

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

NITRO DISTRIBUTING, INC.; WEST)	
PALM CONVENTION SERVICES, INC.;)	
NETCO, INC.; SCHMITZ & ASSOCIATES,)	
INC.; and U-CAN-II, INC.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. _____
)	
ALTICOR, INC., a foreign corporation;)	
AMWAY CORPORATION, a foreign)	
corporation; and QUIXTAR, INC., a)	
foreign corporation,)	
)	
Defendants.)	

COMPLAINT

COME NOW the Plaintiffs, by and through their counsel, and for their causes of action against the Defendants, state and allege as follows:

Type of Action

1. This cause, arising out of the same series of transactions and occurrences, entails Defendants' efforts to unlawfully influence, control, monopolize and manipulate a business enterprise operating in Missouri and engaged in interstate commerce. Defendants' unlawful conduct, as part of a wide-ranging conspiracy, occurred repeatedly and profusely throughout the State of Missouri, causing damages to the Plaintiffs.

Jurisdiction and Venue

2. Plaintiffs are businesses incorporated and existing under the laws of the States of Missouri and Florida. Defendant Alticor, Inc. is a Michigan corporation, with its principal place

of business in Michigan. Defendant Amway Corporation is or was a Michigan corporation, with its principal place of business in Michigan. Defendant Quixtar, Inc. is a Virginia corporation, with its principal place of business in Michigan. The matter in controversy significantly exceeds the sum of \$75,000, exclusive of interest and costs. Therefore, this Court has jurisdiction under 28 U.S.C. § 1332. In addition, this action being predicated in part under 15 U.S.C. §§ 1 and 2, this Court also has jurisdiction under 28 U.S.C. § 1331. Defendants engage in business in the Western District of Missouri and a substantial part of the events and omissions giving rise to the claim occurred in the Western District of Missouri. Therefore, venue is proper in the Western District of Missouri. *See* 28 U.S.C. § 1391.

Parties

3. Plaintiff Nitro Distributing, Inc. (“Nitro”) is a Missouri corporation with principal offices located in Springfield, Missouri. Nitro engages in the “tool” business as hereinafter described.

4. Plaintiff West Palm Convention Services, Inc. (“West Palm”) is a Florida corporation with offices located in Springfield, Missouri. West Palm formerly participated in the “function” business as hereinafter described until boycotted out of that business.

5. Plaintiff Netco, Inc. (“Netco”) is a Missouri corporation with principal offices located in St. Joseph, Missouri. Netco formerly participated in the “tool” business as hereinafter described until boycotted out of that business.

6. Plaintiff Schmitz & Associates, Inc. (“Schmitz Associates”) is a Missouri corporation with principal offices located in St. Joseph, Missouri. Schmitz Associates formerly participated in the “function” business as hereinafter described until boycotted out of that business.

7. Plaintiff U-Can-II, Inc. (“U-Can-II”) is a Florida corporation with principal offices located in Lakeland, Florida. U-Can-II formerly participated in the “tool and function” business as hereinafter described until boycotted out of that business.

8. Defendant Alticor, Inc. (“Alticor”) is a Michigan corporation created in 2000 with its principal place of business in Ada, Michigan.

9. Defendant Amway Corporation (“Amway”) is, or at least was until sometime in 2001, a Michigan corporation with its principal place of business in Ada, Michigan. For over 40 years, Amway engaged in a multi-level marketing business (the “Amway business”), selling consumer goods and products worldwide through a vast network of independent distributors, many of them based in Missouri.

10. Defendant Quixtar, Inc. (“Quixtar”) is a foreign corporation (registered to do and doing business in Missouri), with its principal place of business, on knowledge and belief, in Michigan. On knowledge and belief, an entity known as Quixtar, Inc., which was incorporated in Michigan in 1999, merged on or about November 1, 2002, with an entity known as Quixtar, Inc., a Virginia corporation incorporated in 2001, to form the Defendant designated as Quixtar, Inc. herein. Quixtar is a successor in interest to Amway in regard to Amway’s agreements with Amway’s former distributors. As used herein, from the incorporation of Quixtar in 1999 and thereafter, reference to Quixtar is reference to Amway as well and vice versa.

11. Alticor is and/or was the parent company of Amway and Quixtar, and Alticor since sometime in 2001, assumed the name “Amway Corporation” as a fictitious name for the purpose of conducting business. Alticor is also a successor in interest of Amway. On knowledge and belief, Alticor is Amway, and as used herein, reference to Amway is reference to Alticor.

12. Amway moved all of its distributors to Quixtar effective January 1, 2003. Prior to that time, beginning in late 1999 or early 2000, distributors could elect to be in either Amway or Quixtar. On knowledge and belief, this move was prompted by the adverse publicity and increasing negatives experienced by Amway in the 1990s as abuses within the tool and function business (hereinafter described) spread.

13. On knowledge and belief, the business operated by Quixtar today is essentially the Amway business. Use of the word “Amway” is discouraged in the Quixtar business. On knowledge and belief, Alticor has simply repackaged Amway’s business into Quixtar. On knowledge and belief, Quixtar is Amway. The former Amway distributors are now Quixtar distributors. A former Amway distributor’s respective position within the Amway pyramid is the same relative position within the Quixtar pyramid.

14. The current Alticor website (www.Alticor.com), provides in part:

Alticor, Inc. is the parent company of Amway Corp., Quixtar Inc. and Access Business Group LLC. Based in Ada, Michigan, USA, Alticor and its affiliates help people live better lives by offering a wide range of consumer products, business opportunities, and manufacturing and logistics services in more than 80 countries and territories. In its most recent fiscal year, the company reported worldwide sales of \$4.5 billion.

The diverse, 40-year *history* of Alticor and its *businesses* is a key factor in its strong *values, finances* and competitiveness. The Alticor companies have been *recognized* in many ways over the years for their leadership in the community and in their respective fields. Please learn more about them through this Web site and by stopping by the *Visitor Center* at our headquarters in Ada, Mich., USA. (emphasis original)

15. The Defendants are so closely related and intertwined that they each constitute the alter ego of the other two. The acts or omissions of one constitute the acts or omissions of all three. On knowledge and belief, the changes in corporate structure in or about 2001 were legal

maneuvers by Alticor to cut off or prevent Amway's exposure as well as its founders, the DeVos and Van Andel families, to anticipated claims as well as shirk adverse publicity related to Amway.

General Allegations

The Tool and Function Business:

16. Amway enticed prospective distributors into the Amway business with the prospect of owning and operating an independent business, buying and selling Amway products, and thereafter becoming financially independent, if not fabulously wealthy. However, the wealth portrayed as attainable in the Amway business is not attainable in that business because the wealth portrayed is in substantial part due to a separate but related business.

17. Amway requires its Amway distributors to train and motivate the downline distributors that they sponsor and bring into Amway's multi-level business. This requirement gave rise to what is commonly known today as the Amway "tool and function business," or sometimes the "motivational business" (herein referred to collectively at times as "the tool business"). This business is used to train and motivate Amway distributors respecting the Amway business, including the recruiting of new Amway distributors.

18. The tool and function business is related and supportive of the Amway business, but a separate and distinct business in and of itself. Amway recognizes this. Further, Amway is itself a tool distributor and a competitor within this separate business. Amway "birthed" the tool and function business by and through its mandatory training and motivation requirement, and has tacitly approved and sanctioned same from the beginning.

19. In conjunction with this separate business, "tools" refer to instructional and motivational materials such as audio and video tapes, books, electronic literature, etc., also sometimes referred to as "business support materials" or "BSMs." "Functions" refer to

instructional seminars, motivational rallies and conventions, some in the past attracting over 40,000 attendees. The sale of the tools and charging Amway distributors a fee to attend major functions generates profits for those participating distributors in the tool and function business.

20. The tool and function business operates similarly to that of the Amway business in that it also involves a pyramid of participating distributors. What is commonly referred to as the “line of sponsorship” in the Amway business is sometimes referred to as the “line of affiliation” in the tool and function business. The ultimate customers of the tool and function distributors are low-level or entry Amway distributors. There are no retail sales, or insignificant retail sales, outside of the tool pyramid. Each tool and function distributor is a separate competitor within this business industry. The tool and function business generates enormous profits. Simply put, the money is not in the Amway business; it is in the hype of the Amway business.

Control of the Business:

21. Amway distributors situated at the top of the Amway pyramid of distributors (those entering the Amway business early on and attaining a high Amway “pin level” of Diamond or above, hereinafter the “Amway kingpins”), long ago seized the opportunity to profit by and from the training and motivation of their downline distributors by seizing control of the tool and function business. The kingpins promulgated their own rules (the “Rules”) to govern the tool and function business which were ultimately ignored from time to time to benefit their own pecuniary needs and agendas. Like the Amway business requiring strict observance of the “line of sponsorship,” observance of the “line of affiliation” was deemed essential in the Rules governing the tool and function business.

22. These Rules reserved participation (eligibility) in the massive profits realized from the tool and function business to only those distributors within the Amway pyramid of distributors

attaining a certain level of success or “pin level” (“Direct” or above for tools and “Emerald” or above for functions). Because of an Amway rule prohibiting Amway distributorships from engaging in any other business, the “eligible” Amway distributors were instructed by the Amway kingpins to set up their own corporations which would engage in the tool and function business as independent distributors, separate and apart from the Amway business.

23. Having assumed and exercised control over the tool and function business by the 1970s, the kingpins were in position to profit immensely aside from the Amway business and to use their enhanced lifestyle to entice further distributors into Amway. Every new Amway distributor was a potential customer for the kingpins in the tool and function business. The tool and function business grew tremendously, and by the early 1980s had become the driving force behind Amway.

24. Plaintiffs, who were downline from the kingpins, engage(d) in the tool and/or function business. With the exception of Plaintiff Netco, none of the Plaintiffs are or were ever Amway distributors engaging in the Amway business. Netco has not engaged in the Amway business for some time, and brings this action solely in its capacity as a former participant in the tool business, not as an Amway distributorship. Plaintiffs are competitors with Amway, the kingpins, and other distributors within the tool and function business.

25. Eligible tool and function distributors/participants like the Plaintiffs, who came along after this business and the “systems” in place to govern and operate same were already rooted, were falsely led to believe that the Rules would be applied fairly and uniformly, and that all eligible distributors for participation within the tool and function business would have fair, equitable and equal opportunity to participate in the business, just like the Amway kingpins before

them. This has not been the case. The kingpins instead have sought to disadvantage many eligible distributors, including the Plaintiffs.

The Amway Kingpins and their Tool and Function Pyramids:

26. There are three primary lines of sponsorship within the Amway business, each giving rise to at least three separate pyramids within the tool and function business. These three lines of sponsorship provide Amway with the substantial part of its annual sales, if not virtually all of such sales. These three lines of sponsorship are: Dexter Yager, Bill Britt and Ronald Puryear. All three individuals are Amway kingpins – those figuratively sitting on top of their pyramid of Amway distributors on the one hand, and their tool and function distributor pyramid on the other. These three kingpins have tremendous clout and influence with Amway.

27. All three Amway kingpins engage in the tool and function business through their separate companies. Within each tool pyramid, there are other Amway kingpins who work together to facilitate the activities of their pyramid as they pursue the sale of tools and the marketing of functions.

28. Amway, being a competitor within the tool and function business, operates as a tool distributor.

29. The Plaintiffs are, or at least were until February 1998, within the Yager pyramid which is headed by Yager's tool and/or function company, Internet Services, Inc. The Amway kingpins in Yager's pyramid included, but are/were not necessarily limited to, Richard Setzer, Hal Gooch, Bill Childers, Tim Foley, Steve Woods and Jimmy Dunn of Springfield, Missouri.

30. Each Amway kingpin endeavors to keep the other kingpins and Amway (and their downline tool distributors), from selling tools or functions to the distributors/customers in their pyramid. The kingpins preach to all distributors within their respective pyramids that they are

expected to “edify and support” their “upline” distributors, attending their functions only, and purchasing tools only from their upline distributors. Amway's own rules prohibit “cross-lining” (soliciting those who the distributor did not sponsor), and as such, Amway’s rules serve to foster non-competition and/or solicitation between pyramids and, for that matter, between distributors in any given pyramid. The kingpins enacted a similar Rule within the tool and function business. The result is that competition is stifled. Amway publishes that Amway distributors are free to purchase tools from anyone, but Amway knows full-well that is simply not reality. Amway knows it is a “closed system” within each tool pyramid and has been for years. That is the intent; that is the reality.

Amway Challenges the Tool Systems of the Kingpins:

31. By the early 1980s, Amway recognized the inherent problems of the tool and function business as operated by these large pyramid distributor systems.

32. By that time, the tool and function business had grown so big and profitable that Amway recognized it as constituting a threat to the Amway business (by taking substantial monies out of or away from Amway according to its co-founder), and for a period of time, Amway apparently strived to either bring it “in-house” or substantially limit it.

33. In a 1983 audiotaped speech entitled “Directly Speaking,” Amway co-founder Rich DeVos stated:

Let me talk to you about the legal side, beyond price fixing, that deals with pyramids, that deals with the illegal operation of a business that does not have an end consumer, where the product is not retailed. That would include all books and tapes. The sad news, folks, is that when those things go out that way and they become excessive, beyond my ten or twenty percent theoretical guideline, hopefully acceptable, to where it’s a reasonable support system, but not beyond the reasonable element, then it becomes an out and out illegal pyramid.

. . . when your tape volume becomes so great in relationship to your regular business, if it is not used as a support for the Amway business, – will oftentimes be an illegal business – in fact, it could be called a pyramid – because, – does not get sold to the consumer. Which means that all the tape business does is take money out of the organization, and because the final person can't retail it, it never brings money into the organization. Now, I'm not arguing the value of it – we accept the fact that motivation is vital to this business. Good, honest motivation is important to the business. But, it must be motivation that builds the business – not become a business in itself. And some of you have made it a business in itself . . . And I am imploring all of you to do two things. Number one, clean up your act. And number two, if you know people who are continuing to do things improperly after all of this, then I want you to write us a note and just tell us who's doing it.

Directly Speaking, January 1983, Rich DeVos, Amway Cassette Series VA-2160.

34. At that time, DeVos also addressed the necessity of honoring the “line of sponsorship” within the separate tool and function business. DeVos asked distributors involved in the sale of tools to:

. . . unplug from any group, up or down, which is not in my line of sponsorship. You know, a lot of you, got your fingers dirty. You got your hands a little bit into somebody else's group, or you're dealing into somebody else's group that's not in your line of sponsorship, or you're getting stuff from somebody. I'm just asking you to unplug it. Tend to your own business. Stay in your own line. Deal only with people you sponsor. The other people who are not in your group – they are not your business, and if you are a believer in this Plan, then you'll believe in this principle. If it's okay for you to intrude somebody else's group, then it's okay for them to intrude yours. If it's okay for you to intrude somebody else's group, then it's okay for somebody above you to go around you and intrude your distributors below you. You and I know you can't tolerate that.

35. On knowledge and belief, in a January 10, 1983 memorandum written by the Amway Executive Vice President, summarizing the Britt and Yager tool systems, the following conclusions were reached:

- “There is a major economic force at work with the tool business. Anything that is done by the corporation that will cause conflict or competition with this business could cause a major split. This business will crumble under its own weight . . .”
- “Greed. A continuing promise to all Directs in this system is that they will do as well (financially) or better than Diamonds in the system today. This may not always be possible.”

- “It is not a free enterprise opportunity. A downline Direct is not to compete with an upline Diamond.”
- “The motivation business is getting larger than expected. None of the major participants really wishes to deal with it in a detail sense. With proper prodding, this business will fail.”

