

Court File N°: T-1754-09

Proposed Class Proceeding

FEDERAL COURT

BETWEEN:

CHERYL RHODES

-AND-

KERRY MURPHY

Plaintiffs

-AND-

COMPAGNIE AMWAY CANADA

-AND-

AMWAY GLOBAL

Defendants



STATEMENT OF CLAIM TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the Plaintiffs' solicitor or, where the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Montreal, October 23rd 2009

Issued by: _____
(Registry Officer)

Address of local office: 30 McGill
Montreal (Quebec) H2Y 3Z7

TO: **COMPAGNIE AMWAY CANADA**
375 Exeter Road, P.O. Box 7777
London (Ontario) N5Y 5V6

AND **AMWAY GLOBAL**
7575 East Fulton Road
Ada, Michigan, U.S.A. 49355-0001

CLAIM

1. The Plaintiffs, Cheryl Rhodes and Kerry Murphy, claim on their behalf and on behalf of all class members:
 - (a) An Order pursuant to rule 334.12 of the *Federal Courts Rules* certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs of the class members;
 - (b) A declaration that the Defendants breached sections 52, 55 and 55.1 of the *Competition Act*;
 - (c) A declaration that the Defendants are liable to pay to each class member damages suffered as a result of Defendants' breaches of sections 52, 55 and 55.1 of the *Competition Act*;
 - (d) Damages on an aggregate basis;
 - (e) Any other damages that this Court may grant under section 36 of the *Competition Act*;
 - (f) Pre and post-judgment interests pursuant to section 36 of the *Federal Courts Act*;
 - (g) Such further and other relief as this Honourable Court deems just, including the cost of publication of notices.

Overview of Plaintiffs' and class members' claims

2. The Defendants sell dreams of wealth, independence and success when in fact the overwhelming majority of distributors recruited into this dream world lose money and over half give up within one year;
3. For many years, the Defendants have supplied products to distributors throughout Canada, who in turn receive compensation for the supply of the products to newly recruited distributors and so on. In so doing, Defendants operate a multi-level marketing plan ("MLMP") as that term is defined in section 55(1) of the *Competition Act* ("CA");
4. In operating their MLMP, Defendants have systematically and continuously omitted to provide accurate information to distributors in respect of the compensation that distributors may ultimately earn;

5. In fact, the Defendants' business is built on misleading potential distributors with respect to the business opportunities the Defendants provide. In so doing, Defendants have systematically breached sections 52 and 55 of the CA;

6. In addition, Defendants operate an illegal scheme of pyramid selling in violation of section 55.1 of the CA;

7. The Plaintiffs institute the present action, on their behalf and on behalf of all distributors of Defendants' products, to recover all losses and damages suffered by them, since October 23rd 2007 pursuant to section 36 of the CA;

The Parties

8. The Plaintiffs are distributors of the Defendants' products. They have at all material times resided in Surrey, British Columbia;

9. They have distributed Defendants' products since June 2008;

10. The Plaintiffs put an end to all their activities with Amway. In fact, they made their last sale on August 11, 2009;

11. As distributors of the Defendants' products, Plaintiffs never made any net income: they lost money despite having invested resources, time and energy. In fact, since June 2008, the Plaintiffs have lost over \$15,000;

12. The Defendant Amway Canada Corporation ("Amway Canada") is a company incorporated in Canada. It has its head office in London, Ontario and numerous business offices throughout Canada;

13. The Defendant Amway Global Corporation ("Amway Global") is a company incorporated in the United States with its head office in Michigan. It was incorporated in 1999 under the name Quixtar and became Amway Global in 2008;

14. Defendant Amway Canada is a wholly owned subsidiary of Amway Global and was at all material times under the control of Amway Global which acted as its directing mind;

The Defendants' omissions, false promises and breaches of the Competition Act

15. Defendants operate a multi-level marketing plan (MLMP) as that term is defined in section 55(1) of the CA. Distributors of the Defendants' products «receive compensation for the supply of the product to another participant in the plan who, in turn, receives compensation for the supply of the same or another product to other participants in the plan»;

