

State of Missouri  
Office of Secretary of State

Case No. AP-04-100

IN THE MATTER OF:

VARNER TECHNOLOGIES, INC.;  
CLAYTON W. VARNER;  
ROBERT W. RAPP;  
RICHARD A. DAVIS; and  
JAN M. SKOLA,

Respondents,

Serve: Varner Technologies, Inc. and Clayton W. Varner at:  
347 Pine Wood Bend  
Wildwood, MO 63005

Robert W. Rapp at:  
515 North Eagle Terrace  
Jefferson City, MO 65109

Richard A. Davis at:  
11570 Rock Island Court  
Maryland Heights, MO 63043

Jan M. Skola at:  
346 E. Cross Fox Trail  
Camdenton, Missouri 65020

**SUMMARY ORDER TO CEASE AND DESIST**

On the 16th day of December, Omar Davis, Enforcement Counsel for the Securities Division submitted a petition for a cease and desist order. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

**FINDINGS OF FACT**

1. Varner Technologies, Inc., ("VTI"), was a Missouri corporation which was administratively dissolved in Missouri on April 9, 2002. Varner was purportedly engaged in the business of distributing, promoting and marketing Internet services, e-commerce, long distance services, wireless services and products, pre-paid calling cards, and the latest in communication services to the public and has a current address of 347 Pine Wood Bend, Wildwood, MO 63005.
2. Clayton W. Varner ("Varner") was the President of VTI and has a current address of 347 Pine Wood Bend, Wildwood, MO 63005
3. Robert W. Rapp ("Rapp") was the Vice President/Director of VTI and has an address of 515 North Eagle Terrace, Jefferson City, MO 65109.
4. Richard A. Davis ("Davis ") was the acting CEO of VTI from January 2002, through his termination November 13, 2003, and has an address of 11570 Rock Island Court, Maryland Heights, MO 63043.
5. Jan M. Skola ("Skola") was a consultant for VTI and has an address of 346 E. Cross Fox Trail, Camdenton, MO 65020.
6. Robert Ponder (now deceased) was a consultant for VTI had an address of 1219 South 730, Deepwater, Missouri 64740.
7. As used in this Cease and Desist Order, the term "Respondents" refers to VTI, Varner, Rapp, Davis and Skola.
8. A check of the records maintained by the Commissioner confirmed that Varner Technologies, Inc. was administratively dissolved in the State of Missouri on April 9, 2002.
9. In May 2002, a Missouri resident ("MR1") met Rapp through a mutual friend. Within a short time, Rapp introduced MR1 to Skola. Skola introduced MR1 to the DAVID computer browser concept, which Skola, Rapp and Davis promoted at meetings with investors and potential investors. DAVID was the name given to the interactive browser created by Varner to provide Internet members instant access to information, products or services pertinent to a user's particular lifestyle. Through DAVID, the consumer was able to interact directly with their preferred brands and products.
10. On July 17, 2002, Skola personally visited MR1 and asked if MR1 would give VTI a loan. Skola told MR1, among other

things, the following about the loan:

