SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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IN RE SEA LIMITED SECURITIES LITIGATION

Plaintiff,

- v -

XXX,

Defendant.

INDEX NO. 151344/2022

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 68

were read on this motion to/for EXTEND - TIME.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 66, 67, 69, 70, 71, 72, 76, 77, 78, 80, 81

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the Second Amended Complaint (the **SAC**; NYSCEF Doc. No. 65) must be dismissed.

The SAC asserts that the Offering Documents issued in connection with the Secondary Offering were materially misleading because the Offering Documents failed to (i) adequately disclose the risk that Sea Limited's (the **Company**) Free Fire app which had been released by Garena, one of the Company's three divisions, would be banned in India given that the Government of India had already banned both (x) apps owned by Chinese companies (which the Company was not) and (y) apps that were not owned by Chinese companies but were nonetheless published by Chinese companies (which Free Fire was not) and (ii) disclose interim financial data that indicated a

decline in the growth rate of user engagement was material requiring disclosure notwithstanding that 25% of the quarter had not yet occurred, where the rate of user engagement had fluctuated historically and in fact had declined in three of the previous four quarters and where actual performance met expectations. As discussed below, neither basis is actionable under the Securities Act of 1933 (the **1933 Act**).

As to the first argument, the Company is not a Chinese company. It is a Singaporean company with three divisions – Garena, Shopee, and SeaMoney. Garena was devoted to the Company's digital entertainment platform, Shopee was the division devoted to the Company's e-commerce platform and SeaMoney was the division devoted to the Company's digital financial services platform. Garena released the Free Fire app – a battle royale-type shooter available in over 130 markets which had growing user bases in Brazil, Mexico, India, North America, Russia and the Middle East (NYSCEF 65 ¶ 30). It was one of Garena's top five games which games contributed to approximately 96% of the Company's revenue (*id.*, ¶ 31[a]). As discussed above, although India had banned apps published or owned by Chinese companies, including WeChat and Snack Video, the Government of India's ban of the Company's Free Fire app was the very first ban of an app of a non-Chinese company where merely having an investor (Tencent) who happens to be Chinese, was the cause of a ban. This was not anticipated and came as a total shock (NYSCEF Doc. Nos. 56-59). Indeed, the Government of Singapore inquired if this has been unintentional (NYSCEF Doc. Nos. 57). To be sure, the Company did disclose the possibility of a government ban (NYSCEF Doc. No. 35, at 22), but most significantly, far from there being warnings signs of a ban based on having a Chinese company as an investor and one

that had a member on the board, the Company had good reason to expect that no such ban would occur by the Government of India.

Krafton Inc. (**Krafton**), a South Korean company, published a game called PlayerUnknown's Battlegrounds (**PUBG**) that was a competitor to Free Fire (NYSCEF Doc. No. 65, ¶ 6). PUBG was distributed by Tencent, a Chinese company who was also a shareholder in Krafton and who also had a member on the board (*id.*, ¶ 76). In September 2020, PUBG was initially temporarily banned in India because it was published by Tencent (*id.*, ¶ 77). In response to the ban, months later, in June 2021, PUBG relaunched. This time without being distributed by Tencent, and as of the time of the Secondary Offering, PUBG was not subject to ban by the Government of India (*id.*, ¶ 84). In other words, and as indicated above, far from there being a red flag warning that the Government of India would ban Free Fire because Tencent was merely an investor, inasmuch as PUBG which was banned based on having Tencent as a distributor but was no longer banned when Tencent was merely an investor (as with the Company), the Government of India signaled a green flag to the Company that Free Fire would not be subject to ban.[1] Inasmuch as the lack of clairvoyance is not actionable, the unexpected ban of Free Fire can not form a predicate for liability under the 1933 Act (*In re Uxin Ltd. Sec. Litig.*, 66 Misc3d 1232[A], * 8 [Sup Ct, NY County 2020], *citing Shemian v Research in Motion Ltd.*, 2013 WL 1285779, * 21 [SD NY 2013], *affd* 570 F Appx 32 [2d Cir 2014]; *Matter of NIO Inc. Sec. Litig.*, 211 AD3d 464, 466 [1st Dept 2022]).

