

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

JOHN MARK MOSSNER, HOLGER  
SPIEWAK, MARTY HYSEN, MIKE  
RAATZ, DAVID WALSTEAD,  
WILLIAM P. NEWTON, STEVEN  
SLOAN, and DOUGLAS STROH,  
individuals,

Plaintiffs,

v.

QUIXTAR, INC,  
a Michigan corporation,

Defendant.

File No. 07-08751-CK

Hon. Paul J. Sullivan

OPINION & ORDER

---

Appearances:

John E. Anding (P30356)  
DREW, COOPER & ANDING  
Attorneys for Plaintiffs  
125 Ottawa Avenue, NW  
Grand Rapids, MI 49503  
(616) 454-8300

Edward J. Bardelli (P53849)  
WARNER NORCROSS & JUDD, LLP  
Attorneys for Defendant  
900 Fifth Third Center  
111 Lyon Street, NW  
Grand Rapids, MI 49503  
(616) 752-2000

James R. Sobeiraj  
BRINKS HOFER GILSON & LIONE  
NBC Tower, Suite 3600  
455 North Cityfront Plaza Drive  
Chicago, IL 60611  
(312) 321-4226

Plaintiffs are individual Independent Business Owners who entered into Quixtar's uniform distributor contract, thereby becoming authorized to market and sell Quixtar products and also to recruit participants into Quixtar's multi-level marketing plan. Under its Rules of Conduct, which plaintiffs agreed to abide by when becoming IBOs, Quixtar authorizes IBOs to utilize Business Support Material ["BSM"] to teach IBOs how to operate and successfully build their businesses. Signature Management Team, LLC ["Team"], operated by former Quixtar IBOs, was an entity which was previously

authorized by Quixtar under its Rules of Conduct to provide BSM. Recently, Quixtar determined that the materials provided by Team were putting its IBOs at legal and regulatory risk and therefore revoked its authorization to provide BSM.

Following the revocation of Team as a qualified distributor of BSM, Quixtar sent an email to its IBOs. That email reiterated several of the non-compete and confidentiality rules contained within the Rules of Conduct and informed the IBOs that Team is no longer an authorized supplier of IBO education and training materials. As such, the IBOs were placed on notice that the “sale, distribution, and/or promotion of any Team-related business support materials” violates the Rules of Conduct. The correspondence also required that the IBOs sign and return a statement that they would comply with the Rules of Conduct and no longer promote the use of Team BSM. The failure to do so would result in suspension of the IBO.

Plaintiffs now seek injunctive relief to enjoin Quixtar during the pendency of a class action lawsuit in California from releasing disparaging information about the Team business, prevent Quixtar from taking adverse action against them for failing to sign the letter of commitment until the contractual dispute resolution process is complied with, and enjoin Quixtar from interfering with plaintiffs’ ability to do business with Team.

A grant of injunctive relief is an extraordinary remedy. *Kernen v Homestead Development Co*, 232 Mich App 503, 509 (1998). In order to justify the imposition of a preliminary injunction, the Court must weigh four factors: (1) the likelihood that the party seeking the injunction will succeed on the merits; (2) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief; (3) the harm to the public interest if the injunction is issued; and (4) demonstration that the applicant will suffer irreparable injury if the injunction is not issued. *Fruehauf Trailer Corp v Hagelthorn*, 208 Mich App 447, 449 (1995). The party seeking a preliminary injunction has the burden of establishing that the relief should be granted. MCR 3.310(A)(4); *Campau v McGrath*, 185 Mich App 724, 727-728 (1990).

*Success on the Merits.* Plaintiffs entered into a written contract with Quixtar under which they agreed to abide by Quixtar’s Rules of Conduct. Section 7 of those rules govern BSM. Specifically, § 7.2 restricts IBOs from using or distributing any BSM that contains “any presentation, explanation, or illustration of the IBO Plan, or any part thereof unless expressly authorized by the Corporation as provided herein.” It is undisputed that the BSM produced by TEAM contained such information, and that at one time Quixtar authorized Team to be a distributor of BSM. However, pursuant to § 7.2.5, the “Corporation reserves the right to limit the duration of such authorization.” Therefore, under the terms of the Rules of Conduct, Quixtar reserved the right to de-authorize Team from distributing BSM and, by doing so, under § 7.2 could preclude existing IBOs from distributing that material.

Further, under § 11.1.3, the Dispute Resolution Procedure, Quixtar maintained the right to require all IBOs, whether involved in an investigation or not, to cooperate and

respond in a timely manner to all inquiries. Here, Quixtar sent correspondence to some of its IBOs inquiring as to whether or not they intended to comply with the Corporation's directive to no longer distribute Team material. Under the Rules of Conduct, those IBOs were required to respond, with failure to do so resulting in action being taken against the IBO. Although a dispute resolution procedure is provided for under § 11, there is no requirement in that section that Quixtar investigate and hold hearings prior to sanctioning an IBO for failure to act in accordance with the Rules of Conduct as opposed to utilizing the dispute resolution process as a vehicle for the aggrieved IBO to appeal negative action taken against it. Section 11.1.1 specifically authorizes Quixtar to "examine the situation and take appropriate action if necessary" when there is a suspected Rule violation.

