



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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## ONTARIO SECURITIES COMMISSION

Applicant

– and –

**SPONSORSONE BRANDS INC., GARY BARTHOLOMEW, MYLES BARTHOLOMEW,  
WESTCAN ENERGY LTD., and JOHN CAMERON CUNNINGHAM**

Respondents

### APPLICATION FOR ENFORCEMENT PROCEEDING

(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

#### A. OVERVIEW

1. This matter involves a reporting issuer and its directing minds who committed securities fraud. In 2020 and 2021, SponsorsOne Brands Inc. (**SPO**) and its directing minds, Gary and Myles Bartholomew, issued approximately 1.2 billion SPO treasury shares to five purported marketing consultants, representing that these issuances were compensation for marketing consultancy work ostensibly in furtherance of the company's business of building its brands. However, little to no substantive marketing consultancy work was performed. Instead, the consultants sold the shares on the open market and then funneled approximately CAD \$24 million to or for the benefit of SPO and the Bartholomews.<sup>1</sup>

2. In a series of continuous disclosure filings between 2020 and 2022, SPO and the Bartholomews made misleading statements and concealed the truth about these stock issuances to the investing public. These disclosures represented that SPO was making large investments in

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<sup>1</sup> The net SPO share proceeds, as well as the funnelled amounts, include a combination of CAD and USD as set out in paragraphs 17 and 18 below.

marketing consulting services to further its new brands when, in fact, it was not.

3. This scheme also involved an illegal distribution of shares to the public. While SPO claimed to rely on the consultant exemption to the prospectus requirement, in reality, the purported consultants operated as *de facto* underwriters who were used to illegally distribute shares to the public. Each of SPO, Gary and Myles Bartholomew and one of the purported consultants, WestCan Energy Ltd., along with its directing mind John Cameron Cunningham, engaged in illegal distributions of SPO shares.

4. Finally, during the Commission’s investigation, Gary Bartholomew made misleading statements to the Commission about his knowledge of the activities of an individual named E.I., who was a key intermediary in the scheme.

## **B. GROUNDS**

The Ontario Securities Commission (**OSC or Commission**) makes the following allegations of fact:

5. Between at least April 2019, and August 29, 2022 (the **Material Time**),<sup>2</sup> SPO, and its principals engaged in breaches of the Ontario *Securities Act*, RSO 1990, c S.5 (the **Act**) as described below.

### **1. SPO and its Directing Minds**

6. SPO was incorporated in Ontario and was later continued under the laws of the province of British Columbia. Its head office is in Uxbridge, Ontario. SPO was a reporting issuer in the provinces of Ontario, British Columbia, and Alberta. During the Material Time, SPO’s shares traded on the Canadian Stock Exchange (**CSE**) under the symbol “SPO,” on the US OTC markets under the symbol “SPONF”, and on the Frankfurt Stock Exchange under the symbol “5SO.” Since May 5, 2023, SPO’s shares on the CSE have been subject to a cease trade order and a regulatory halt.

7. During the Material Time, Gary Bartholomew (**GB**) was a director, the Executive Chairman, and a directing mind of SPO. He is an Ontario resident and is Myles Bartholomew’s

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<sup>2</sup> All activities described occurred during the Material Time unless otherwise indicated.

father.

8. During the Material Time, Myles Bartholomew (**MB**) was the President, Chief Executive Officer, director, and a directing mind of SPO. He is an Ontario resident and is GB's son.

## **2. SPO's Business Operations and Its Financial Situation**

9. Prior to the spring of 2020, SPO represented that it was in the business of building the brands of external parties. On March 27, 2020, SPO announced that it had decided to "shift" its business from building "external brands," to "creating and building brands in-house with a focus on the Beverage and CBD market."

10. Throughout 2020 and 2021, SPO was in perpetual need of operating capital. SPO had no revenue in 2020 and reported only CAD 256,017 in revenue in 2021.

11. SPO's financial struggles continued following its acquisition of a U.S. based alcohol beverage company, Premium Beverage Consortium LLP (**PBC**), in November 2020.

