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U.S. DISTRICT COURT

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DISTRICT OF UTAH

BY: _____
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Brian C Johnson, #3936
Graden P. Jackson, #8607
William B. Ingram, #10803
STRONG & HANNI
3 Triad Center, Suite 500
Salt Lake City, Utah 84180
Telephone: (801) 532-7080
Facsimile: (801) 596-1508
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT,

IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MONAVIE, LLC, a Utah limited liability
company,

Plaintiff,

v.

QUIXTAR INC., a Virginia corporation, and
AMWAY CORP., a Delaware corporation,

Defendants.

**COMPLAINT FOR
DECLARATORY RELIEF**

Case: 2:08cv00204
Assigned To : Campbell, Tena
Assign. Date : 3/17/2008
Description: Monavie v. Quixtar et al

Plaintiff MonaVie, LLC, by and through its undersigned counsel Strong & Hanni law firm, hereby for cause of action, alleges and complains against Defendants Quixtar Inc. and Amway Corp. as follows:

PARTIES

1. MonaVie is a registered Utah limited liability company, in good standing, with a principal place of business located at 10757 River Front Parkway, Suite 110, South Jordan, Utah 84095.

2. Quixtar is a registered Virginia corporation with a principal place of business located at 30600 Telegraph Road, Suite 2345, Bingham Farms, Michigan 48025.

3. Amway is a registered Delaware corporation with a principal place of business located at 30600 Telegraph Road, Suite 2345, Bingham Farms, Michigan 48025.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because this action is between citizens of different states and because the amount in controversy exceeds \$75,000.

5. There is an actual and justiciable controversy between the parties within the jurisdiction of this Court pursuant to 28 U.S.C. § 2201(a). As more fully set forth below, Defendants contend that MonaVie is tortiously interfering with the contractual relations of independent distributors who allegedly have entered into covenants of non-competition in favor of Quixtar and/or Amway. MonaVie disputes this claim. Accordingly, the parties require the assistance of a judicial determination of whether MonaVie is tortiously interfering with the contractual relations of Defendants and if MonaVie is liable therefor.

6. Personal jurisdiction over Defendants is proper in this Court pursuant to Utah's long-arm statute, Utah Code Ann. § 78B-3-201 et seq., and conforms with the United States Constitution.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

8. MonaVie (formerly known as Monarch Health Sciences) is a direct marketing company engaged in the business of manufacturing, selling and distributing health beverages and related products.

9. MonaVie markets and distributes its products by means of a network of independent distributors who, in turn, continuously recruit new distributors into what are known as distributor "downlines."

10. Each new distributor of MonaVie is in the downline of the distributor who recruited him or her *and so on* up through the company.

11. Distributors earn commissions based on their sales of product as well as the sales generated by the distributors in their downline.

12. This model of business, also known as multilevel or network marketing, is shared by many successful enterprises, including Defendants Quixtar and Amway.

13. Both Quixtar and Amway are wholly-owned subsidiaries of Alticor Corporation.

14. In order to enroll as a MonaVie distributor, each distributor is required to complete and sign either a written or online application and agree to certain terms and conditions.

15. Among other things, the distributor agrees to comply with company Policies and Procedures, which include the following covenants to indemnify MonaVie from any liability resulting from the distributor's unauthorized actions and activities:

5.12 Unauthorized Claims and Actions

5.12.1 Indemnification

A Distributor is fully responsible for all of their verbal and written statements made regarding MonaVie products, services, and the Marketing and Compensation Plan which are not expressly contained in official MonaVie materials. Distributors agree to indemnify MonaVie and MonaVie's directors, officers, employees, and agents, and hold them harmless from any and all liability including judgments, civil penalties, refunds, attorney fees, court costs, or lost business incurred by MonaVie as a result of the Distributor's unauthorized representations or actions. This provision shall survive the termination of the Distributor Agreement.

6.10 Independent Contractor Status

You are an independent contractor. You are not an agent, employee, partner, or joint venture with the Company. You may not represent yourself as anything other than an Independent Distributor. You have no authority to bind MonaVie to any obligation. You are responsible for paying your own self-employment taxes, federal income taxes and other taxes required by law. You must obey any federal, state, and local laws, as well as Company rules and regulations pertaining to your independent MonaVie Distributorship or the acquisition, receipt, holding, selling, distributing or advertising of MonaVie's products or opportunity.

6.10.3 Indemnity: You agree to indemnify and hold MonaVie, its officers, agents, directors, and employees harmless from any claim, damage, liability, or loss arising out of your activities.

16. One of these unauthorized activities, is the solicitation and/or enticement of members of another direct sales company to sell or distribute MonaVie products in violation of an enforceable non-competition covenant:

6.3 Targeting Other Direct Sellers

Should Distributors engage in solicitation and/or enticement of members of another direct sales company to sell or distribute MonaVie products, they bear the risk of being sued by the other direct sales company. If any lawsuit, arbitration, or mediation is brought against a Distributor alleging that they engaged in inappropriate recruiting activity of its sales force or Customers, MonaVie will not pay any of Distributor's defense costs or legal fees, nor will MonaVie indemnify the Distributor for any judgment, award, or settlement.

