

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION**

FEDERAL TRADE COMMISSION

Plaintiff

v.

JOHN T. POLK, individually and as an officer of the corporate defendant(s),
PATRICK FARAH, individually and as an officer of the corporate defendant(s),
PETER HIRSCH, individually and as an officer of the corporate defendant(s),
USASURANCE GROUP, INC., a Colorado corporation,
AKAHI CORP., a Texas and Colorado corporation,
AKAHI.COM, CORP., a Texas corporation,
2XTREME PERFORMANCE INTERNATIONAL, LLC, a Delaware LLC,
AFEW, INC., a Delaware corporation,
Defendants.

CIVIL NO.

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges as follows:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain preliminary and permanent injunctive relief against the defendants to prevent them from engaging in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including rescission, restitution, and disgorgement, as is necessary to redress injury to consumers and the public interest resulting from defendants' violations of the FTC Act.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), 57b, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the United States District Court for the District of Maryland, Northern Division, is proper under 15 U.S.C. § 53(b), as amended by the FTC Act Amendments of 1994, Pub. L. No. 103-312, 108 Stat. 1691, and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting commerce. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act, and to secure such other equitable relief as may be appropriate in each case, including redress and disgorgement. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant John Polk is or has been the founder, Chief Executive Officer, and sole shareholder of 2Xtreme Performance International, LLC, and AFEW, Inc. Individually or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate defendant(s), including the acts and practices set forth in this complaint, and has done so at all times pertinent to this action. Polk transacts or has transacted business in this district.

6. Defendant Patrick Farah is or has been the Chief Operating Officer of 2Xtreme Performance International, LLC, Akahi Corp., and/or Akahi.com, Corp. Individually or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate defendant(s), including the acts and practices set forth in this complaint, and has done so at all times pertinent to this action. Farah transacts or has transacted business in this district.

7. Defendant Peter Hirsch is or has been the President of USAsurance Group, Inc., Akahi Corp., and/or Akahi.com, Corp. Individually or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate defendant(s), including the acts and practices set forth in this complaint, and has done so since at least December 1998. Hirsch transacts or has transacted business in this district.

8. Defendant USAsurance Group, Inc. ("USAG") is a Colorado corporation that does or has done business at 7345 E. Peakview Avenue, Englewood, Colorado; 15115 Surveyor Boulevard, Addison, Texas; and 3340 Wiley Post, Carrollton, Texas. In or about February 1999, USAG, through a wholly-owned subsidiary Akahi Corp., acquired the assets of 2Xtreme Performance International, LLC. Throughout the United States, USAG, through its wholly-owned subsidiaries Akahi Corp., and Akahi.com, Corp., sells or has sold products to its multi-level or network marketing (interchangeably "MLM") participants and solicits or has solicited participants to invest in its various compensation plans and its various recruiting tools. USAG transacts or has transacted business in this district.

9. Defendant Akahi Corp. is a Texas corporation and a Colorado corporation that does or has done business at 7345 E. Peakview Avenue, Englewood, Colorado; 15115 Surveyor Boulevard, Addison, Texas; and 3340 Wiley Post, Carrollton, Texas. Akahi Corp. is a wholly-owned subsidiary of USAG and is the entity that acquired the assets of 2Xtreme Performance International, LLC. Throughout the United States, Akahi Corp., along with its affiliated entities, USAG and Akahi.com, Corp., sells or has sold products to its MLM participants and solicits or has solicited participants to invest in its various compensation plans and its various recruiting tools. Akahi Corp. transacts or has transacted business in this district.

10. Defendant Akahi.com, Corp. is a Texas corporation that does or has done business at 7345 E. Peakview Avenue, Englewood, Colorado; 15115 Surveyor Boulevard, Addison, Texas; and 3340 Wiley Post, Carrollton, Texas. Akahi.com, Corp. is a wholly-owned subsidiary of USAG and handles the companies' marketing activities. Throughout the United States, Akahi.com, Corp., along with its affiliated entities, USAG and Akahi Corp., sells or has sold products to its MLM participants and solicits or has solicited participants to invest in its various compensation plans and its various recruiting tools. Akahi.com, Corp. transacts or has transacted business in this district.

11. Defendant 2Xtreme Performance International, LLC, ("2Xtreme") is a Delaware limited liability company that does or has done business at 15115 Surveyor Boulevard, Addison, Texas, 3340 Wiley Post, Carrollton, Texas, and 3340 Wiley Post, Carrollton, Texas. Throughout the United States, 2Xtreme sells or has sold products to its MLM participants and solicits or has solicited participants to invest in its various compensation plans and its various recruiting tools. 2Xtreme transacts or has transacted business in this district.

12. Defendant AFEW, Inc., ("AFEW") is a Delaware corporation that does or has done business at 15115 Surveyor Boulevard, Addison, Texas, and 3340 Wiley Post, Carrollton, Texas. Its sole owner and officer is John Polk. At the time that 2Xtreme Performance International, LLC, was acquired, AFEW owned 51% of 2Xtreme. Throughout the United States, AFEW, through its affiliated entity 2Xtreme, sells or has sold products to its MLM participants and solicits or has solicited participants to invest in its various compensation plans and its various recruiting tools. AFEW transacts or has transacted business in this district.