## **3. The Fraud Upon SPO's Shareholders**

12. SPO, GB, and MB (collectively the **SPO Respondents**) engaged in acts of deceit, falsehood, or other fraudulent means through the issuance of SPO treasury shares to purported "marketing consultants," as well as the reporting of purported "marketing consultancy expenses" in SPO's public filings.

### ***The Consulting Agreement Scheme***

13. Between March 18, 2020 and January 26, 2021, SPO entered into purported consulting agreements (the **Agreements**) with five entities (the **Consultants**).<sup>3</sup> Under these Agreements, the Consultants were purportedly to provide services in relation to SPO's new "internal brand-building" direction. The Consultants were incorporated in one of Alberta, British Columbia, Switzerland, or the Cayman Islands.

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<sup>3</sup> The Consultants included the following entities: B.M.C.; K.G.L.; I.S.; L.A.G.; as well as WestCan Energy Ltd. (**WestCan**).

14. The Agreements were nearly identical to each other in substance. They stated that the services to be performed by the Consultants included assisting SPO in securing new funding and providing strategic marketing services including influencer marketing, social media strategies, content creation and engagement.

15. Each of the Agreements contemplated that SPO could satisfy the Consultants' invoices in cash or free-trading common shares, or a combination of cash and shares.

### ***Consultants used as Vehicles to Raise Capital***

16. The Consultants performed little to no actual marketing consultancy work. Instead, the Consultants were used simply as vehicles by SPO to distribute the SPO Shares to the investing public then funnel the proceeds of those sales to or for the benefit of SPO, GB and MB.

17. Between March 26, 2020 and December 15, 2021, SPO issued over 1.2 billion treasury common shares to the Consultants (the **SPO Shares**). Each time SPO Shares were issued to a Consultant, the Consultant would sell them on the secondary market. In many cases these sales began within days of receiving the SPO Shares. In total, between April 3, 2020 and February 24, 2022, the Consultants generated net proceeds of approximately CAD \$21 million and USD \$7 million through the sale of the SPO Shares (the **SPO Share Proceeds**).<sup>4</sup>

18. The Consultants then funneled the bulk of the SPO Share Proceeds to or for the benefit of SPO and the Bartholomews as follows:

- i. at least USD \$14 million and CAD \$260,000 of SPO Share Proceeds was used to fund stock promotion campaigns for SPO. The stock promotion campaigns were managed by individual, E.I., who lived in the United States. At the direction of GB, three of the Consultants (B.M.C., K.G.L., and I.S.) transferred SPO Share Proceeds to E.I., E.I.'s company, and other third parties to fund stock promotion activities. These activities predominantly involved stock-related subscription e-mail newsletter blasts touting SPO and its purported business operations; and

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<sup>4</sup> Portions of the approximately CAD 21 million in SPO Share Proceeds were converted to USD in USD accounts before flowing onward as described in paragraph 18 below.

- ii. approximately CAD 3.5 million and USD 2 million of SPO Share Proceeds was directed to or for the benefit of SPO, GB or MB in the following ways:
- a. to third parties to pay SPO or PBC expenses and/or expenses of GB's other companies;
  - b. to GB's other companies;
  - c. to or for the benefit of MB;
  - d. to SPO, as cash advances/loans, and/or in exchange for promissory notes; and
  - e. to SPO as private placement investments by WestCan, L.A.G.'s principal A.A., and two nominee investors who were used as part of the scheme.

19. The flow of SPO Share Proceeds to or for the benefit of SPO allowed GB and MB to receive compensation, in the form of consulting fees, from SPO totalling CAD \$380,613 for GB and CAD \$216,250 for MB between 2020 and 2021, at a time when SPO had little to no revenue.

***Misleading Disclosure in SPO's 2020 and 2021 interim and final MD&A filings***

20. SPO reported "marketing consultancy" expenses of CAD \$6,005,690 in 2020 and CAD \$19,424,345 in 2021 in its Consolidated Financial Statements for the years ended December 31, 2020 and 2019 and its Consolidated Financial Statements for the years ended December 31, 2021 and 2020. These expenses were comprised almost entirely of the value SPO recorded for the SPO Shares issued to the Consultants, who performed little to no substantive marketing consultancy work.