[1] Subsequently, and after Free Fire was banned by the Government of India, the Government of India again banned KUBG. Both apps remain banned to this date.

The second argument that certain interim financial data was required to be disclosed also fails. The test is whether the omission is material:

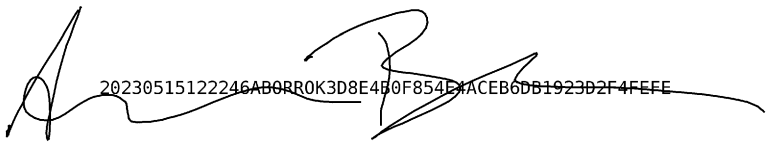
> It is well settled in the Second Circuit that the test for whether an omission of interim financial data is material and therefore violates Section 11 of the Securities Act is 'whether there is a 'substantial likelihood that the disclosure of the omitted [information] would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available

(*Asay v Pinduoduo Inc.*, 2021 WL 3871269 [2d Cir 2021] *citing Stadnick v. Vivint Solar, Inc.*, 861 F3d 31, 37 [2d Cir. 2017], quoting *DeMaria v. Andersen*, 318 F3d 170, 180 [2d Cir. 2003]).

The plaintiffs do not allege that the historical data disclosed in the Offering Documents was not accurate and do not dispute that the historical data reflected a slowing of growth in three of the previous four quarters (NYSCEF Doc. No. 66, Pg. 2). This matters because the failure to disclose interim data as to one quarter's growth rate where the Company had a history of volatility is not actionable (*Stadnick v Vivint Solar, Inc.*, 861 F3d 31, 38-39 [2d Cir 2017]). In addition, for completeness, the Offering Documents contained certain general precatory warnings including that historical results are not indicative of future performance (NYSCEF Doc. No. 35, at 6) and operating results may vary from quarter to quarter and may not be satisfactory at all (*id.,* at 9 and 17). Significantly, the Offering Documents also disclosed certain specific warnings including that (x) user engagement had increased during the lockdown and social distancing measures implemented to control the spread of COVID-19, and (y) that such increased engagement may not continue based on the availability and effectiveness of vaccines and treatments and other measures taken by authorities and that as a result "growth prospect may not be as strong" (*id.*, at 12). To be clear, user engagement did continue to grow. At year end

2020, the Company projected for the year 2021, bookings for digital entertainment would be between $4.3 billion and $4.5 billion (NYSCEF Doc. No. 41, at 4). After Q2 2021, the Company raised its guidance to reflect that expected bookings for digital entertainment would be between $4.5 billion and $4.7 billion (NYSCEF Doc. No. 37, at 2). At year end 2021, the Company reported that its bookings for digital entertainment for the year 2021 was $4.6 billion, up 44.3% year-on-year and in line with its guidance (NYSCEF Doc. No. 36, at 4). In other words, as indicated above, user engagement did not decrease at all and in fact increased. When the Company announced its earnings for Q3 2021, the revenue of digital entertainment was $1.1 billion, *i.e.*, still higher than it had been in every quarter in the last nearly two years (NYSCEF Doc. No. 43, at 4). Recently, the Appellate Division held that statements that were mere puffery were not rendered materially misleading by omitting information then tied to a decline of 1.4% in a single quarter's earnings as to a revenue source that was only one of the defendant's three principal revenue sources (*City of Warwick Mun. Empl. Pension Fund v Rest. Brands Intl. Inc.*, 210 AD3d 461, 462 [1st Dept 2022]). This is not even that. Accordingly, the SAC must be dismissed with prejudice.

It is hereby ORDERED that the motion to dismiss is granted with prejudice; and it is further ORDERED that the motion to extend the time to serve Tencent is denied as moot.



5/15/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE