

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

FILED

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FRANCIS X. McCORMACK
CLERK

STATE OF WISCONSIN,
Plaintiff,

v.

AMWAY CORPORATION, INC.,
a Michigan corporation, and
WAYLAND C. BEHNKE, DEAN M. FLISS,
BENEDETTO LANZA, JOHN C. HAUGNER, JR.,
all Amway Direct Distributors,
d/b/a World Wide Diamond,

Defendants.

SUMMONS

CASE NUMBER 589806

JUDGE HAROLD B. JACKSON, JR.-BR. 18

THE STATE OF WISCONSIN, to Said Defendant(s):

YOU ARE HEREBY SUMMONED and required to serve upon Bronson C. La Follette, Attorney General, and Bruce A. Craig Assistant Attorney General, plaintiff's attorneys, whose address is 114 East State Capitol, Madison, Wisconsin 53702, an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service, and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint.

BRONSON C. LA FOLLETTE
Attorney General

STEPHEN J. NICKS
Assistant Attorney General

Bruce A. Craig
BRUCE A. CRAIG
Assistant Attorney General

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Attorneys for Plaintiff,
STATE OF WISCONSIN

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

STATE OF WISCONSIN,

v.

AMWAY CORPORATION, INC., a Michigan corporation, and WAYLAND C. BEHNKE, DEAN M. FLISS, BENEDETTO LANZA, JOHN C. HAUGNER, JR., all Amway Direct Distributors, d/b/a World Wide Diamond,

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O COMPLAINT

Case No. 589806

JUDGE HAROLD B. JACKSON, JR. BR. 18

Defendants.

The State of Wisconsin, by Attorney General Bronson C. La Follette, Assistant Attorney General Stephen J. Nicks and Assistant Attorney General Bruce A. Craig, alleges and shows to the court as follows:

JURISDICTION

1. This action is commenced pursuant to sec. 100.18(11)(d), Stats., to restrain, by temporary and permanent injunction, violations of sec. 100.18(1), Stats., and to obtain civil forfeitures pursuant to sec. 100.26(4), Stats.

DEFENDANTS

2. Amway Corporation, Inc. (hereafter "Amway") is a Michigan corporation with its principal place of business at 7575 East Fulton Road, Ada, Michigan.

3. Wayland C. Behnke is an adult residing at 11013 North Bonnie Lynn Drive, Mequon, Ozaukee County, Wisconsin. Behnke is an Amway Direct Distributor, of the Diamond Direct category. He does business as and through an informal organization called "World Wide Diamond," which has, as one of its primary places of business, a meeting "center" at the Brown-Port Shopping Plaza,

8705 North Port Washington Road, Fox Point, Milwaukee County, Wisconsin.

4. Dean M. Fliss is an adult residing at 3191 Upper Woodland, Colgate, Washington County, Wisconsin. Fliss is an Amway Direct Distributor and is, or has, qualified for the Diamond Direct category. He also does business as and through an informal organization called "World Wide Diamond," which has, as primary places of business, a meeting "center" at the Brown-Port Shopping Plaza, 8705 North Port Washington Road, Fox Point, Milwaukee County, Wisconsin and a "center" at 8817 West Lynx, Milwaukee, Wisconsin.

5. John C. Haugner, Jr. is an adult residing at 37060 Willow Springs, Dousman, Waukesha County, Wisconsin. Haugner is an Amway Direct Distributor and does business as and through an informal organization called "World Wide Diamond," which has, as one of its primary places of business, a meeting "center" at the Brown-Port Shopping Plaza, 8705 North Port Washington Road, Fox Point, Milwaukee County, Wisconsin.

6. Benedetto Lanza is an adult residing at 2826 North 57th Street, Milwaukee, Milwaukee County, Wisconsin. Lanza is an Amway Direct Distributor and does business as and through an informal organization called "World Wide Diamond," which has, as one of its primary places of business, a meeting "center" at the Brown-Port Shopping Plaza, 8705 North Port Washington Road, Fox Point, Milwaukee County, Wisconsin.