36. On April 5, 1983, Amway brought or permitted its outside counsel, William Abraham from Columbus, Ohio, to talk with Amway Diamonds (high-level Amway distributors and participants in the tool and function business), in the Yager pyramid at a meeting in Miami, Florida. The session was taped. On knowledge and belief, Abraham told the participants at that time:

- “We know if we take away your tape income, you’ll be bankrupt.”
- “You don’t put the brakes on if you know it’s wrong. You put the brakes on if you know the bureaucrats are going to cut your throat.”
- In order for the tool business to be legal, there is a “rule of reason” you need to follow, which is not a rule of law. This “rule of reason” is that not more than 20% of your total income can be from tools.

37. The battle for control of the tool business in the early ‘80s pitted the kingpins squarely at odds with Amway and its founders. In or about 1986, Amway kingpin Rick Setzer and his wife, represented by attorney William Abraham, sued Amway Corporation and its co-founders, Richard DeVos and Jay VanAndel, in the United States District Court for the District of South Carolina, Greenville Division, Case No. 6:86-1898-3 (the “Setzer suit”). In that litigation, plaintiffs alleged in part:

67. Defendants have now breached their contract with Plaintiffs by destroying Plaintiffs’ ability to produce and sell educational and motivational materials. Beginning in or about January 1983 and continuing to the present, Defendants have discouraged the distributors within Plaintiffs’ organizations from purchasing the educational and motivational materials produced by Plaintiffs, while encouraging said distributors instead to purchase such materials from the Defendants.

Plaintiffs claimed and sought damages of \$100,000,000 from the defendants.

38. On knowledge and belief, in sworn testimony given by co-founder and defendant DeVos, it was revealed that Amway's revenues dropped from \$1,500,000,000 in 1982 to \$1,130,000,000 in 1983 – a drop of \$370 million and Amway had not been successful in curbing the abuses in the tool and function business. In other words, the cost of the confrontation with the kingpins over tools had been costly indeed.

39. On knowledge and belief, Amway co-founder DeVos in the Setzer suit, provided the following sworn testimony:

Q. It is a position that you took in the early part of 1983. Have you deviated from that position in the Amway Corporation since then, with respect to your Ten Points and the subject matter contained therein?

A. (DeVos) Well, let's just say that we dealt with it the way we did. We did put some people under notice that they were doing things wrong. We pursued, of course, re-education but we never pursued it to its ultimate goal of really nailing anything down. In the meantime, the volume came down and we started to work at trying to hold the business together, but the problem persisted in any case.

40. On knowledge and belief, Amway and its founders gave up the fight over tools sometime after 1983, and embarked on a new strategy of enabling the kingpins to solidify their control over their tool systems.

41. On knowledge and belief, the Amway kingpins' **tool and function income grew to** vastly exceed their income from the Amway business by **a ratio of nine-to-one or more**. And the profits they derived from tools and functions amounted to many, many millions.

42. From 1988 on, well into the 1990s, the tool and function business grew, indeed flourished. And as it flourished, so did the Amway business. On knowledge and belief, Amway "closed its eyes" and ignored what they considered to be a business rampant with abuse because

Amway had become inherently dependent on the tool and function business to sustain its growth and profitability. In substance, on knowledge and belief, greed overcame principles.

Amway's Complicity – the Conspiracy to Monopolize and Restrain Trade:

43. At some point in time after 1983 and before 1990, the exact point being unknown to Plaintiffs, perhaps after the Setzer suit, Amway acting by and through its authorized agents and representatives as herein detailed in part, became an active co-conspirator in a conspiracy or perhaps multiple conspiracies, acting separately or in concert at the same time, to control, monopolize and manipulate the tool and function business to the detriment of Plaintiffs and others. The conspiracy, including these Defendants, intended to endeavor to assist the kingpins in the monopolization of the marketplace as herein defined and to restrain trade. On knowledge and belief, the participants in this conspiracy included at least some, if not all, of the Amway kingpins (including but not limited to, Yager, Setzer, Gooch, Childers, Foley, Woods and Dunn), their tool and function companies, their agents and representatives, their suppliers or manufacturers of tools (including Global Support Systems, Inc.), and the Amway Distributor's Association (later known as the Independent Business Owners Association), and its directors, agents and representatives. Not all of the co-conspirators are known to the Plaintiffs at this time. The acts and omissions of any one co-conspirator are and were the acts and omissions of all others, including each Defendant.

44. The Amway kingpins needed Amway as an "object" to promote their separate tool and function business, and further, the kingpins needed Amway's help in controlling their downline distributors and negating any emerging competition. Amway, in turn, needed the kingpins to sustain and build Amway. These two separate businesses were dependent upon one another in order to prosper. Although Amway apparently never expected the tool and function

business to become what it had become by the early '80s, a business in and of itself, the tool and function business did just that.

Amway Becomes the “Gatekeeper,” an Active Ally of the Kingpins:

45. Amway facilitated the kingpins' control of their tool systems by requiring all tool literature to be sent to Amway for prior approval before dissemination and use of that literature. On knowledge and belief, unless the submitter was a qualified Diamond pin level or above (to-wit: an Amway kingpin or someone working closely with an Amway kingpin), Amway would not even review the literature. This prompted a strong protest from large Amway Emerald distributors (the pin level next below the Diamonds), and Amway thereafter relented and advised that they would review, but not necessarily approve, literature submitted by Emerald pin-level distributors on up. On knowledge and belief, if a distributor disseminated tool literature that had not been prior approved, Amway would terminate or suspend the distributor. This Amway rule permitted Amway, a competitor in the tool business, to become the **gatekeeper** for what could and could not be sold as literature in the tool business. As such, Amway could deter any new competing entrant to the business. On knowledge and belief, in that Amway was acting under the influence and/or control of the Amway kingpins, the kingpins were thus able to negate competition from any “maverick” distributor who might have the audacity to believe that he/she had a right to compete freely and fairly in the tool business. As Amway reportedly noted early on, the tool and function business was anything but free enterprise.

46. On knowledge and belief, Amway used the tool and function business to not only build its Amway business to new heights, but to effectively subsidize the Amway business; the huge profits pouring in for tools and functions to the Amway kingpins allowed Amway to artificially hold down what it paid out to its growing Amway distributorship network in

commissions and bonuses. Stated differently, Amway didn't need to pay large commissions and bonuses to the Amway kingpins for sales of soap because those kingpins were raking in millions from the tool and function business, bringing in throngs of new Amway distributors, and training and motivating them to buy soap and bring in yet more distributors. The low-level distributors, who were buying the soap (not necessarily selling the soap), were in turn motivated by the representations being made to them by the Amway kingpins and their widely proclaimed lavish lifestyles. These low-level distributors were often told not to focus on selling soap (or other Amway products), but to buy the Amway products themselves and instead focus on bringing in new Amway distributors who would do likewise. Of course, each new Amway distributor was a potential new tool customer for the kingpins. These low-level distributors were also told that they could attain similar riches (like that of the kingpins) from the Amway business, and they believed it. Amway contributed to the perception by publicizing the kingpins' lavish lifestyles in its publications, like the *Amagram*, and in Amway's own "tools."

47. Amway joined the Amway kingpins in avidly touting the virtues and benefits of tools and functions to Amway distributors. The "rule of reason" advanced in 1983 was forgotten or ignored. It is and was common for Amway executives to attend functions. For example, Amway's Chief Executive Officer, Tom Eggleston, attended major Yager/Internet functions in the 1990s like "Free Enterprise," and spoke to the distributors, touting the benefits of tools, tacitly approving and endorsing the tool system known by Amway to be in place – the same tool system as that in 1983.

48. The Amway Sales and Marketing Plan encourages distributors to purchase tools and to attend functions:

To assist you with your own training and motivation, as well as training and motivating others, some distributors produce and distribute Business Support Materials and support services independently of Amway Corporation (independently-produced Business Support Materials or BSMs). These may include books, magazines, and other printed materials, audiotapes, videotapes, rallies, meetings and educational seminars. While these BSMs are not required by or produced by Amway Corporation, you may decide that they can play a useful role in building a profitable Amway business . . .

Merchandising products and sponsoring others is the way you build a truly successful business . . . You can also sponsor others as distributors and train them to merchandise products . . . As your business begins to grow, you will want to buy products and you may wish to acquire training aids. You will also want to attend motivational and business-building meetings. Typically, you may attend one distributor meeting a week.

