

Federal Court



Cour fédérale

Date: 20111110

Docket: T-696-10

Vancouver, British Columbia, November 10, 2011

PRESENT: The Honourable Mr. Justice Rennie

CLASS ACTION

BETWEEN:

MARK CUZZETTO

Plaintiff

and

**BUSINESS IN MOTION INTERNATIONAL
CORPORATION, ALAN KIPPAX AND
ASHIF MOHAMED**

Defendants

CERTIFICATION ORDER

UPON MOTION by the Plaintiff, dated May 16, 2011, to certify this action as a class proceeding, heard November 9, 2011 at Vancouver, British Columbia, and on hearing Luciana P. Brasil and Mark W. Mounteer, counsel for the Plaintiff, and no one appearing for the Defendants or any of them, although duly served:

AND UPON reading the materials herein and the Affidavit of Mark Cuzzetto and Greg McMullen;

AND UPON being satisfied that the requirements governing certification of a class proceeding set forth in Rules 334.16 of the *Federal Courts Rules* have been met;

THIS COURT ORDERS that:

1. The application against Ashif Mohamed (Mohamed) is adjourned *sine die*.
2. This action is certified as a class proceeding against Business in Motion International Corporation (BIM) and Alan Kippax (Kippax) (collectively, the Defendants).
3. The class is described as:

“All persons resident in Canada who purchased a Perpetual Motion Product from or through BIM (the Class)”
4. The Plaintiff Mark Cuzzetto is appointed as representative plaintiff on behalf of the Class.
5. The nature of the claims asserted on behalf of the Class against the Defendants is for breach of section 55.1 of the *Competition Act*, RSC 1985, c C-34 (the Act), arising out BIM’s operation of a multi-level marketing plan and/or a scheme of pyramid selling.
6. The relief sought on behalf of the Class is:
 - a. A declaration that BIM, Kippax, and Mohamed established, operated, advertised or promoted a scheme of pyramid selling, contrary to s. 55.1(2) of the Act;

- b. A declaration that BIM, Kippax and Mohamed operated a multi-level marketing plan, as defined in s. 55(1) of the *Act*, and, in the course of doing so, BIM, Kippax and/or Mohamed made certain representations relating to compensation to the Plaintiff and to other Class Members which were contrary to s. 55(2) of the *Act*;
 - c. Further, or in the alternative, a declaration that, while operating a multi-level marketing plan, as defined in s. 55(1) of the *Act*, BIM, Kippax and/or Mohamed failed to ensure that any and all representations made to the Plaintiff and to other Class members relating to compensation under the plan complied with the requirements set out in s. 55(2.1) of the *Act*,
 - d. A declaration that BIM, Kippax and Mohamed are jointly and severally liable to pay to the Plaintiff and to each Class member the damages the Plaintiff and each Class member suffered as a result of the Defendants' breaches of sections 55.1(2), 55(2) and 55(2.1) of the *Act*;
 - e. Damages payable to the Plaintiff and to the other Class members, in an amount equal to the losses or damages they sustained as a result of the Defendants' breaches of sections 55.1(2), 55(2) and 55(2.1) of the *Act*;
 - f. Any other damages that this Court may grant under s. 36(1) of the *Act*; and
 - g. Pre and Post-judgment interest pursuant to the *Federal Courts Act*, RSC 1985, c F-7 (as amended), ss. 36-37.
7. The common issues to be determined in this Class proceeding are:
- a. Did BIM or Kippax establish, operate, advertise or promote a scheme of pyramid selling, contrary to s. 55.1(2) of the *Act*?

- b. Did BIM or Kippax operate a multi-level marketing plan, as defined in s. 55(1) of the Act? If so, did BIM or Kippax make representations to the Plaintiff or the other Class members relating to compensation? If so:
 - i. were those representations contrary to s. 55(2) of the Act?
and
 - ii. were those representations consistent with the due diligence requirements set out in s. 55(2.1) of the Act?
 - c. To the extent that BIM and Kippax breached ss. 55.1(2), 55(2) or 55(2.1) of the Act, are BIM and Kippax jointly and severally liable to pay to the Plaintiff and to the other Class members the damages they suffered as a result of the breaches?
 - d. Should the Court assess damages in the aggregate, in whole or in part? If so, what is the proper amount of the aggregate damages award?
 - e. Did the conduct of BIM or Kippax meet the standard required for an award of punitive damages? Once compensatory damages are determined, in what amount and to whom should punitive damages be paid?
8. Class members may opt out of the class proceeding by notifying Branch McMaster LLP in writing within 60 days of the publication of the first issuance of notice.
 9. Notice of Certification is to be given in the form of the notice attached to this Order as Schedule A (Notice).
 10. Notice of Certification be given in the following manner:
 - a. published by posting a press release on the Canada Newswire within 10 days from the date of the Order. The press release shall attach a copy of the Notice;

