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BUZZFEED CASE HIGHLIGHTS NEW TRENDS IN SPAC LITIGATION

In this article, the authors discuss the Buzzfeed case as an exemplar of emerging trends affecting SPAC transactions.

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INTRODUCTION

Special purpose acquisition companies (“SPACs”) have been under the microscope this year.¹ As markets cooled, shareholders have sought to recoup investments in these “blank check” companies by lobbying accusations of securities fraud, breach of fiduciary duty, breach of contract, and violations of state-specific blue-sky laws.

One highly publicized example is the litigation over a business combination transaction between Buzzfeed, Inc., a digital media company (“Old Buzzfeed”) and 890 5th Avenue Partners, Inc. a SPAC (“890”).² When the

intended transaction was publicly announced in mid-2021, the market was at first excited because 890 had about \$287.5 million in its trust account from the proceeds of its public offering and private placement. But most public shareholders of 890 redeemed their shares in connection with the transaction and about \$271.3 million from the trust account was returned to those investors, leaving around \$16.2 million in the trust account available to the combined company at the closing.³ The lawsuit that followed highlights emerging trends affecting SPAC transactions, including the difficulty of handling employee-shareholder disputes and the importance of clear arbitration agreements.

BUZZFEED DECIDES TO GO PUBLIC THROUGH A SPAC

Founded in 2006, Old Buzzfeed grew from a website of digital lists into a digital-media conglomerate. Its ability to engage younger audiences gained the attention of more traditional media outlets. For example, in 2016, NBCUniversal invested \$200 million in Old Buzzfeed at a valuation of \$1.7 billion. This allowed Old Buzzfeed to expand beyond its original website to entities such as

¹ See, e.g., *In re MultiPlan Corp. S'holders Litig.*, 268 A.3d 784 (Del. Ch. 2022) (establishing a heightened standard for evaluating the fairness of acts by SPAC officers and directors because of inherent conflicts that exist between them and public stockholders); *In re Romeo Power Inc. Sec. Litig.*, No. 21 Civ. 3362 (LGS), 2022 BL 190788 (S.D.N.Y. June 02, 2022) (addressing the application of the “forward-looking statements” defense to a securities lawsuit if asserted by a SPAC); *Jedrzejczyk v. Skillz Inc.*, No. 21-cv-03450-RS, 2022 BL 231688 (N.D. Cal. July 5, 2022) (requiring proof of falsity and scienter in a securities fraud lawsuit against a SPAC).

² The company is named after the fictional address for the mansion of the “Avengers” in the Marvel cinematic universe.

³ https://www.sec.gov/ix?doc=/Archives/edgar/data/1828972/000110465921148188/tm2134844d1_8k.htm.

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