

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MARK CUBAN,)	
)	
Plaintiff,)	
)	Case No. 1:09-cv-00996 (RWB)
vs.)	Judge Reggie B. Walton
)	
SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Defendant.)	

**DECLARATION OF DAVID M. ROSS IN SUPPORT OF
PLAINTIFF'S REPLY TO DEFENDANT
SECURITIES AND EXCHANGE COMMISSION'S RESPONSE TO
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT**

I, David M. Ross, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am an attorney admitted to practice in the District of Columbia and before this Court.
2. I am an attorney at the law firm of Dewey & LeBoeuf LLP, counsel to Plaintiff Mark Cuban in the above-captioned action. As such, I am familiar with the facts and circumstances set forth herein.
3. I submit this declaration in support of Plaintiff's Reply to Defendant Securities and Exchange Commission's ("SEC") Response to Plaintiff's Cross-Motion for Summary Judgment.
4. Attached hereto as **Attachment A** is a true and correct copy of various documents produced by the SEC on March 9, 2010 in *SEC v. Cuban*, Civil Action No. 3:08-cv-02050 (SAF) (N.D. Texas) in connection with Mr. Cuban's Motion for Attorneys' Fees and Expenses pending in that matter. These documents appear to be internal SEC emails and bear the following Bates

numbers: SEC-MC0302497-500, SEC-MC0302501-504, SEC-MC0302576, SEC-MC0300820,
SEC-MC0300858-864, SEC-MC0300797-798, and SEC-MC0302624-627.

Executed: Washington, D.C.
March 29, 2010



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DEWEY & LEBOEUF LLP
1101 New York Avenue, NW
Washington, D.C. 20005
Telephone: (202) 346-8000
Facsimile: (202) 346-8102

Counsel to Plaintiff

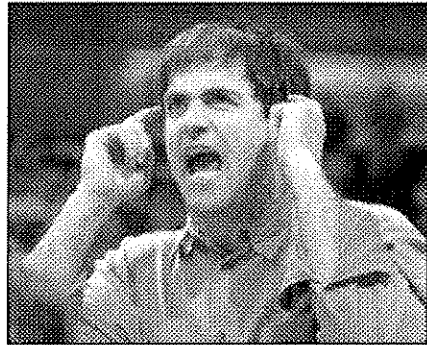
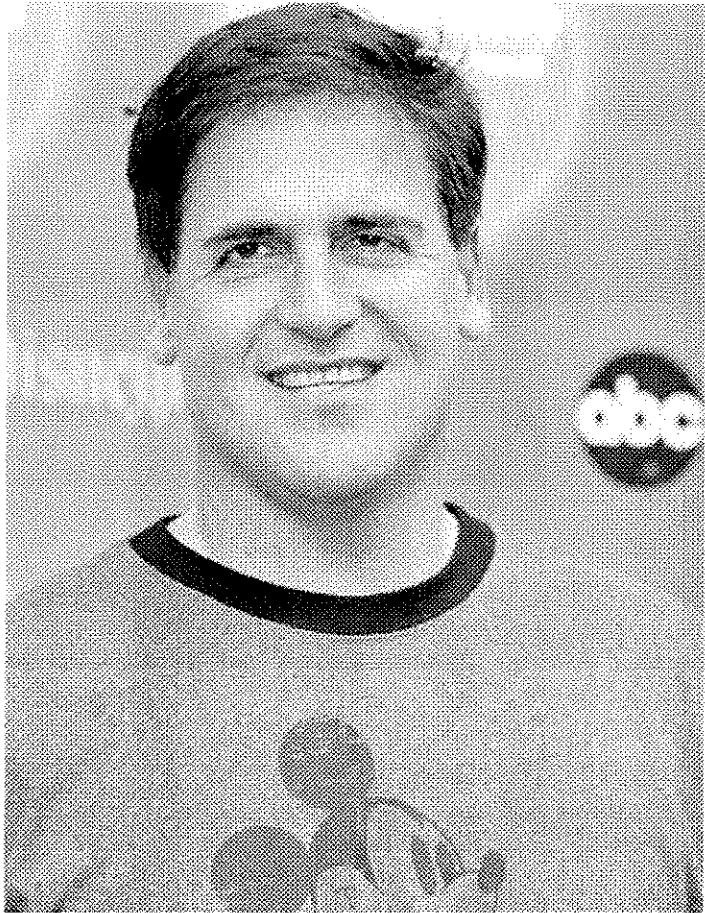
ATTACHMENT A