COMMERCE

13. At all times relevant to this complaint, defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

14. Since approximately 1996, defendants have operated what purports to be a "multi-level" or network marketing (interchangeably "MLM") business. Defendants have solicited consumers (also referred to as Independent Consultants, participants, distributors, and investors) to invest in their various compensation plans and have sold a variety of products to these participants. Defendants' MLM compensation plans include, but are not limited to, the "unilevel" plan, the "coded bonus" plan, and the "6-for-6" (also referred to as the "Xtreme Access" and "Internet Resource Access") plan. Defendants' products include, but are not limited to, nutritional products, "training" materials, and computer products. Defendants have solicited consumers nationwide, including consumers who reside in Maryland in this district.

15. Defendants have represented that consumers who join their MLM business can earn "commissions" and/or "bonuses" if they: (1) sign an Independent Consultant agreement and pay the \$10 application fee; (2) purchase, every month, at least \$100 of defendants' nutritional products; (3) in some cases make a one-time purchase of approximately \$300-\$1,300 in training materials (a requirement in the "coded bonus" plan), \$3,000 in day-trading computer software (a requirement in another version of the "coded bonus" plan), or \$4,300-\$7,300 in computer products (a requirement in the "6-for-6" plan); and (4) recruit other people who will do the same.

16. Under defendants' "unilevel" MLM compensation plan, a participant earns commissions and bonuses based upon a percentage of the participant's "Group Bonus Volume," which equals the volume of nutritional products purchased from the company by the participant and by the participant's "downline" - the participant's recruits and the recruits' successive generation of recruits.

17. Under defendants' "coded bonus" MLM compensation plan, a participant earns bonuses based upon the number of people he recruits into both the "coded bonus" and the "unilevel" plans. The higher up in the "unilevel" plan a participant is, the higher the bonus he receives.

18. Under defendants' "6-for-6" MLM compensation plan, a participant earns \$6,000 in commissions for every six people he recruits into both the "6-for-6" and the "unilevel" plans.

19. Defendants also sell to their participants various devices designed to recruit new people into the participants' MLM "downlines" and in turn generate commissions and/or bonuses for the purchasing participants in the defendants' MLM business. These devices

are hereinafter referred to as "recruiting tools." Defendants' recruiting tools include, but are not limited to, "positions" and "Businesses in a Box" or "BIBs."

20. Defendants sell "positions," which are denominated the "VIP"/"Emerald" position, the "Founder"/"Diamond" position, and the "Presidential Founder" position, for approximately \$600-\$5,000. The "positions" purportedly consist of a prefabricated, company-provided "downline" -- defendants claim that the "positions" entitle the participant to receive company-provided recruits into the participant's "downline" in the MLM business.

21. Defendants sell Businesses in a Box, or BIBs, which cost approximately \$1,000-\$4,000 each. The BIBs consist of direct mail marketing systems and include mailing lists containing the names and addresses of "leads," as well as envelopes and marketing pieces that tout the various products and defendants' MLM businesses. Defendants represent that these "leads" will become new members of the purchaser's "downline" in the MLM business.

22. Defendants have induced participants to invest in their MLM business and purchase their recruiting tools primarily through infomercial advertisements, in-person sales presentations, recruiting scripts, telemarketing sales pitches, faxes, voicemail messages, Internet web pages, and/or other audio, visual, and written marketing materials (referred to collectively as "marketing materials").

23. In their marketing materials, defendants have represented, expressly or by implication, that participants will receive substantial income by participating in defendants' MLM business, including, but not limited to, representations that:

- participants can reasonably expect to achieve a specific level of sales or earnings from the MLM business, including, but not limited to, earnings ranging from \$3,500-\$15,000 per month to \$5,000-\$10,000 every year, or that such figures are average estimates of the sales or earnings participants can reasonably expect;
- participants can reasonably expect to receive substantial residual income for the rest of their lives from purchases by their "downlines," without the need for active sales by the participant; and
- participants can reasonably expect to retire in two to five years;

24. In their marketing materials, defendants have also featured "testimonials" from participants in defendants' MLM business. In these testimonials, the company-selected individuals describe how successful they have become through participation in defendants' MLM business. The testimonials show people standing in front of large

estates and next to luxury automobiles. Individuals giving testimonials are quoted with statements such as:

- "I've made over \$5,000 in the last 20 days";
- "My best month has been almost \$20,000"; and
- "I've generated revenues" of "about \$2,000 in the first month . . . and then it went to \$60,000."

25. In their marketing materials, defendants have represented, expressly or by implication, that participants will receive substantial income by purchasing defendants' recruiting tools, including, but not limited to, representations that:

- participants can reasonably expect to achieve a specific level of sales or earnings from the "positions," including, but not limited to, earnings of \$3,500 per month or \$8,000 per "position," or that such figures are average estimates of the sales or earnings participants can reasonably expect; and
- participants can reasonably expect to achieve a specific level of sales or earnings from the BIBs, including, but not limited to, earnings of between \$1,000-\$1,500 per BIB, or that such figures are average estimates of the sales or earnings participants can reasonably expect.

