

REPRESENTATIVE PROCEEDING

Court File No.

T-696-10



FEDERAL COURT

MARK CUZZETTO

PLAINTIFF

AND:

BUSINESS IN MOTION INTERNATIONAL CORPORATION

AND:

ALAN KIPPAX

AND:

ASHIF MOHAMED

DEFENDANTS

STATEMENT OF CLAIM TO THE DEFENDANTS

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. 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 Court Rules*, serve it on the Plaintiff's 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 Court 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.

Vancouver, May _____, 2010

MAY 04 2010

Issued by: **ORIGINAL SIGNED BY
JULIA PLATT
A SIGNÉ L'ORIGINAL**

(Registry Officer)

Address of Local Office: P.O. Box 10065
701 West Georgia Street
Vancouver, BC V7Y 1B6

TO: BUSINESS IN MOTION CORPORATION
6205 Airport Road, Building A, Suite 300
Mississauga, ON L4V 1E1

AND: ALAN KIPPAX
16 Dow Street
Bayfield, ON

AND: ASHIF MOHAMED
3-4 Fifth Street
Toronto, ON M8V 2Y8

I HEREBY CERTIFY that the above document is a true copy of the original (issued out of / filed in the Court on the _____
MAY 04 2010

day of _____ A.D. 20 _____

Dated this _____ day of **MAY 04 2010**

**JULIA PLATT
REGISTRY OFFICER
AGENT DU GREFFE**

CLAIM

Relief Claimed

1. The Plaintiff, Mark Cuzzetto, claims on his own behalf and on behalf of all Class Members, as defined below:
 - a. An Order pursuant to Rules 334.16(1) and 334.17 of the *Federal Court Rules* (the "Rules") certifying this action as a class proceeding and providing any ancillary directions;
 - b. An Order pursuant to Rules 334.12(3), 334.16(1)(e) and 334.17(b) appointing the Plaintiff as the representative plaintiff of the Class;
 - c. A declaration that Business in Motion Corporation ("BIM"), Alan Kippax ("Kippax") and Ashif Mohamed ("Mohamed") established, operated, advertised or promoted a scheme of pyramid selling, contrary to s. 55.1(2) of the *Competition Act*, R.S.B.C. 1985, c. C-34 (the "Act");
 - d. 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*;
 - e. 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*;
 - f. 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*;
 - g. 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*;

- h. Any other damages that this Court may grant under s. 36(1) of the *Act*;
- i. Pre and Post-judgment interest pursuant to s. 36 and 37 of the *Federal Courts Act*;
- j. Such further and other relief as this Honourable Court deems just.

The Parties

- 2. The Plaintiff, Mark Cuzzetto ("Cuzzetto"), resides in the City of Burnaby, in the Province of British Columbia.
- 3. The Defendant, Business in Motion International Corporation ("BIM Corporation"), is a company incorporated pursuant to the laws of Canada, with a registered office at 6205 Airport Road, Building A, Suite 300, in the City of Mississauga, in the Province of Ontario, and a Head Office at 7275 Rapistan Crt., in the City of Mississauga, in the Province of Ontario.
- 4. The Defendant, Alan Kippax ("Kippax"), is a businessman and is believed to reside at 16 Dow Street, in the City of Bayfield, in the Province of Ontario. Kippax was involved in the creation of BIM, and has over the years held various positions in the organization, including "Global Sales Director" of BIM.
- 5. The Defendant, Ashif Mohamed ("Mohamed"), is a businessman. As of March 20, 2010, Mohamed was the sole director of BIM.

The Class

- 6. Cuzzetto brings this claim on his own behalf, and on behalf of a class of persons defined as follows:

All persons resident in Canada who purchased a Perpetual Motion Product from or through BIM Corporation.

Overview of the Pyramid Scheme

- 7. Commencing on or about March 6, 2007, the Defendants have been engaged in the establishment, operation, advertisement and promotion of a multi-level marketing plan which employed the "Time Leverage System" scheme developed by Kippax (the "Plan").
- 8. In furtherance of the Plan, the Defendants engaged in a systematic campaign to recruit "sales representatives" for BIM Corporation. Such

campaign has included conducting a variety of recruiting seminars in many Canadian cities, such as Kelowna (BC), Winnipeg (MB), Calgary (AB), Red Deer (AB), Langley (BC), Edmonton (AB) and Saskatoon (SK).