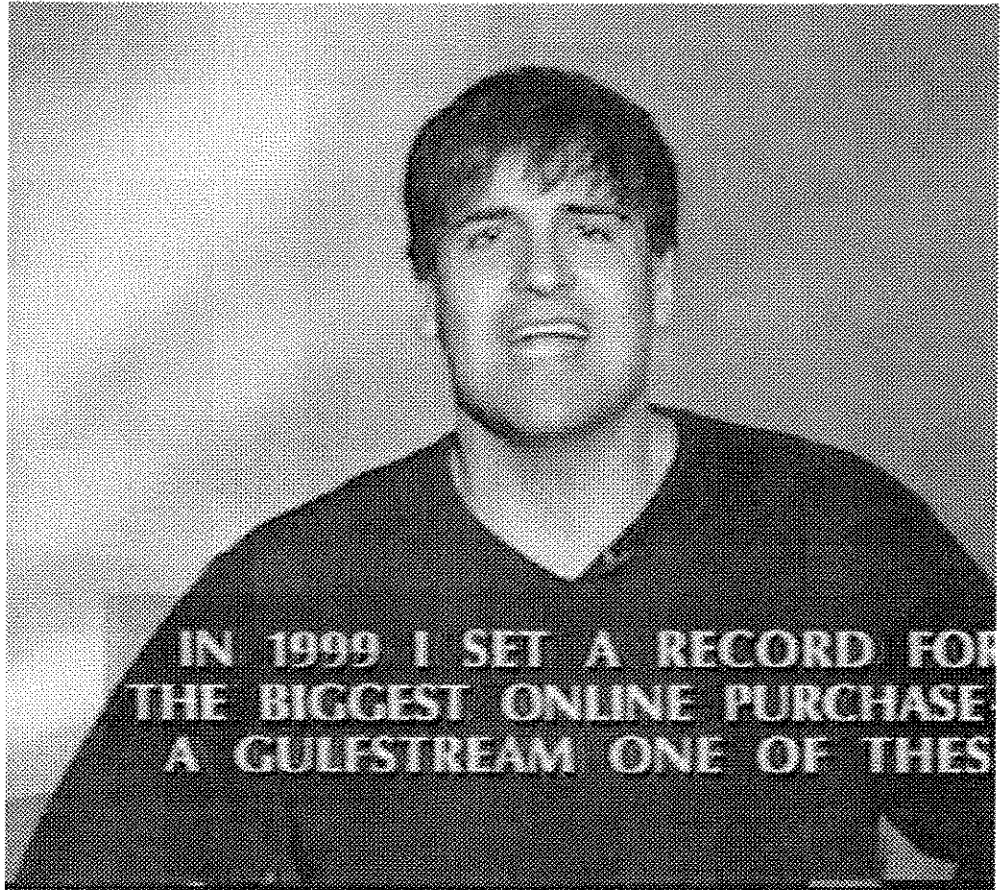
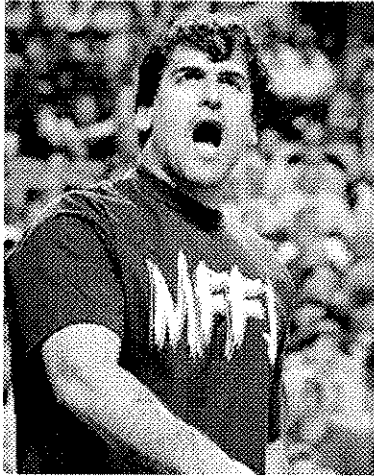
SEC-MC0302497-500

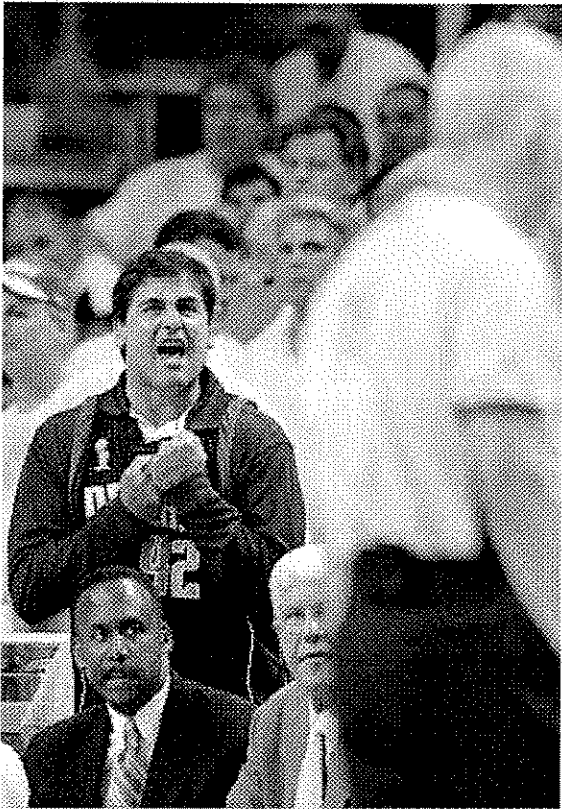
From: Thomsen, Linda
Sent: Monday, February 26, 2007 1:58 PM (GMT)
To: Friestad, Scott <FriestadS@SEC.GOV>
Subject: RE: Mark Cuban

charming

From: Friestad, Scott
Sent: Monday, February 26, 2007 8:52 AM
To: Thomsen, Linda; McKown, Joan
Subject: Mark Cuban