21. In seven different Management Discussion & Analysis (**MD&A**) filings between August 19, 2020 and April 30, 2021, as well as a Revised Management Discussion & Analysis for the year ended December 31, 2021 and 2020 (**Revised MD&A**), SPO represented that its growing marketing expenditures were related to branding initiatives, brand development, and/or product launches.

22. SPO misrepresented these so-called "marketing consultancy" expenses by failing to disclose that these expenses actually arose from a scheme to use the Consultants as vehicles to flow SPO Share Proceeds back to or for the benefit of SPO, GB, and MB, and to fund SPO stock

promotion campaigns.

23. In respect of each of these eight MD&A filings, MB, as SPO's CEO, signed certifications pursuant to NI 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109)* and Form 52-109 in which he falsely certified for each of the eight MD&A filings referred to above (the **MD&A Certifications**), that based on his knowledge, having exercised reasonable diligence, the MD&A did not contain any untrue statement of a material fact, or omit to state a material fact required to be stated or that was necessary to make the statement not misleading in light of the circumstances under which it was made.

***The SPO Respondents Compounded the Deception in SPO's Revised MD&A***

24. On June 23, 2022, the Corporate Finance Branch of the OSC (CF) notified SPO that it had been selected for a full review of its continuous disclosure record pursuant to s. 20.1 of the Act. As part of that review, CF identified material non-compliances with SPO's continuous disclosure obligations, including in relation to the disclosure of SPO's marketing consultancy expenses in its 2021 Year End MD&A. As a result, SPO was required to provide a breakdown of these marketing consultancy expenses and refile its 2021 Year End MD&A.

25. On August 29, 2022, SPO filed its Revised MD&A. The Revised MD&A broke down the approximately CAD \$19.4 million of marketing consultancy expenses purportedly incurred by SPO in 2021 into the following five categories:<sup>5</sup>

- i. Brand Creation Marketing: approximately \$3 million;
- ii. Brand Marketing through Paid Social Advertising: approximately \$500,000;
- iii. Brand Marketing through Paid Influence: approximately \$5 million;
- iv. Brand Marketing Corporate: approximately \$5 million;
- v. Corporate Promotion and Investor Awareness: approximately \$6 million.

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<sup>5</sup> The total marketing consultancy expenses in the breakdown provided in the revised 2021 MD&A is CAD \$19.5M, notwithstanding the fact that SPO reported "marketing consultancy" expenses of CAD \$19,424,345 in 2021 in its Consolidated Financial Statements for the year ended December 31, 2021.

26. This breakdown was false and misleading. In the activities described in categories i to iii above, SPO purported to allocate a total of CAD \$8.5 million. At best, however, only approximately CAD \$250,000 of SPO's 2021 marketing consultancy expenses could actually be attributed to those categories. The remaining approximately CAD \$8.25 million was in fact SPO's recorded expenses for the Consultants, none of whom performed any work under any of these categories.

27. The Consultants also did not directly engage in the activities described in categories iv and v above. To the extent these two categories were intended to encompass the SPO stock promotional activities: (i) the descriptions were still misleading because they disguised the true nature of those expenses; and (ii) in any event, would have accounted for only CAD \$11 million of the at least USD \$12.8 million in SPO Share Proceeds that were directed by the Consultants to EI in 2021 and 2022 for the purpose of funding the stock promotion campaigns.

28. Despite including these additional details on its purported marketing consultancy expenses, the Revised MD&A again failed to disclose that the vast majority of the expenses, actually arose from a scheme to use the Consultants as vehicles to flow SPO Share Proceeds back to or for the benefit of SPO, GB, and MB.

29. By misleading investors as to the true nature of SPO's purported marketing consultancy expenditures in its eight MD&A filings referred to above, the SPO Respondents exposed investors to undisclosed risks.

### ***The Role of GB and MB in the Fraud***

30. GB was the architect of the scheme. He signed documents and agreements that implemented the scheme, sourced and directed the Consultants including in relation to their use of SPO Share Proceeds and drafted and/or reviewed the misleading disclosure referred to above.

31. MB also participated in the scheme. He signed documents and agreements that implemented the scheme and certified the MD&A filings referred to above without conducting reasonable efforts to verify the accuracy of the statements contained in the MD&A filings and/or when he knew or ought to have known that some of the MD&A statements were misleading or false.

