

Federal Court



Cour fédérale

Date: 20041123

Docket: T-1824-04

Vancouver, British Columbia, Tuesday, the 23rd day of November, 2004

Present: THE HONOURABLE MR. JUSTICE CAMPBELL.



HER MAJESTY THE QUEEN

Applicant

and

GLOBAL ONLINE SYSTEMS INC

and

DEBORAH JANE STOLTZ AND MARILYN THOM

Respondents

PROHIBITION ORDER

UPON THE APPLICATION of the Attorney General of Canada for an order pursuant to subsections 34(2) of the *Competition Act*, R.S.C. 1985 c. C-34, as amended (the "Act");

AND UPON having registered a conviction on two (2) counts this day against the Respondent Global Online Systems Inc. for having committed indictable offences, contrary to paragraphs 55(2) and 55.1(2) of the Act;

AND UPON reading the Agreed Statement of Facts, filed, on consent;

AND UPON reading the Consent of the Respondents to this Order, filed herein;

AND UPON hearing the submissions of counsel for the Attorney General of Canada and counsel for the Respondents:

In this Order,

“AVERAGE INCOME” means the total of the income actually received by all participants in the **MULTI-LEVEL MARKETING PLAN** during the past twelve months divided by the number of all participants in the **MULTI-LEVEL MARKETING PLAN** during that same period. Average income will be calculated annually on **June 30th** of each year.

“MULTI-LEVEL MARKETING PLAN” means a plan for the supply of a product whereby participants in the plan receive compensation related to the supply of the product to other participants in the plan who, in turn, receive compensation related to the supply of the same or another product to other participants in the plan.

“SCHEME OF PYRAMID SELLING” means a **MULTI-LEVEL MARKETING PLAN** that includes any of the following elements:

- (a) participants in the plan give consideration, including cash or any other benefit, for the right to receive consideration when others are recruited into the plan who, in turn, give consideration for the same right. For greater certainty, consideration

may include the profit derived from the sale of all marketing material including all videos, audio tapes, distribution packages and promotional booklets;

- (b) as a condition of participating in the plan, participants give consideration for a specified amount of a product, that is not sold at the seller's cost price plus reasonable shipping and handling costs;
- (c) a person supplies products to participants in the plan in amounts that he or she knows are commercially unreasonable; or
- (d) participants do not have access to a buy-back guarantee or the right to return the product in a saleable condition.

1. **THIS COURT DOES DIRECT** each of the Respondents Global Online Systems Inc., Deborah Jane Stoltz and Marilyn Thom not to become involved directly or indirectly in any business operation engaged in a **SCHEME OF PYRAMID SELLING**, including but not limited to the following:

- a) incorporating, owning, or operating any business engaged in a **SCHEME OF PYRAMID SELLING** or being an officer, manager, employee, consultant or agent in any such business;

- (b) receiving any compensation from any business engaged in a **SCHEME OF PYRAMID SELLING**; or
- (c) writing, developing or marketing any websites, videos, audio tapes, distribution packages or any other promotional materials used by any business engaged in a **SCHEME OF PYRAMID SELLING**.

2. **AND THIS COURT DOES FURTHER DIRECT** each of the Respondents Global Online Systems Inc., Deborah Jane Stoltz and Marilyn Thom to inform all of its existing distributors and participants, in writing, in the form set out in Appendix "A", of the terms of this order within seven (7) days of the date of this Order.

3. **AND THIS COURT DOES FURTHER DIRECT** the Respondents Global Online Systems Inc. Deborah Jane Stoltz and Marilyn Thom and each and every of their corporate affiliates, directors, officers and employees to clearly state in all representations made to the public and/or prospective participants in any **MULTI-LEVEL MARKETING PLAN** operated by the Respondents the **AVERAGE INCOME** actually received by all participants operating in Canada. For greater certainty, representations made to the public and/or prospective participants can include, but are not limited to, representations in all websites, videos, advertisements, audio tapes, distribution packages, promotional booklets and any other promotional materials.

4. **AND THIS COURT DOES FURTHER DIRECT** each of the Respondents Global Online Systems Inc. and Deborah Jane Stoltz and Marilyn Thom:

- (a) to include a term in any new Distribution Agreement that is entered into during the 10 year period following the date of this Order, or that is renewed during that time, in the form attached hereto as Appendix "B"; and
- (b) for the period of 10 years following the date of this Order, file with the Commissioner of Competition no later than **June 30th** of each year a copy of any new form of Distribution Agreement that has been entered into during that period, together with written confirmation that the terms set out in Appendix "B" are contained therein and that all distributors have reported their average income as required by the amendments specified in Appendix B.