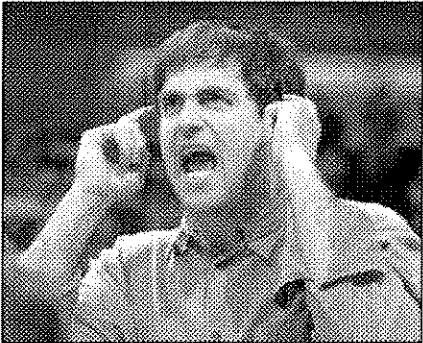
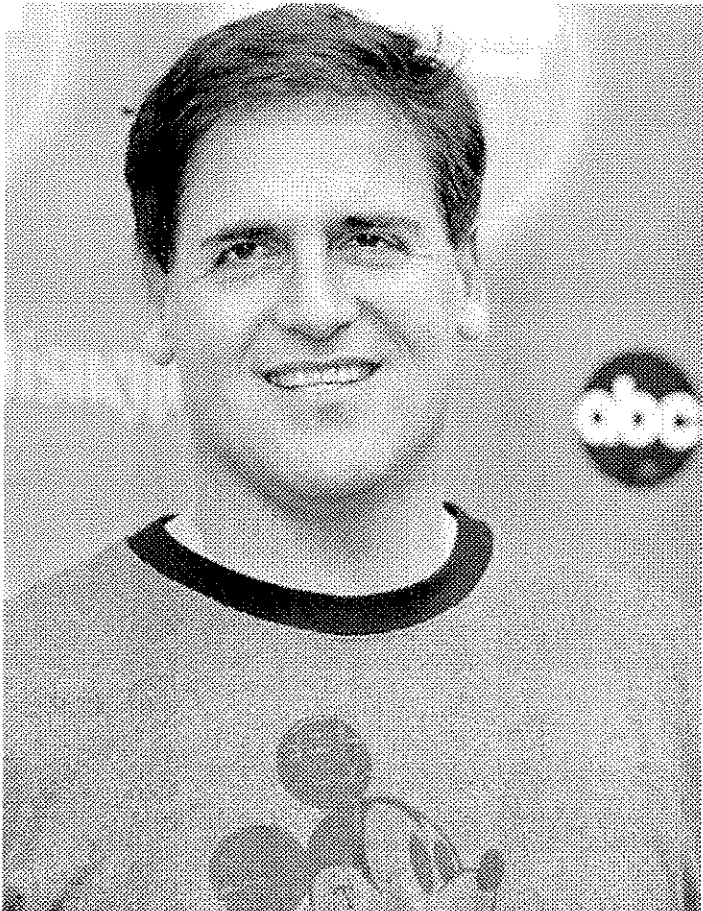


SEC-MC0302501-504

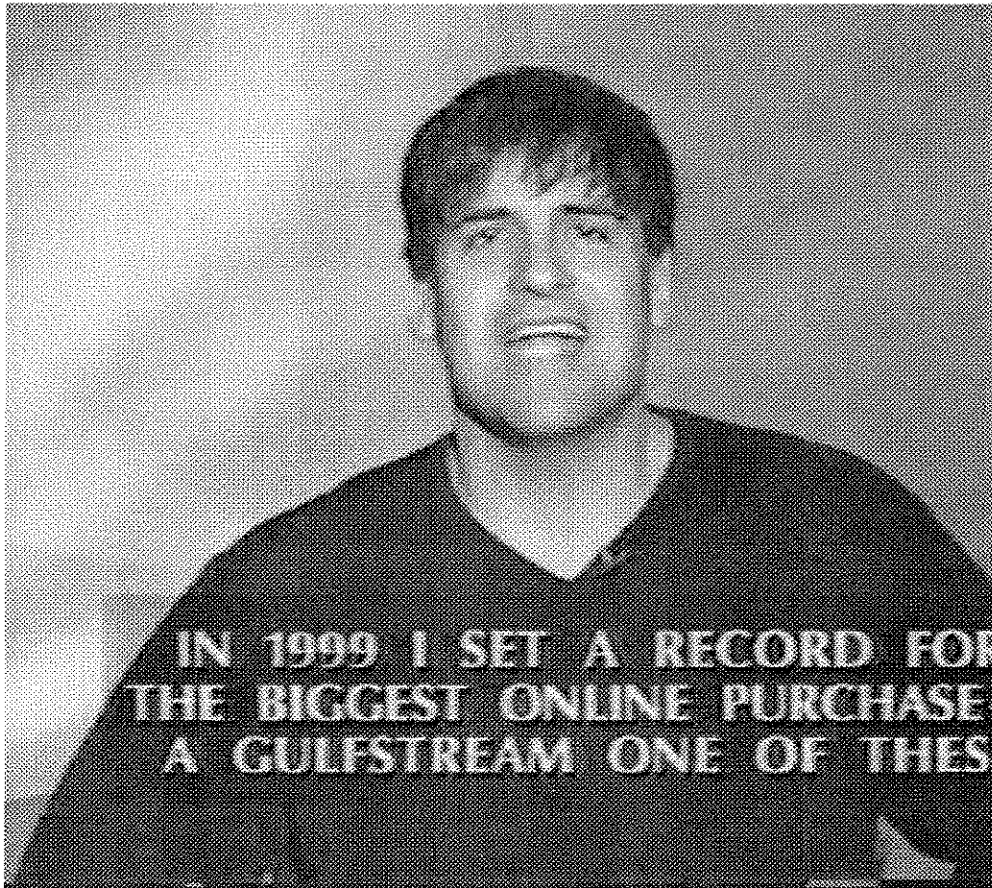
From: McKown, Joan <McKownJ@SEC.GOV>
Sent: Monday, February 26, 2007 2:21 PM (GMT)
To: Friestad, Scott <FriestadS@SEC.GOV>; Thomsen, Linda
<ThomsenL@SEC.GOV>
Subject: RE: Mark Cuban

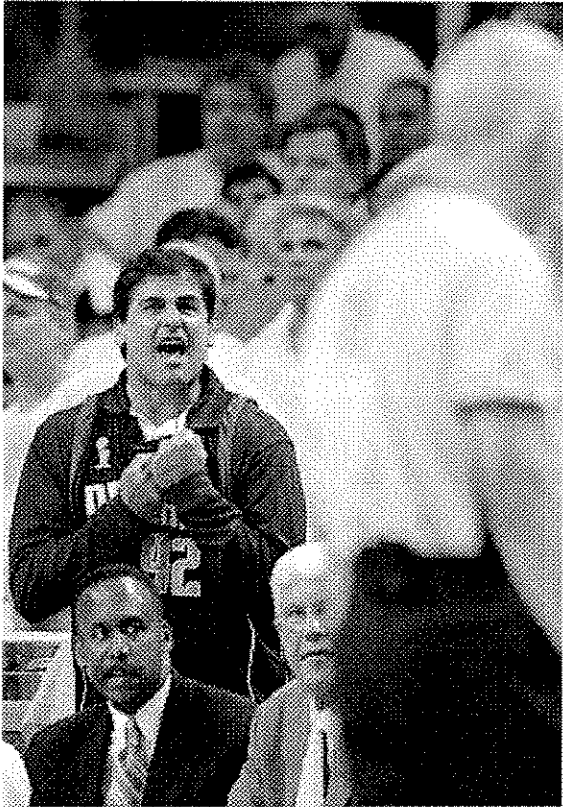
Now I feel fully informed. The picture with the money is particularly helpful and certainly speaks a 1,000 words (if not more).

