

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOHN T. POLK, individually and as an officer of the
corporate defendant(s),

PATRICK FARAH, individually and as an officer of the
corporate defendant(s),

PETER HIRSCH, individually and as an officer of the
corporate defendant(s),

USASURANCE GROUP, INC., a Colorado corporation,

AKAHI CORP., a Texas and Colorado corporation,

AKAHI.COM, CORP., a Texas corporation,

2XTREME PERFORMANCE INTERNATIONAL, LLC,
a Delaware LLC,

AFEW, INC., a Delaware corporation,

Defendants.

)
) CIVIL NO. JFM 99 CV 3679

)
) ORDER FOR
) PRELIMINARY INJUNCTION
) AND OTHER EQUITABLE
) RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or the "Commission"), having filed its complaint for injunctive and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and the Court, having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, *and having held a hearing on February 24th 25, 2000, heard testimony and received evidence,* finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction of all parties hereto;
2. There is good cause to believe that defendants ~~John T. Potts~~, Patrick Farah, ~~Peter Hirsch~~, USAurance Group, Inc., Akahi Corp., Akahi.com, Corp, 2Xtreme Performance International, LLC, ~~and AFEW, Inc.~~, have engaged in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the plaintiff is therefore likely to prevail on the merits of this action;
3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by defendants of their assets or corporate records, unless the defendants are restrained and enjoined by Order of this Court;
4. Weighing the equities and considering plaintiff's likelihood of ultimate success, a preliminary injunction freezing assets, requiring an immediate accounting of assets and providing other equitable relief is in the public interest; and
5. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof for the issuance of a restraining order.

DEFINITIONS:

For the purpose of this preliminary injunction Order, the following definitions shall apply:

- A. "Defendants" means ~~John T. Poth~~, Patrick Farah, ~~Peter Hirsch~~, USAurance Group, Inc., Akahi Corp., Akahi.com, Corp., 2Xtreme Performance International, LLC, ~~and AFEW, Inc.~~, and each of their successors, assigns, officers, agents, servants, employees, salespersons, subsidiaries or affiliates, including but not limited to Cynergy International and Cynergint.com.
- B. "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property of any defendant, or held for the benefit of any defendant, wherever located, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails, other deliveries, shares of stock, lists of participants, intellectual property, accounts, credits, receivables, cash, and trusts, including, but not limited to the trusts listed in Schedule A, hereto, and any other trust held for the benefit of any defendant, any defendant's minor children, or any defendant's spouse.
- C. "Prohibited marketing program" means any marketing program, Ponzi scheme, chain marketing scheme, or other marketing plan or program in which a person who participates makes a payment and receives the right, license or opportunity to derive income as a participant primarily from: (i) the recruitment of additional recruits by the participant, program promoter or others; (ii) sales made to or by such recruits or their

recruits; or (iii) any other payments made by recruits.

- D. "Recruiting Tool" means any device designed to recruit new people into a participant's multi-level or network marketing (collectively, "MLM") downline and in turn generate commissions and/or bonuses for the purchasing participant in the defendants' MLM business, whether denominated "Business-in-a-Box," "position," or otherwise.

CONDUCT PROHIBITIONS

I.

IT IS THEREFORE ORDERED that defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from participating in, or offering for sale or selling to any person the right to participate in, any prohibited marketing program.

II.

IT IS FURTHER ORDERED that, in connection with the advertising, promoting, marketing, offering or providing, or assisting others in the advertising, promoting, marketing, offering or providing of any MLM marketing program, not subject to Paragraph I, defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from making, or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to:

- A. Statements or representations about the income, profits or rewards that a person who participates in the MLM marketing program is likely to achieve, including, but not

limited to statements or representations that:

1. Participants can reasonably expect to earn \$3,500-\$15,000 per month to \$5,000-\$10,000 every year;
 2. Participants can reasonably expect to earn substantial residual income from payments or purchases by their "downlines"; or
 3. Participants can reasonably expect to retire in two to five years.
- B. Statements or representations about the ability of participants to earn in-kind benefits, including, but not limited to, computers.

III.