49. Amway's expressed endorsement of this tool and function system is perhaps not as egregious as its tacit approval of the misrepresentations routinely made by the Amway kingpins or their downline Diamonds, acting upon the training and direction of the kingpins, at functions with Amway executives prominently in attendance. Two myths were fostered by and through these misrepresentations.

50. **The first myth** is that by working hard to build the Amway business, an Amway distributor can build his/her Amway network to a point where they can achieve the Amway dream or riches like those attained and proclaimed by the Amway kingpins. Very simply, one cannot attain comparable riches by selling Amway products. But in fact, it is only through the participation in the tool and function business that one can attain the riches like those of the Amway kingpins. New distributors were not told this. Instead, they were led to believe that the riches were in the Amway business. Amway knew this. Amway permitted it and encouraged it. More Amway distributors meant more revenue for Amway.

51. **The second myth**, related to Amway distributors once they became eligible for participation in the tool and/or function profits (Direct level or above), is that those distributors

will be treated fairly under the Rules, including the line of sponsorship and/or affiliation and the Servicing Agreement Rule, being honored. The reality is that the Amway kingpins control the destiny of those below them, and they control and manipulate the tool and function business in such a way, with Amway's assistance, that a tool and function distributor cannot attain these riches unless the Amway kingpins so elect. And few do attain these riches, regardless of the size of their downline distributor network.

52. Plaintiffs, the tool and/or function companies of "eligible" Amway distributors, relied in good faith on the representations (respecting the second myth above), made to them, when and after they became "eligible" tool and function distributors, by Amway kingpins Yager, Gooch, Childers, Dunn and other upline distributors in the Yager pyramid in entering and pursuing the tool and function business, expending large sums of money to promote same, and thereafter instructing their downline distributors respecting same as they were trained and instructed to do by Yager, Gooch, Childers, Dunn and others. Plaintiffs relied on these representations to their detriment. Plaintiffs became participants in these established tool systems because they had no viable options, despite Amway's published statement that a distributor is free to buy tools from anyone. Plaintiffs, by and through their principals, expected and intended for the Rules to be equitably applied, with fair and proper access to all eligible distributors once they qualified to participate in the tool and function business as distributors. Plaintiffs did not condone the kingpins' abuses. Plaintiffs did not knowingly and/or intentionally mislead their downline distributors.

53. Amway knew full-well that these repeated representations were inherently false and misleading to distributors like Plaintiffs, but as a co-conspirator motivated to perpetuate and

grow the tool and function business run by the kingpins to and for Amway's own pecuniary benefit, Amway did nothing to stop them from being made – ever!

54. When the Amway kingpins, with Amway executives present, made these inherently misleading or false representations or inferences, the Amway kingpins were reasonably perceived by distributors, including Plaintiffs, to be acting with the tacit approval and apparent authority of Amway in making the misrepresentations. Amway ratified these egregious acts.

55. The aforesaid misrepresentations made by the members of this conspiracy, many being made in Missouri, were and are the acts and misrepresentations of the Defendants and each of them.

56. Aside from the misrepresentations, the conspirators in the 1990s with Amway giving tacit approval, endeavored to allocate customers in the tool and function business and boycott those they chose to disadvantage, such as the Plaintiffs. Examples follow.

The Allocation of the D'Amico Tool Business:

57. In or about 1994, the conspiracy engineered the allocation of the D'Amico downline group of distributors from under U-Can-II to being placed under kingpin Setzer. On knowledge and belief, upon kingpin Setzer's return to the Yager group respecting BSMs in the '90s, Yager pressured Gooch and Childers to "cut" Setzer back in (to receive profits on BSMs sold within the Yager pyramid). On knowledge and belief, to address this pressure from kingpin Yager without significantly reducing their own profits, kingpins Gooch and Childers entered into a secret agreement on or about September 19, 1995, to allocate the D'Amico tool business to Setzer, eliminating U-Can-II from participation, in complete violation of the Rules. In substance, the conspirators took customers from U-Can-II and arbitrarily gave them to Setzer.

58. When U-Can-II learned that D'Amico was dealing with Setzer for his tool business, U-Can-II protested to Amway and to Yager and Jody Victor, both members of the Amway Distributor Association's (ADA) board. A meeting to address the situation followed in Jacksonville, Florida.

59. In attendance for this Jacksonville meeting were the following: Bob Kerkstra of Amway; Jody Victor, as a representative of the ADA board; Dexter Yager, Doyle Yater, Childers, Setzer, Don Brindley and D'Amico, all tool competitors; and the Harts of U-Can-II. With Amway's and the ADA's direct participation and over U-Can-II's protest, the Harts were told that D'Amico's tool business was being pulled from them and given to Setzer. D'Amico's tool business moved to Setzer with Amway's support. No one disclosed to U-Can-II the secret agreement between Gooch and Childers regarding the D'Amico tool business. This secret agreement was tantamount to an allocation of customers, in violation of the antitrust laws, and that arrangement was, at the very least, sanctioned by Amway.

60. This meant that the essential "line of sponsorship" or the "line of affiliation" was completely evaded and U-Can-II, contrary to the Rules, was boycotted respecting the tool and function business of the D'Amico organization. U-Can-II, per the Rules, should have sold all tools to D'Amico, or at a minimum, been reasonably reimbursed for same. U-Can-II should have participated in the function revenue as well, in accord with the Rules. U-Can-II was eventually advised by Gooch, Childers and Yager that, in accord with the Rules, Setzer would equitably compensate U-Can-II for "going around" U-Can-II respecting the D'Amico organization's tool business. But Setzer has paid no compensation to U-Can-II.

61. On knowledge and belief, Setzer paid Gooch, Childers and Yager for tools sold to the D'Amico organization because they fell within D'Amico's line of sponsorship. But, again,

Setzer paid the Plaintiff U-Can-II nothing despite the Plaintiff's direct line of sponsorship to D'Amico. This tactic, as orchestrated by the conspirators, was instrumental in paving the way for the loss of other downline distributors within the Hart organization respecting the tool and function business. U-Can-II was effectively undermined by the conspiracy, including Amway.

The Gooch Pyramid – Pro Net Global Association:

62. In or about 1997, Hal Gooch and Bill Childers, two Amway kingpins in the Yager pyramid, pursued a “breakaway” from Yager and Internet Services respecting tools and functions. On knowledge and belief, this contemplated breakaway was prompted out of concern by Gooch and Childers that kingpins Yager and Setzer were taking too great a “cut” on tools and might encroach on their (Gooch's and Childers') downline distributors/customers, thus diminishing their profits from the tool and function business. They sought to preclude such competition.

63. This led to the creation in February 1998 of a separate pyramid (the “Gooch pyramid”) out of the larger Yager pyramid, the same being all of the distributors in the Yager/Gooch line of sponsorship from Gooch down. Gooch, Childers, Tim Foley and Steve Woods, all powerful distributors in the Gooch line of sponsorship (hereinafter collectively “the Gooch kingpins”), facilitated the creation of this new pyramid and, with the help of others like kingpin Jimmy Dunn of Missouri, its ongoing business practices.

64. The Gooch kingpins used Pro Net Global Association (“Pro Net”), a purported not-for-profit trade association, to facilitate the tool and function business within the Gooch pyramid. They absolutely controlled Pro Net, were the only members with voting rights per the Pro Net bylaws (excepting Ken Stewart, who they quickly booted in 1998), and operated Pro Net to serve and accomplish their own pecuniary interests.

65. Amway helped facilitate the Gooch kingpins “break away” from Yager and Internet. The assistance included several meetings and Amway lending guidance and direction to the Gooch kingpins or their agent, Paul Brown, in setting up this new tool pyramid. Attached hereto as **Exhibit A** is an Antitrust Primer provided Paul Brown by Amway’s in-house counsel while Mr. Brown was working for the Gooch kingpins on the “breakaway” from Yager/Internet.

