

PROPOSED CLASS ACTION

Court File No. T-696-10

FEDERAL COURT

BETWEEN:

MARK CUZZETTO

PLAINTIFF

AND:

BUSINESS IN MOTION INTERNATIONAL CORPORATION

AND:

ALAN KIPPAX

AND:

ASHIF MOHAMED

DEFENDANTS

AFFIDAVIT OF MARK CUZZETTO

I, Mark Cuzzetto, photographer, of the City of Burnaby, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the proposed Representative Plaintiff in the above noted action. I have the knowledge deposed to below. Where that knowledge is based on information obtained from others, I have so indicated, and I believe that information to be true.

2. Capitalized terms that are not defined in this affidavit have the meanings given to them in the Statement of Claim or Notice of Motion for Certification.

My History with BIM

3. In or about November 2008, I was invited to attend, and did attend, a seminar offered by BIM at the Ramada Inn Hotel on Kingsway, in Vancouver, British Columbia (the "BIM Seminar"). There were approximately 100 other people present at the BIM Seminar.
4. The BIM Seminar was conducted by a host, aided by a PowerPoint presentation. Attached as **Exhibit "A"** to this Affidavit are printouts of a PowerPoint presentation that appears to be the same presentation that was shown to me and others during the BIM Seminar.
5. The Defendant Alan Kippax ("Kippax") was not present at the BIM Seminar. I do not know if the Defendant Ashif Mohamed was present at the BIM Seminar.
6. The focus of the BIM Seminar was participation in a "business opportunity" through purchase of a BIM Membership and of a Perpetual Motion Product, which, in turn, would allow me to enter a "Perpetual Motion Corporate Ladder" and collect substantial profits as other participants were recruited. These profits were expressly and repeatedly impressed upon prospective recruits during the BIM Seminar through a variety of means, including:
 - (a) Use of the words "massive profitability"; "get ready for the ultimate lifestyle", "earn way, way, way more money!", "sleeping money", "potential of \$100,000", "profit way, way, way more!", "a system that creates a 'DREAM LIFESTYLE' for all mankind";

- (b) Use of images designed to convey a lifestyle of wealth and luxury, such as sharply inclined charts, private jets, jewellery, sports cars; and
 - (c) Representation that, in 2008, BIM realized \$30,000,000.00 in sales.
- 7. At the same time that the BIM Seminar highlighted substantial profits in the proposed business opportunity, it also assured prospective participants that there was no down side: some of the slides specifically stated: "you can't lose", "Your assurance.... It's a win, win, win, situation". The impression I formed at the conclusion of the BIM Seminar was that this was a very profitable opportunity with no down side.
- 8. As a result of my attendance at the BIM Seminar, on or about November 9, 2008, I acquired a BIM membership and placed an order for a Perpetual Motion Product (namely, an Ultra Life Club membership, serial no. 26883056). I paid \$80 for my BIM membership, and \$3200 for the Perpetual Motion Product, for a total of \$3280.
- 9. With my purchase of an Ultra Life Club membership, I received an Ultra Life Club "kit", comprising:
 - (a) A black briefcase, displayed on the photograph attached as **Exhibit "B"** to this Affidavit;
 - (b) A binder displayed on the photograph attached as **Exhibit "C"** to this Affidavit, which contained certain information about BIM and about the Ultra Life Club, copies of which are attached as **Exhibit "D"** to this Affidavit;
 - (c) A laminated double-sided chart showing a blank "Perpetual Motion Corporate Ladder", and a completed Perpetual Motion

Corporate Ladder, a copy of which is attached as **Exhibit "E"** to this Affidavit;

- (d) Promotional brochures and other materials;
 - (e) A luggage identity tag;
 - (f) Travel utensils, such as a travel clock, a travel pillow and a water proof case; and
 - (g) A USB key with three pictures and a document entitled "BOSS START.html", a printout of which is attached as **Exhibit "F"** to this Affidavit.
10. I understood that the purchase of the Perpetual Motion Product would entitle me to acquire a "sales representative" spot in a "Perpetual Motion Corporate Ladder" (the "Original Ladder"). This opportunity was the main reason why I purchased the Perpetual Motion Product, although at the time I also was under the impression that there was some value to my Ultra Life Club membership.
11. Once all other lateral sales representative positions on the Original Ladder were filled, the Original Ladder split into two new Perpetual Motion Corporate Ladders and all sales representative, including myself, were "promoted" to "Supervisors".
12. According to the information provided in the BIM Seminar, all I was required to do in order to make money was to acquire "keys", which were obtained by recruiting two new participants (or "Sales Representatives") for my ladder.
13. Each participant was encouraged to recruit two new participants for his or her ladder. However, according to the information provided in the BIM Seminar, if I recruited additional participants for my ladder, I would be given additional "keys" and would be entitled to additional compensation.

14. Although I sold five Perpetual Motion Products and acquired sufficient “keys” to qualify for enhanced positions, I did not receive any compensation for those sales, as my ladder was “crushed” because not all positions were filled before the prescribed time limit.
15. I then paid an additional \$100 to BIM to be transferred to another active ladder, which again was “crushed” before all positions were filled.
16. None of the ladders in which I was involved were completed, and I have not received any compensation from my participation in the Plan.