26. In reality, defendants have operated what is commonly known as a "pyramid scheme." Pyramid schemes are characterized by participants' payment of money to the company in return for which they receive (1) the right to sell a product, and (2) the right to receive in return for recruiting other participants into the program rewards that are unrelated to the sale of product to the ultimate users. Earnings in a pyramid scheme are derived primarily from recruiting other participants into the program, not from the retail sale of products or services.

27. Pyramid schemes are inherently injurious to consumers because they must eventually collapse. Like chain letters, pyramid schemes make money for those at the top of the chain or pyramid, but end up injuring the vast majority of participants at the bottom of the pyramid who can find few or no recruits.

28. Defendants' Independent Consultant agreement, as well as certain other written materials, purport to require participants to make retail sales of products to ultimate users who are not participants in the MLM business in order for the participant to receive commissions or bonuses. In fact, these policies are routinely disregarded and often not enforced by defendants.

29. Even if these policies were enforced, they would not ensure that products purchased by participants are primarily resold to ultimate users who are not participants in defendants' MLM business. By their very terms, defendants' policies do not link compensation to retail sales.

30. In each of defendants' MLM compensation plans, the compensation received by participants from their own and their downline's recruitment of new participants is unrelated to the sale of products to ultimate users who are not participants in defendants' MLM business.

31. The vast majority of participants in defendants' MLM business discontinue their participation with little or no financial success, or make very modest earnings. In making the foregoing representations, defendants do not disclose to prospective or actual participants this or similar information concerning how much money participants actually make.

32. The vast majority of participants in defendants' MLM business who purchase defendants' recruiting tools make little or no earnings from the recruiting tools.

33. Defendants have induced thousands of consumers throughout the United States to participate in their MLM business and to purchase their recruiting tools. Defendants have also provided their marketing materials to others for use in recruiting new participants and inducing them to participate in the MLM business and purchase the recruiting tools.

COUNT ONE

34. In connection with the offering for sale or sale of participation in defendants' MLM business, defendants have represented, expressly or by implication, that consumers who become participants in defendants' MLM business will receive substantial income, such as \$5,000-\$10,000 per year.

35. In truth and in fact, because defendants operate a pyramid scheme as alleged in Paragraphs 1-33, in numerous instances, consumers who become participants in defendants' MLM business will lose money and will not receive substantial income, such as \$5,000-\$10,000 per year.

36. Therefore, the representations set forth in paragraph 34 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

37. In the course of offering for sale and selling participation in defendants' MLM business, defendants have represented, expressly or by implication, that consumers who become participants in defendants' MLM business will receive substantial income, such as \$5,000-\$10,000 per year.

38. In truth and in fact, in numerous instances, consumers who have become participants in defendants' MLM business have not received substantial income, such as \$5,000-\$10,000 per year.

39. Therefore, the representations set forth in paragraph 37 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE

40. In the course of offering for sale and selling defendants' recruiting tools, including but not limited to their "positions" and their "Businesses-in-a-Box" or "BIBs," defendants have represented, expressly or by implication, that consumers who purchase defendants' recruiting tools will receive substantial income from them, such as \$8,000 per "position" or \$1,000-\$1,500 per BIB.

41. In truth and in fact, in numerous instances, consumers who have purchased defendants' recruiting tools have not received substantial income from them, such as \$8,000 per "position" or \$1,000-\$1,500 per BIB.

42. Therefore, the representations set forth in paragraph 40 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FOUR

43. In connection with the offering for sale or sale of participation in defendants' MLM business, defendants have represented, expressly or by implication, that consumers who become participants in defendants' MLM business will receive substantial income, such as \$5,000-\$10,000 per year.

44. Defendants fail to disclose that, in numerous instances, consumers who become participants in defendants' MLM business will not receive substantial income, such as \$5,000-\$10,000 per year.

45. This additional information, described in paragraph 44, would be material to consumers in deciding whether to participate in defendants' MLM business.

46. Defendants' failure to disclose the material information in paragraph 44, in light of the representations made in paragraph 43, constitutes a deceptive act and practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a)

COUNT FIVE

47. Defendants provide participants in defendants' MLM business with promotional materials to be used in recruiting new participants that contain false and misleading representations, including, but not limited to, the false and misleading representations described in paragraphs 34, 37, 40, and 43 above.

48. By providing participants with the promotional materials described in paragraphs 47 above, defendants have provided the means and instrumentalities for the commission of deceptive acts and practices.

49. Therefore, defendants' practices, as described in paragraphs 47 and 48, constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

50. Defendants' violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), as set forth above, have caused and continue to cause substantial injury to consumers. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

51. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the Federal Trade Commission.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief.

2. Permanently enjoin the defendants from violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as alleged in this complaint.
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), including, but not limited to, rescission of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies.
4. Award the Commission the costs of bringing this action, as well as any other equitable relief that the Court may determine to be just and proper.

Date:

Respectfully submitted,
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