9. In order to become a sales representative for BIM Corporation, a person is, and was at all material times, required to pay an annual \$80.00 registration fee to BIM Corporation and purchase one of certain products "Perpetual Motion Products" marketed by BIM Corporation.
10. The original Perpetual Motion Product was a membership in the "Ultra Life Club", which purported to provide substantial travel discounts for its members. A few additional Perpetual Motion Products were added over time.
11. Perpetual Motion Products were typically not consumable products for which there would be repeat demand, and were sold at the same price (\$3,200 originally, up to \$3,600), although certain "upgrade" options were available at an additional cost.
12. The focus of the Plan was on the sequential recruitment of new sales representatives who would purchase at least one Perpetual Motion Product, and through such further sales by those sales representatives to others who would become sales representatives, create pyramid "downlines" that would eventually generate revenue to be distributed back up the sales pyramid, pursuant to the "Time Leverage System" developed by Kippax.
13. The Plan, and the Time Leverage System it employed, is built upon the continual creation of sales pyramids called "Perpetual Motion Corporate Ladders", which work as follows:
 - a. Each new Perpetual Motion Corporate Ladder that is created starts with a "sales team" of seven members, comprising a "director of sales", two "managers" below the "director of sales" and two "supervisors" below each "manager" (for a total of four "supervisors");
 - b. Each Perpetual Motion Corporate Ladder upon formation also has eight vacant "sales representative" positions, two beneath each of the four supervisors on the Perpetual Motion Corporate Ladder;
 - c. Upon formation of each Perpetual Motion Corporate Ladder, each supervisor is given the exclusive opportunity, for the initial 170 hours from the formation of the Perpetual Motion Corporate Ladder (called the "Protection Period"), to fill the two vacant sales

representative positions below each supervisor through the sale of a Perpetual Motion product;

- d. A sales "key" is awarded to each supervisor for each sale during the Protection Period that fills a vacant sales representative position below that supervisor on the new Perpetual Motion Corporate Ladder;
- e. At the end of the Protection Period, the Perpetual Motion Corporate Ladder enters into what is known as a "Capture the Key" mode, and any empty "sales representative" positions below a supervisor on the Perpetual Motion Corporate Ladder can now be filled by other members of the Perpetual Motion Corporate Ladder, including the new "sales representatives" who were added to the Perpetual Motion Corporate Ladder during the Protection Period, who earn additional "keys" for each vacant sales representative position they fill through a sale;
- f. Once all eight "sales representative" positions in the new Perpetual Motion Corporate Ladder are filled, the original Ladder splits into two new Perpetual Motion Corporate Ladders (the "First Split Ladders"), and each of the eight "sales representatives" in the original Ladder become "supervisors" in the two First Split Ladders (four "supervisors" in each First Split Ladder), with eight vacant "sales representative" positions to be filled in each of the two First Split Ladders;
- g. Once the eight new "sales representative" positions below the "supervisors" are filled in each of the two First Split Ladders, each First Split Ladder divides again and creates two new Perpetual Motion Corporate Ladders (the "Second Split Ladders"), with the following consequences:
 - i. The eight "sales representatives" in each of the two First Split Ladders become "supervisors" in the Second Split Ladders (four "supervisors" in each of the four Second Split Ladders); and
 - ii. The four "supervisors" in each of the two First Split Ladders, who were "sales representatives" in the original Ladder, now become "managers" in the Second Split Ladders (two "managers" in each of the four Second Split Ladders);
- h. Once the eight new "sales representative" positions below the "supervisors" are filled in each of the four Second Split Ladders, each Second Split Ladder divides again and creates two new

Perpetual Motion Corporate Ladders (the "Third Split Ladders"), with the following consequences:

- i. The eight "sales representatives" in each of the four Second Split Ladders become "supervisors" in the Third Split Ladders (four "supervisors" in each of the eight Third Split Ladders);
 - ii. The four "supervisors" in each of the four Second Split Ladders become "managers" in the Third Split Ladders (two "managers" in each of the eight Third Split Ladders); and
 - iii. Each of the two "managers" in the four Second Split Ladders, each of whom were one of the eight "sales representatives" in the original Ladder, become a "Director of Sales" in one of the eight Third Split Ladders (one "Director of Sales" on the top of each Third Split Ladder).
- i. Revenue is distributed on each Perpetual Motion Corporate Ladder once the sales representative positions on the Ladder are filled through sales of Perpetual Motion product, as follows:
- i. Every time a sales representative position is filled, the Director of Sales for the Perpetual Motion Corporate Ladder receives a bonus equal to 1/8 of the cost of the Perpetual Motion Product the Director of Sales was required to purchase to become a sales representative and enter the Perpetual Motion Corporate Ladder;
 - ii. The Director of Sales also receives compensation for each Key the Director of Sales received as a Supervisor in respect of the two exclusive sales opportunities that were provided to the Director of Sales as a Supervisor during the Protection Period, which compensation for each Key is in an amount equal to 156% of the sales price of the Perpetual Motion product sold to acquire the Key;
 - iii. If the Director of Sales did not receive both Keys in respect of the exclusive sales opportunities provided to the Director of Sales as a Supervisor during the Protection Period and one or both of those Keys was captured by another member of the Perpetual Motion Corporate Ladder after the Protection Period expired, then that other member receives the compensation for that Key at this time, irrespective of their position on the Perpetual Motion Corporate Ladder.

