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DISTRICT OF MARYLAND

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION

CLERK'S OFFICE
AT BALTIMORE
BY _____ DEPUTY

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOHN T. POLK, et al.,

Defendants.

CIVIL NO. JFM99CV3679

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AGAINST DEFENDANTS 2XTREME PERFORMANCE INTERNATIONAL, LLC,
USASURANCE GROUP, INC., AKAHI CORP., and AKAHL.COM CORP.**

On December 9, 1999, plaintiff, the Federal Trade Commission ("FTC" or the "Commission") filed its complaint for injunctive and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants John T. Polk, Patrick Farah, Peter Hirsch, USAsurance Group, Inc., Akahi Corp., Akahi.com Corp., 2Xtreme Performance International, LLC, and AFEW, Inc. with violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a). Defendants 2xtreme Performance International, LLC, USAsurance Group, Inc., Akahi Corp., and Akahi.com Corp. have failed to answer the complaint and have failed to plead or otherwise defend in this case. After considering the Commission's Motion for Entry of Default Judgment, its Memorandum, affidavits and other evidence submitted in support thereof, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

2/7/01
JTB.05200

FINDINGS

1. This Court has jurisdiction over the subject matter of this action and has personal jurisdiction over defendants 2xtreme Performance International, LLC, USAsurance Group, Inc., Akahi Corp., and Akahi.com Corp.;
2. Venue in this district is proper;
3. The Commission's complaint states a claim upon which relief may be granted against defendants 2xtreme Performance International, LLC, USAsurance Group, Inc., Akahi Corp., and Akahi.com Corp. under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);
4. Defendants 2xtreme Performance International, LLC, USAsurance Group, Inc., Akahi Corp., and Akahi.com Corp. have been properly served with the complaint in this matter, but they have failed to answer that complaint and have failed to plead or otherwise defend this matter;
5. Entry of this Final Order is in the public interest.

DEFINITIONS

For the purpose of this Final Order, the following definitions shall apply:

- A. "Corporate Defendants" means 2xtreme Performance International, LLC, USAsurance Group, Inc., Akahi Corp., and Akahi.com Corp., whether acting directly, indirectly, in concert or participation with others, or through any agent, representative, business entity, or other intermediary or device.
- B. "Asset" means any legal or equitable interest in, right to, or claim to any real or personal property of the defendant or held for the benefit of the defendant, wherever located, including,

but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails, other deliveries, shares of stock, lists of participants, intellectual property, accounts, credits, receivables, cash, and trusts.

- C. “Business opportunity” means any written or oral business arrangement, however denominated, whether or not covered by the FTC’s Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures” (“Franchise Rule”), 16 C.F.R. Part 436, which consists of the payment of any consideration for both: a) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and b) assistance to any person in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.
- D. “Multi-level marketing program” means any marketing program in which participants pay money to the program promoter in return for which the participants obtain the right to:
- (1) recruit additional participants, or have additional participants placed by the promoter or any other person into the program participant’s downline, tree, cooperative, income center, or other similar program grouping;
 - (2) sell goods or services; and
 - (3) receive payment or other compensation, in whole or in part, based upon the sales of those in the participant’s downline, tree, cooperative, income center or similar program grouping. This definition is intended to include both currently legal and illegal multi-level marketing programs.

E. “Participating” in a multi-level marketing program includes, but is not limited to, promoting, marketing, advertising, offering for sale, or selling, or assisting others in the offering for sale or selling the right to participate in, the program, as well as acting or serving as an officer, director, employee, salesperson, agent, shareholder, advisor, consultant, independent contractor, or distributor, or acting as a speaker or spokesperson on behalf of any multi-level marketing program.

CONDUCT PROHIBITIONS

I.

IT IS THEREFORE ORDERED that the Corporate Defendants, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, are permanently restrained and enjoined from engaging in, participating in, promoting, advertising, marketing, offering for sale, selling, or assisting in any manner or in any capacity whatsoever in, any multi-level marketing program or business opportunity.

II.

IT IS FURTHER ORDERED that the Corporate Defendants, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, are permanently restrained and enjoined from, directly or indirectly, selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, facsimile number, credit or debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any of the Corporate Defendants, at any time prior to the entry of this Final Order, in connection with participation in any of the 2Xtreme Performance International, Akahi Corp..

Akahi.com, and/or Cynergy International multi-level marketing program(s). Provided, however, that the Corporate Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation or court order.

MONETARY RELIEF

III.

IT IS FURTHER ORDERED that Judgment in the amount of \$82,113,420.00 is entered jointly and severally against the Corporate Defendants. The Commission may apply any or all funds received by the Corporate Defendants pursuant to this Final Order, and any interest received thereon, to a consumer redress program and to related administrative expenses; provided, however, that if the Commission determines that a consumer redress program is not feasible, the Commission may transfer these funds to the United States Treasury as disgorgement. The Commission shall have full and sole discretion to: (1) determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Final Order; (2) determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and (3) delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay the fees, salaries, and expenses incurred thereby from the payments made pursuant to this Final Order.

COMPLIANCE MONITORING

IV.

IT IS FURTHER ORDERED that the Commission is authorized to monitor the Corporate Defendants' compliance with this Final Order by all lawful means, including, but not limited to, the following means:

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Federal Rules of Civil Procedure 26-34, 36 and 37, and the use of compulsory process pursuant to Federal Rule of Civil Procedure 45, for the purpose of monitoring and investigating the Corporate Defendants' compliance with any provision of this Final Order;
- B. The Commission is authorized to use representatives posing as consumers and employees of, and suppliers to, the Corporate Defendants, the Corporate Defendants' employees, or any other entity managed or controlled in whole or in part by the Corporate Defendants, without the necessity of identification or prior notice; and
- C. Nothing in this Final Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether the Corporate Defendants have violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

ACCESS TO BUSINESS PREMISES

V.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Order, for the purpose of further determining compliance with this Final Order, the Corporate Defendants shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

- A. Access during normal business hours to any office, or facility storing documents, of any of the Corporate Defendants. In providing such access, the Corporate Defendants shall permit

representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Final Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

- B. To interview the officers, directors and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with the terms of this Final Order. The person interviewed may have counsel present.

Provided that, upon application of the Commission and for good cause shown, the Court may enter an ex parte order granting immediate access to the Corporate Defendants' business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Order.

**SERVICE OF ORDER
VI.**

IT IS FURTHER ORDERED that copies of this Final Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets, as defined in this Final Order, of the Corporate Defendants, or that may be subject to any provision of this Final Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Final Order and the initial papers filed in this matter may be served by agents of plaintiff, and by agents of any process service retained by the plaintiff.

**LIFTING OF PRIOR ORDERS
VII.**

IT IS FURTHER ORDERED that all prior orders of this Court concerning the Corporate Defendants shall be lifted after the entry of this Final Order by this Court.

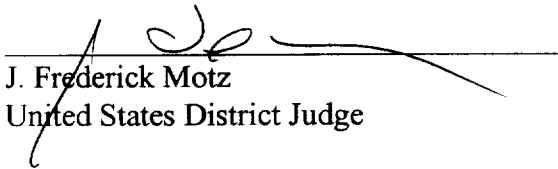
**RETENTION OF JURISDICTION AND ENTRY OF JUDGMENT
VIII.**

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

IX.

IT IS FURTHER ORDERED that there being no just reason for delay of entry of this judgment, and, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Order immediately.

SO ORDERED, this 6th day of February, 2001 at Baltimore, Maryland.



J. Frederick Motz
United States District Judge