66. On knowledge and belief, the “breakaway” included secret payments/kickbacks flowing back to Yager and others upline to Gooch from profits generated from tools and functions in the Gooch pyramid, even though Yager was not a member of Pro Net. On knowledge and belief, these secret payments/kickbacks were intended to preclude Yager’s and Setzer’s solicitation and/or competition for tools and functions with those distributors in the Gooch pyramid. Very simply, on knowledge and belief, Yager was paid to “stay out.”

67. The Gooch kingpins mandated tool and function distributors’ participation in Pro Net so as to seize absolute control of the tool and function business within the Gooch pyramid. Equally important, they required each distributor to contribute all of his/her copyrights in tools he/she created to Pro Net. The Gooch kingpins locked the system down tight so that no viable competition could arise. Lower downline Amway distributors were expected, if not required, to buy all tools through Pro Net and all functions were under the auspices of Pro Net. If a tool and function distributor refused to abide by the requirements of the Gooch kingpins, that distributor was cut off – boycotted. Paul Brown, the agent of the Gooch kingpins, refers to the boycotts as a tool distributor being “blackballed.” From a practical standpoint, that resulted in that distributor losing his tool and function income as there were no viable options. Amway was well-aware of the Pro Net mandate for participation, as well as the Pro Net membership mandatory terms which

served to place absolute control in the hands of the Gooch kingpins, and Amway tacitly approved same by and through its conduct.

68. Through Pro Net, the Gooch kingpins and their co-conspirators conspired to eliminate competition and to place themselves in a position to control:

- (a) what tools would be distributed, including the content of same, and only authorized Pro Net Diamond speeches would be on the tapes;
- (b) how tools would be distributed and priced at each level of the distributor network;
- (c) which distributors would be permitted to participate and profit on tools and functions and how much;
- (d) what functions would be approved and permitted; and
- (e) who would be permitted to speak at functions.

69. The Plaintiffs were all tool and/or function distributors/participants first within the Yager pyramid and then the Gooch pyramid. The Plaintiffs all previously dealt with Yager's Internet Services for tools, and Yager exercised control and direction over functions. The "breakaway," with Amway's assistance and promotion, meant that Plaintiffs were no longer to deal with Yager/Internet or Yager/Internet with them.

70. Nitro and West Palm were lured into Pro Net and then boycotted or minimized. Netco and Schmitz Associates refused to join Pro Net and were boycotted out of the business. U-Can-II was forced into Pro Net and then boycotted from the business.

71. Attached hereto as **Exhibit B** is a schematic illustration of the respective locations of the Plaintiffs, the Gooch kingpins and other Amway kingpins as mentioned herein.

The Role of the Independent Business Owner's Association ("IBOA"):

72. The IBOA, formerly the Amway Distributor's Association ("ADA"), is an association of Amway distributors. The IBOA is purportedly controlled by a board of directors consisting of 30 directors. One-half of the IBOA board is elected by those IBOA members eligible to vote (those being at the Direct Amway pin level or higher), and the other half is elected by the IBOA board members themselves. In order to be eligible to serve as a director of the IBOA board, the member must be a qualified Amway Diamond distributor.

73. The IBOA is not representative of the vast majority of Amway distributors as the substantial majority of distributors are not eligible to serve as a director or even to vote, and as might be expected, the election of directors is controlled or at least influenced heavily by the Amway kingpins.

74. Amway kingpins (including, on knowledge and belief, Yager, Britt, Puryear, Setzer, Gooch, Childers, Foley and Woods), serve and/or have served as IBOA directors. Virtually all of the other IBOA directors are Amway distributors situated in the line of sponsorship below these kingpins, and in accordance with the Amway culture and training, are required to support and edify the kingpins. Thus, on knowledge and belief, the Amway kingpins control and direct the IBOA for all practical purposes.

75. One published purpose of the IBOA board is to provide input to Amway. The Amway kingpins exercise substantial influence over Amway in the conduct of its business under the guise that such influence is being exercised on behalf of the vast number of Amway distributors, when the interests of the vast number of distributors are in actuality not being protected at all. On knowledge and belief, the IBOA is but one more mechanism for the kingpins to get leverage on Amway.

76. On knowledge and belief, the conspiracy to control, monopolize and manipulate the tool business as herein alleged involved at times Amway's conspiring with the IBOA, who had market power, or members of the IBOA board or their agents and representatives.

77. At the urging of the IBOA board, who was operating under the control and/or influence of the Amway kingpins, Amway was encouraged to adopt a dispute resolution procedure for disputes arising out of the Amway business which would involve the IBOA board directly and serve to cloak the airing of all such disputes with confidentiality. On information and belief, this process was designed to afford Amway and the IBOA board a means to exercise influence and control over the process without regard to any notion of fairness, independence and/or due process.

78. Once the dispute resolution process became effective January 1, 1998, Amway kingpins, individually and as members of the IBOA board, thereafter applied pressure on Amway to inject the process into tool disputes, despite the fact that (1) Amway itself is and was a tool competitor; and (2) the Amway dispute resolution process was never intended to govern or apply to tool disputes. The latter was confirmed by IBOA board members Billy Florence and Jody Victor in October 2002 in the presence of Amway executives, including counsel.

79. As but one example of this pressure, attached hereto as **Exhibit C** is a communication sent by kingpin Bill Childers to Larry Harper, Amway Director of Business Relations, on August 26, 2002. Mr. Childers states therein:

Larry, I just wanted to follow up on our conversation from Thursday, August 22, and reiterate how important it is that **Quixtar takes action to force Ken Stewart** (as well as Hart and Schmitz) to fulfill his obligation as a Quixtar IBO to conciliate his disputes with us. (emphasis added)

Ken Stewart is the principal of Plaintiffs Nitro and West Palm. Hart is a principal of Plaintiff U-Can-II. Schmitz is a principal of Plaintiffs Netco and Schmitz Associates. Childers is and was an

Amway kingpin in the Yager/Gooch lines of sponsorship/pyramids. Childers is and was an Amway distributor upline to each of the Plaintiffs in the tool business. Childers at the time that he sent this communication to Amway executive Larry Harper was an active member of the IBOA board and chair of the IBOA Hearing and Disputes Committee. The disputes alluded to were tool disputes and not disputes arising out of the separate Amway business. Childers is the principal of a company competing in the tool business. Amway is a tool competitor by admission. As such, one competitor was leaning on another to bring leverage on yet others in order to secure advantage.

80. The Amway dispute resolution process, which was never intended to govern tool disputes, is inherently flawed and subject to the control, direction and bias of the Amway kingpins and their influence and control of Amway.

81. The IBOA board's intervention into tool disputes is further illustrated by dealings with Brig Hart, a principal of Plaintiff U-Can-II. Brig Hart in 2000 served as a member of the Board of Regents for Oral Roberts University. An offer was made through Marilyn Hickey, another member of the Oral Roberts University Board of Regents, from an IBOA board representative that if Brig Hart would sign a letter addressed to the President of the IBOA in the form attached hereto as **Exhibit D**, the IBOA would cause \$30 million to be paid to Oral Roberts University. Billy Florence, then President of the IBOA, is a distributor under the Yager Amway line of sponsorship and participated at that time in the tool business within the Yager pyramid. The disputes of concern were tool disputes. On knowledge and belief, the letter to the IBOA (**Exhibit D**), was drafted by Billy Florence and Jody Victor, another IBOA board member and an Amway Diamond in the Yager pyramid. Florence and Victor are and were Amway kingpins under Yager.

82. The aforesaid overture to Marilyn Hickey, which was related to Brig Hart, was preceded on March 10, 1999, by a communication from Hal Gooch on behalf of the Amway Distributors' Association (later known as the IBOA), a copy thereof being attached hereto as **Exhibit E**.

83. Previously, representatives of the ADA/IBOA board and Amway intervened in tool disputes involving U-Can-II when U-Can-II was in the Yager pyramid (e.g., D'Amico), and later when U-Can-II was forced into the Gooch pyramid. This active intervention amply demonstrates the IBOA's active role in pursuing and/or addressing tool disputes, and seeking to control that process under the direction of the Amway kingpins and their agents.