17. To underscore this unauthorized activity, and as a result of a vast amount of recent litigation and arbitration actions initiated by Quixtar and Amway, MonaVie requires that each distributor execute the following certification with respect to Quixtar and Amway and other direct marketing companies:

CERTIFICATION

In connection with my application and agreement to become a distributor for MonaVie LLC ("MonaVie"), I hereby certify that:

1. I have never been a distributor for Amway Corporation and/or Quixtar Corporation (collectively "Amway").

Or,

2. I have been a distributor for Amway, but my status as an Amway distributor ended (whether by non-renewal, resignation, or termination) at least six months ago.

3. In addition, if I have been a distributor in the past with Amway, then I further certify that:

a) I have not violated any non-competition, non-solicitation, or confidentiality agreement entered into with Amway or any other organization or entity, and by becoming a distributor for MonaVie will not be violating any agreement or contract, including non-

competition, non-solicitation, or confidentiality agreement entered into with Amway or any other organization or entity.

b) I will not solicit or attempt to entice any person who is or has been an Amway distributor to become a MonaVie distributor.

c) I am not bringing and will not use any confidential information or trade secrets obtained from Amway, including, but not limited to, all Amway Line of Sponsorship information as defined in Amway's Business Rules and Regulations 4.27.1 (the "Amway Data Management Rule"), and any distributor list or distributor source list.

d) I will continue to observe the confidentiality and non-solicitation provisions of Amway Data Management Rule 4.27 and Amway Rule 6.5.5.

e) I approached MonaVie, New Horizon Association, or another MonaVie distributor about becoming a MonaVie distributor and requested to become a MonaVie Distributor. Neither MonaVie, New Horizon Association, nor any other MonaVie distributor (or any of their agents, employees, managers, members, or affiliates) has approached or solicited the undersigned about becoming a MonaVie distributor.

18. In or about the latter part of 2007, MonaVie was informed that several arbitration and judicial actions had been prompted or initiated by Quixtar and Amway against a number of MonaVie distributors.

19. Beginning in or about November 2007 and continuing to about January 2008, MonaVie began receiving requests issued in certain arbitration matters which requested a plethora of information concerning the downline organizations of certain MonaVie distributors named as parties to those arbitrations.

20. Although under no legal obligation to do so, MonaVie cooperated with Quixtar and Amway to produce information, subject to an agreement of confidentiality, regarding the identified MonaVie distributors and their downline organizations.

21. During this same timeframe, Quixtar and Amway provided MonaVie a list of approximately 31,000 distributors who they claimed were former distributors of Quixtar and/or Amway and members of a distributor organization known as "TEAM."

22. Quixtar and Amway subsequently claimed to MonaVie that these approximately 31,000 "TEAM Leaders" were barred by written covenants of non-competition and non-solicitation in favor of Quixtar and Amway, and that a significant number of them had enrolled with MonaVie in violation of these purported covenants.

23. For each of these purported TEAM Leaders that had enrolled with MonaVie, Quixtar and Amway demanded that MonaVie terminate its distributor agreement with them.

24. At no time did Quixtar and Amway provide, nor have they ever provided, MonaVie with any copies of written non-competition and non-solicitation agreements in Quixtar or Amway's favor entered into between them and the approximately 31,000 TEAM Leaders.

25. In response to this demand, MonaVie questioned both the existence and enforceability of Quixtar/Amway's non-competition and non-solicitation covenants, especially since the alleged TEAM Leaders were independent distributors spread across multiple states, and, more importantly, reiterated the express representation of each TEAM Leader that they did not enroll with MonaVie in violation of "any non-competition, non-solicitation, or confidentiality agreement entered into with Amway or any other organization or entity."

26. Notwithstanding, on or about March 14, 2008, counsel for Quixtar and Amway communicated to MonaVie that MonaVie was “feeding the beast” and, consequently, that it intended to immediately file suit against MonaVie for tortious interference with contractual relations unless MonaVie terminated each of the distributorships of the alleged TEAM Leaders.

FIRST CAUSE OF ACTION
(Declaratory Relief)

27. Plaintiffs incorporate the preceding paragraphs 1 through 26 by reference as though fully set forth herein.

28. An actual dispute and controversy has arisen between MonaVie and Defendants Quixtar and Amway regarding whether the enrollment of alleged TEAM Leaders with MonaVie as independent distributors violates the terms of Quixtar/Amway’s Rules of Conduct and creates a cause of action for tortious interference with contractual relations.

29. Alleged TEAM Leaders enrolled with MonaVie are spread across multiple states, operate their own independent distributorships, and have executed the above Certifications in favor of MonaVie, which places at issue both the existence, enforceability, and the alleged violation(s) of Quixtar/Amway’s covenants of non-competition and non-solicitation.