- a. MR1 would receive an Installment Note that would pay interest at 10% per annum. The principal and interest would be repaid 24 months from the date of the note or July 19, 2004;
  - b. The principal was secured by 12,500 shares of Varner Technology Preferred B stock for every \$500 loaned to the company; and
  - c. In addition to a stock bonus, MR1 would participate, on a pro-rata basis, in the DAVID browser pool of funds created by 2% of browser sales.
11. On July 17, 2002, Rapp and Skola visited MR1 and MR1 gave Skola a personal check for \$30,000 made payable to VTI.
  12. In August 2002, MR1 received an Installment Note dated July 19, 2002. Davis signed the note. Included in the mailing was a stock certificate for 360,000 shares of VTI stock, dated July 31, 2002, and signed by Rapp and Davis.
  13. In early December 2002, Skola contacted MR1 and asked for another loan to VTI.
  14. On December 21, 2002, MR1 gave Skola a personal check for \$25,000 payable to VTI.
  15. In mid-February 2003, MR1 received an Installment Note dated January 6, 2003, and signed by Davis. The January 6, 2003 Note stated that the amount of interest earned would be 6% rather than the 10% as stated in the first Note. The principal on this note would be due and payable 24 months from the date of the note or January 6, 2005. Included in the mailing February mailing was a VTI stock certificate for 250,000 shares of stock, dated February 1, 2003, and signed by Rapp and Davis.
  16. MR1 received interest payments in the form of checks signed by Davis as follows: October 15, 2002, \$756.16; January 20, 2003, \$750; and two payments on April 11, 2003, for \$750 and \$375. The total amount of interest MR1 received was \$2,631.16. MR1 received no further interest payments or a return of MR1's principal. Some time after April 11, 2003, Rapp, Davis and Skola informed MR1 that VTI had no money to pay any investors.
  17. MR1 told an investigator with the Enforcement Section that:
    - a. MR1 was not told that the Missouri Corporations Division administratively dissolved VTI on April 9, 2002;
    - b. MR1 believed that money from the Installment Note account was being used to promote and continue the VTI Browser;
    - c. MR1 was never informed that Davis received a salary from the Installment Note account money. Davis told MR1 that Davis never received a salary for his work as interim CEO of VTI;
    - d. MR1 was never informed that Skola and Varner received any money from the Installment Note account; and
    - e. MR1 would not have invested in the Installment Note account had MR1 known that Davis, Skola and Varner were receiving any money from the investment.
  18. The Enforcement Section's review of the VTI Installment Note account revealed that 59% of the total amount of funds deposited into the VTI Installment Note account, or approximately \$280,000 of the total \$475,000, was used to pay salaries and expenses to Davis, Skola and Varner. These individuals received the following amounts over the twelve month period the VTI Installment Note account was active: Davis received \$141,000; Skola received \$56,000; and Varner received \$83,000. The money paid for such things as: Davis and Skola's salaries; expenses claimed by Davis and Skola; stock redemption (\$5,000) by Varner; Varner's \$2,500 monthly DAVID LLC license usage fee; Varner's monthly taxes (\$1,350); and Davis' auto allowance charge.
  19. During early July 2002, Skola contacted a Missouri resident ("MR2") and asked MR2 to loan money to VTI. Skola informed MR2 that the loan would be in the form of an Installment Note and the money would be used to continue the operations of VTI. MR2 had earlier purchased VTI stock and knew Rapp, Davis and Varner. Around mid-July 2002, MR2 gave Skola a personal check dated July 17, 2002 payable to VTI in the amount of \$17,000.
  20. In the fall of 2002, MR2 received a VTI Installment Note that stated among other things, the following:
    - a. The outstanding principal amount of this Note shall bear interest per annum at 10%;
    - b. Borrower agrees to pay Lender each Quarter, as installment payments under this Note, an interest amount equal to 10% per annum. Principal would be due and payable 24 months from the date of the note or July 19, 2004;
    - c. In addition to a stock bonus, Lender would participate, on a pro-rata basis, in the DAVID Browser pool of funds created by 2% of Browser sales.
  21. The Installment Note was attached to a stock certificate issued to MR2 for 500,000 shares of VTI Class B-Preferred stock,

dated July 31 st, 2002, and signed by Rapp and Davis.