Abuses within the Gooch Pyramid:

84. Abuses of the Rules were rampant within the Gooch pyramid.

85. The tactics used by the Gooch kingpins in running their tool and function pyramid included:

- Control and monopolization.
- Illegal tying arrangement.
- Allocating customers.
- Price fixing.
- Boycotts.

86. Nitro was viewed with disfavor by the Gooch kingpins and its participation in the tool business was curtailed in 1998 and thereafter, contrary to the Rules, and all to Nitro's proximate and direct damage.

87. West Palm likewise was viewed with disfavor by the Gooch kingpins and was boycotted out of the function business in 1998, contrary to the Rules, and all to West Palm's proximate and direct damage.

88. Netco was viewed with disfavor by the Gooch kingpins and other upline distributors, and was substantially excluded from the tool business in 1998 and before, contrary to the Rules, and all to Netco's proximate and direct damage.

89. Schmitz Associates was viewed with disfavor by the Gooch kingpins and other upline distributors, and was boycotted out of the function business, contrary to the Rules, and all to Schmitz Associates' proximate and direct damage.

90. U-Can-II was viewed with disfavor by the Gooch kingpins, and its participation in the tool and function business was precluded by and through an effective boycott, contrary to the Rules, and all to U-Can-II's proximate and direct damage.

91. All of the Plaintiffs lost millions of dollars as a direct result of being boycotted from the tool and function business, contrary to the Rules and kingpin representations upon which they had relied in good faith.

92. On knowledge and belief, Amway knew of these ongoing abuses, and tacitly sanctioned same. Amway did nothing to stop them. When the Plaintiffs sought Amway's assistance in addressing these abuses, Amway professed that the tool and function business was separate and apart from the Amway business, that Amway's rules did not govern tool disputes, and that Amway could not/would not intercede. On knowledge and belief, these positions were taken to aid and abet the Gooch kingpins and perhaps other Amway kingpins upon their lobbying of Amway in furtherance of the conspiracy.

93. Later, after kingpin Childers sent his August 26, 2002 letter to Harper (**Exhibit C** hereto), Amway demanded Nitro and U-Can-II submit to the biased Amway dispute resolution process, and by so doing, did an "about face" respecting the application of the Amway rules to tool disputes. Why? Because the kingpins wanted it.

94. On knowledge and belief, there is extensive documentation in Amway files and IBOA files constituting or referencing communications between the kingpins and Amway and/or the IBOA respecting the Plaintiffs and/or the Yager and/or Gooch systems, and the efforts to control and manipulate same.

Team In Focus:

95. The inherent involvement of Amway in tools and with the kingpins as part of this ongoing conspiracy is further amply illustrated in dealings with Team In Focus. In mid-2000, a group of Amway Diamond distributors in the Yager/Gooch/Childers Amway line of sponsorship met in Chicago to address their common concern about the tool system and the abuses and inequities they had witnessed in the Pro Net/Gooch pyramid. These distributors ultimately decided to form what became known as Team In Focus (“TIF”), and take their downline distributors away from Pro Net respecting tools and functions.

96. By this time, the Plaintiffs had either been effectively boycotted out of the tool and function business or substantially curtailed. The Plaintiffs’ principals were no longer in leadership positions due to the boycotts. These TIF distributors’ tool and function companies, as participants in the tool and function business, would or should have been situated in the line of affiliation below Plaintiffs Nitro, West Palm and U-Can-II. In other words, the TIF distributors were downline to the aforesaid Plaintiffs and constituted, under the Rules, the tool and function customers of these Plaintiffs. What ultimately transpired with TIF is a classic example of the conspiracy manipulating the marketplace as a result of their monopolization. The conspiracy boycotted the TIF distributors and allocated their customers, the same being customers or potential customers of Plaintiffs.

97. On July 25, 2000, the TIF leadership, assumingly unbeknownst to the Gooch kingpins, met in Atlanta with top executives of Amway, including Ken McDonald, President of Quixtar North America.

98. On knowledge and belief, during this July 25, 2000 Amway/TIF meeting, the Director of Global Business Conduct and Rules, Bob Kerkstra, stated that “the corporation had been looking for a solution to the BSM challenge for 35 years.” On knowledge and belief, Kerkstra and the other Amway executives expressed to TIF a desire to help TIF pull out of the Gooch pyramid without fear of retaliation; in this respect, Kerkstra stated that Amway would eliminate the fear of financial retaliation from the IBOA board and the Amway kingpins.

99. In order for TIF to break away from the Gooch kingpins, TIF needed a supplier for their tools. TIF negotiated with Amway for the breakaway from Gooch and to ensure Amway’s commitment to supply TIF with tools. On knowledge and belief, Amway committed financial and moral support to TIF, as well as the supply of tools by Amway itself.

100. TIF subsequently advised the Gooch kingpins of their intention to break away, and they did. Thus, a direct challenge to the “system” had been undertaken with TIF’s understanding that Amway would back them.

101. On knowledge and belief, the Amway kingpins and the IBOA board rallied to support the Gooch kingpins and applied pressure on Amway who recanted, withdrawing its support of TIF, including its commitment to supply tools.

102. On knowledge and belief, Larry Harper, Amway Director of Business Relations, told TIF, “We left you out in the ocean without a life raft, didn’t we?”

103. On knowledge and belief, when the TIF leadership confronted Amway President McDonald, he told them, “Guys, you never had anything in writing.”

104. TIF found itself without a supplier and without Amway's support. The Gooch kingpins instructed their representative, Paul Brown, to boycott TIF and ensure that TIF could not buy tools from any tool supplier without the supplier itself being subjected to financial reprisals. Thus, the conspiracy worked to freeze TIF out and then bring their downline distributors back into Pro Net.

105. Ultimately, on April 19, 2002, after TIF attempted to implement its own tool "system" for its downline distributors, Quixtar terminated the Amway distributorships of the TIF leadership principals for purported "antitrust violations." Other TIF founders thereafter resigned their affiliation with Quixtar in protest.

106. On knowledge and belief, Amway conspired with the Gooch kingpins and others to help them continue to control, monopolize and manipulate the tool and function business within the Gooch pyramid which, of course, on knowledge and belief, had financial benefits flowing to Yager and others upline. The old "system" remained secure. At the very least, Amway's conduct respecting TIF is/was tantamount to the ratification of the wrongful acts of the Gooch kingpins, Pro Net and others unknown at this time.

107. Efforts were then undertaken by the Gooch kingpins, with the assistance of Amway, to recruit away from the former TIF Diamond distributors their downline tool and function customers. This was pursued in a variety of ways, including "town hall meetings" jointly sponsored and/or held by Amway and Pro Net. Amway instructed distributors in the Gooch pyramid that they should look to Pro Net for their tools and functions.

108. One such "town hall meeting" was held in Overland Park, Kansas, on November 3, 2002. Distributors in Missouri and Kansas were actively solicited by Amway, the Gooch kingpins, and their minions to attend. Pro Net had many tool distributors (Direct pin level or

above), in Missouri. Pro Net sold hundreds of thousands, if not millions, of tools in Missouri. Jimmy Dunn of Springfield, Missouri, a Pro Net Diamond and Amway kingpin in the Gooch pyramid, represented Pro Net at this meeting. Randy Epema of Quixtar attended and responded to questions. After Epema confirmed that the Quixtar business and the tool and function business were “separate and distinct operations,” the following exchange occurred:

Q. Is the tool business part of the Quixtar business?

A. (Epema) No.

Q. How do we find our upline leader?

A. (Epema) Work with the Corporation (Quixtar) . . . Your leadership will come from the Pro Net line of affiliation.

109. Amway actively sought to help the Gooch kingpins bring the downline Amway distributors/tool customers of the terminated or resigned TIF leaders back into Pro Net.

Amway Facilitates the Continuing Boycott of Plaintiffs and the Control of the Kingpins:

110. During the TIF fallout, the Diamond principals of Plaintiffs Nitro, West Palm and U-Can-II were kept out of the loop (not informed or consulted) by Quixtar, even though most TIF Diamonds (and their large downline distributors), were in their downline. When downline distributors of the TIF distributors (the same being downline distributors to Plaintiffs), called Quixtar looking for “leadership,” they were referred to Pro Net Diamond distributors – not the Plaintiffs or their principals who were in many instances the next rung in the line of sponsorship. This is so, even though the principals of Nitro, West Palm and U-Can-II remained in active, good standing with Amway.