From: Friestad, Scott
Sent: Monday, February 26, 2007 8:52 AM
To: Thomsen, Linda; McKown, Joan
Subject: Mark Cuban



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SEC-MC0302576

From: Friestad, Scott
Sent: Monday, August 27, 2007 9:19:54 AM
To: Thomsen, Linda; Kaplan, Robert; Riewe, Julie M.
Subject: Mamma.com

Cuban dancer

Mavs owner to participate in 'Dancing With The Stars'

Posted: Sunday August 26, 2007 2:12PM; Updated: Monday August 27, 2007 12:07AM

Mark Cuban's net worth is \$1.8 billion, according to Forbes magazine.

John W. McDonough/SI

By Chris Mannix, SI.com

LAS VEGAS -- Following in the illustrious footsteps of athletes **Apolo Ohno**, **Clyde Drexler** and **Laila Ali**, Dallas Mavericks owner **Mark Cuban** will become the next cast member of *Dancing With the Stars*, a source told SI.com.

Cuban is the latest celebrity to join the wildly popular ABC reality show, based on the British BBC series *Strictly Come Dancing*. The new series will also reportedly feature former *90210* star **Jennie Garth**, former Spice Girl **Melanie Brown** and singer **Wayne Newton**.

The show features 10 couples competing in ballroom dancing in an elimination format. A celebrity is paired with a professional dancer, and their performances are live each week. Viewers and judges vote off one couple each week.

The seventh series of *Dancing With the Stars* airs September 24.

SEC-MC0300820

From: Riewe, Julie M.
Sent: Thursday, March 01, 2007 6:31:04 PM
To: Friestad, Scott; Kaplan, Robert; Chaudoin, Daniel T.
Subject: Cuban and the Cubs

Attachments: Forms.HTML:Hidden.1; Forms.HTML:Hidden.1; Forms.HTML:Hidden.1; Forms.HTML:Hidden.1;
Forms.HTML:Hidden.1; Forms.HTML:Hidden.1; Forms.HTML:Hidden.1; Forms.HTML:Hidden.1;
Forms.HTML:Hidden.1; Forms.HTML:Hidden.1

<http://dealbook.blogs.nytimes.com/2007/03/01/cuban-and-the-cubs-a-match-made-in-heaven/>

Cuban and the Cubs: A Pair or a Pipe Dream?

March 1, 2007, 7:35 am

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Does Mark Cuban really want the Chicago Cubs _so bad?_ Apparently not. Radar Online reported Wednesday that the tech entrepreneur was set to offer \$625 million to buy the Chicago team from the Tribune Company. Radar quoted _a source familiar with matter_ as saying _Mark is desperate to buy the Cubs. He wants this so bad._ But The Chicago Tribune managed to track down Mr. Cuban who told the paper (also owned by Tribune) that the story was _not true._

I have no idea where they got their info, he told The Tribune via e-mail.

Still, Mr. Cuban, who also owns the Dallas Mavericks basketball team, has made no secret of his interest in adding a baseball team to his stable. Speculation about whether he would make a run for the Cubs began to surface in 2005 after the owners of his home town team, the Pittsburgh Pirates, told Mr. Cuban that the team wasn't for sale.

And when asked whether he might try to buy the Cubs in a interview with TheStreet.com earlier this month, Mr. Cuban responded: _I'm always interested in iconic teams or teams from my hometown, but it's a 'nice to do,' not a 'have to do.'_ When Tribune indicated last year that it was considering selling itself, industry watchers fell over themselves trying to guess whether the Cubs were on the block, and if so who would be a buyer.

The valuation cited by Radar would be a hefty premium over the \$448 million that Forbes estimated the team was worth. CNBC sports commentator Darren Rovell wrote that he'd _be surprised to see the team go for that price given the huge payroll the Tribune just committed._ (In November, the Cubs signed outfielder Alfonso Soriano to an eight-year, \$136 million deal.)

Mr. Rovell, however, notes that the Cubs fans would be more than willing to fall into Mr. Cuban's embrace.

I don't think, in the history of sports, a fan base has wanted a particular owner so badly, he wrote. _It's reached a point where there are even petitions that have been set up where people are begging Cuban to buy the team._

One online petition has morphed into a chat room of sorts, where the over-riding consensus is that Mark Cuban is a _winner_ and that he do _whatever it takes_ to bring victory to the team.