- j. Upon the distribution of revenue after the eight sales representative positions on the Perpetual Motion Corporate Ladder are filled, the Director of Sales will either be:
 - i. promoted to the position of Vice President in respect of the two new Perpetual Motion Corporate Ladders created by the splitting of the recently completed Perpetual Motion Corporate Ladder, if the Director of Sales had earlier “captured a Key” from a supervisor while the Director of Sales was a sales representative or supervisor; or
 - ii. discharged from the Perpetual Motion Corporate Ladder, if the Director of Sales did not capture a Key as described in (i) above and is therefore not qualified to be promoted to the position of Vice President.
 - k. Vice Presidents receive \$2,000 each time the eight sales representative positions are filled in each Perpetual Motion Corporate Ladder below the Vice President, until the Vice President either:
 - i. is “knocked off” the Perpetual Motion Corporate Ladder by the promotion of a qualifying Director of Sales from one of the Perpetual Motion Corporate Ladders below the Vice President; or
 - ii. has received a total revenue from the Perpetual Motion Corporate Ladders of \$100,000.
 - l. Each Perpetual Motion Corporate Ladder has a certain amount of time in which the eight “sales representative” positions had to be filled. If this does not occur, the Perpetual Motion Corporate Ladder was “crushed”, and persons in the crushed Perpetual Motion Corporate Ladder have to pay a fee to transfer into another active Perpetual Motion Corporate Ladder.
14. The Perpetual Motion Products sold under the Plan were sold at a price that exceeded the commercially reasonable value of the Perpetual Motion Products.
15. A participant in the Plan had no right to return, for any amount of refund, an unused Perpetual Motion Product that the participant was required to purchase in order to join the Plan. Participants only had very limited rights to exchange an unused Perpetual Motion Product for another Perpetual Motion Product.

The Plan is a Pyramid Scheme

16. The Plaintiff says that the Plan is not a legitimate multilevel marketing plan for the sale of a product but is an unlawful scheme for pyramid selling prohibited by s. 55.1 of the *Competition Act*.
17. The Plaintiff says that both the object and the function of the Plan is to compensate participants for the sale of product to other persons who are required to purchase the product in order to become participants in the Plan, and thereby secure the opportunity to earn compensation from the sale of product to other persons who wish to become participants in the Plan.
18. As such, the Plaintiffs say that the Plan constitutes a scheme of pyramid selling within the meaning of s. 55.1(a), (b) and (c) of the *Competition Act* because:
 - a. a participant in the Plan gives consideration, being the purchase of a Perpetual Motion Product and the BIM registration fee, in order to acquire the right to receive compensation by reason of the recruitment into the Plan of another participant in the Plan who gives consideration for that same right;
 - b. a participant in the Plan must purchase a Perpetual Motion Product as a condition in participating in the Plan and the product is not bought at the seller's cost price for the purpose of only facilitating sales; and
 - c. a participant in the Plan does not have a buy-back guarantee in relation to the Perpetual Motion Product that the participant was required to purchase in order to become a participant in the Plan or a right to return that Perpetual Motion Product on reasonable commercial terms.
19. The Plaintiff says that the Plan cannot be reasonably construed or characterized as a simple multilevel marketing scheme because:
 - a. sales representatives are not compensated as they effect a sale but must wait until their Perpetual Motion Corporate Ladder splits at least three times before they can possibly realize any revenue from a sale;
 - b. compensation for sales is only paid in respect of sales made for persons who became participants in the Plan;

- c. the commission paid in respect of sales to persons who became participants exceeds by 50% the purchase price of the products sold;
- d. the Perpetual Motion Products were sold at a price which exceeded their commercially reasonable value; and
- e. the Perpetual Motion Products were not the type of product that would generate a recurring demand from an established group of customers.