111. For example, when distributors of TIF distributor (and former Amway distributor) Ron Rummell, a downline distributor of Nitro and West Palm, called Quixtar for guidance,

instead of referring these distributors to Ken Stewart of Nitro and West Palm, as would be the ordinary and proper course of action, Larry Harper and other Amway executives referred them to Jimmy Dunn, stating that Stewart “was not in the picture” and “inactive,” when Harper knew that was not the case. Similar treatment was given the Harts of U-Can-II. Amway was perpetuating the boycott of Plaintiffs Nitro, West Palm and U-Can-II. Once again, Amway helped facilitate control in and for the kingpins.

112. About this same time (fall 2002), Quixtar responded to the requests of the principal Diamonds of Plaintiffs Nitro, West Palm (Stewart) and U-Can-II (Harts) to be permitted to resume leadership of their downlines in the Amway business (after being boycotted out of the tool and function business), so as to enable the Plaintiffs to attempt to resume their participation in functions and thus access tool sales as well. In letters of October 25, 2002, Quixtar stated:

“[we] have determined at this time, allowing you to service the downline would not be in the best interest of the involved IBOs, Quixtar or the Quixtar business . . . Furthermore, as a result of the current dispute between you and other IBOs, it is difficult for us to imagine how you could be qualified to bring the requisite harmony, leadership and teamwork that these groups will require. While no one disputes your right to seek redress for your concerns, the manner in which you have chosen to do so has resulted in a very public and acrimonious airing of this dispute.

Again, Amway perpetuated the boycott and facilitated control.

113. Similarly, when the successor in interest to Plaintiff Netco, Inc. sought legal recourse against some of the Gooch kingpins and Pro Net for violation of the tool rules, Amway threatened retaliation if she did not dismiss her suit, despite her protests to Quixtar that her disputes did not arise out of the Amway business but out of the “separate and distinct” (using Quixtar’s Epema’s words) tool business. Again, Amway facilitated control.

Abuses in the Other Pyramids:

114. Abuses in the tool business were not confined to just the Yager and/or Gooch pyramids. The Rules were ignored respecting U-Can-II, Netco and Schmitz Associates while tool and function distributors in the Yager pyramid. On knowledge and belief, the abuses occurred throughout the tool business, including within the Britt and Puryear pyramids.

115. On knowledge and belief, Amway was aware of these abuses.

116. On knowledge and belief, when an “Emerald” Amway distributor and a participant within the Puryear tool pyramid declined to go along with the Puryear “system” respecting tools, his Amway distributorship was terminated by and through influence wielded on Amway by the Emerald’s upline distributors and/or kingpins.

117. The Emerald’s termination from Amway demonstrates once again Amway’s intervention into “tool disputes” when it serves the purposes and agendas of the favored and powerful distributors, to-wit: the kingpins. On knowledge and belief, Amway executive Don Bailey advised this Emerald’s downline distributors in the Puryear pyramid to file a formal complaint against the Emerald for refusing to buy back tools.

The Amway Flip-Flop:

118. The inherent impropriety and illegality of Amway’s active engagement in tool disputes is perhaps best revealed in Amway’s Antitrust Primer, **Exhibit A** hereto, provided Paul Brown by Amway’s Associate General Counsel, Sharon Grider, during Pro Net’s formation:

It would be a mistake for distributors to try to invoke Amway’s rule against cross-line solicitation to solve problems in the BSM business. Amway is not the supplier of BSM resold in independent “systems”; it is a competitor, selling its own books, tapes and functions. Distributors who ask Amway to enforce lines of sponsorship in non-Amway BSM “systems” are in effect asking their competitor to help them allocate customers. If Amway complied with such a request, it would expose the requesting distributor as well as Amway to serious antitrust risks.

119. Similarly, in a letter to U-Can-II's legal counsel of April 24, 2000, from Amway's Associate General Counsel, Ms. Grider wrote:

As you know, Amway has attempted for years to facilitate a resolution of the dispute between your client Brig Hart and other IBOs with whom he has worked in the past arising from his participation in business support materials. While we remain puzzled as to why you believe that Amway has the legal responsibility to resolve these private disputes, which do not appear to be covered by our Rules of Conduct or by Mr. Hart's Amway distributorship contract, we have tried repeatedly to help your client to work out these issues.

120. Again, Amway repeatedly told the Plaintiffs that Amway rules did not apply to tool or BSM disputes and, therefore, that Amway had no responsibility to intercede.

121. But Amway did intercede, again and again, when the intercession benefited the Amway kingpins and furthered the interests of the conspiracy which, in turn, benefited Amway.

Amway's "Legal Fiction":

122. Understanding why Amway has taken contradictory positions is perhaps revealed in part by Ms. Grider's (Amway's in-house counsel), statements to the TIF leadership in 2002. Ms. Grider explained Amway's view of the tool business at that time as a **"legal fiction" that only a few high pin-level distributors should make money in the tool side of the business.**

123. This "legal fiction," as explained by Amway's in-house counsel, would represent a change from Amway's thinking early on – in the early 1980s. It confirms that Amway decided to ally itself with the Amway kingpins and assist them in weeding out otherwise eligible distributors like Plaintiffs from participation in the lucrative tool and function business.

124. On knowledge and belief, the inclination of Amway to pursue and implement this "legal fiction" was reiterated in a telephone conference with Amway counsel, John Pierce, and TIF counsel and representatives on March 25, 2002. Pierce reportedly stated:

98% of the IBOs (Amway Independent Business Owners), should not participate in the income nor should they even be aware that there is an opportunity.

125. Despite Amway's Bob Kerkstra reportedly telling TIF representatives in July 2002 that Amway "had been looking for a solution to the BSM challenge for 35 years," the tool business remains as it did in 1983 – a business controlled by the kingpins, but now with the active support and assistance of Amway. The apparent "solution" chosen by Amway, which is consistent with Amway's actions heretofore, is that the profits of the tool and function business should vest secretly in just the kingpins. And in so doing, the kingpins stay happy and avidly build the Amway business to Amway's financial benefit.

The Marketplace:

126. Tools and functions constitute a separate and distinct product which is cognizable as a "**product market**" within the context of the antitrust laws.

127. The Yager pyramid (its multi-level network of tool and/or function distributors), constitutes or constituted a separate and discrete line of business, which is a "**geographic market**," regardless of the physical location of any particular distributor, in that a distributor is limited in that it can only purchase from an upline distributor and can only sell to downline distributors. In substance, a tool and/or function distributor can or could reasonably and practically only purchase tools and functions from its upline distributors.

128. The Gooch pyramid (its multi-level network of tool and/or function distributors), constitutes or constituted a separate and discrete line of business, which is a "**geographic market**," regardless of the physical location of any particular distributor, in that a distributor is limited in that it can only purchase from an upline distributor and can only sell to downline distributors. In substance, a tool and/or function distributor can or could reasonably and practically only purchase tools and functions from its upline distributors.

129. Plaintiffs, by reason of direction, instruction and/or coercion of the kingpins in the Yager/Gooch line of sponsorship/affiliation, were situated or placed within the Yager pyramid until approximately February 1998, and thereafter within the Gooch pyramid until boycotted out or, in Nitro's case, until its tool business was arbitrarily limited by the Gooch kingpins.

130. Without Amway's participation and support, the kingpins could not, on knowledge and belief, have attained the degree of control over the Plaintiffs and the marketplace that they ultimately did, all to the Plaintiffs' and many other distributors' substantial detriment. The marketplace and competition therein have been impaired and deterred, causing injury.

131. Plaintiffs incorporate in each and every count hereinafter set forth the foregoing allegations contained in ¶¶ 1 through 130 herein as though fully set forth below.