IT IS FURTHER ORDERED that, in connection with the advertising, promoting, marketing, offering or providing, or assisting others in the advertising, promoting, marketing, offering or providing of any recruiting tool, defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from making or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to:

- A. Statements or representations about the income, profits or rewards that a person who purchases a recruiting tool is likely to achieve, including, but not limited to, statements or representations that:
1. Purchasers can reasonably expect to achieve a specific level of sales or earnings from "positions," including, but not limited to, earnings of \$3,500 per month or \$8,000 per "position," or that such figures are average estimates of the

sales or earnings purchasers can reasonably expect; and

2. Purchasers can reasonably expect to achieve a specific level of sales or earnings from BIBs, including, but not limited to, earnings of between \$1,000-\$1,500 per BIB, or that such figures are average estimates of the sales or earnings purchasers can reasonably expect.
3. Purchasers can reasonably expect to recoup their investment in the MLM marketing program or for the recruiting tool.

IV.

IT IS FURTHER ORDERED that, in connection with the advertising, promoting, marketing, offering or providing, or assisting others in the advertising, promoting, marketing, offering or providing of any MLM marketing program not subject to Paragraph I, defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to disclose, clearly and conspicuously, orally and in writing, all information material to a person's decision to participate in the MLM marketing program, including, but not limited to, failing to disclose the fact that the vast majority of participants will not earn substantial income such as \$5,000-\$10,000 per year.

V.

IT IS FURTHER ORDERED that, in connection with the advertising, promoting, marketing, offering or providing, or assisting others in the advertising, promoting, marketing, offering or providing of any MLM marketing program, not subject to Paragraph I or of any recruiting tool:

- A. Defendants, and those persons in active concert or participation with them who

receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from providing to others the means and instrumentalities with which to make, directly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to:

1. Statements or representations about the income, profits or rewards that a person who participates in the MLM marketing program is likely to achieve, including, but not limited to, statements or representations that:
 - a. Participants can reasonably expect to earn \$3,500-\$15,000 per month to \$5,000-\$10,000 every year;
 - b. Participants can reasonably expect to earn substantial residual income from payments or purchases by their "downlines"; or
 - c. Participants can reasonably expect to retire in two to five years.
2. Statements or representations about the ability of participants to earn in-kind benefits, including but not limited to, computers.
3. Statements or representations about the income, profits or rewards that participants who purchase a recruiting tool are likely to achieve, including, but not limited to, statements or representations that:
 - a. Purchasers can reasonably expect to achieve a specific level of sales or earnings from "positions," including, but not limited to, earnings of \$3,500 per month or \$8,000 per "position," or that such figures are average estimates of the sales or earnings purchasers can reasonably

expect; and

b. Purchasers can reasonably expect to achieve a specific level of sales or earnings from BIBs, including, but not limited to, earnings of between \$1,000-\$1,500 per BIB, or that such figures are average estimates of the sales or earnings purchasers can reasonably expect.

c. Purchasers can reasonably expect to recoup their investment in the MLM marketing program or for the recruiting tool.

B. Defendants are restrained and enjoined from providing to others the means and instrumentalities with which to advertise, promote, market, offer or provide any MLM marketing program, not subject to Paragraph I, that fails to disclose, clearly and conspicuously, orally and in writing, all information material to a consumer's decision to participate in the MLM marketing program, including, but not limited to the fact that the structure of the MLM marketing program, prevents the vast majority of participants from earning substantial income such as \$5,000 - \$10,000 per year.

VI. ASSET FREEZE

IT IS FURTHER ORDERED that defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing

of any assets, as defined in this Order, wherever located, including outside the United States, other than to comply with Part VII of this Order, including, but not limited to those assets, that are (1) owned or controlled, directly or indirectly, by any defendant, or for the benefit of any defendant, in whole or in part, including, but not limited to those held in trust for defendants, defendants' minor children or defendants' spouses; (2) in the actual or constructive possession of any defendant, including, but not limited to those held in trust for the defendant, the defendant's minor children or the defendant's spouse; (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any defendant, including but not limited to, any assets held at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind, including, but not limited to those held in trust; or (4) listed in Schedule A.

- B. Opening or causing to be opened any safe deposit boxes titled in the name of any defendant, or subject to access by any defendant; and
- C. Incurring charges or cash advances on any credit card issued in the name, individually or jointly, of any defendant.

**VII.
REPATRIATION OF ASSETS AND DOCUMENTS
LOCATED IN FOREIGN COUNTRIES**

IT IS FURTHER ORDERED that defendants, and those persons in active concert or

participation with them who receive actual notice of this Order by personal service or otherwise, shall:

- A. Within seven (7) business days following the service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all defendants' documents and assets, as defined in this Order, that are located outside of such territory; and
- B. Hold and retain all transferred documents and assets, as defined in this Order, and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds in accordance with Paragraph VI of this Order; and
- C. Provide plaintiff access to defendants' records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached hereto as Schedule B.