- b. published once in a quarter-page advertisement in *Metro* and *24 Hours* newspapers across Canada on one occasion;
 - c. mailed by BIM or Kippax to the last known address they have for each Class member;
 - d. mailed by the Plaintiff to all persons who have identified themselves as potential Class members to Class Counsel;
 - e. making a request for publication on the National Class Action Database, and other relevant websites identified by Class including:
 - i. www.togethertothetop.com
 - ii. www.falseprofits.com
 - iii. www.pyramidschemealert.org; and
 - iv. www.ultralifeclub.com;
 - f. posted by the Plaintiff on the websites secured for this litigation, including www.BIMclassaction.com, and on the “BIM Class Action” Facebook Group; and
 - g. condensed and transformed into a one (1) minute or less video-clip to be recorded and published on the www.youtube.com website for public viewing.
11. BIM and Kippax be responsible for all costs associated with the Notice, and that, failing such payment, the Plaintiff may recover any costs incurred from any of BIM or Kippax.

“Donald J. Rennie”

Judge

Bim CLASS ACTION

DID YOU PURCHASE A PERPETUAL MOTION PRODUCT FROM OR THROUGH BUSINESS IN MOTION INTERNATIONAL CORPORATION? IF SO, PLEASE READ THIS CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.

WHAT IS THIS CASE ABOUT?

A class action lawsuit has been certified in the Federal Court of Canada claiming that Business in Motion International Corporation and Alex Kippax ("BIM") ran an illegal pyramid scheme and an illegal multi-level marketing scheme. A copy of the Statement of Claim and Order certifying the action as a class proceeding can be found at www.BIMclassaction.com.

HOW WILL THE LAWSUIT PROCEED?

A trial will be held to determine the common issues in the action. If these issues are determined in favor of the class members, there might still need to be individual hearings to determine the entitlement of each class member to a refund.

WHAT DO I HAVE TO DO TO PARTICIPATE?

There is nothing you have to do right now. Unless you opt out, you will be bound by the result of the common issues trial. However, in order to make sure you are notified of any important developments in the action, we recommend you register on our website at www.BIMclassaction.com.

WHAT IF I DO NOT WANT TO PARTICIPATE IN THIS LAWSUIT?

If you do not want to be part of the class action, you must complete the online form at www.BIMclassaction.com. If you do not have access to the internet, please contact Ulla Herlev at Branch MacMaster LLP. You must complete the online form by no later than X, 2012.

DO I NEED TO PAY ANYTHING?

You will only need to pay legal fees if the action is successful in obtaining you a refund of some of the monies you paid. Those legal fees will be paid directly from the refund you receive. You will not need to pay any legal fees out of your own pocket.

Any fee paid to the lawyers must be approved by the Court as being fair and reasonable. The fee agreement entered into by the representative plaintiff provides for the lawyers to be paid up to 1/3 of any amounts recovered or any benefit obtained from the class action. If and when this occurs, the lawyers will apply to Court for approval of that percentage or some lesser amount.

If the class action is unsuccessful at the common issues trial, you will not pay any legal fees.

WHO ARE THE LAWYERS FOR THE CLASS?

The lawyers for the class are:

BRANCH MACMASTER LLP
Barristers and Solicitors
1410 – 777 Hornby Street
Vancouver, BC V6Z 1S4

HORDO BENNETT MOUNTEER LLP
Barristers and Solicitors
1400 – 128 West Pender St.
Vancouver, BC V6B 1R8

Mark Cuzzetto (the representative plaintiff) has been appointed by the Court to instruct the lawyers for the common issues stage. The lawyers must act in the interest of all class members.

HOW DO I FIND OUT ABOUT DEVELOPMENTS?

For updates or questions please check our website at www.BIMclassaction.com. Alternatively, you can contact Ulla Herlev of Branch MacMaster LLP:

Ulla Herlev, Paralegal
Email: uherlev@bramac.com
Tel: (604) 654-2964
Fax: (604) 684-3429

This notice has been authorized by the Federal Court.