

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE AT NASHVILLE**

TENNESSEE SECURITIES DIVISION)	
)	
Petitioner,)	
)	
VS.)	
)	
)	File No.: <u>03-023</u>
UPPER CUMBERLAND MEDIA GROUP, INC.,))	
DALE HOLLOW <i>HORIZON</i>,)	
DON NAPIER,)	
PAULETTE MAYNARD,)	
KELLY T. KEISLING, AND)	
EVERETT H. ASBERRY)	
)	
Respondents.)	

ORDER TO CEASE AND DESIST

This Order issues as a result of a Petition and its exhibits attached hereto filed by the Tennessee Securities Division of the Department of Commerce and Insurance and is predicated upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Upper Cumberland Media Group, Inc. ("UCMG") is a Tennessee chartered corporation, with its principal place of business being 1042 Cordell Hull, Memorial Drive, Byrdstown, TN 38549. Kelly Keisling is the registered agent for service of process at the address of UCMG.

2. Dale Hollow *HORIZON* ("Dale Hollow") is a business entity with its principal place of business being 510 W. Main St., P.O. Box 281, Byrdstown, TN 38549.

3. Don Napier (“Napier”) is a natural person, believed to be an employee, agent, officer, director, owner or other affiliated person of UCMG, with his business address being c/o Upper Cumberland Media Group, Inc., 1042 Cordell Hull, Memorial Drive, Byrdstown, TN 38549.

4. Paulette Maynard (“Maynard”) is a natural person, believed to be an employee, agent, officer, director, owner or other affiliated person of UCMG, with her business address being c/o *Dale Hollow HORIZON*, 510 W. Main St., Byrdstown, TN 38549.

5. Kelly T. Keisling (“Keisling”) is a natural person, believed to be an employee, agent, officer, director, owner or other affiliated person of UCMG, with his business address being c/o Upper Cumberland Media Group, Inc., 1042 Cordell Hull, Memorial Drive, Byrdstown, TN 38549.

6. Everett H. Asberry (“Asberry”) is a natural person, believed to be an employee, agent, officer, director, owner or other affiliated person of UCMG, with his business address being 525 N. Main St., Byrdstown, TN 38549.

7. UCMG is currently offering and/ or selling securities from and/or in the state of Tennessee.

8. Dale Hollow is currently offering and/or selling securities from and/or in the state of Tennessee.

9. Napier is currently offering and/ or selling securities from and/or in the state of Tennessee.

10. Maynard is currently offering and/ or selling securities from and/or in the state of Tennessee.

11. Keisling is currently offering and/ or selling securities from and/or in the state of Tennessee.

12. Asberry is currently offering and/ or selling securities from and/or in the state of Tennessee.

13. On or about July, 2003, it was brought to the attention of the Division that UCMG had been raising capital by putting on a series of infomercial type seminars. On July 21, 2003, Robert Heisse, an investigator with the Division of Securities, conducted a preliminary investigation regarding the matter. He learned that Don Napier was conducting the seminars on behalf of UCMG. Mr. Heisse further discovered that UCMG was chartered by the Tennessee Secretary of State on April 14, 2003. Keisling is listed as the registered agent for UCMG. The documents filed with the Secretary of State listed Asberry as an incorporator of UCMG.

14. On or about July 23, 2003, the *Dale Hollow HORIZON*, a local newspaper in Byrdstown, Tennessee, ran an advertisement for the sale of stock in UCMG. UCMG is the parent company of the *Dale Hollow HORIZON*. The advertisement states that UCMG is announcing "the availability of shares for purchase." The advertisement further provides that "[s]hares are still available at \$10 a share with 100 shares being the minimum amount to purchase." The advertisement also provides that "[s]hares will be available at this purchase price until August 20, 2003, at which time, shares will go up to \$12.50 a share with minimum remaining at 100." The advertisement provided that interested parties were to contact Paulette Maynard at the *Dale Hollow HORIZON* or stop by the editorial offices for additional information.

15. UCMG is not currently, nor has the company ever been, registered as a broker-dealer, agent of a broker-dealer, or investment adviser with the Division pursuant to the Tennessee Securities Act of 1980, as amended. Moreover, UCMG has never registered a securities offering with the Division.

16. Dale Hollow is not currently, nor has the company ever been, registered as a broker-dealer, agent of a broker-dealer, or investment adviser with the Division pursuant to the Tennessee Securities Act of 1980, as amended.

17. Napier is not currently, nor has he ever been, registered as a broker-dealer, agent of a broker-dealer, or investment adviser with the Division pursuant to the Tennessee Securities Act of 1980, as amended.

18. Maynard is not currently, nor has she ever been, registered as a broker-dealer, agent of a broker-dealer, or investment adviser with the Division pursuant to the Tennessee Securities Act of 1980, as amended.

19. Keisling is not currently, nor has he ever been, registered as a broker-dealer, agent of a broker-dealer, or investment adviser with the Division pursuant to the Tennessee Securities Act of 1980, as amended.

20. Asberry is not currently, nor has he ever been, registered as a broker-dealer, agent of a broker-dealer, or investment adviser with the Division pursuant to the Tennessee Securities Act of 1980, as amended.

21. The Respondents are presently and will continue to offer and/or sell unregistered securities, without the proper registration, from or in the State of Tennessee. As result of this activity the public will suffer immediate and irreparable injury, loss or damage.

22. The Respondents, in connection with the offer, sale and purchase of the security in this state, will continue to violate Tennessee Code Annotated § 48-2-121(b) by stating that the shares of UCMG stock are registered or omitting to state that the shares of stock are unregistered with the State of Tennessee, Department of Commerce and Insurance, Division of Securities.