My Attempts to Use the Ultra Life Club

17. The Ultra Life Club is portrayed as a travel discount program that purportedly entitles the member to access up to 150 “vacationing weeks” at condos, resorts, hotels and other recreational properties, with substantial discounts. The membership was sold to me for \$3,200, but in the BIM Seminar I was told it had a retail value of between \$9,000 and \$15,000.
18. I attempted to use my Ultra Life Club Membership in late 2008, when I was planning a trip to Hawaii. I did not use the Ultra Life Club Membership in connection with this trip as the Ultra Life Club price for the hotel I wanted to stay at was more expensive than the price I was able to secure through Expedia.
19. Since then, I have conducted some online research on prices of hotels to determine whether there is any value in the Ultra Life Club Membership I purchased. Attached as **Exhibit “G”** to this Affidavit is a true copy of the results of my research. My research indicated that the Ultra Life Club Membership did not offer savings I was not able to obtain through publicly available channels such as Expedia and other discount travel programs which do not require memberships.

20. Following my enrollment in BIM, I attempted to sell memberships to the Ultra Life Club. In my experience, no one was interested in purchasing the Ultra Life Club membership on its own. Any interest expressed was always in connection with the associated opportunity to enter a Perpetual Motion Corporate Ladder and earn revenues from the recruitment of other participants.

Alan Kippax

21. Kippax is the creator of the "Time Leverage System" which was promoted by BIM through the Perpetual Motion Corporate Ladders (the "System"). At all material times, Kippax held the "Global Sales Director" position at BIM, and very active in the establishment, operations, advertisement and promotion of the System.
22. By searching on the Internet, and, more specifically, on the website maintained by BIM, my counsel Luciana Brasil and I have been able to obtain a number of documents which illustrate Kippax's extensive involvement in the establishment, operation, advertisement and promotion of the system, including:
- (a) A document entitled "A Special Thank You", a true copy of which is attached as **Exhibit "H"** to this Affidavit;
 - (b) A document entitled "And the Battle Goes On...", a true copy of which is attached as **Exhibit "I"** to this Affidavit;
 - (c) A document entitled "Special Appearance in Tillsonburg this Saturday", a true copy of which is attached as **Exhibit "J"** to this Affidavit;
 - (d) A document entitled "The Pedal to the Metal Tour", a true copy of which is attached as **Exhibit "K"** to this Affidavit;

- (e) A document entitled "Stepping to the Microphone" Tour, a true copy of which is attached as **Exhibit "L"** to this Affidavit;
 - (f) A document entitled "With Gratitude....", a true copy of which is attached as **Exhibit "M"** to this Affidavit; and
 - (g) A document entitled "We Can Hold Our Heads High", a true copy of which is attached as **Exhibit "N"** to this Affidavit.
23. In addition, the activities of BIM and of Kippax were the subject of an investigative report by Wendy Mesley on CBC's Marketplace, a consumer watchdog program (the "Marketplace Piece"). The Marketplace Piece was originally broadcast on February 6, 2009. The Marketplace Piece is available for viewing online at:
http://www.cbc.ca/marketplace/2009/easy_money/main.html
24. Following the broadcast of the Marketplace Piece, Kippax engaged in considerable efforts to attempt to discredit it. Those efforts including the broadcast of three video-clips on the www.youtube.com website. Attached as **Exhibit "O"** to this Affidavit is a DVD containing these video clips. Kippax appears on all three video clips.

Size of the Class

25. I am not aware of the exact number of class members. I know at least 10 class members personally, and I am advised by Greg McMullen, an associate at Branch MacMaster LLP, that their firm has been contacted by 185 people who have expressed an interest in participating in this action.
26. In the Marketplace Piece, Kippax claimed that BIM had "over 8,000" members.

Counsel

27. I have retained Branch MacMaster LLP and Hordo & Bennett to assist me in this matter. Attached as **Exhibit "P"** to this Affidavit are biographies for each of Ward Branch, Luciana Brasil, Paul Bennett and Mark Mounteer.

The Benefits of a Class Action

28. I am advised by my counsel, Luciana Brasil, and verily believe that the cost of pursuing this action individually could run into the hundreds of thousands of dollars, which vastly exceeds the amount of my own individual claim. It is clear to me that I could not afford to pay for lawyers to bring this claim on my own behalf.

Litigation and Notice Plan

29. Attached as **Exhibit "Q"** is a copy of the Litigation and Notice Plan prepared by my lawyers. I have reviewed the plan and it seems reasonable from a lay person's perspective.

Criminal Proceedings

30. According to recent media reports, the commercial crime section of the Winnipeg detachment of the Royal Canadian Mounted Police has been conducting an investigation on the activities of BIM. It has been reported that criminal charges have been laid against Kippax and twelve other persons.
31. Attached as **Exhibit "R"** is a copy of a CBC article entitled "RCMP say business was 'illegal lottery'", dated January 13, 2011, discussing the RCMP investigation into BIM and charges against Kippax.