22. In early December 2002, Skola asked MR2 to loan VTI money once again. Skola told MR2 that VTI needed ongoing funding to continue is operations.
23. In mid-December 2002, MR2 gave Skola a check dated December 12, 2002, payable to VTI in the amount of \$25,000.
24. In February 2003, MR2 received an Installment Note dated January 6, 2003, and signed by Davis. The January 6, 2003 Note stated that the amount of interest earned would be 6%. Principal would be due and payable 24 months from the date of this note or January 6, 2005. Included in the mailing February 2003 mailing was a stock certificate for 250,000 shares of stock in Varner Technologies, dated February 1, 2003, and signed by Rapp and Davis.
25. On March 3, 2003, MR2 gave Skola a check dated March 1, 2003, payable to VTI in the amount of \$10,000. This check was given to Skola upon Skola's request.
26. On April 4, 2003, MR2 gave Skola a check dated April 4, 2003 payable to VTI in the amount of \$15,000. This check was given to Skola upon Skola's request.
27. In October 2003, MR2 received the first page of an Installment Note identical to the earlier July 19, 2003 note, signed by Davis. This note also stated that the principal would be due and payable 24 months from the date of the note or July 19, 2004. The Installment Note differed from the January 2003 Installment Note in the following ways:
  - a. The amount of interest MR2 was to receive was once again 10% per annum;
  - b. The following was handwritten on the note: "R.R. Oct. 16, 2003, Total Loans to V.T.I. \$75,000, Signed by Robert Rapp."
28. MR2 received interest payments in the form of checks signed by Davis as follows: October 15, 2002, \$541.64; January 20, 2003, \$625; and two payments on April 11, 2003, for \$625, and \$375.02. The total amount of interest MR2 received was \$2,166.66. MR2 received no further interest payments or the Principal. Rapp, Davis and Skola have informed MR2 that VTI has no money to pay any investors.
29. MR2 informed an investigator with the Enforcement Section that:
  - a. MR2 believed that the money from the Installment Note account was going to be used to pay for the bookkeeping and other expenses needed to keep VTI going;
  - b. MR2 was not informed that Davis, Skola or Varner received any part of the money from the Installment Note account. MR2 questioned Skola about drawing a salary since he was concerned when he learned this fact. Skola admitted to MR2 that he did get a salary;
  - c. Skola did not inform MR2 that the Missouri Corporations Division administratively dissolved VTI on April 9, 2002; and
  - d. MR2 would not have invested in the Installment Note account had MR2 been informed that Davis, Skola and Varner would receive any portion of the money from the investment.
30. MR2 also was not aware that 59% of the total amount of funds deposited into the VTI Installment Note account, or approximately \$280,000 of the total \$475,000, was used to pay salaries and expenses to Davis, Skola and Varner.
31. On October 3, 2003, the Missouri Securities Division received information indicating that the Respondents offered unregistered securities in the State of Missouri.
32. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration, granted exemption or notice filing indicating status as a "federal covered security" for any of the securities offered by the Respondents in the State of Missouri.
33. A check of the records maintained by the Commissioner confirmed no registration for Respondents to sell securities in the State of Missouri.
34. An investigator with the Enforcement Section confirmed that the State of Washington issued a Consent Order on November 22, 1999 in which Varner Technologies, Inc. and Varner agreed to cease and desist the offering and/or selling of securities in violation of the securities laws of the State of Washington.
35. On November 7, 2003, the Enforcement Section sent a letter of inquiry to Respondent Varner that requested a claim of exemption from registration or exception from definition upon which Respondents relied in offering unregistered securities in the State of Missouri in the form of shares of stock. The letter also requested additional information about the offers to Missouri residents.

36. After receiving an incomplete and insufficient response from Varner on November 28, 2003 to the questions asked in the Enforcement Section's November 7 letter, the Enforcement Section sent a second letter of inquiry dated December 4, 2003
37. On January 15, 2004, the Enforcement Section received a response from Varner giving information that included, in part;
  - a. That Varner had "not had anything to do with VTI for quite a long time";
  - b. "Robert Rapp was Executive Vice President of VTI. When any meetings was [sic] held regarding stock or shareholders he coordinated and conducted them. It is my understanding that he has all documentation of this company and is now in charge. I no longer have any access to records or dealings with this company."
38. On November 7, 2003, the Enforcement Section sent a letter of inquiry to Respondent Rapp that requested a claim of exemption from registration or exception from definition upon which Respondents relied in offering unregistered securities in the State of Missouri. The letters also requested additional information about the offers to Missouri residents.
39. On December 1, 2003, the Enforcement Section received an incomplete and insufficient response from Rapp that gave the names of two former law firms that represented VTI regarding the incorporation of the company and past securities issues from the inception of the company through the purchase of the public company and through a merger with VTI.
40. On December 4, 2003, the Enforcement Section sent a second letter of inquiry to Respondent Rapp that requested a claim of exemption from registration or exception from definition upon which Respondents relied in offering unregistered securities in the State of Missouri. The letter also requested additional information about the offers to Missouri residents.
41. On December 16, 2003, the Enforcement Section received an incomplete and insufficient response from Rapp that stated, in part;
  - a. "Varner Technologies, Inc. is presently in a survival mode, in my opinion. After becoming a public company in Aug. 2001 and the 9-11-01 attack on our country, Varner Technologies Inc. lost Broker support that would have helped the company financially, and since that time I would say it has been in the survival mode.";
  - b. In April, 2002, Varner brought Davis to the company as CEO and Rapp no longer had input or involvement in the company while it was in Davis' control; and
  - c. Varner is the only person to have access to the company records.
42. On May 24, 2004 the Enforcement Section sent a third letter of inquiry to Respondent Rapp that requested a claim of exemption from registration or exception from definition upon which Respondents relied in offering unregistered securities in the State of Missouri. The letter also requested additional information about the offers to Missouri residents.
43. On June 14, 2004, the Enforcement Section received an incomplete and insufficient response from Rapp that stated, in part, that information on the Installment Notes would need to come from Davis, since Davis had total control of the company and established bank accounts to which only Davis had access. Only Davis would know the identity of all the Installment Note investors.
44. Rapp's response also indicated that he believed the offering was being made pursuant to Regulation D, specifically 505 or 506.
45. On June 14, 2004, the Enforcement Section sent a final letter of inquiry to Respondent Rapp that requested a claim of exemption from registration or exception from definition upon which Respondents relied in offering unregistered securities in the State of Missouri. The letter also requested additional information about the offers to Missouri residents.
46. On June 25, 2004, the Enforcement Section received a response from Rapp that stated, in part, that
  - a. Varner and Davis planned to offer the notes to shareholders as a way to recapitalize the company; and
  - b. After Davis was brought in as CEO' Rapp was not allowed input into the company.
47. On May 24, 2004 the Enforcement Section sent a letter of inquiry to Respondent Skola that requested a claim of exemption from registration or exception from definition upon which Respondent relied in offering unregistered securities in the State of Missouri in the form of Installment Notes. The letter also requested additional information about the offers to Missouri residents.
48. On June 14, 2004, the Enforcement Section received an incomplete and insufficient response from Skola that stated, among other things, the following:
  - a. Skola never sold securities for VTI;
  - b. Skola received a salary as a consultant for VTI;