SEC-MC0300858-864

From: Riewe, Julie M.
Sent: Friday, July 13, 2007 6:29:06 PM
To: Friestad, Scott; Kaplan, Robert; Chaudoin, Daniel T.
Subject: Cuban on executives who blog

Attachments: Forms.HTML:Text.1; Forms.HTML:Image.1; Forms.HTML:Hidden.1; Forms.HTML:Hidden.1; Forms.HTML:Hidden.1; Forms.HTML:Text.1; Forms.HTML:Image.1; Forms.HTML:Option.1; Forms.HTML:Option.1; Forms.HTML:Checkbox.1; Forms.HTML:Checkbox.1; Forms.HTML:Checkbox.1; Forms.HTML:Submitbutton.1

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As of Friday, July 13, 2007

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COMPANIES

Dow Jones, Reuters

Whole Foods Market Inc. (WFMI)

PRICE

CHANGE

40.04

1.04

1:11p.m.

Sun Microsystems Inc. (SUNW)

PRICE

CHANGE

5.36

-0.07

1:11p.m.

Marriott International Inc. CIA (MAR)

PRICE

CHANGE

44.19
-0.85
1:06p.m.

Pitney Bowes Inc. (PBI)

PRICE
CHANGE
46.82
-0.13
1:06p.m.

General Motors Corp. (GM)

PRICE
CHANGE
36.97
-0.57
1:06p.m.

Wal-Mart Stores Inc. (WMT)

PRICE
CHANGE
49.01
0.18
1:06p.m.

Cisco Systems Inc. (CSCO)

PRICE
CHANGE
29.81
0.01
1:11p.m.

* At Market Close

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Executives Get the Blogging Bug

More CEOs Openly Post

Their Views on Work, Life;

The Tale of a Colonoscopy

By ERIN WHITE, JOANN S. LUBLIN and DAVID KESMODEL

July 13, 2007; Page B1

The Internet can be a dangerous place -- even for a CEO.

John Mackey, chairman and chief executive of Whole Foods Market Inc. is the latest to learn that lesson, after he was revealed this week as the author, under a pseudonym, of pro-Whole Foods comments on an Internet stock-message board. Mr. Mackey also maintains a blog that has attracted the attention of federal antitrust regulators.

More CEOs and other top executives are venturing online, mostly with signed blogs, or personal Web pages on which they opine openly. Blogs offer CEOs a way to communicate with investors, employees and customers, and to defend themselves when under fire. Top-level corporate bloggers include Jonathan Schwartz, CEO of Sun Microsystems Inc., J.W. "Bill" Marriott Jr., chairman and CEO of Marriott International Inc., Michael Critelli, executive chairman of Pitney Bowes Inc., and Robert Lutz, a vice chairman of General Motors Corp.

CEO BLOGGERS

Public Companies

Jonathan Schwartz, CEO of Sun Microsystems

Bill Marriott, CEO of Marriott International

Mike Critelli, executive chairman of Pitney Bowes

Robert Lutz, GM vice chairman

David Neeleman, chairman of JetBlue Airways:

Michael Hyatt, CEO of Thomas Nelson Publishers:

Tom Glocer, CEO of Reuters

Closely Held Companies

Mark Cuban, internet entrepreneur and owner of the Dallas Mavericks and Landmark Theaters

Richard Edelman, CEO of Edelman

Paul Levy, CEO of Deaconess Beth Israel Hospital in Boston

Nick Jacobs, CEO of the Windber Medical Center in Windber, Pa.

Bob Parsons, CEO of GoDaddy.com

Done well, "a blog is an extremely effective way of articulating a vision," says Debbie Weil, a corporate blogging consultant and author of "The Corporate Blogging Book." But blogs, chat rooms and stock-message boards also pose pitfalls, particularly for executives unaccustomed to unfiltered dialogue. An unwittingly controversial post can set off an unanticipated fury of replies on the blog and across the Internet. "If you don't sort of take a deep breath and think about it - if you publish without thinking -- you can really make some big mistakes," Ms. Weil says.

Some CEOs deliberately stay away from newsy or controversial subjects in their posts, and many companies now review executive writings before they are posted online.

Some executives comfortable in the online world questioned the wisdom of Mr. Mackey's actions. "It's a huge mistake for a CEO of a public company to post under an undisclosed handle," says Mark Cuban, the billionaire majority owner of professional basketball's Dallas Mavericks, president of HDNet and an avid blogger himself. He began his own blog in March 2004 as a response to a reporter who Mr. Cuban thought had taken his answers out of context. His first entry consisted of posting their entire email exchange.

Last month, Mr. Cuban wrote about his colonoscopy: "One minute I'm talking rugby, the next I'm waking up, picking up the conversation where I left off and being told to 'dispell the air in my system.'" Because he doesn't work for a public company, "no one monitors or screens my work," Mr. Cuban wrote in an email interview. "I have unlimited space to say exactly what is on my mind and no timetable but my own in which to say it."

The CEO of job site Jobster Inc. attracted criticism from other bloggers last year after writing online about his iPod playlist as rumors swirled that the company was planning layoffs. Giant Wal-Mart Stores Inc. was embarrassed after a public-relations agency set up a pro-Wal-Mart blog but didn't fully reveal the identities of the bloggers.

Mr. Mackey's postings under a false name were very different from a signed blog entry. While many bloggers criticized his

actions, legal experts yesterday said it was unclear whether he had violated securities law by touting Whole Foods' stock and denigrating that of Wild Oats Markets Inc., a rival that Whole Foods now wants to buy.

It appears from his voluminous postings that at times Mr. Mackey made financial predictions that weren't readily available from company disclosures to the markets. At the 2006 annual meeting, he told shareholders the company would hit \$12 billion in sales by 2010, doubling its sales in five years. Less than a week later, under the pseudonym "rahodeb," he was even more confident in an online posting: "The upgraded prediction of \$12 billion is most likely conservative. Won't surprise me if the number ends up close to \$14 billion in 5 years."