NATURE OF THE AMWAY PROGRAM

7. Amway manufactures and distributes an extensive line of products, including soaps, detergents, vitamins and toiletries.

It also catalogs a large number of general consumer products, which are available for wholesale purchase by its Distributors. Amway products are marketed only through its Direct Distributors, such as the individual defendants named herein.

8. An Amway Direct Distributor receives income from Amway through certain bonus payments, which are calculated as a percentage of the Business Volume (BV) purchased through that Distributor. BV equals the retail value of the products purchased from Amway prior to the assessment of freight and warehouse charges. A Direct Distributor also receives income from personal retail sales which, if made at full markup, will generate a profit of approximately 30% of the retail, or BV, price.

9. A major source of gross income for an Amway Direct Distributor is the performance bonus. This equals 25% of the BV value of purchases made by his "personal group," i.e., all non-Direct Distributors he has personally sponsored (recruited) and all non-Direct Distributors recruited by others in his personal group. This bonus is reduced, at times, through the required payment, by the Direct Distributor, of subcommissions to other Amway Distributors in his personal group. The Direct Distributor also receives another commission, or bonus (at a rate based on 3% of BV), on purchases made through previous members of his personal group who have since become Direct Distributors. Additional bonuses or commissions are also paid to some Direct Distributors under varying circumstances as are certain profit sharing bonuses.

10. The Amway distribution network is often referred to as a multi-level marketing plan. Distributors receive commissions and bonuses based upon the purchases made by all Distributors recruited by that Distributor as well as those in turn recruited by his earlier recruits. Given the nature of this commission or bonus structure, Direct Distributors continually seek large numbers of recruits in order to generate purchases on which a bonus payment will accrue to them as the original recruiting Direct Distributor. There are approximately 20,000 Distributors in Wisconsin, of which 192 are Direct Distributors.

DEFENDANTS' ACTIVITIES IN WISCONSIN

11. During a period beginning on January 1, 1979, and continuing to date, defendants Behnke, Fliss, Lanza and Haugner (hereinafter "the Behnke Group") all do, or have done, business as World Wide Diamonds and have, as one of their primary places of business, the meeting "center" at 8705 North Port Washington Road, Fox Point, Wisconsin. Fliss, Lanza and Haugner are all in the Behnke "organization." Fliss and Haugner were recruited by Behnke. Lanza was recruited by Fliss.

12. Although each Direct Distributor is independently associated with Amway, the Behnke Group is under the general supervision of Behnke, who coordinates the scheduling of public presentations at the "center" and other locations throughout the state. These public presentations of the Amway plan are made for the purpose of obtaining new recruits into the Behnke organization and take place twice a week at the Milwaukee "center" before groups ranging between twenty and 300 people, and

at other locations in the state before groups ranging between ten and fifty people.

COUNT I
Misrepresentation of Individual Incomes

13. Defendants Behnke, Fliss, Lanza and Haugner have, either at public presentations as described in paragraph twelve herein or in personal contacts with prospective recruits, indicated, expressly or by direct implication, that their personal Amway incomes or the incomes of other Amway Distributors were at a level significantly higher than what was in fact earned. Defendants further failed to adequately distinguish between gross, adjusted gross and net incomes, to disclose the duration of the income experience and the significant business expenses which have resulted either in net losses or net incomes below those reasonably to be expected by those to whom the representations were made.

14. The statements and representations as alleged in paragraph thirteen are untrue, deceptive and misleading and as such are in violation of sec. 100.18(1), Stats.

COUNT II
Misrepresentation of Potential Income

15. Defendants Behnke, Fliss, Lanza and Haugner each, at public presentations as described in paragraph twelve, have stated, either expressly or by direct implication, that a new Amway Distributorship has a reasonable chance, within three to nine months and working six to twelve hours a week, of earning in excess of \$12,000 a year. Said Defendants have also stated, either expressly or by direct implication, that higher incomes, up to \$55,000, are available in three to five years.