49. On June 22, 2004, the Enforcement Section sent a second letter of inquiry to Respondent Skola that requested a claim of exemption from registration or exception from definition upon which Respondent relied in offering unregistered securities in the State of Missouri in the form of Installment Notes. The letter also requested additional information about the offers to Missouri residents.
50. On July 2, 2004, the Enforcement Section received a response from Skola that stated, among other things, the following:
  - a. Skola believed the offering was being made to "Accredited Investors" as defined in Rule 501 of Regulation D;
  - b. Skola completed the first draft of the Installment Note and forwarded it to Davis, Rapp and Varner; and
  - c. Checks from shareholders interested in participating in the Installment Notes were sent to Davis to be deposited in a bank in St. Louis and only Davis had access to that account.
51. In a conversation Skola had with the Enforcement Section on April 22, 2004, Skola stated that Davis signed many of the checks and sent them to Skola to fill in the interest amounts to go to the participants in the Installment Notes and then Skola would mail the checks.
52. On June 14, 2004, the Enforcement Section sent a letter of inquiry to Respondent Davis that requested a claim of exemption from registration or exception from definition upon which Respondent relied in offering unregistered securities in the State of Missouri in the form of Installment Notes. The letter also requested additional information about the offers to Missouri residents.
53. On July 13, 2004 the Enforcement Section received a response from Davis, which stated that Skola filled out the dividend checks and returned them to Davis.
54. On July 15, 2004 the Enforcement Section received a second response from Davis that stated, among other things, the following:
  - a. Davis received administrative duties with VTI but never received a formal contract or title;
  - b. Davis opened the bank account for VTI; and
  - c. "Jan Skola, Bob Rapp and Bob Ponder were the people responsible for presenting the Installment Note to the investors they had gotten involved in Varner."
  - d. "Clay, Bob and Jan gathered shareholders that they claimed were accredited investors that were shareholders of registered stock and that they got involved under the 505 or 506 offering. They claimed to be using that same exemption from their past dealings."
55. Respondents offered and sold unregistered securities to Missouri residents.
56. Although the Enforcement Section investigator repeatedly requested evidence of exemption from Respondents, Respondents have failed to carry their burden of demonstrating an exemption.
57. Respondents were not registered to sell securities in the State of Missouri.
58. Respondents offered and sold securities in VTI to MR1 and MR2 and led MR1 and MR2 to believe that VTI was a fully operational and existing entity, all the while knowing that VTI had been administratively dissolved as a corporation on April 9, 2002
59. In connection with the offer, sale or purchase of a security to Missouri residents, Respondents omitted to state the material fact that:
  - a. The securities Respondents offered and sold to Missouri residents were unregistered and non-exempt;
  - b. Respondents were not registered to sell securities in the State of Missouri;
  - c. VTI was administratively dissolved by the State of Missouri on April 9, 2002;
  - d. The State of Washington issued a Consent Order on November 22, 1999 in which Varner Technologies, Inc. and Clay Varner agreed to cease and desist the offering and/or selling of securities in violation of the securities laws of the State of Washington; and
  - e. Respondents intended to use funds invested in the Installment Notes account for the salary and other expenses of Respondents.
60. This Order is in the public interest.