16. This MLMP structure is clear from statements made in various sections of Amway Global's, website, namely: "*Put simply the Amway Global Independent Business Owner (IBO) Compensation Plan rewards you for selling products and for sponsoring others as IBOs who will do the same*" and "*A compelling aspect of the Amway Global business is the Line of Sponsorship (LOS). When you register a new IBO, you are their sponsor. The person who introduced you to Amway is your sponsor. This Line of Sponsorship is important to the calculation of bonuses based on business volume generated by IBOs in the LOS.*";

17. Section 55 of the CA provides in part :

Definition of "multi-level marketing plan"

55. (1) For the purposes of this section and section 55.1, "multi-level marketing plan" means a plan for the supply of a product whereby a participant in the plan receives compensation for the supply of the product to another participant in the plan who, in turn, receives compensation for the supply of the same or another product to other participants in the plan.

Representations as to compensation

(2) No person who operates or participates in a multi-level marketing plan shall make any representations relating to compensation under the plan to a prospective participant in the plan unless the representations constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person making the representations relating to

- (a) compensation actually received by typical participants in the plan;
or
- (b) compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including:
 - (i) the nature of the product, including its price and availability,
 - (ii) the nature of the relevant market for the product,

- (iii) the nature of the plan and similar plans, and
- (iv) whether the person who operates the plan is a corporation, partnership, sole proprietorship or other form of business organization

18. Thus, as operators of a MLMP, the Defendants were prohibited from making any representation relating to compensation, unless such representation also included information in respect of the actual compensation of a typical distributor of which the Defendants had knowledge;

19. At all material times, Defendants represented to the public that IBOs could earn substantial compensation by distributing their products. For example, over the last two years, the Defendants made the following representations publicly to all prospective participants:

- i) Amway is "*the greatest business opportunity in the world*"; as appears from an excerpt of *The Amway Global Business Opportunity Brochure*;
- ii) "*We are proud to offer compensation and support that leads the pack*", as appears from an excerpt of *The Amway Global Business Opportunity Brochure*;
- iii) "*The IBO Compensation Plan affords you a solid foundation to help you achieve your financial goals*" as appears from excerpts of *Amway Global's business Reference Guide*;
- iv) "*We will always offer HOPE to individuals and the opportunity to receive REWARD in proportion to their efforts*", the whole as appears from excerpts of *Amway Global's Business Reference Guide*;
- v) "*Do you want some extra monthly income [...] and perhaps a great new opportunity?*"; the whole as appears from excerpts of *Amway Global's Business Reference Guide*,
- vi) "*The college student found a way to pay his tuition bills. The two physicians no longer had to work 80-hour weeks. And the recent immigrants could finally achieve the goals they set when they arrived in North America. What they all have in common is that they found success by becoming Independent Business Owners (IBO's). Whether success meant making more money, having more time, creating a better life, or something else, was up to them*"; the whole as appears from excerpts of *Amway Global's Business Reference Guide*;

- vii) “Hundreds of thousands of men and women have chosen the Amway Global business opportunity as their path to success. They’re attracted by the unlimited potential of the opportunity (...)”, as appears from an excerpt of *The Amway Global Business Opportunity Brochure*;
 - viii) “The Amway Global business opportunity offers: a compensation plan that rewards IBOs equitably for their efforts”, as appears from an excerpt of *The Amway Global Business Opportunity Brochure*;
20. Said representations constitute representations relating to compensation within the meaning of section 55(2) of the CA. Hence, the Defendants were obliged to disclose the actual compensation that typical distributors could earn in a similar fashion;
21. Defendants assert that the Average Monthly Gross Income for “Active” IBOs was \$115 US or \$181 Canadian in their promotional brochures communicated to the public, as it appears from Amway Global’s *Business Reference Guide* and in *The Amway Global Business Opportunity Brochure*, as well as in the *Independent Business Owner Registration Agreement*,
22. Said representations violate section 55(2) of the CA in that:
- (a) They describe the likely average compensation of an “active” participant and not the actual compensation of a “typical” participant;
 - (b) They fail to mention the attrition rate among new distributors which exceeds 50 % annually; the whole as appears from the internal *Data Management’s Data Bits of June 2005*;
 - (c) They neither account for, nor provide any data with respect to the cost of so-called “supporting and tools materials” such as literature, audiovisual and other material that distributors are expected to purchase and use to support the sale of the Defendants’ products and services;
 - (d) They do not provide current information with regard to the actual compensation of a typical distributor;
 - (e) They do not account for the money distributors are expected to spend on Amway’s products, products which are often overpriced;
23. The overall impression created by the Defendants’ publicity is that the majority of IBOs will earn a substantial income;