Later the same month, defending himself against a charge that he was a stock "pumper," rahodeb predicted that "operating cash flow for 2006 will be up at least another 20% just as it is every year." Despite his rosy prediction, operating cash flow in fiscal 2006 rose only 10.2%. A Whole Foods spokeswoman declined to comment on both postings.

Whether they are unlawful could depend on several factors, including whether the statements were misleading or intended to manipulate the price of the stock. Whole Foods also could argue that the Yahoo message board is freely open to the public. A Securities and Exchange Commission spokesman declined to comment.

So far, there appear to be few other consequences. A big Whole Foods investor said it was sticking by Mr. Mackey, and, as of midafternoon the Whole Foods board hadn't met to discuss the matter, according to a company spokeswoman. She declined to say whether any meetings were planned. Mr. Mackey declined an interview request yesterday. Whole Foods shares fell 50 cents, or 1%, to \$39 in heavy trading on the Nasdaq.

Still, public-relations experts said Mr. Mackey's postings risked damaging Whole Foods' well-regarded brand. "Their trust bank is probably sufficient enough to weather this storm, but it chips away at some of their golden brand, because they go from being the company that cares about our health to just another company," said Richard S. Levick, who runs Levick Strategic Communications, a crisis-communications firm.

Mr. Mackey's choice of forum was unusual as well. Stock-message boards were popular for a time during the tech-stock boom in the late 1990s, but fell out of favor after reports that investors had used the boards to circulate rumors that moved share prices. Most posts are anonymous, and few contain verifiable information. "It's the Wild West if you're going to use that stuff," says Todd Clark, director of stock trading at Nollenberger Capital Partners Inc. in San Francisco.

Mr. Mackey's postings recalled a 1999 incident involving mutual-fund giant Franklin Resources Inc. William Johnson, the son of then-CEO Charles Johnson, used a pseudonym (FimMker9899) to defend the company and his father on an online message board. William Johnson wasn't a Franklin employee. Franklin Resources "has a longstanding internal policy that applies to all employees regarding public discussion in various public forums," spokeswoman Stacey Johnston said yesterday.

RAHODEB SPEAKS

Postings by "Rahodeb" on Yahoo:

* Collected Excerpts: Rahodeb's Greatest Hits

* Rahodeb's farewell comment to the Yahoo message board for Whole Foods stock in August 2006.

* Rahodeb says the fundamentals of Wild Oats shares haven't improved and that its stock price had risen merely because of speculation of a buyout.

* Rahodeb lambastes a Yahoo user who claimed Wild Oats had been a takeover target at \$14 to \$16 a share.

* Rahodeb predicts that Whole Foods shares will one day trade at more than \$800.

* Rahodeb claims Whole Foods shares are undervalued and Wild Oats is overvalued.

Note: Whole Foods didn't authenticate each and every one of Rahodeb's postings as being from Mr. Mackey. But the company and Mr. Mackey confirmed that he made numerous postings under the name Rahodeb from 1999 to 2006.

MORE

* MarketBeat: CEOs Who Blog

* Whole Foods confirms that John Mackey used an alias in making comments about the company's stock on Yahoo's Web site.

* John Mackey's blog

* Read the full text of the FTC complaint and the FTC document released July 10.

* Whole Foods CEO Has Heated Words for FTC

6/27/2007

* CEO's Words May Cook Whole Foods

6/20/2007

Forty of the country's biggest 500 companies now publish corporate blogs, according to the Fortune 500 Blogging Wiki, a collaborative tracking site. Technology companies such as Cisco Systems Inc., Oracle Corp. and Amazon.com Inc. embraced the idea early, but senior executives at industrial giants like Boeing Co. and GM have adopted the trend.

Mr. Critelli at Pitney Bowes started blogging last month. One post asserted that mail is more environmentally friendly than it gets credit for. "That's a very difficult concept to capture in a sound bite" but the blog allows him to explain it fully, he says. The company's public-relations and legal teams review his posts, but have suggested only minor changes, he says. When he gave a speech as CEO, Mr. Critelli says, there were "multiple sign-offs and heavy edits." Now, "I tell them I

welcome that feedback but not to hold it up."

Mr. Lutz, of GM, launched his FastLane blog in early 2005. Each proposed posting "is looked at by a number of eyes before it goes out to make sure it's accurate and we're not getting ahead of ourselves," says Steve Harris, GM's vice president of public relations. In most cases, he says, "it goes through the way Lutz did it."

Sun, which boasts about 3,500 employee blogs, publishes internal guidelines, with warnings such as, "Using your weblog to trash or embarrass the company, our customers or your co-workers is not only dangerous but stupid." Sun's lawyers have told Mr. Schwartz not to disclose financial results or similar information solely in the blog.

Mr. Schwartz has been pushing the SEC to allow companies to post significant financial information on the Internet as a way to meet fair-disclosure rules. Last fall, he posted on his blog a copy of a letter he sent to SEC Chairman Christopher Cox. Mr. Cox blogged back applauding the idea but also raising some concerns.

Mr. Marriott, 75, is perhaps the most unusual corporate blogger. He doesn't use a computer. Instead, he records his musings on a digital recorder, which are then transcribed and posted to the Internet by a Marriott employee.

His blog discusses the hotel industry, but is also highly personal. Entries recount the birth of his granddaughter, memories of his parents' root-beer stand, and thoughts on immigration reform.

--Tamara Audi, Russell Gold, Justin Lahart and Kara Scannell contributed to this article.