## **CONCLUSIONS OF LAW**

1. §409.401(o), RSMo, Cumulative Supp. 2002, includes "notes" within the definition of a security. The interests offered and sold by Respondents as described in the above findings of fact constitute securities.
2. §409.101, RSMo 2000, provides that it is unlawful, in connection with the offer, sale or purchase of any security (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. The conduct described in the above findings of fact constitutes a violation of this section.
3. §409.201(a), RSMo 2000, provides that it is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under §§ 409.101 to 409.419, RSMo. The conduct described in the above findings of fact constitutes a violation of this section.
4. §409.201(b), RSMo 2000, provides that it is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered under §§409.101 to 409.419, RSMo. The conduct described in the above findings of fact constitutes a violation of this section.
5. §409.301, RSMo 2000, provides that it is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this act; (2) the security or transaction is exempted under section 409.402; or (3) it is a federal covered security. The conduct described in the above findings of fact constitutes a violation of this section.
6. §409.402(f) RSMo, Cumulative Supp. 2002, provides that the burden of proving an exemption, qualification as a federal covered security, or an exception from a definition is upon the person claiming it. As described in the above findings of fact, Respondents failed to prove an exemption from registration, qualification as federal covered security, or an exception from the definition of a security.
7. §409.408(b), RSMo 2000, provides, in part, that:

If the commissioner shall believe, from evidence satisfactory to him, that such person is engaged or about to engage in any of the fraudulent or illegal practices or transactions above in this subsection referred to, he may issue and cause to be served upon such person and any other person or persons concerned or in any way participating in or about to participate in such fraudulent or illegal practices or transactions, an order prohibiting such person and such other person or persons from continuing such fraudulent or illegal practices or transactions or engaging therein or doing any act or acts in furtherance thereof.

8. §409.6-604(a) RSMo Cumulative Supp. 2003 provides:

If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary and appropriate to comply with this act;

9. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §§409.408(b), RSMo 2000 and 409.6-604(a) RSMo Cumulative Supp. 2003.

## **ORDER**

**NOW, THEREFORE**, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are immediately prohibited from:

- A. Offering or selling securities issued by Varner Technologies, Inc.
- B. Violating §409.101(2), RSMo 2000, or violating or materially aiding in the violation of §409.5-501(2), RSMo Cumulative Supp. 2003, by omitting to state, in connection with the offer or sale of securities to Missouri residents, any material facts, including the following:
  - a. Respondents are not registered to sell securities in the State of Missouri;
  - b. Securities offered and sold by Respondents are not registered in the State of Missouri;
  - c. VTI, the issuer of the securities, has been administratively dissolved by the State of Missouri since April 9, 2002;
  - d. The State of Washington has issued a Consent Order on November 22, 1999 in which Varner Technologies, Inc. and Varner agreed to cease and desist the offering and/or selling of securities in violation of the securities laws of the State of Washington; and

- e. Information concerning the intended use of proceeds, including information that Respondents intended to use proceeds for salary and other expenses of Respondents.
- C. Violating §409.101(3), RSMo 2000, or violating or materially aiding in the violation of §409.5-501(3), RSMo Cumulative Supp. 2003, in connection with the offer or sale of a security, by engaging in any act, practice or course of business, which operates or would operate as a fraud or deceit upon any person, including the offering and sale of securities in a dissolved corporation while leading investors to believe that the corporation is a fully operational and existing entity, knowing that the corporation has been dissolved.
- D. Violating §409.201(a), RSMo 2000, or violating or materially aiding in the violation of §409.4-402(a), RSMo Cumulative Supp. 2003, by transacting business as an agent without an effective registration;
- E. Violating §409.201(b), RSMo 2000, or violating or materially aiding in the violation of §409.4-402(d), RSMo Cumulative Supp. 2003, by employing an unregistered agent;
- F. Violating §409.301, RSMo 2000, or violating or materially aiding in the violation of §409.3-301, RSMo Cumulative Supp. 2003, by offering or selling any unregistered security, unless it is either a federal covered security or has an effective exemption from registration.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 22ND DAY OF DECEMBER, 2004.

MATT BLUNT  
SECRETARY OF STATE

(Signed/Sealed)  
DOUGLAS M. OMMEN  
COMMISSIONER OF SECURITIES