16. In truth and fact, the average annual adjusted gross income for each of the approximately 20,000 Wisconsin Amway Distributorships was \$267, or 2.2% of the projected \$12,000 income. During the two-year period of 1979-1980, approximately 139 Direct Distributorships, or less than 1% of all Wisconsin Distributorships, had an average annual adjusted gross income in excess of \$12,000. The average annual net income (after the deduction of business expenses) for all Wisconsin Direct Distributorships was, in fact, a net loss of \$918. The average annual adjusted gross income for each Direct Distributor was \$7,265, and the average for each Direct Distributorship was \$14,349 (most Distributorships consist of two Distributors, husband and wife).

17. Income examples such as those set forth in paragraph fifteen, as publicly presented by defendants Behnke, Fliss, Lanza and Haugner, are untrue, deceptive and misleading in that an annual income of \$12,000 is, in fact, achievable by less than seven of every 1,000 Amway Distributorships and that said income levels fail to reflect business expenses which, on the average for all Direct Distributorships, exceeded adjusted gross income by no less than \$918. As such, said income representations and those of a similar nature, as well as the significant business expenses incurred, fail to meet the reasonable expectations of those to whom they were made and thereby are untrue, deceptive and misleading and in violation of sec. 100.18(1), Stats.

COUNT III
Use of Unrealistic Hypothetical Examples

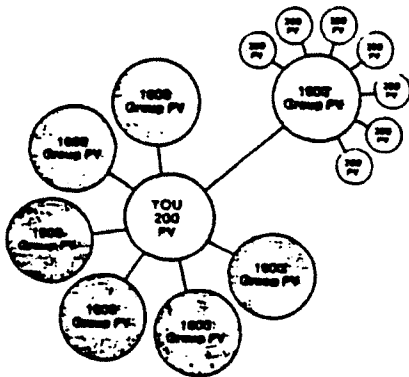
18. Defendants Behnke, Fliss, Lanza and Haugner each, at public presentations as described in paragraph twelve, have utilized hypothetical examples of potential income at the insistence of and in the form directed by defendant Amway. One of said examples is contained in Amway materials (hereinafter TABLE I) and is recommended, by Amway, for use at all public presentations of the Amway program. To wit:

TABLE I

KEEP GROWING THROUGH DUPLICATION

Your business continues to grow as your distributors follow your example and begin sponsoring their own distributors

Let's say that all seven of your distributors continue to do 200 PV a month, and they each sponsor seven distributors of their own. The total PV for each group would be 1,600. If you continue to personally generate 200 PV a month, your income could be as follows:



| | |
|---|-----------------|
| Total Monthly PV of Your Group (your own 200 + 1,600 x 7 groups) | 11,400 |
| Performance Bonus received by you (11,400 x 25%) | \$ 2,850 |
| Performance Bonuses paid by you (1,600 x 15% = \$240 x 7 groups) | -\$ 1,680 |
| Performance Bonus retained by you | \$ 1,170 |
| Gross Income on your personal PV | \$ 60 |
| Your Total Gross Monthly Income | \$ 1,230 |

YOU CAN ACHIEVE YOUR GOALS WHILE HELPING OTHERS!

(Note: Remember, these examples are illustrative only. Not every distributor will sponsor seven distributors. Some will sponsor more, some will sponsor less, depending upon time and effort spent building the business.)

19. Said example and those of a similar nature are used to demonstrate income which can be earned by a non-Direct Distributor. On an annual basis, the projected gross income in TABLE I would equal \$14,760 ($\$1,230 \times 12$). As such it exceeds the average (1979-1980) annual adjusted gross income of all Wisconsin Direct Distributorships (\$14,349), which constitute less than 1% of all Wisconsin Amway Distributorships. In truth and in fact, the average annual adjusted gross income of non-Direct Wisconsin Amway Distributorships is \$267 and (for 1979-1980) fewer than one-half of 1% of all Wisconsin Amway Distributorships earned an annual adjusted gross income in excess of the projected level. Said example also fails to disclose the salient fact that average annual business expenses for each Wisconsin Direct Distributorship exceeded adjusted gross income by \$918.

