

Competition Law Division  
Department of Justice, Canada  
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Ottawa, Quebec K1A 0G9

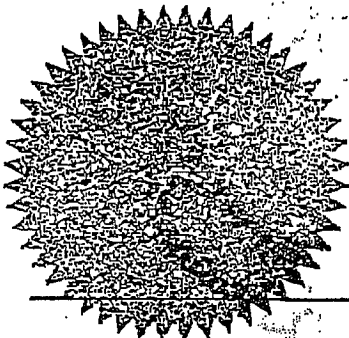
CANADA  
PROVINCE OF ONTARIO

Court File No.

IN THE SUPERIOR COURT OF ONTARIO  
(JUDICIAL DISTRICT OF TORONTO)

IN THE MATTER OF an application by the Attorney General of Canada  
for an order pursuant to section 34 of the *Competition Act*, R.S.C. 1985, c.  
C-34 (as amended).

BETWEEN:



CLD/SDC IC  
HER MAJESTY THE QUEEN

Applicant

- and -

PAT ASHBY

Respondent

**PROHIBITION ORDER**

ON THE APPLICATION OF THE ATTORNEY GENERAL OF CANADA pursuant to  
subsection 34(2) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, (the  
"*Competition Act*");

AND UPON the laying of an Information by the Attorney General of Canada alleging  
violation of subsection 55(2) of the *Competition Act*;

AND UPON reading the Consent of Pat Ashby (the "Respondent") to the Draft  
Prohibition Order pursuant to subsection 34(2) of the *Competition Act*;

AND UPON determination that it appears the Respondent has done an act or thing  
constituting or directed toward the commission of an offence pursuant to subsection  
55(2) of the *Competition Act*;

AND UPON reading the Statement of Admitted Facts filed;

AND UPON hearing the submissions of counsel for the Attorney General of Canada  
and counsel for the Respondent;

ON THE APPLICATION OF THE ATTORNEY GENERAL OF CANADA  
pursuant to subsection 34(2) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**THIS COURT DOES HEREBY PROHIBIT THE RESPONDENT:**

- A) from making any representations relating to compensation under a multi-level marketing plan in which he is a participant, to a prospective participant in the plan, unless the representations constitute or include fair, reasonable and timely disclosure of the information within his knowledge, relating to compensation actually received or likely to be received by typical participants in the plan;
- B) from the doing or omitting to do anything for the purpose of aiding or abetting in the making of any representations relating to compensation under a multi-level marketing plan unless the representations constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person making the representations relating to compensation actually received or likely to be received by typical participants in the plan;

**AND THIS COURT DOES FURTHER DIRECT THAT THE RESPONDENT:**

- C) comply with the provisions of the *Competition Act* with respect to the conduct regarding the making of any representations relating to compensation as described in subsection 55(2) of the *Competition Act* as set out herein. A current copy of the relevant provision is attached hereto and marked as Exhibit "A".

**AND IT IS FURTHER ORDERED** that, without limiting the generality of the foregoing, these provisions will apply to:

- i) representations described in A) or B), made through any means including, but not limited to, representations made verbally, in published material or through any electronic means such as audio or audio-visual tape recordings, Internet websites and e-mail.

**AND IT IS FURTHER ORDERED** that this Order is binding upon the Respondent.

**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.

DATED at the City of Toronto, in the Province of Ontario, this 18<sup>th</sup> day of May, 2001.

Justice of the Superior Court of Ontario



Exhibit "A"

Competition Act

R.S.C. 1985, c. C-34.

as am. to April 30, 2000 Section 34  
Section 55

34.

(1) Where a person has been convicted of an offence under Part VI, the court may, at the time of the conviction, on the application of the Attorney General of Canada or the attorney general of the province, in addition to any other penalty imposed on the person convicted, prohibit the continuation or repetition of the offence or prohibit the doing of any act or thing, by the person convicted or any other person, that is directed toward the continuation or repetition of the offence.

Idem

(2) Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI, the court may prohibit the commission of the offence or the doing or continuation of any act or thing by that person or any other person constituting or directed toward the commission of the offence.

Prescriptive terms

(2.1) An order made under this section in relation to an offence may require any person

(a) to take such steps as the court considers necessary to prevent the commission, continuation or repetition of the offence; or

(b) to take any steps agreed to by that person and the Attorney General of Canada or the attorney general of the province.