23. This Order is in the public interest and necessary for the protection of investors, and consistent with the purposes fairly intended by the Act.

CONCLUSIONS OF LAW

1. Tennessee Code Annotated §48-2-104 provides that it is unlawful for any person to sell any security in this state unless it is registered with the Division, qualified for an exemption pursuant to §48-2-103, or a covered security.

2. Tennessee Code Annotated § 48-2-102 provides that a security includes stock.

3. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, the Respondents have violated and are violating Tennessee Code Annotated §48-2-104 by offering, issuing, and/or selling unregistered securities to Tennessee residents.

4. Tennessee Code Annotated §48-2-102(3) provides that a “broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person’s own account and as part of a regular business rather than in connection with such person’s investment activities.

5. Tennessee Code Annotated §48-2-102(2) provides that an “agent” means any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from or in this state.

6. Tennessee Code Annotated §48-2-109(a) provides that it is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part.

7. Tennessee Code Annotated §48-2-109(b) provides that it is unlawful for any broker-dealer to employ an agent to transact business as an agent unless the agent is registered under this part.

8. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, Respondents, UCMG, Dale Hollow, Napier, Maynard, Keisling, and Asberry, have violated and are violating Tennessee Code Annotated §48-2-109(a) and (b) by acting as unregistered broker-dealers and/or employing unregistered agents to solicit Tennessee residents.

9. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, Respondents, Dale Hollow, Napier, Maynard, Keisling, and Asberry have violated and are violating Tennessee Code Annotated §48-2-109(a) by acting as broker-dealers and/or unregistered agents of a broker-dealer from and in the State of Tennessee.

10. Tennessee Code Annotated § 48-2-121(b) provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

11. Based upon the Findings of Fact, the Respondents have violated and are violating Tennessee Code Annotated § 48-2-121(a) by stating that the shares of UCMG stock are registered or omitting to state that the shares of stock are unregistered with the State of Tennessee, Department of Commerce and Insurance, Division of Securities.

12. Tennessee Code Annotated §48-2-116 provides that the Commissioner may make, promulgate, amend, and rescind such Orders as are necessary to carry out the provisions of the Tennessee Securities Act of 1980, as amended, and that such Order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

13. Tennessee Code Annotated §48-2-116(e)(2) states, in pertinent part, that no Order may be entered without: 1) prior notice to affected parties, unless the Commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors; 2) an opportunity for a hearing before the Commissioner; and 3) written Findings of Fact and Conclusions of Law.

14. Based upon the Findings of Fact, it would not be in the public interest and it would be detrimental to the protection of investors if prior notice of this Order were given to affected parties.

NOW, THEREFORE, in consideration of the foregoing, it is **ORDERED** that:

1. The Respondents, Upper Cumberland Media Group, Inc., Dale Hollow *HORIZON*, Don Napier, Paulette Maynard, Kelly T. Keisling, and Everett H. Asberry shall comply with the provisions of the Tennessee Securities Act of 1980, as amended.

2. The Respondents, Upper Cumberland Media Group, Inc., Dale Hollow *HORIZON*, Don Napier, Paulette Maynard, Kelly T. Keisling, and Everett H. Asberry, shall cease and desist in the further conduct as a broker-dealers from or in the State of Tennessee until such time as it is effectively registered with the Division to engage in such activity.

3. The Respondents, Dale Hollow *HORIZON*, Don Napier, Paulette Maynard, Kelly T. Keisling, and Everett H. Asberry, shall cease and desist in further conduct as agents of a broker-dealer from or in the State of Tennessee until such time each is effectively registered with the Division to engage in such activity.

4. All Respondents shall cease and desist the further offer and/or sale and/or issuance of unregistered securities from and in the State of Tennessee.

5. The Respondents shall cease and desist, from and in the State of Tennessee, in making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

6. All persons in any way assisting, aiding, or helping any of the aforementioned Respondents in any of the aforementioned violations of the Tennessee Securities Act of 1980, as amended, Tennessee Code Annotated §§48-2-101 et seq. shall cease and desist from all such activities in violation of the Tennessee Securities Act of 1980, as amended.

This Order is not intended to prohibit any lawful conduct in which any of the Respondents might be engaged.

Entry of this Order shall not in any way restrict the Tennessee Securities Division or the Commissioner of Commerce and Insurance from taking further action with respect to

these or other possible violations by Respondents of the Act or any of the Rules promulgated there under.

This Order shall become a Final Order 30 days from the date of its entry, unless written notification requesting a hearing is made within that 30 day period.

You are advised that you have the right to a hearing as to all matters raised in this Order. If you wish to exercise your right to a hearing, please notify:

**DAPHNE D. SMITH
ASSISTANT COMMISSIONER FOR SECURITIES
STATE OF TENNESSEE, DEPARTMENT OF COMMERCE AND INSURANCE
DAVY CROCKETT TOWER, SUITE 680
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243**

Such request must be received within 30 days of the date of entry of this Order.

Entered this 29th day of September, 2003.

Paula A. Flowers
Paula A. Flowers,
Commissioner

APPROVED FOR ENTRY:

Daphne D. Smith
Daphne D. Smith
Assistant Commissioner for Securities
Department of Commerce and Insurance

Michele Komorowski Elliott
Michele Komorowski Elliott, #022618
Staff Attorney, Securities Division
Department of Commerce and Insurance
500 James Robertson Parkway
Davy Crockett Building, 5th Floor
Nashville, Tennessee 37243
(615) 741-2199
Fax (615) 741-4000