and never obtained a Master’s degree in business administration.

7. Misrepresentations about Ragucci’s Salary

45. The Defendants made material misrepresentations and omissions concerning Ragucci’s salary. In the Companies’ PPMs for 2003, 2004 and 2006, Ragucci and the

Companies stated Ragucci's salary was \$70,000, \$150,000 and \$70,000, for each year respectively.

46. As Ragucci and the Companies knew or were reckless in not knowing, Ragucci's employment agreement set his compensation at \$275,000 in 2003 and \$350,000 in 2004, with his actual pay for those years at least \$212,000 and \$238,000, respectively. Additionally, the Defendants never disclosed to investors that the Companies paid Ragucci more than \$220,000 in 2006.

47. Ragucci and the Companies never disclosed these amounts to investors. As a result, investors never learned that, despite the Companies' precarious financial positions, they were paying Ragucci one-and-a-half to almost three times the modest salaries the Defendants disclosed to investors.

V. CLAIMS FOR RELIEF

COUNT I

SALE OF UNREGISTERED SECURITIES IN VIOLATION OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT

48. The Commission repeats and realleges paragraphs 1-19, 22, 24, 28, 30, 32, 35, 37, 39-40, 43, and 45 of this Complaint.

49. From at least 2003 through February 2007, the Defendants directly and indirectly:

- a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;
- (b) carried securities or caused such securities to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or
- (c) made use of the means or instruments of transportation or

communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise.

50. No valid registration statement was filed or in effect with the Commission pursuant to the Securities Act, nor did any exemption from the registration requirement exist with respect to the securities and transactions described in this Complaint.

51. By reason of the foregoing, the Defendants directly and indirectly violated, and unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

COUNT II

FRAUD IN VIOLATION OF SECTION 17(a)(1) OF THE SECURITIES ACT

52. The Commission repeats and realleges paragraphs 1 through 47 of this Complaint.

53. From at least 2003 through February 2007, the Defendants directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this Complaint, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

54. By reason of the foregoing, the Defendants directly and indirectly, violated and unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT III

FRAUD IN VIOLATION OF SECTIONS 17(A)(2) AND 17(A)(3) OF THE SECURITIES ACT

55. The Commission repeats and realleges paragraphs 1 through 47 of this Complaint.

56. From at least 2003 through February 2007, the Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities: (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (b) engaged in transactions, practices and courses of business which operated and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

57. By reason of the foregoing, the Defendants, directly and indirectly, violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3).

COUNT IV

FRAUD IN VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER

58. The Commission repeats and realleges paragraphs 1 through 47 of this Complaint.

59. From at least 2003 through February 2007, the Defendants directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities as described in this Complaint, knowingly, willfully or recklessly; 1) employed devices, schemes or artifices to defraud; 2) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or 3) engaged in acts, practices and courses of business which operated as a fraud upon the purchasers of such securities and will operate as a fraud upon the purchasers of such securities.

60. By reasons of the foregoing, the Defendants directly or indirectly violated, and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine and find that the Defendants committed the violations of the federal securities laws alleged herein.

II.

Permanent Injunction

Issue a Permanent Injunction restraining and enjoining the Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, and Section 10(b) and Rule 10b-5 of the Exchange Act, as indicated above.

III.

Disgorgement

Issue an Order directing the Defendants to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

IV.

Penalties

Issue an Order directing Defendant Ragucci to pay a civil money penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

V.

Officer & Director Bar

Issue an Order pursuant to Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), barring Defendant Ragucci from serving as an officer or director of a public company.

VI.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

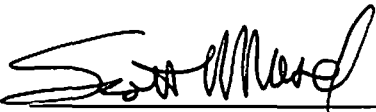
VII.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application of motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

January 14, 2009

By:  _____

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