VIII. BANKRUPTCY PROVISIONS

IT IS FURTHER ORDERED that the defendants shall notify the Commission contemporaneously upon filing a petition for relief under the United States Bankruptcy Code involving them. In the event that any of the defendants' creditors file a petition for relief under the United States Bankruptcy Code, the defendants shall notify the Commission in writing within five (5) business days of receiving notice of such petition.

IX. FINANCIAL STATEMENTS AND ACCOUNTING PROVISIONS

IT IS FURTHER ORDERED that within seven (7) business days after service of this Order, each defendant shall deliver to this Court and to counsel for the plaintiff:

- A. A completed copy of the financial statements contained in Attachment C for the individual defendants and Attachment D for the corporate defendants, verified under oath and accurate as of the date of service of this Order upon such defendant, identifying the nature, location, source, time of acquisition, and dollar value, estimated if necessary, of all of each defendant's tangible and intangible assets, as defined in this Order, regardless of location, whether held in foreign countries or domestically, notwithstanding status or form; and
- B. A completed statement, verified under oath and accurate, of all payments, transfers, or assignment of assets, as defined in this Order, made by each defendant worth \$1,000 or more since August 1, 1996. Such statement shall include (a) the amount transferred or assigned; (b) the name, address and telephone number of each transferee or assignee; (c) the date of the assignment or transfer; and (d) the type and amount of consideration for any payment.

**X.
PRESERVATION OF RECORDS**

IT IS FURTHER ORDERED that the defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and

business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices or business or personal finances of the defendants.

**XI.
MAINTENANCE OF CURRENT BUSINESS RECORDS**

IT IS FURTHER ORDERED that the defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect defendants' incomes, disbursements, transactions, and use of money; and
- B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

**XII.
DISTRIBUTION OF ORDER BY DEFENDANTS**

IT IS FURTHER ORDERED that the defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, salesperson, agent, attorney, and representative of any defendant, and shall,

within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement detailing the manner in which defendants have complied with this provision of the Order, which shall include the names and addresses of each such person or entity who received a copy of the Order.

**XIII.
SERVICE OF ORDER**

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets, as defined in this Order, of the defendants, or that may be subject to any provision of this Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the initial papers filed in this matter may be served by agents of plaintiff, and by agents of any process service retained by the plaintiff.

**XIV.
CONSUMER CREDIT REPORTS**

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any of the defendants to ^{the} any plaintiff.

**XV.
RETENTION OF ASSETS AND RECORDS**

IT IS FURTHER ORDERED that any trustee, bank, savings and loan institution, credit union, brokerage house, escrow agent, IRA custodian, money market or mutual fund, title company, commodity trading company, common carrier, storage facility, or any other entity or person, shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal,

assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset, as defined in this Order, except by further order of the Court;

- B. Deny defendants access to any safe deposit box that is:
1. titled in the name of any defendant, either individually or jointly; or
 2. otherwise subject to access by any defendant;
- C. Provide the Commission's counsel within seven (7) business days of receiving a copy of this Order, a sworn statement setting forth:
1. the identification number of each account or asset, as defined in this Order, titled in the name, individually or jointly, of any of the defendants, or held on behalf of, or for the benefit of, any of the defendants;
 2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
 3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of any defendant, or is otherwise subject to access by any defendant;
- D. Upon the request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including

but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, deposit items, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks.

**XVI.
COMPLIANCE AND MONITORING**

IT IS FURTHER ORDERED that, in order to ensure compliance with this Order, defendants shall, during the course of this litigation:

- A. Require each participant, affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, salesperson, attorney, and representative of any defendant, to refrain from making the representations set forth in Paragraphs I-V and to make the disclosures set forth in Paragraph IV of this Order.
- B. Use their best efforts to notify all participants about the terms of this Order, including, but not limited to posting such information on the Cynergint.com or any other active web site and informing participants through any meetings, conference calls, seminars, faxes-on-demand, and newsletters, which take place or are distributed after entry of this Order.
- C. Notify the Commission in writing, within fifteen (15) days after entry of this Order and each and every sixty (60) days thereafter, of employment status, including the name,

identity of the principals, business address and telephone numbers of the current employer(s);

- D. Notify the Commission in writing within fifteen (15) days of any change in residential address(es). Such notification shall include his new address(es) and telephone number(s);
- E. Notify the Commission in writing within fifteen (15) days of any change in his employment status. Such notice shall include the name(s), address(es), and telephone number(s) of his new employer(s), a statement of the nature of the business(es), and a statement of his duties and responsibilities in connection with the business(es);
- F. Notify the Commission in writing contemporaneously with the effective date of any proposed change in the structure of any business entity owned or controlled by him, such as creation, incorporation, dissolution, assignment, sale or creation of subsidiaries, or any other changes that may affect compliance obligations arising out of this Order.