20. If one-fifth (4,000) of the 20,000 Wisconsin Amway Distributors reached the projected \$1,230 monthly income, in accord with the hypothetical example set forth in paragraph eighteen herein, they would collectively generate a monthly "P.V." of 45,600,000 ($11,400 \text{ P.V.} \times 4,000$). The "BV" or retail value of this is \$55,084,800 a month (BV = 120.8% of P.V.) or \$661,017,600 a year. This would require the annual purchase of \$400 worth of Amway products by each of the 1,652,261 households in Wisconsin.

21. The hypothetical example set forth in paragraph eighteen and others of a similar nature, for the reasons set forth in paragraphs nineteen and twenty, fail to bear any

reasonable relationship to the incomes which are actually earned or which could be earned by non-Direct Amway Distributors. Notwithstanding defendants' disclaimers concerning the hypothetical nature of the example, or concurrent disclosure of average sales figures for non-Direct Distributors, said hypothetical example, and others of a similar nature, are untrue, deceptive and misleading in terms of the reasonable expectations of those to whom they were made and, as such, violate sec. 100.18(1), Stats.

COUNT IV

Failing To Disclose Nature And Identity Of Amway Program

22. Defendants Behnke, Fliss, Lanza and Haugner each, at public presentations as described in paragraph twelve herein, have urged fellow Amway Distributors, in their efforts to secure non-Distributor attendance at said presentations, to disguise or not disclose the nature of the presentation to be given, the type of opportunity to be made available to the prospect or, when requested, the identity of the Amway Corporation. Plaintiff is informed and believes that said defendants use the same practices in their solicitation of prospects.

Defendant Lanza, at a public presentation made on August 27, 1980, at the Holiday Inn, Oshkosh, Wisconsin, indicated:

When you invite people, don't tell them much. The idea of products can turn some people off. Don't be a SAP, and mention Sales, Amway and Products.

As such, said practices are untrue, deceptive and misleading in that they falsely disguise the true nature of the presentation and the identity of the company involved to the extent that had

the prospect known the truth, he would not have attended. All said practices, plaintiff alleges, violate sec. 100.18(1), Stats.

RELIEF REQUESTED

1. Plaintiff requests, pursuant to sec. 100.18(11)(d), Stats., that defendants Behnke, Fliss, Lanza and Haugner be enjoined from engaging in the following acts and practices:

a. Falsely indicating individual income levels.

b. Failing to clarify the nature of the income levels discussed, in terms of gross, adjusted gross and net incomes, and the duration of the income experience.

c. Failing to disclose the extent of business expenses to be encountered by a prospect when said expenses exceed levels reasonably expected to be incurred by persons to whom the statement is made.

d. Misrepresenting income levels as achievable within reasonable expectations of the persons to whom the statement is made.

e. Using examples of documented individual income levels which are not achievable by a reasonable percentage of the persons to whom the statement is made in the absence of a clear contextual statement indicating the percentage and number of Distributors which have achieved the exemplary level and the duration of the income experience.

2. Plaintiff requests, pursuant to sec. 100.18(11)(d), Stats., that defendants Amway, Behnke, Fliss, Lanza and Haugner be enjoined from engaging in the following acts and practices:

a. Using any hypothetical example or projection of income in the solicitation of a prospective Distributor which does not represent an income which is achievable by a reasonable percentage of persons to whom the statement is made.

b. Failing to disclose that business expenses attendant to being an Amway Distributor exceed those which might be reasonably expected under the circumstances.

3. Plaintiff requests, pursuant to sec. 100.18(11)(d), Stats., that defendants Behnke, Fliss, Lanza and Haugner be enjoined from engaging in the following acts and practices:

a. Misrepresenting, in respect to seeking attendance at public presentations of the Amway Plan:

(1) The nature of the presentation to be given.

(2) The type of opportunity to be offered.

b. Failing to disclose, after a request made by the prospect, the identity of the Amway Corporation as the sponsor of the opportunity offered.

4. Such other relief as the court deems just and equitable.

5. For the imposition of civil forfeitures, pursuant to sec. 100.26(4), Stats., for each of the violations alleged herein.

Dated at Madison, Wisconsin, this 27th day of July, 1982.

BRONSON C. LA FOLLETTE
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