#### 4. GB Misled the OSC Investigation Team

32. During his compelled examination, GB made false and misleading statements to the OSC investigation team about his knowledge of the activities of E.I., who was a key intermediary in the scheme. E.I., a U.S. based stock promoter, along with his company, received approximately USD 14 million in SPO Share Proceeds from three of the Consultants, B.M.C., K.G.L. and I.S.

33. GB was examined by the OSC investigation team on May 31, and June 1, 2023. During that examination:

- i. when asked whether he dealt with E.I. from the summer of 2020 onwards, GB said “I haven’t dealt with him. If the consultants dealt with him, they might have. I don’t know. That’s not for me to guess. I dealt with the five consulting firms, and whoever they dealt with, again, they don’t tell me.”
- ii. in response to whether GB “instructed any of the consultants to use E.I. or to use his services”, GB answered “no”.
- iii. GB also represented that E.I. was not involved in any work for SPO and that he never dealt with E.I. on the business side.

34. In fact:

- i. GB instructed B.M.C., I.S., and/or K.G.L. to work with E.I. and knew that these Consultants were dealing with E.I.
- ii. GB consulted with E.I. on a broad range of issues, including but not limited to:
  - a. SPO press releases prior to their publication;
  - b. media and purported investor relations;
  - c. capital raising and funding for SPO;
  - d. SPO’s audit fees;
  - e. preparing agreements for SPO; and

- f. introducing alcoholic drinks to a Las Vegas casino.

## 5. The Illegal Distributions of SPO Shares

### *Illegal Distributions by the SPO Respondents*

35. The SPO Respondents engaged in an illegal distribution in relation to the approximately 1.2 billion SPO Shares issued to the Consultants by using the Consultants as intermediaries (*de facto* underwriters) to sell the SPO Shares on the open market for capital raising purposes. This indirect distribution of shares to the public is sometimes called a “backdoor underwriting.”

36. No prospectus or preliminary prospectus was filed for any of the SPO Shares and no exemption from the prospectus requirement applied.

37. SPO advised the OSC in response to its investigation that it relied on the “*Employee, executive officer, director and consultant*” prospectus exemption under s. 2.24 (**Consultant Exemption**) in National Instrument 45-106 – *Prospectus Exemptions* (**NI 45-106**) in relation to its distribution of SPO Shares to the Consultants.

38. However, in reality none of the Consultants was in fact a “consultant” as defined in s. 2.22 of NI 45-106 because they were engaged to provided services to SPO, “in relation to a distribution,” thus making these distributions ineligible for the Consultant Exemption.

39. GB orchestrated the illegal distribution scheme. GB and MB’s actions furthered the illegal distributions of SPO Shares to the public. These actions include, but are not limited to:

- i. GB or MB signing each of the Agreements;
- ii. GB and MB signing SPO resolutions authorizing the issuance of the SPO Shares;
- iii. GB or MB signing certificates of compliance with the CSE in relation to the issuance of the SPO Shares, certifying to the CSE that SPO was in compliance with the requirements of applicable securities legislation and all exchange requirements;
- iv. GB arranging for and signing private placement subscription agreements in connection with the flow of SPO Share Proceeds back to SPO; and

- v. GB directing the Consultants on the use of the SPO Share Proceeds to or for the benefit of SPO, GB and/or MB and to fund SPO stock promotions.

***Illegal Distributions by WestCan and Cunningham***

40. WestCan and its principal, John Cameron Cunningham (**Cunningham**) (collectively the **WestCan Respondents**), participated in these illegal distributions in relation to the sales of SPO Shares issued to WestCan.

41. As part of the over 1.2 billion SPO Shares issued to the Consultants, WestCan received 50 million SPO Shares to settle a \$500,000 “retainer” purportedly owed to it under WestCan’s Agreement with SPO.

42. WestCan, through its principal and directing mind, Cunningham, acted as an agent and *de facto* underwriter for SPO in connection with the sale of WestCan’s SPO Shares to the public. WestCan did not receive its SPO Shares as compensation for actual services rendered as a Consultant. Instead, the WestCan Respondents acquired and sold the SPO Shares to the public in relation to a distribution.

