

Alabama. By 1999 it had grown to be the second largest athletic shoe retailer in the United States with locations in thirty states and annual sales of approximately \$775 million. At all times relevant to this Information, JFF's stock was traded on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") under the symbol "FEET."

3. JFF was an issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 ("the Act"). To sell securities to members of the public and maintain public trading of its securities in the United States, JFF was required to comply with the provisions of the federal securities laws, including Section 13(a) of the Act (Title 15, United States Code, Sections 78m(a) and 78o(d)) and the regulations promulgated thereunder, that were designed to ensure that the company's financial information was accurately recorded and disclosed to the public.

4. Under provisions of the federal securities laws and the provisions promulgated thereunder, JFF was required to, among other things (a) file with the United States Securities and Exchange Commission ("SEC") annual financial statements audited by an independent accountant; (b) file with the SEC quarterly updates of its financial statements that disclosed its financial condition and the results of its business operations for each three-month period; (c) make and keep books, records, and accounts that accurately and fairly reflected the transactions and dispositions of the company's assets; and (d) devise and maintain a system of internal accounting controls sufficient to provide – (i) reasonable assurances that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") and other criteria applicable to such statements and to maintain the accountability of assets; and (ii) reasonable assurances

that the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

5. Deloitte & Touche, LLP was the independent accounting firm retained by JFF to, among other things, audit JFF's quarterly and annual financial statements.

6. Beginning in 1994, when JFF issued its initial public offering, it filed quarterly reports, called Forms 10-Q, and annual reports, called Forms 10-K, with the SEC at its headquarters located in Washington, D.C.

CERTAIN RELEVANT ACCOUNTING PRINCIPLES AND PRACTICES

7. Public companies, such as JFF, typically report the financial results of their operations in financial statements that include both an Income Statement and a Balance Sheet. A company's Income Statement reports, among other things, revenue recognized, expenses incurred, and income earned during a stated period of time – usually for a fiscal quarter or fiscal year. Within an Income Statement, expenses are generally subtracted from revenues to calculate net income. A company's Balance Sheet reports, among other things, the assets and liabilities of a company at a given point in time, usually at the end of a fiscal quarter or the end of a fiscal year.

8. JFF's fiscal year ran from February 1 to January 31. In January 1999, JFF changed the last day of its fiscal year from January 31st to the Saturday closest to January 31st. As a result, the last day of JFF's fiscal year 1998 was January 30, 1999.

9. Beginning in or around February 1999 and continuing through on or about April 23, 1999, Deloitte & Touche performed its annual audit of JFF's financial statements for the fiscal year ending January 30, 1999.

10. As part of the audit process involving JFF's accounts receivable, Deloitte & Touche would request certain vendors to provide written, independent confirmation of the amounts they owed JFF directly to Deloitte & Touche. This was usually done in the form of an "audit confirmation letter" which, using language approved by Deloitte & Touche, was typically sent from JFF to the various vendors and requested that, in connection with the audit of JFF's financial statements, the respective vendor verify whether the amount set forth in the letter is the amount actually owed to JFF as of January 30, 1999. The vendor was then requested to send the signed audit confirmation letter directly to Deloitte & Touche.

CERTAIN RELEVANT INDUSTRY PRACTICES

11. It was common practice in the athletic footwear industry for a vendor, such as adidas, to provide retailers, such as Just for Feet, with money which the retailer would use to offset the costs of marketing and advertising the vendor's products. adidas referred to this money as "market development funds" or "MDF." JFF referred to such funds generally as "co-op." Under the guidelines established by adidas for the disbursement of MDF funds, retailers, such as JFF, had to submit invoices and supporting documentation to adidas in order to demonstrate that it had incurred expenses in connection with the advertising or sale of adidas products. Once adidas had approved an MDF request, it typically issued a credit to the vendor to be applied against outstanding invoices from adidas.

12. In or around November 1997 senior officers of JFF met with senior officers of adidas, including defendant **McCOOL**, to discuss projected sales and marketing strategies for the upcoming year. Among the topics discussed was how much MDF money adidas would provide to JFF in 1998 and the guidelines by which JFF would be able to obtain those funds.