24. In fact, at all material times during the class period, the overwhelming majority of all distributors have shown a net loss after expenses, a fact long known to the Defendants. As such, the average compensation of the smallest range of compensation earned by over 50% of the IBOs is negative and it follows that the overwhelming majority of distributors earn significantly less than what was represented to them;

25. Defendants thus omitted to provide accurate information to the public about the fair and reasonable compensation that could be earned by its distributors at all times relevant to the class period;

26. In failing to disclose such material information to the public and to the class members, Defendants breached sections 52 and 55 of the CA;

27. In addition to the violations of the CA outlined above, the Defendants operate an illegal scheme of pyramid selling in violation of section 55.1 of the CA;

28. Distributors must also purchase a minimum quantity of products each month in order to earn a 3% commission. The fact that the Defendants' plan directly promotes purchases of products by participants solely to maintain compensation levels violates section 55.1 (b) of the CA;

29. In addition, Defendants' buy-back guarantee is not exercisable on reasonable commercial terms contrary to section 55.1(d) of the CA, as it only applies to "resigning IBOs";

30. Moreover, the Defendants' buy-back rule provides that distributors are required to purchase back products from any of their personally registered downline distributors who are resigning at a "mutually agreeable" price. This conditional obligation does not comply with section 55.(1) d) of the CA. As well, this rule applies only between distributors and does not create any obligation for the Defendants to buy back any product;

31. Recently, in an action initiated by the government of the UK against Amway (UK) Limited, the High Court of Justice analysed Amway's business model and found that 99,7% of all IBOs end up losing money, the whole as appears from the judgment in *Secretary of State For Business Enterprise and Regulatory Reform v. Amway (UK) Limited*, [2008] EWHC (ch) 1054 (Mr Justice Norris);

The Class and the common issues

32. The Plaintiffs purport to represent the following class of persons:

All persons resident in Canada who distributed Defendants' products, since October 23rd, 2007 excluding the Defendants' employees and their affiliates and family members.

33. The questions of fact and law common to all members of the class can be summarized as follows:

Throughout the period starting October 23rd 2007 until the present:

Did the Defendants operate, in Canada, a multi-level marketing plan within the meaning of section 55(1) of the CA ?

Did the Defendants make representations to class members relating to compensation that distributors might receive?

In the affirmative, did the Defendants knowingly or recklessly make a false or misleading representation to the public in contravention of section 52 of the CA ?

Did the Defendants provide class members with fair, reasonable and timely information relating to compensation actually received by typical participants in the plan or with respect to compensation likely to be received by typical participants?

Did the Defendants breach sections 52(1), 55(2) and/or 55(2.1), of the CA ?

Did the Defendants establish, operate, advise or promote a scheme of pyramid selling in contravention of section 55.1 of the CA?

What remedies are available to distributors under section 36 of the CA?

Are class members entitled to the collective recovery of aggregate damages?

The remedies sought

34. Pursuant to section 36 of the CA, class members are entitled to recover all losses and damages suffered as a result of the Defendants' violations of the CA, including but not limited to :

- (a) Their loss of income and opportunity;

- (b) Non pecuniary losses, such as loss of self-esteem, and any other damages that this Court may order under section 36 of the CA;
 - (c) The collective recovery of aggregate damages;
 - (d) Their costs;
35. The Plaintiffs are entitled to recover all their losses, pursuant to section 36 of the CA, since October 23rd 2007, which are presently estimated at over \$15 000;
36. Plaintiffs would not have suffered losses and damages had the Defendants complied with sections 52, 55 and 55.1 of the CA;
37. The Plaintiffs propose that this action be tried in Montreal.

Dated in Montreal, this 23rd of October 2009.

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