Write to Erin White at erin.white@wsj.com, Joann S. Lublin at joann.lublin@wsj.com and David Kesmodel at david.kesmodel@wsj.com

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SEC-MC0300797-798

From: Zelinsky, Yuri <ZelinskyY@SEC.GOV>
Sent: Wednesday, June 14, 2006 2:27 PM (GMT)
To: Turner, Alton O. <TurnerAL@SEC.GOV>
Subject: Re: Your email acquaintance.

Mavericks Owner Cuban to Launch Web Site to Investigate Stock Fraud

Associated Press
June 14, 2006 9:33 a.m.

DALLAS -- Dallas Mavericks owner Mark Cuban is financing a new Web site that will investigate stock fraud and corporate wrongdoing. The billionaire also said he'll buy and sell stocks based on information before the site publishes it.

Mr. Cuban said he has not been a direct victim of fraud but was motivated to start the site by his approach to investing.

"I'm a firm believer that out of [the more than 10,000] public companies the odds are that there are more than just a few crooks and frauds," Mr. Cuban said Tuesday. "Finding them can be rewarding and entertaining."

Christopher Carey, a 17-year St. Louis Post-Dispatch staffer, said Sharesleuth.com will launch next month and also carry work from a network of stringers that will include burned investors.

Neither Mr. Carey nor Mr. Cuban would disclose how much is being invested in the site.

Mr. Cuban mentioned such a site two weeks ago in his own Web log, blogmaverick.com¹, although he didn't mention it by name then. He faulted the mainstream media for failing to tell stories in a compelling, multimedia fashion.

Mr. Cuban believes stories from the Web site can be repackaged for his high-definition television networks, HDNet and HDNet Movies. Mr. Cuban also said that he could use information that the site uncovers to buy and sell stock.

"A journalistic conflict you say?" he wrote on his blog on May 31. "Not any more. Not in this world.

"It will be fully disclosed and explained. This site is for the profit of its owners and we will buy and sell stocks that are discussed, before they are made available on the site ... If we can uncover companies whose stock is public and that can be bought or sold and that allows us to pay for more in depth research and effort. I'm good with that."

Mr. Cuban, 47 years old, made a fortune that Forbes magazine recently estimated at \$1.8 billion by selling Broadcast.com to **Yahoo** Inc. in 1999. He bought the woeful Mavericks in 2000 and spent heavily to improve the roster. The team is on the brink of an NBA championship this week, and Mr. Cuban is soaking up the adoration of long-suffering Dallas fans.

Mr. Cuban's interests go beyond hoops. He co-founded HDNet, and with his Broadcast.com partner Todd Wagner, he owns two movie-production companies -- one made the Oscar-nominated "Good Night, and Good Luck" -- a movie distributor and a chain of art theaters. He is threatening to shake up Hollywood by releasing movies simultaneously in theaters, on cable and DVD.

On his blog, Mr. Cuban writes frequently about subjects from politics to movies to stock-trading.

Mr. Carey, a finalist for the Loeb Award, the highest honor in business journalism, for a series about securities boiler rooms, said he pitched the idea of a stock-fraud Web site after reading a Mr. Cuban blog in February.

"With newspapers getting increasingly locally focused, I thought maybe the best way to tell these stories, which tend to be national or international in scope, would be via the Internet and other multimedia," Mr. Carey said. "I tossed it out as a general proposition, and he was interested."

Mr. Carey, 45, who will leave the Post-Dispatch at the end of this week, said he doesn't know what it will be like to work for Mr. Cuban, who sits next to the Mavericks' bench during games, joins team huddles and screams at the referees.

Mr. Carey hasn't even met his new boss. All their discussions have been by e-mail.

SEC-MC0302624-627

From: Clarkson, James <ClarksonJ@SEC.GOV>
Sent: Tuesday, November 18, 2008 3:13 PM (GMT)
To: Thomsen, Linda <ThomsenL@SEC.GOV>; Friestad, Scott <FriestadS@SEC.GOV>; Curtis, George <CurtisG@sec.gov>; McKown, Joan <McKownJ@SEC.GOV>
Subject: FW: article - another - SEC accuses Cuban of insider trading in 2004 stock sale

FYI

This morning's coverage in the Dallas press.

From: Ray, Barbara A.
Sent: Tuesday, November 18, 2008 9:45 AM
To: Norris, Jeffrey B.; Edmundson, Kevin J.; Addleman, Katherine S.; Baudhuin, Thomas J.; Clarkson, James; Garber, Kim; Huseman, Julia W.; Korotash, Stephen J.; Prescott, Victoria F.; Preuit, Julie A.; Romero, Rose L.; Scott, Jonathan; Werner, Eric
Subject: article - another - SEC accuses Cuban of insider trading in 2004 stock sale

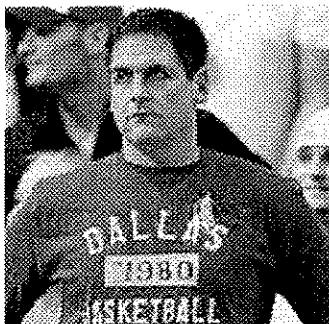
Dallas Morning News

SEC accuses Cuban of insider trading in 2004 stock sale

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By **DAVE MICHAELS** and **BRENDAN M. CASE** / The Dallas Morning News
Dave Michaels reported from Washington, D.C., and Brendan M. Case from Dallas.

Federal regulators on Monday accused Mark Cuban of insider trading, saying he sold shares in an Internet company shortly after learning about a stock offering that was likely to push down the value of his shares.



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GUY REYNOLDS/DMN

Mavs owner Mark Cuban isn't facing criminal charges in the case.