43. From on or about January 26 to February 20, 2021, the WestCan Respondents received the first 40 million of the 50 million SPO Shares in tranches of 10 million shares. The WestCan Respondents began selling these SPO Shares within days of receipt of each tranche. Prior to, and during this period, the WestCan Respondents performed no marketing consultancy work for SPO under their Agreement.

44. Rather, shortly after liquidating the 40 million SPO Shares for approximately CAD \$2.4 million, the WestCan Respondents sent CAD \$1,250,000 in proceeds from the sale of those SPO Shares directly back to SPO through a March 15, 2021, private placement investment. On March 17, 2021, the WestCan Respondents sent a further CAD \$250,000 in proceeds from the sale of these SPO Shares back to SPO, in exchange for a promissory note.

**C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

45. The Commission alleges the following breaches of Ontario securities law and/or conduct contrary to the public interest during the Material Time:

- i. By engaging in the conduct described in paras 13-31 above, the SPO Respondents directly or indirectly engaged in or participated in acts, practices or courses of conduct relating to securities that they each knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to subsection 126.1(1)(b) of the Act;
- ii. By engaging in the conduct described in paragraphs 20-28 above, SPO made statements in documents required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue, or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to subsection 122(1)(b) of the Act;
- iii. MB signed the MD&A Certifications described in paragraph 23 above, which contained statements in documents required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue, or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to subsection 122(1)(b) of the Act and NI 52-109;
- iv. GB misled the OSC investigation team by making statements that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue, or did not state facts that were required to be stated or that were necessary to make the statements not misleading, contrary to subsection 122(1)(a) of the Act;
- v. The Respondents participated in distributions of securities without filing a preliminary prospectus or a prospectus and without an applicable exemption to the

prospectus requirement, contrary to subsection 53(1) of the Act;

- vi. As directors and/or officers of SPO, GB and MB authorized, permitted, or acquiesced in SPO's breaches of Ontario securities law and, pursuant to section 129.2 of the Act, are deemed to have also not complied with Ontario securities law; and
- vii. As a director and/or officer of WestCan, Cunningham authorized, permitted, or acquiesced in WestCan's breaches of Ontario securities law and, pursuant to s. 129.2 of the Act, is deemed to have also not complied with Ontario securities law.
- viii. In addition to breaching Ontario securities law, by engaging in the conduct described above, the Respondents acted in a manner contrary to the animating principles of the Act, such that it would be in the public interest for the Tribunal to make an order. Specifically:
  - a. the SPO Respondents made misleading statements to the public that concealed the truth about issuances of SPO shares to the investing public; and
  - b. the Respondents acted together to improperly funnel proceeds from the sale of SPO shares back to SPO, thereby failing to protect investors from unfair or improper practices and failing to foster confidence in capital markets.

46. These allegations may be amended, and further and other allegations may be added as counsel may advise, and the Capital Markets Tribunal (the **Tribunal**) may permit.

#### **D. ORDERS SOUGHT**

47. The Commission requests that the Tribunal make the following orders:

As against all the Respondents:

- i. that they cease trading in any securities or derivatives permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2 of subsection 127(1) of the Act;

- ii. that they be prohibited from acquiring any securities permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
- iii. that any exemptions contained in Ontario securities law not apply to them permanently or for such period as is specified by the Tribunal, pursuant to paragraph 3 of subsection 127(1) of the Act;
- iv. that they be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- v. that they be prohibited from becoming or acting as a registrant or promoter, permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- vi. that they pay an administrative penalty of not more than \$5 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
- vii. that they disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
- viii. that they pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
- ix. such other order as the Tribunal considers appropriate in the public interest.

As against GB, MB, and Cunningham:

- x. that they resign any position they may hold as a director or officer of an issuer pursuant to paragraph 7 of subsection 127(1) of the Act;
- xi. that they be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8 of subsection 127(1) of the Act;

- xii. that they resign any positions that they may hold as a director or officer of any registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;
- xiii. that they be prohibited from becoming or acting as a director or officer of any registrant permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.2 of subsection 127(1) of the Act; and
- xiv. such other order as the Tribunal considers appropriate in the public interest.

DATED this 27 day of March, 2026

**ONTARIO SECURITIES COMMISSION**

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