Looking at the language of the Rules of Conduct which plaintiffs agreed to abide by, it appears to the Court that Quixtar had the authority to de-authorize Team as an approved supplier of BSM, to restrict existing IBOs from distributing that material once it was no longer authorized, and to require IBOs to signify that they intended to abide by Quixtar's decision to no longer approve the dissemination of Team BSM. As such, the Court believes that plaintiffs do not have a likelihood of success on the merits.

*Harm to Plaintiffs versus Harm to Defendant.* The harms to plaintiffs if this injunction does not issue is that they will be restricted from distributing Team materials to individuals in their Line of Sponsorship and that if they fail to return their letter of intent to comply that their IBO could be suspended. Notably, plaintiffs themselves are not being prevented from attending a Team event or buying a Team product for their own personal use. Rather, they are merely being prevented from promoting those materials to others in their Line of Sponsorship. Thus, the harm to plaintiffs is not longer being able to pass along Team products and having to comply with a contractual obligation that they previously agreed to.

The harm to defendant, on the other hand, has the potential to be quite significant. It has been alleged that Team is no longer authorized due to problems that Quixtar saw with its training methods which would open Quixtar and its IBOs to legal and regulatory consequences. This potential liability is greater than plaintiffs perceived harm resulting from not being able to utilize Team materials in their downlines and having to agree, in writing, to comply with Quixtar's directive regarding the use of Team BSM or face consequences. In the Court's opinion, the harm appears greater to defendant.

*Harm to the Public Interest if Injunction Issues.* In considering this factor, the Court wishes to emphasize the strong public policy of encouraging parties to enter into written agreements and also in the enforcement of such agreements. While the law allows, in most cases, for parties to enter into verbal contracts, the duties and obligations of participants in those types of arrangements are often difficult for the parties or a reviewing court to determine due to the lack of definitive evidence. Having agreements in writing, and signed by the parties, aids courts in determining the intent of the parties and the specific responsibilities of those agreeing to be bound.

Before the Court are plaintiffs who willingly entered into a contractual agreement with Quixtar. The Court did not draft the contract or the Rules of Conduct that were incorporated therein. The language of the contract was presumably drafted by Quixtar, but plaintiffs had the opportunity to read the agreement, have it reviewed by competent legal counsel, propose changes or amendments to the provisions incorporated into it, and to seriously consider what was being committed to before signing. For the Court to enter the requested injunction, and thereby disregard the clear and explicit terms of a contract which plaintiffs personally agreed to, would be against the public policy of enforcing agreements as written and against the interest of the public.

*Irreparable Injury to Plaintiffs.* To establish irreparable injury, plaintiffs must demonstrate a noncompensable injury for which there is no legal measurement of damages or where damages cannot be determined with a sufficient degree of certainty. *Thermatool Corp v Borzym*, 227 Mich App 366, 377 (1998). Economic injuries can be remedied by damages at law and are therefore not irreparable. *Acorn Building Components, Inc v Local Union No. 2194 UAW*, 164 Mich App 358, 366 (1987).

The assumption by plaintiffs that they will suffer irreparable harm is that they will be wrongfully terminated for not signing the confirmation of intent to comply with Quixtar's decision to no longer authorize Team BSM. While plaintiffs could lose business opportunities and profits from reduced sales if the injunction does not enter, the bulk of their damages seem able to be reduced to a monetary remedy. In the case at hand, we are dealing with a large corporate defendant such that if plaintiffs ultimately prevail, economic damages could be established and collected from Quixtar. As the majority of plaintiffs' damages are economic in nature and subject to an adequate remedy at law, plaintiffs do not appear to be facing irreparable injury. But, to the extent plaintiffs would suffer irreparable injury, such would pale in comparison to that suffered by defendant.

*Conclusion.* After review of the material submitted and incorporated into the contract between the parties, it is the opinion of the Court that Quixtar had the legal authority to determine Team to be an unauthorized distributor of BSM, to preclude its IBOs from further distributing Team materials, and to require plaintiffs to confirm their intent to comply with Quixtar's decision in this regard or face potential sanctions. Now, plaintiffs are ultimately left with making a decision as to whether they intend to comply with Quixtar's requirements or face the ensuing consequences. Regardless of what those consequences are, even if it is suspension of their IBOs, plaintiffs have available to themselves the dispute resolution procedure as provided in the Rules of Conduct.

Accordingly, plaintiffs' request for injunctive relief ought be and respectfully is DENIED.

DATED: August 24, 2007

---

Paul J. Sullivan, Circuit Judge (P24139)