5. **AND THIS COURT DOES ORDER** that the Respondents shall pay the legal costs incurred by the Applicant and the Commissioner of Competition with respect to this inquiry.

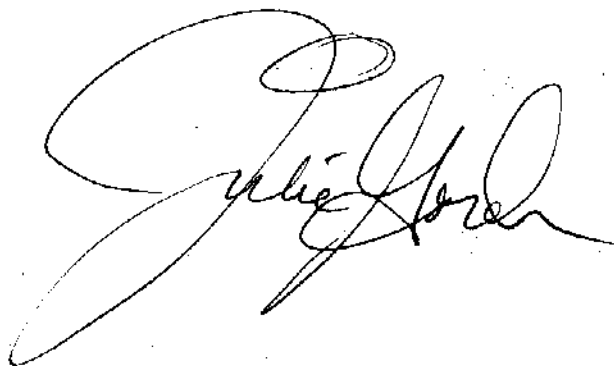
6. **AND IT IS FURTHER ORDERED** that, unless otherwise indicated, the provisions of this Order shall be binding on the Respondents for the period of ten (10) years following the date hereof.

7. **AND IT IS FURTHER ORDERED** that each and every paragraph of this Order that applies to the Respondents or their corporate affiliates shall be applicable to each of their respective corporate successors, if any.

8. **AND THIS COURT SHALL** retain jurisdiction over the parties to this proceeding for the purposes of interpreting, varying or rescinding any of the provisions of this Order, upon the application of either party.

(Sgd.) "Douglas R. Campbell"

J.F.C.

A handwritten signature in cursive script, appearing to read "Julie Jordan". The signature is written in black ink and is positioned below the typed name "Julie Jordan".

APPENDIX "A"

NOTICE TO ALL GLOBAL ONLINE SYSTEMS PARTICIPANTS

Dear

The Commissioner of Competition under the *Competition Act* has conducted an inquiry regarding certain marketing practices of Global Online Systems Inc, Deborah Jane Stoltz and Marilyn Thom. This matter has been settled by way of a Prohibition Order and a conviction on two (2) counts against Global Online Systems Inc. for having operated a scheme of pyramid selling and committed indictable offences, contrary to paragraphs 55(2) and 55.1(2) of the *Competition Act* (a current copy of these sections are attached hereto).

The terms of the Prohibition Order (a copy of which is attached hereto) direct Global Online Systems Inc, Deborah Jane Stoltz and Marilyn Thom and all participants to not become involved, directly or indirectly, in any business operation engaged in a Scheme of Pyramid Selling.

Any questions regarding this notice can be directed to the Competition Bureau at (204) 983-8911

Yours truly,

APPENDIX "B"

NEW DISTRIBUTION AGREEMENT TERMS

1. Distributors are required, as a term of this Agreement, to accurately state the income of a typical participant in the plan when soliciting new participants. This amount is to be calculated by the Distributor each year based on the income received by all participants in the place in the previous twelve (12) months. This information must be included in all representations made to the public and/or prospective participants, which includes, but is not limited to, representations in all websites, videos, advertisements, audio tapes, distribution packages, promotional booklets and any other promotional materials. Distributors must file a statement on or before **June 30th** of each year confirming that the income of a typical participant has been disclosed and displayed in accordance with this Section.

2. Distributors are also prohibited from becoming involved directly or indirectly in a scheme of pyramid selling. For the purposes of this Agreement, a scheme of pyramid selling means a multi-level marketing plan that includes any of the following elements:

- (a) participants in the plan give consideration, including cash or any other benefit, for the right to receive consideration when others are recruited into the plan who, in turn, give consideration for the same right. For greater certainty, consideration

may include the profit derived from the sale of all marketing material including all videos, audio tapes, distribution packages and promotional booklets;

- (b) as a condition of participating in the plan, participants give consideration for a specified amount of a product, that is not sold at the seller's cost price plus reasonable shipping and handling costs;
- (c) a person supplies products to a participant in the plan in amounts that he or she knows are commercially unreasonable; or
- (d) participants do not have access to a buy-back guarantee or the right to return the product in a saleable condition.

3. Failure to comply with these requirements of Section 1 or 2 will be deemed to be a material breach of this Agreement and cause for immediate termination of this Agreement.

4. Distributors for the purpose of Section 1 and 2 of this agreement means "Herbalife distributors recruited by GOLS participants".