13. For the year 1998 adidas budgeted approximately \$407,000 in MDF to JFF and its subsidiaries.

14. In or around November 1998 senior officers of JFF met with senior officers of adidas, including defendant **McCOOL**, to discuss projected sales and marketing strategies for the upcoming year. Among the topics discussed was how much MDF money adidas would provide to JFF in 1999 and the guidelines by JFF would be able to obtain those funds.

15. For the year 1999 adidas initially budgeted approximately \$2.8 million in MDF for JFF and its subsidiaries. In or around June 1999, however, adidas cut the MDF budget for JFF to approximately \$1.3 million.

JFF FRAUDULENTLY RECORDS CREDIT ALLEGEDLY DUE FROM ADIDAS AS INCOME FOR FYE 1998

16. On or about March 15, 1999, prior to the conclusion of JFF's year end audit, an Executive Vice-President at JFF ("the JFF-EVP") directed the accounting department to record a total of approximately \$2,270,769 in fictitious co-op funds due from adidas as of January 30, 1999. He further caused a total of five invoices, which were made out to adidas for various amounts totaling \$2,270,769, be prepared and entered into the books and records of JFF as of January 30, 1999. As a result, JFF overstated it's income for FYE January 30, 1999 by approximately \$2,270,769.

17. As of January 30, 1999, adidas owed JFF no MDF funds.

THE CONSPIRACY

18. Beginning on or about March 16, 1999 and continuing until on or about April 16, 1999, within the Northern District of Alabama and elsewhere, the defendant, **TIMOTHY R.**

McCOOL, and others, knowingly and willfully conspired and agreed with each other, to commit offenses against the United States, to wit:

(1) to devise and attempt to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises and to knowingly transmit and cause to be transmitted, by means of wire communication, in interstate and foreign commerce, writings, signs, signals and sounds for the purpose of executing such scheme and artifice in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

19. A purpose of the conspiracy was for the defendant, **TIMOTHY R. McCOOL**, the JFF-EVP, and others, to deceive Deloitte & Touche into believing that the \$2,270,769 in credits that had been recorded by JFF as due from adidas was, in fact, due from adidas.

THE MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and others sought to accomplish the conspiracy included, among other things, the following:

20. It was part of the conspiracy that the JFF-EVP signed and caused a letter to be sent to defendant **McCOOL**, (the “audit confirmation letter”) requesting him to confirm to Deloitte & Touche that adidas owed JFF credits in various amounts totaling \$2,270,769 “for advertising that ran or merchandise sold prior to January 30, 1999.”

21. It was further part of the conspiracy that defendant **McCOOL**, knowing that the information contained in the audit confirmation letter was false, signed it and caused it to be sent by facsimile directly to Deloitte & Touche.

OVERT ACTS

22. On or about March 16, 1999, the JFF-EVP telephoned defendant **McCOOL** informing him that he would be receiving letters which he should sign and return to Deloitte & Touche.

23. On or about March 22, 1999, the JFF-EVP caused an audit confirmation letter to be sent by facsimile from JFF in Birmingham, Alabama to defendant **McCOOL** at adidas' headquarters in Beaverton, Oregon.

24. On or about April 16, 1999, the JFF-EVP caused another audit confirmation letter to be sent by facsimile from JFF in Birmingham, Alabama to defendant **McCOOL** at adidas' headquarters in Beaverton, Oregon. The audit confirmation letter was signed by the JFF-EVP, addressed to defendant **McCOOL**, and requested that defendant **McCOOL** confirm directly to Deloitte & Touche that adidas owed JFF credits in various amounts which totaled approximately \$2,270,769.

25. On or about April 16, 1999, the JFF-EVP in Birmingham, Alabama telephoned defendant **McCOOL** in Beaverton, Oregon and requested that he sign the audit confirmation letter and return it to Deloitte & Touche as soon as possible.

26. On or about April 20, 1999, defendant **McCOOL** signed the audit confirmation letter which falsely stated that adidas owed JFF credits totaling \$2,870,000.

27. On or about April 20, 1999, defendant **McCOOL** caused this false audit confirmation letter to be sent by facsimile from adidas headquarters in Beaverton, Oregon to Deloitte & Touche in Birmingham Alabama.

All in violation of Title 18, United States Code, Section 371.

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