The civil lawsuit involves a 4-year-old stock sale that Mr. Cuban has written about on his blog. The U.S. Securities and Exchange Commission alleges that Mr. Cuban avoided a \$750,000 loss by selling his 6

percent stake after company executives told him confidentially about a stock offering restricted to major investors.

"It is fundamentally unfair for someone to use access to nonpublic information to improperly gain an edge on the market," said Scott W. Friestad, the SEC's deputy director of enforcement.



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LOUIS DeLUCA/DMN

Mark Cuban, shown at the season opener on Oct. 30, was at American Airlines Center in June 2004 when the CEO of a company gave him confidential information over the phone, the SEC has alleged.

Mr. Cuban, the outspoken owner of the Dallas Mavericks and a suitor for the Chicago Cubs, denied the allegations and wrote on his blog Monday that he would fight the civil complaint.

Mr. Cuban wrote in March 2005 that he sold his stake in Mamma.com, an Internet search engine, because he disliked the tactic of selling stock below its market price, which is how Mamma.com's CEO told him it would issue more shares in June 2004.

"I am disappointed that the Commission chose to bring this case based upon its enforcement staff's win-at-any-cost ambitions," Mr. Cuban wrote on Monday. "The staff's process was result-oriented, facts be damned. The government's claims are false and they will be proven to be so."

The complaint, filed in the Northern District of Texas, demands that Mr. Cuban forfeit the losses he avoided and pay a civil penalty. The SEC cannot bring criminal charges.

The agency could refer the case for criminal prosecution to the U.S. Department of Justice if it thinks the case is "particularly egregious," said Phillip L. Stern, a former SEC attorney in Chicago.

Usually "there is not a companion criminal case," said Mr. Stern, the co-chair of the white-collar criminal and regulatory practice at Neal, Gerber & Eisenberg LLP in Chicago.

Mr. Cuban, 50, retained Paul E. Coggins, a former U.S. attorney for the Northern District of Texas, as his defense counsel. Neither Mr. Coggins nor his co-counsel, Ralph C. Ferrara, returned phone calls seeking comment.

However, people close to Mr. Cuban suggested the SEC's probe was tainted by an adversarial relationship the entrepreneur had with SEC lawyer Jeffrey Norris in Fort Worth.

In one e-mail, Mr. Norris criticized Mr. Cuban for "smearing the good name of a patriot like President Bush," because of Mr. Cuban's reported involvement with a controversial film about the Sept. 11 attacks. Mr. Cuban said he played no role with the film, *Loose Change*.

The e-mail exchange was also sent to SEC chairman Christopher Cox.

SEC officials said the e-mail was irrelevant because Mr. Norris didn't work on the Cuban investigation. Mr. Cox didn't vote on the decision to pursue the enforcement case to avoid the appearance of a conflict of interest, SEC officials said.

"Chairman Cox has never met the individual who corresponded with Mr. Cuban, nor has he spoken or corresponded with him in any way," said John Nester, an SEC spokesman. "After those communications came to light, the matter was referred for disciplinary action against the individual."

Mr. Friestad, the deputy director of enforcement, said the e-mails wouldn't undermine the SEC's case.

The SEC's investigation appears to rely in part on communications it has obtained that describe Mr. Cuban's feelings at the time of the sale.

According to the complaint, Mr. Cuban was at American Airlines Center on June 28, 2004, when he got an e-mail titled "Call me pls" from Guy Faure, Mamma.com's chief executive at the time. Reached through e-mail Monday, Mr. Faure declined to comment.

Mr. Cuban called, and the CEO invited him to participate in a private stock offering but cautioned him to keep the information confidential. During a conversation that lasted eight minutes and 35 seconds, Mr. Cuban "became very upset and angry" with the company's plan to raise additional cash, according to the SEC complaint.

"Well, now I'm screwed," Mr. Cuban reportedly told the executive. "I can't sell."

A person close to Mr. Cuban disputed the SEC's depiction of the conversation.

The complaint says Mr. Cuban later called his Dallas broker and ordered him to sell all 600,000 shares he owned. The broker sold 10,000 of Mr. Cuban's 600,000 shares in after-hours trading on June 28. He sold the rest during regular trading on June 29.

The company announced the stock offering after the markets closed on June 29. On June 30, trading in Mamma.com opened at \$11.89, down 9.3 percent from the June 29 closing price of \$13.105.

In March 2005, Mr. Cuban described his reason for selling the stock on Blog Maverick, where he wrote: "I don't like the idea of selling in a private placement, stock for less than the market price, and then to make matters worse, pushing the price lower with the issuance of warrants. So I sold the stock."

David Goldman, chairman of Copernic Inc., the company that owns Mamma.com, said it would have no comment about the SEC complaint. Mr. Goldman said some of the complaint's allegations "aren't precise" but said he had "no idea one way or the other" about whether Mr. Cuban did anything wrong.

Mr. Stern, the former SEC attorney, said the agency appears to be relying on "circumstantial evidence" but has obtained "some interesting quotes" that aid its investigation.

"Knowing who they are bringing it against, [the SEC] knows it's going to get a lot of visibility," said Mr. Stern. "It's going to be a difficult case for Cuban to ultimately win."

The case could complicate Mr. Cuban's attempt to buy the Chicago Cubs. Major League Baseball has been cool to the notion of welcoming Mr. Cuban, who has been fined more than \$1.6 million by the NBA since buying the Mavericks in 2000.

"This would just be something that somebody needs to look into to determine whether it does affect his integrity," Mr. Stern said. "If somebody had a negative view [of Mr. Cuban], it would only reinforce it."

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