Liability

COUNT I

Antitrust Violation – Group Boycott

COME NOW the Plaintiffs, and for their cause of action against Defendants, further state and allege as follows:

132. Defendants and their co-conspirators had an agreement or mutual understanding to restrain trade in the tool and function business, and/or created or attempted to create a monopoly in the tool and function business in violation of 15 U.S.C. §§ 1 and 2, by refusing to deal with Plaintiffs.

133. Defendants and their co-conspirators are sellers of tools and functions, and have a dominant or monopoly position in that business. Plaintiffs must be able to purchase tools and functions from Defendants and/or their co-conspirators in order to compete effectively in the tool and function business.

134. The tactics described above utilized by Defendants and their co-conspirators constituted a “concerted refusal to deal” with Plaintiffs, more commonly called a **group boycott**, which is **per se illegal** under §§ 1 and 2 of the Sherman Act.

135. Defendants’ group boycott of Plaintiffs was designed to disadvantage the Plaintiffs as competitors of the conspirators in the distribution and sale of tools and functions, and/or as buyers from the conspirators, and was not the result of an independent business judgment. These tactics included, but were not necessarily limited to, the following:

- (a) “blackballing” the principals of Plaintiffs from speaking at functions;
- (b) refusing to edit and/or sell and/or advertise any tapes featuring the principals of the Plaintiffs;
- (c) isolating the Plaintiffs from their downline distributors by undermining and/or disparaging the Plaintiffs and/or their principals; and
- (d) persuading or coercing customers of the Plaintiffs to refuse to deal with or purchase tools and functions from them, which tools and functions were essential to maintain a viable network of distribution.

The conspirators used these same tactics against other tool and function distributors, the effect of which was to harm competition in the tool and function business.

136. The refusal to deal occurred in or affected interstate commerce.

137. As a direct result of the aforesaid tactics and refusal to deal, Plaintiffs and each of them have sustained damages in the millions of dollars to their business and property.

COUNT II
Antitrust Violation – Allocation of Customers

COME NOW the Plaintiffs, and for their second cause of action against Defendants, further state and allege as follows:

138. Defendants and their co-conspirators had an agreement or mutual understanding to restrain trade in the tool and function business, and/or created or attempted to create a monopoly in the tool and function business in violation of 15 U.S.C. §§ 1 and 2, by agreeing to allocate customers.

139. The tactics described above utilized by the Defendants constitute agreements for the illegal allocation of customers and a restraint of trade, per se violations of 15 U.S.C. §§ 1 and 2. Such allocation of customers includes as examples, but is not limited to, what is discussed above as the D'Amico allocation of customers, the Gooch "breakaway" from Yager, the dealings of Pro Net, and Team In Focus. The effect of these tactics was to harm competition in the tool and function business.

140. The agreements to allocate customers occurred in or affected interstate commerce.

141. As a direct result of the aforesaid actions, Plaintiffs and each of them have sustained damages in the millions of dollars to their business and property.

COUNT III
Antitrust Violation – Illegal Tying Arrangement

COME NOW the Plaintiffs, and for their third cause of action against Defendants, further state and allege as follows:

142. The tools and functions were a necessary and indispensable portion of the business of all of the tool and function distributors within the Gooch pyramid.

143. The sales of tools by Global to the distributors in the Gooch pyramid constitute a substantial amount of commerce, representing sales annually in the tens of millions of dollars.

144. The tools sold by Global were unrelated to, and separate and distinct from, membership in Pro Net, the self-serving association of distributors formed by the Gooch kingpins,

which all Diamond-level distributors in the Gooch pyramid were required to join in order to have access to the essential products: the tools sold by Global through Pro Net, as well as the functions authorized and sanctioned by Pro Net. In substance, participation in the tool and function business was “tied” to Pro Net membership which was unduly restrictive, disadvantageous and controlling.

145. The Defendants, the Gooch kingpins and their other co-conspirators had appreciable economic power over the market of tools sold through Global which the conspirators controlled, as well as market power over all functions which were required to be approved and/or sanctioned by the conspirators.

146. Forcing downline distributors to join Pro Net (a “tied product or service”), in order to obtain access to and the right to purchase tools and participate in functions (the “tying products”), from Global constituted an **illegal tying arrangement**, a **per se violation** of 15 U.S.C. §§ 1 and 2.

147. The conspirators’ tactics in tying the service and products has substantially foreclosed a substantial volume of commerce in the market for the tied products.

148. The conspirators have an economic interest in the market for the tied products.

149. As a direct result of this illegal tying arrangement, Plaintiffs and each of them have sustained damages in the millions of dollars to their business and property.

COUNT IV
Antitrust Violation – Conspiracy to Monopolize

COME NOW the Plaintiffs, and for their fourth cause of action against Defendants, further state and allege as follows:

150. Defendants and their co-conspirators had an agreement or mutual understanding to obtain or maintain monopoly power in the tool and function business within the Yager pyramid, as well as the Gooch pyramid, in violation of 15 U.S.C. § 2.

151. Defendants knowingly, voluntarily and intentionally became a party to that agreement or mutual understanding.

152. Defendants and their co-conspirators specifically intended that the parties to the agreement would obtain or maintain monopoly power in the tool and function business, the same being the systems within the Yager pyramid and then later in the Gooch pyramid.

153. Defendants committed an overt act in furtherance of the conspiracy.

154. Defendants' activities occurred in or affected interstate commerce.

155. As a direct result of this conspiracy to monopolize, Plaintiffs and each of them have sustained damages in the millions of dollars to their business and property.

COUNT V
Tortious Interference

COME NOW the Plaintiffs, and for their fifth cause of action against Defendants, further state and allege as follows:

156. Each of the Plaintiffs enjoyed and were the beneficiaries of valid business relationships or expectancies with their respective downline distributors within their line of sponsorship/affiliation. Plaintiffs, and each of them, reasonably expected that their downline distributors would be a source of business or serve as an exclusive customer base for their tool and/or function business.

157. Defendants had knowledge of these business relationships and expectancies enjoyed by each of the Plaintiffs with their downline distributors.

158. Defendants, as active participants in the aforesaid conspiracy, intentionally interfered with the well-established business relationships and expectancies of the Plaintiffs, causing the breach or impairment of those relationships and expectancies.

159. Defendants were without justification in their intentional interference causing the loss or impairment of the Plaintiffs' relationships and business expectancies with their downline distributors.

160. As a direct and proximate result of the Defendants' intentional interference, Plaintiffs and each of them sustained damages which substantially exceed the minimum jurisdictional amount for this cause to be brought before this Court.

161. The conduct of the Defendants, as herein described, was outrageous because of their evil motive or reckless indifference to the rights of others.

COUNT VI
Civil Conspiracy

COME NOW the Plaintiffs, and for their sixth cause of action against Defendants, further state and allege as follows:

162. Defendants had an agreement or meeting of the minds with the Gooch kingpins to commit unlawful acts, to-wit: (1) to monopolize and restrain trade within the tool and function business in violation of antitrust laws; (2) to misrepresent the opportunities, operation and dealings within the tool and function business; and (3) to tortiously interfere with the Plaintiffs' business expectancies relating to their tool and function customers.

163. In furtherance of this conspiracy, Defendants' co-conspirators, with the aid and/or active participation of Defendants, engaged in unlawful activities, including: group boycotting, allocating customers, price fixing, illegal tying arrangements and misrepresentations.

164. As a direct result of the Defendants' acts and omissions in this respect, Plaintiffs have been damaged, and their damages substantially exceed the minimum jurisdictional amount for matters to be brought before this Court.

165. The conduct of the Defendants, as herein described, was outrageous because of their evil motive or reckless indifference to the rights of others.

Prayer for Relief

WHEREFORE, Plaintiffs and each of them pray judgment against Defendants, jointly and severally, as follows:

- (a) for their actual damages in a fair and reasonable amount, including pre-judgment interest thereon;
- (b) for the trebling of actual damages and attorneys' fees, as provided by law for violation of the antitrust laws;
- (c) for exemplary damages under Counts V and VI to deter Defendants and others from similar conduct;
- (d) for their costs herein expended; and
- (e) for such other and further relief as the Court shall deem just and proper.

Plaintiffs demand trial by jury.

Respectfully submitted,

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