The Prohibited Compensation Representations

- 20. In order to entice membership in BIM Corporation, and more importantly, participation in the Plan, the Defendants encouraged existing distributors to be secretive about the type of "business opportunity" to be presented to potential recruits, who were then invited to attend one of the recruiting seminars.
- 21. Once the new recruits were at the recruiting seminars, the Defendants represented, or alternatively, allowed other participants to make representations designed to convey to the recruits an extraordinary potential for compensation associated with the Plan (collectively, the "Compensation Representations").
- 22. Examples of the Compensation Representations include, but are not limited, to the following written representations made in the recruitment materials:
 - a. "You can't Lose";
 - b. "Sleeping Money";
 - c. "Ultimate Money";
 - d. "Turn your annual income into monthly income"
 - e. "A Win, Win, Win, Situation!"; and
 - f. "Earn Way, Way, Way More Money!".
- 23. As a further example of the Compensation Representations, the following question and answer were posed to recruits, in writing, in recruitment seminars, immediately prior to an explanation as to how the Plan works:

Question: Would you like to become a business owner & make MASSIVE amounts of MONEY without the risk?

Answer: That's exactly what we're going to show you NOW!

24. In many instances, the Compensation Representations were accompanied by visual aids that were designed to convey, and did convey, the potential for earning extraordinary revenue. Examples of such visual aids include the use of private jets, expensive cars, mansions, jewelry and steep profitability graphs in recruitment seminar slides.
25. The Compensation Representations were further reinforced by BIM's mission statement, which was reproduced in BIM's recruitment materials, as follows:

Our Mission.... is to create a System that creates a "DREAM LIFESTYLE for all mankind!"

26. As operators of a multilevel marketing plan, the Defendants were prohibited by s. 55(2) of the *Competition Act* from making any representations relating to compensation under the Plan unless the representations made constituted or included fair, reasonable and timely disclosure of the available information relating to compensation actually received by typical participants in the Plan or compensation likely to be received by typical participants in the Plan.
27. The Compensation Representations constituted representations relating to compensation under a multilevel marketing plan for the purpose of s. 51 of the *Competition Act* and violated that section because the Compensation Representations:
- a. created, and were designed and intended to create, the misleading impression that money would be earned by each participant in the Plan without risk; and
 - b. failed to highlight the significant potential that participants in the Plan would earn no revenue under the Plan if they did not reach the position of a Director of Sales in a Perpetual Motion Corporate Ladder, which event would require at least 32 other persons (and more likely 112 other persons) to become participants in the Plan.
 - c. failed to disclose that the market for participants in the Plan would diminish as the Perpetual Motion Corporate Ladders proliferated;

- d. misrepresented the market value of the Perpetual Motion products to be far in excess of the price paid for the Perpetual Motion products; and
- e. failed to disclose that the price of the Perpetual Motion products sold under the Plan exceeded their commercially reasonable value and that the price reflected the cost of entry to the Plan rather than the market value of the products sold under the Plan.

The Plaintiff's Recruitment and Losses

- 28. In or about November 2008, the Plaintiff was invited to attend, and did attend, a recruitment seminar at the Ramada Inn hotel on Kingsway, in Vancouver, British Columbia.
- 29. On or about November 9, 2008, the Plaintiff acquired a BIM membership and placed an order for a Perpetual Motion Product (namely, an Ultra Life Club membership, serial no. 26883056). The plaintiff paid \$80 for his BIM Membership, and \$3200 for the Perpetual Motion Product, for a total of \$3280. Upon doing so, the Plaintiff was allowed to fill one of the last two sales representative positions on a Perpetual Motion Corporate Ladder (the "Plaintiff's Original Ladder").
- 30. As all sales representative positions on the Plaintiff's Original Ladder were filled, the Plaintiff's Original Ladder split into two new Perpetual Motion Corporate Ladders.
- 31. Although the Plaintiff sold five Perpetual Motion Products and acquired sufficient "keys" to qualify for the Super Vice President position, he did not receive the promised compensation for said sales as his Perpetual Motion Corporate Ladder was "crushed". He then paid an additional \$100 to BIM to be transferred to an active Perpetual Motion Corporate Ladder, which again was "crushed". To date, the Plaintiff has not received any compensation from his participation in the Plan.
- 32. The Plaintiff attempted to use his Ultra Life Club Membership when planning a trip to Hawaii in late 2008. The Plaintiff did not use his Ultra Life Club Membership in connection with this trip as the Ultra Life Club price for the hotel he wanted to stay at was more expensive than the price he was able to secure through Expedia.

General

33. The Plaintiff proposes that this Action be tried at Vancouver, British Columbia, Canada.

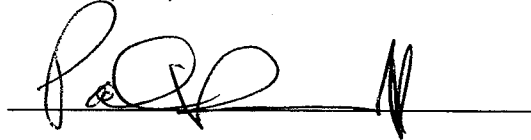
DATED at Vancouver, British Columbia, Canada, this 4th day of May 2010.



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TO: The Administrator of the Federal Court of Canada

AND TO: The Defendants