

(Securities Act Release No. 4952)
ADMINISTRATIVE PROCEEDING
FILE NO. 3-1728

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
March 3, 1969

In the Matter of
BALLY MANUFACTURING CORPORATION
2640 West Belmont Avenue
Chicago, Illinois

(2-28537)

Securities Act of 1933 - Section 8(d)

FINDINGS AND STOP ORDER

STOP ORDER PROCEEDINGS

Where issuer's registration statement was misleading in failing to disclose material circumstances relating to issuer's indebtedness, transactions involving principal shareholders, and age of accounts receivable, held, stop order will be entered suspending effectiveness of registration statement.

APPEARANCES:

Thomas N. Holloway, Calvin K. Huger and John S. Bernas, for the Division of Corporation Finance of the Commission

George N. Aronoff of Benesch, Friedlander, Mendelson & Coplan, for Bally Manufacturing Corporation.

This is a proceeding instituted under Section 8(d) of the Securities Act of 1933 ("Act") to determine whether a stop order should issue suspending the effectiveness of a registration statement filed by Sally Manufacturing Corporation ("registrant") on March 27, 1968 and amended on May 17 and 23, 1968. The registration statement, which has not become effective, relates to a proposed public offering of 275,000 shares of registrant's \$1.00 par value common stock, of which 75,000 shares are to be offered by registrant and 200,000 shares are to be offered on behalf of certain shareholders of registrant. Registrant is a

Delaware corporation formed in March 1968, whose business is the manufacture and sale of coin-operated amusement and gaming devices, principally pin-ball machines and slot machines.

Registrant entered into a stipulation with the Commission's Division of Corporation Finance ("Division") in which registrant waived a hearing and post-hearing procedures. Solely for the purposes of this proceeding, registrant admitted the accuracy of the allegations in the Division's Statement of Matters, waived any objections it might have to assertions of materiality contained in such allegations, and subject to certain conditions consented to the entry of a stop order suspending the effectiveness of the registration statement. Registrant submitted an offer of settlement embodying the provisions of the stipulation.

Upon consideration of all the circumstances, including the recommendation of the Division, the Commission determined to accept the offer of settlement. Accordingly, on the basis of the Statement of Matters and the stipulation and consent, it is found that the registration statement filed by registrant included untrue statements of material facts and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading, with respect to the following matters.

Registrant's Indebtedness and Capital Structure

The prospectus, included as part of the registration statement, stated that registrant had \$470,114 of Secured Indebtedness, \$961,000 of short term Bank Indebtedness and 1,337,000 shares of common stock outstanding as of May 1, 1968. It further stated that registrant planned to use approximately \$961,000 of the proceeds of the stock offering to retire a short term bank loan which was incurred to provide working capital funds required to carry increased accounts receivable and inventory.

The prospectus failed to disclose that the \$961,000 of bank indebtedness was comprised of two promissory notes in the amounts of \$561,000 and \$400,000 which were personally endorsed by Sam W. Klein, William T. O'Donnell, Irving Kaye and Abe Green, the principal and selling shareholders of registrant; that registrant had an agreement with the creditor bank that the notes would be renewed so long as registrant made specified periodic payments; that notwithstanding the three-month term of the \$561,000 note, the note was but a part of a series of "short-term" loans dating back at least to April 1966 which were consistently renewed on or before their due dates; and that approximately \$425,030 of the funds realized from the \$561,000 loan had not been used to provide working capital funds but rather to finance various acquisitions from and by certain shareholders.

The prospectus further was materially misleading in that it did not set forth in one place in a readily understandable manner certain facts with respect to registrant's secured indebtedness, including the facts that such indebtedness was secured by a lien on substantially all of registrant's assets other than inventory, receivables and real estate; that the holder of this indebtedness also held a mortgage on the building occupied by

registrant under a lease from a partnership composed of the principal and selling stockholders of registrant; and that under the terms of the secured indebtedness if the partnership defaults on the mortgage, the payment of the balance due on registrant's secured indebtedness may be accelerated.

Transactions With Insiders

The prospectus stated that in 1965 O'Donnell, registrant's president and one of the selling shareholders, acquired a 30% interest in Currency Gaming Devices, Inc. ("Currency Gaming"), which is registrant's distributor for the northern section of Nevada, and that he acquired the remaining 70% interest in Currency Gaming in December 1966 and then sold the 70% interest to an unaffiliated individual in January 1967. The prospectus failed to disclose that O'Donnell borrowed \$63,600 from registrant in order to purchase his initial 30% interest in Currency Gaming; that he borrowed \$60,030 from registrant in order to purchase the remaining 70% interest in Currency Gaming; that he purchased the 70% interest in Currency Gaming as a nominee for one C. S. Redd pursuant to an oral agreement between Redd and O'Donnell; and that Redd assumed the \$60,000 obligation to registrant. The prospectus also failed to state that O'Donnell borrowed \$15,000 from registrant in order to purchase an 18% interest in Westronics, Inc., another company with which registrant had business dealings.

The prospectus stated that registrant had sold products to the Irving Kaye Co. of New York, New York which company is controlled by Kaye, a principal and selling shareholder of registrant, but failed to disclose that Green, another principal and selling shareholder of registrant, is also a principal shareholder in the Irving Kaye Co. and that he takes an active part in its affairs.

The prospectus stated that during the time registrant's stock was privately held, registrant's principal shareholders and the partnership composed of such shareholders borrowed varying amounts from and loaned varying amounts to registrant, and set forth certain information stated to relate to the advances made to and the amounts due from the principal stockholders and their partnership over a three and a half year period. The prospectus failed to disclose, however, that during the period involved Klein, the Irving Kaye Co. and O'Donnell loaned \$200,000, \$100,000 and \$50,000 respectively to registrant in order for registrant to discharge a bank loan, and that pursuant to an agreement dated July 2, 1965 three principal shareholders of registrant purchased another shareholder's stock interest in registrant with funds borrowed from registrant.

Registrant's Accounts Receivable

The prospectus contained a table showing the number and amount of registrant's accounts receivable which were current and those which were past due for periods of 1-30 days, 31-60 days, 61-90 days and over 90 days, and listing the bulk of registrant's accounts receivable under the caption "current". The prospectus failed clearly to indicate that, under credit terms enjoyed by certain of registrant's customers, accounts designated

“current” in the table may include amounts due for merchandise shipped up to six months previously.

Conclusion

In view of the above deficiencies, a stop order should issue suspending the effectiveness of the registration statement.

As part of its settlement offer, registrant agreed to file an appropriate amendment correcting the deficiencies in the registration statement, with the understanding that in that event the stop order shall be for a five day duration, at the end of which period the registration statement may become effective. An amendment to the registration statement has been filed which appears to make necessary and appropriate changes.

Accordingly, IT IS ORDERED that the effectiveness of the registration statement filed by Bally Manufacturing Corporation be, and it hereby is, suspended.

IT IS FURTHER ORDERED that five days after the date of this order, the stop order shall cease to be effective and the registration statement as amended shall become effective.

For the Commission (pursuant to delegated authority)

Orval L. DuBois
Secretary