

In the Matter of Ball Corporation (2011)

Nature of the Business.

Ball Corporation, an Indiana corporation headquartered in Colorado, manufactures metal packaging for beverages, foods, and household products. Ball Corporation also provides aerospace and other technological services to commercial and government customers. Formametal, based in Argentina, is a wholly-owned subsidiary of Ball Corporation that manufactures aerosol cans.

Influence to be Obtained.

In 2006, Ball Corporation acquired Formametal and discovered that its newly acquired subsidiary had, in the past, made questionable payments associated with Argentinean customs. Despite this knowledge, Ball Corporation allegedly undertook insufficient remedial steps to ensure that illegal payments would not recur.

According to the SEC, from July 2006 until October 2007, Formametal senior officials authorized at least ten unlawful payments to Argentinean government officials, totaling approximately \$106,749.00, for two purposes. First, Formametal allegedly paid bribes in excess of \$100,000 to circumvent Argentinean law prohibiting the importation of used equipment and parts. Formametal disguised the alleged bribes as “customs fees” by detailing them on non-governmental customs agents’ invoices and identifying them as “customs advice” or professional fees which were booked to an “other expenses” account or to accounts associated with the related equipment.

In early 2007, two accountants at Ball Corporation discovered that Formametal reimbursed the Vice President of Institutional Affairs because the Vice President had allegedly personally paid one of the bribes to government officials for importation of used equipment and parts. To reimburse him, Formametal had given the Vice President a car, and to disguise the bribe, Formametal allegedly booked the transfer of the car as an interest expense. When Ball Corporation discovered that the car was reimbursement for a bribe, it allegedly rebooked the transfer as a miscellaneous expense.

Second, in October 2007, Formametal’s President allegedly authorized improper payments in an attempt to gain governmental approval to export copper scrap metal at reduced tariffs. After six months of attempts to secure the waiver legitimately, Formametal allegedly paid five bribes to customs officials through third-party customs agents to avoid payment of tariffs. Formametal inaccurately recorded the payment as “Advice fees for temporary merchandise exported” in an “other expenses” account.

Enforcement.

Without admitting or denying the SEC’s findings, Ball Corporation consented to the entry of an order (i) ordering Ball Corporation to cease and desist from future violations of the books and records and internal controls provisions of the FCPA and (ii) ordering it to pay a civil penalty of \$300,000. The order recognized remedial acts promptly undertaken Ball Corporation, Ball Corporation’s voluntary disclosure of the violations, and the company’s cooperation with the SEC investigation.

Key Facts

Citation. *In the Matter of Ball Corp.*, Admin. Proc. File No. 3-14305 (Mar. 24, 2011).

Date Filed. March 24, 2011.

Country. Argentina.

Date of Conduct. 2006 – 2007.

Amount of the value. \$106,749.

Amount of business related to the payment. Unspecified.

Intermediary. Customs Agents.

Foreign official. Customs Officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant’s Citizenship. United States.

Total Sanction. \$300,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. \$300,000.