**XVII.
NOTIFICATION**

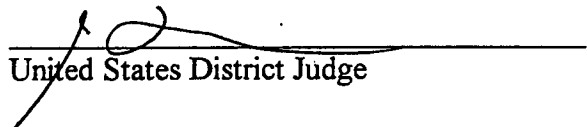
IT IS FURTHER ORDERED that for purposes of this Order, all correspondence and notification shall be sent to Mona Sedky Spivack or James A. Kaminski at:

Federal Trade Commission - HQ-238
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: (202) 326-3795 (Spivack)
(202) 326-2449 (Kaminski)
FAX: (202) 326-3395

XVIII.
RETENTION OF JURISDICTION

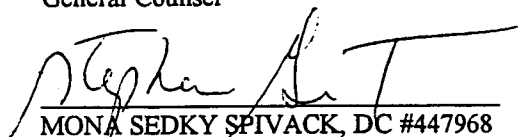
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this 25 day of July, ²⁰⁰⁰~~1999~~ at Baltimore, Maryland.


United States District Judge

Respectfully submitted:

DEBRA A. VALENTINE
General Counsel



MONA SEDKY SPIVACK, DC #447968
JAMES A. KAMINSKI, IL#6243215
STEPHEN GURWITZ, MD. D. CT. #14516
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room 238
Washington, D.C. 20580
(202) 326-3795 (Spivack)
(202) 326-2449 (Kaminski)
(202) 326-3272 (Gurwitz)
(202) 326-3395 FACSIMILE

I hereby attest and certify on 2-25-2000
that the foregoing document is a full, true and correct
copy of the original on file in my office and in my
legal custody.

FELICIA C. CANNON
CLERK, U. S. DISTRICT COURT
DISTRICT OF MARYLAND

By M. West Deputy

Schedule A

List of Known Trusts

- JJS Trust: Original Invested Capital of \$250,000, and the Intangible Value of Business Operations
- JJS Trust No. 1: Intellectual Book Rights' Properties: Education Costs, and Research Cost, and Development Cost, and Know-how, and Justifiable Hourly Cost, and Out-of-Pocket Cost, and Technology Transfer Cost, and Expected Capital Gain (15-year term)
- JJS Trust No. 2: The ownership of 49% of the authorized shares of the common voting stock of the membership Interest in 2Xtreme Performance International, LLC, a Delaware limited liability
- JJS Trust No. 3: The ownership of 51% of the authorized shares of the common voting stock of the membership Interest in 2Xtreme Performance International, LLC, a Delaware limited liability company
- JJS No. 4 Trust: Antiques, Priceless Painting, Fine Art etc., and Family Heirlooms, Hand-Me-Downs, etc., Household Appliances, Household Furniture etc., and Jewelry, Precious Gems and Stones etc., and Personal Clothing, etc., and Tools, Toys, Guns etc.
- JJS No. 5 Trust: Vehicle (vin # 3GNFK16R1XG143780)
- JJS No. 8 Trust: Pool only of real property more commonly known as 3400 Cedar Falls Lane, Plano, Collin County, Texas 75025
- JJS No. 9 Trust: House only of real property more commonly known as 3400 Cedar Falls Lane, Plano, Collin County, Texas 75025
- JJS No. 10 Trust: Land only of real property more commonly known as 3400 Cedar Falls Lane, Plano, Collin County, Texas 75025
- JJS No. 13 Trust: Intangible value of Business Operations

JJS No. 14 Trust: Intellectual Book Rights' Properties: Education Cost, and Research Cost, and Development Cost, and Know-how, and Justifiable Hourly Cost, and Out-of-Pocket Cost, and Technology Transfer Cost, and Expected Capital Gain (15-year term)

JJS No. 15 Trust: (Information incomplete)

Knox Trust: \$900,000 cash

Polk Group Trust: Intangible Business Value