30. In any event, by executing the above Certifications, a question is raised as to whether MonaVie—even assuming for sake of argument only that Quixtar and Amway already have covenants of non-competition and non-solicitation running in their favor from TEAM Leaders—can be held liable for alleged interference with these underlying covenants of non-competition and non-solicitation, and whether the enrollment of TEAM Leaders with MonaVie

in light of the Certifications eliminates the necessary predicate of an improper purpose or improper means for any tortious interference claim against it.

31. Therefore, pursuant to 28 U.S.C. § 2201(a), MonaVie requests a declaration from this Court that:

(a) Any claim against MonaVie for tortious interference with contractual relations is unavailable to Quixtar and Amway because Defendants cannot prove the following elements: (i) that a covenant of non-competition and non-solicitation in favor of Quixtar and Amway actually exists as to each of the approximately 31,000 alleged TEAM Leaders; (ii) that each covenant of non-competition and non-solicitation is enforceable against the alleged TEAM Leader in his or her geographic area of operation; (iii) that the TEAM Leader's enrollment with MonaVie is in breach of the time and geographical limitations of the covenant of non-competition and non-solicitation; (iv) that Quixtar and Amway has incurred actual damages as a result thereof; and (v) that the enrollment of the TEAM Leader with MonaVie is the product of an improper purpose or improper means on the part of MonaVie.

(b) Any claim against MonaVie for tortious interference with contractual relations is untenable because in each instance the alleged TEAM Leader and former member of Quixtar/Amway executed the above Certification and expressly represented to MonaVie that his or her enrollment with MonaVie is not in violation of "any non-competition, non-solicitation, or confidentiality agreement entered into with Amway or

any other organization or entity,” thus obliterating the necessary element of an improper purpose or improper means.

(c) Given (i) the complexities of the enforceability of non-competition covenants against approximately 31,000 alleged TEAM Leaders and former Quixtar and Amway distributors in multiple jurisdictions, (ii) the fact that many MonaVie distributors may not actually be in violation of any non-competition covenant, and (iii) to the extent that any distributor is in violation of an enforceable non-competition covenant MonaVie may be entitled to indemnification, in the interests of judicial economy, Quixtar and Amway should be precluded from initiating a blanket tortious interference claim against MonaVie and force MonaVie to engage and expend resources in a complex litigation, unless and until, it establishes liability against each alleged TEAM Leader in violation of an enforceable non-competition covenant that has resulted in actual damages to Defendants.

32. MonaVie reserves the right to amend this Complaint pursuant to Fed. R. Civ. P. 15(a) to assert anti-trust claims against Quixtar and Amway for violations of Section 1 of the Sherman Act for Quixtar and Amway’s inducement or threat of an unlawful exclusive dealing arrangement with independent distributors.

WHEREFORE, MonaVie prays for the following relief against Defendants Quixtar and Amway:

1. For a judicial declaration that:

(a) Any claim against MonaVie for tortious interference with contractual relations is unavailable to Quixtar and Amway because Defendants cannot prove the following elements: (i) that a covenant of non-competition and non-solicitation in favor of Quixtar and Amway actually exists as to each of the approximately 31,000 alleged TEAM Leaders; (ii) that each covenant of non-competition and non-solicitation is enforceable against the alleged TEAM Leader in his or her geographic area of operation; (iii) that the TEAM Leader's enrollment with MonaVie is in breach of the time and geographical limitations of the covenant of non-competition and non-solicitation; (iv) that Quixtar and Amway has incurred actual damages as a result thereof; and (v) that the enrollment of the TEAM Leader with MonaVie is the product of an improper purpose or improper means on the part of MonaVie.

(b) Any claim against MonaVie for tortious interference with contractual relations is untenable because in each instance the alleged TEAM Leader and former member of Quixtar/Amway executed the above Certification and expressly represented to MonaVie that his or her enrollment with MonaVie is not in violation of "any non-competition, non-solicitation, or confidentiality agreement entered into with Amway or any other organization or entity," thus obliterating the necessary element of an improper purpose or improper means.

(c) Given (i) the complexities of the enforceability of non-competition covenants against approximately 31,000 alleged TEAM Leaders and former Quixtar and Amway distributors in multiple jurisdictions, (ii) the fact that many MonaVie distributors may not actually be in violation of any non-competition covenant, and (iii) to the extent that any distributor is in violation of an enforceable non-competition covenant MonaVie may be entitled to indemnification, in the interests of judicial economy, Quixtar and Amway should be precluded from initiating a blanket tortious interference claim against MonaVie and force MonaVie to engage and expend resources in a complex litigation, unless and until, it establishes liability against each alleged TEAM Leader in violation of an enforceable non-competition covenant that has resulted in actual damages to Defendants.

2. For any other relief that the Court deems just and equitable.

DATED this 17th day of March, 2008.

STRONG & HANNI



Brian C Johnson
Graden P. Jackson
William B. Ingram
Attorneys for Plaintiff

Plaintiff's address:

MonaVie, LLC
10757 River Front Parkway, Suite 110
South Jordan, Utah 84095