Duration of order

(2.2) An order made under this section applies for a period of ten years unless the court specifies a shorter period.

Variation or rescission

(2.3) An order made under this section may be varied or rescinded in respect of any person to whom the order applies by the court that made the order

(a) where the person and the Attorney General of Canada or the attorney general of the province consent to the variation or rescission; or

(b) where the court, on the application of the person or the Attorney General of Canada or the attorney general of the province, finds that the circumstances that led to the making of the order have changed and, in the circumstances that exist at the time the application is made, the order would not have been made or would have been ineffective in achieving its intended purpose.

Other proceedings

(2.4) No proceedings may be commenced under Part VI against a person against whom an order is sought under subsection (2) on the basis of the same or substantially the same facts as are alleged in proceedings under that subsection.

Appeals to courts of  
appeal and Federal  
Court

(3) The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order

(a) from a superior court of criminal jurisdiction in the province to the court of appeal of the province, or

(b) from the Federal Court -- Trial Division to the Federal Court of Appeal, as the case may be, on any ground that involves a question of law or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal.

Appeals to Supreme  
Court of Canada

(3.1) The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order from the court of appeal of the province or the Federal Court of Appeal, as the case may be, to the Supreme Court of Canada on any ground that involves a question of law or, if leave to appeal is granted by the Supreme Court, on any ground that appears to that Court to be a sufficient ground of appeal.

Disposition  
of appeal

(4) Where the court of appeal or the Supreme Court of Canada allows an appeal, it may quash any order made by the court appealed from, and may make any order that in its opinion the court appealed from could and should have made.

Procedure

(5) Subject to subsections (3) and (4), Part XXI of the Criminal Code applies with such modifications as the circumstances require to appeals under this section.

Punishment for  
disobedience

(6) A court may punish any person who contravenes an order made under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

Procedure

(7) Any proceedings pursuant to an information of the Attorney General of Canada or the attorney general of a province under this section shall be tried by the court without a jury, and the procedure applicable in injunction proceedings in the superior courts of the province shall, in so far as possible, apply.

Definition of "Superior  
court of criminal  
jurisdiction"

(8) In this section, "superior court of criminal jurisdiction" means a superior court of criminal jurisdiction as defined in the Criminal Code.

(4) Where the court of appeal or the Supreme Court of Canada allows an appeal, it may quash any order made by the court appealed from, and may make any order that in its opinion the court appealed from could and should have made.

Definition of "multi-level  
marketing plan"

55. (1) For the purposes of this section and section 55.1, "multi-level marketing plan" means a plan for the supply of a product whereby a participant in the plan receives compensation for the supply of the product to another participant in the plan who, in turn, receives compensation for the supply of the same or another product to other participants in the plan.

Representations as to  
compensation

(2) No person who operates or participates in a multi-level marketing plan shall make any representations relating to compensation under the plan to a prospective participant in the plan unless the representations constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person making the representations relating to

(a) compensation actually received by typical participants in the plan;

(b) compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including a participant in the plan as a compensation for the supply of the product to

(i) the nature of the product, including its price and availability, compensation for the supply of the same or another product;

(ii) the nature of the relevant market for the product,

(iii) the nature of the plan and similar plans, and

(iv) whether the person who operates the plan is a corporation, partnership, sole proprietorship or other form of business organization.

Idem

(2.1) A person who operates a multi-level marketing plan shall ensure that any representations relating to compensation under the plan that are made to a prospective participant in the plan by a participant in the plan or by a representative of the person who operates the plan constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person who operates the plan relating to

(a) compensation actually received by typical participants in the plan; or

(b) compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including those specified in paragraph (2)(b).

Due diligence defence

(2.2) A person accused of an offence under subsection (2.1) shall not be convicted of the offence if the accused establishes that he or she took reasonable precautions and exercised due diligence to ensure

(a) that no representations relating to compensation under the plan were made by participants in the plan or by representatives of the accused; or

(b) that any representations relating to compensation under the plan that were made by participants in the plan or by representatives of the accused constituted or included fair, reasonable and timely disclosure of the information referred to in that subsection.

Offence and punishment

(3) Any person who contravenes subsection (2) or (2.1) is guilty of an offence and liable

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(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

(b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

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(Province of Ontario)

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(Judicial District of Toronto)

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- and -

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RESPONDENT

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PROHIBITION ORDER

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Deputy Attorney General of Canada

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