

3. Defendant Kyani, Inc., is, and at relevant times was, a for-profit corporation organized under the law of the State of Idaho and doing business throughout the State of Texas.

Said Defendant may be served with process by serving the registered agent of said company, at its registered office located at 1070 Riverwalk Drive, Suite 350, Idaho Falls, Idaho 83402.

4. Defendant Todd Thompson is a natural person and resident of Colorado. Said Defendant may be served with process at 4856 W. 117th Way, Westminster, Colorado, 80031.

5. Defendant Scott Boulch is a natural person and resident of Denton County. Said Defendant may be served with process at 3233 Reynolds Lane, Frisco, Texas 75033.

6. Defendant Volker Hartzsch, a.k.a. Mark Davenport is an individual and upon information and belief has a principle place of business in Dallas County.

7. Defendant Brandon Stevens is a natural person and resident of Dallas County. Service of said Defendant may be made by certified mail return receipt requested at 4170 Manorview LN, Mesquite, Texas 75150.

8. Defendant James Bradford is a natural person and resident of Dallas County. Said Defendant may be served with process at 3990 Vitruvian Way Apt. 213, Addison, Texas 75001.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter and persons of this action because the events giving rise to the action took place in Texas and the amount in controversy exceeds the minimum jurisdiction of the Court.

10. Venue is proper in the District Court of Dallas because one or more of the Defendants reside in Dallas County, and “all or a substantial part of the events or omissions giving rise to the claim occurred” in Dallas County. TEX. CIV. PRAC. & REM. CODE §§ 15.002(a)(1)(2).

IV. NOTICE BEFORE SUITE

11. Pursuant to 17.47(a) of the Deceptive Trade Practices Act, contact has been made with the Defendants herein to inform Defendants of the unlawful conduct alleged herein, in person or by certified mail, return receipts requested.

V. BACKGROUND

Introduction

12. This matter involves Defendants' intentional interference with Plaintiff's business and unfair business practices employed through a fraternal organization operating under the Kyani banner known as the Inner Circle. At its heart, this matter is about jealousy and greed. Operating within the same multi-level marketing organization as Plaintiff, Defendants have used its ability to control access to a web-based networking platform known as Team Fusion to implement its own policies and procedures and establish an illegal pyramid scheme.

13. Lusting after Plaintiff's business and profits, Defendants have attempted to covert Plaintiff's current and potential business by illegally sharing sales volume information in an attempt to induce others to join Defendants in their pyramid scheme. In an effort to remove Plaintiff from the business altogether, Defendants have disseminated defamatory statements regarding Plaintiff and its business, as well as threatened to deny access to Team Fusion and/or banish anyone from business meetings and promotional events unless they disassociate themselves with Plaintiff. The intentional actions taken by Defendants to interfere with Plaintiff's business are done for no other reason than to maximize their own profits and establish an illegal pyramid scheme.

The Kyani Organization

14. Kyani Inc., ("Kyani") is a multi-level marketing business that offers nutritional

supplements for sale to the public. To induce members of the public into joining the organization, Kyani advertises itself as an independent business enterprise which offers its members broad latitude in how they operate their business.

15. Members of Kyani who sell nutritional products to the public are called Distributors. Almost anyone who is willing to complete an application and pay an entry fee can become a Kyani Distributor. Those who join Kyani as new Distributors are placed underneath an existing Distributor in the organizational chart, otherwise known as the Distributors “downline.” Those above the new Distributor in the organizational chart are considered the Distributor’s “upline.” The organizational tree structure of a Distributor, both its downline and upline, is known as the Distributors “genealogy.”

16. Aside from being placed in an existing Distributors downline, all new Distributors must be “sponsored” by an existing Distributor. The placement and sponsorship of new Distributors is paramount to existing members. Those who sponsor new Distributors are entitled to receive commissions based off of the sponsored Distributor’s sales. Otherwise, a distributor is entitled to a financial bonus based off the volume of sales from the distributors in its downline.

17. After paying the entry fee and being accepted into Kyani, new Distributors are eligible to participate in the Kyani Global Compensation Plan. This provides the Distributor the right to receive certain benefits including, *inter alia*, the right to receive applicable commissions and bonuses, the right to receive Kyani literature, and the right to participate in Kyani sponsored support, service, training, and motivational and recognition functions.

18. The procedures for operating as a Kyani Distributor are set forth in the Kyani Policies and Procedures (“Kyani Policies”). Under the Kyani Policies, Distributors are

prohibited from requiring or encouraging participation in Kyani in any manner that varies from the program as described in official Kyani literature. This includes requiring or encouraging Distributors to make any payments to any individual, or other entity, to participate in the Kyani Global Compensation Plan.

19. Further, Kyani Policies require that all family members of Distributors who join the organization must be directly sponsored and placed with each other in the same placement tree or genealogy. It is also forbidden under Kyani Policies for Distributors to conduct any meeting to promote any social or fraternal organization or group.

Plaintiff and Defendants as Distributors

20. Plaintiff joined Kyani in June of 2014 under the sponsorship of Jeff King. As a seasoned veteran of the network marketing industry, with more than 15 years of experience, Plaintiff thrived in the Kyani network. Almost immediately, Plaintiff built a successful business by recruiting and sponsoring some of Kyani's top Distributors.

21. Defendants Brandon Stevens ("Stevens") and James Bradford ("Bradford") joined Kyani as Distributors under the downline of Plaintiff as a result of Plaintiff's recruiting efforts and in support of Plaintiff's downline, Daniel Monghate. Both Stevens and Bradford had previous experience in the multilevel marketing industry and are based out of Dallas, Texas.

22. Defendant Todd Thompson ("Thompson") is a Kyani Distributor and web-developer. Together, Defendants Scott Boulch ("Boulch") and Thompson designed and developed the network marketing platform used for Team Fusion.

23. Defendant Volker Hartzsch, a.k.a. Mark Davenport ("Davenport"), introduced Defendants Thompson and Boulch to the Kyani organization. Mr. Davenport also played a key role in the design and implementation of the network marketing platform Team Fusion.

24. Together, Defendants Thompson, Boulch, Stevens, Bradford and Davenport (collectively hereinafter referred to as “the Inner Circle”) make up the self-proclaimed Inner Circle and have established a fraternal organization with the support of Kyani for the purposes of establishing an illegal pyramid scheme.

25. Through its development and control over access to the network marketing platform Team Fusion, the Inner Circle has implement new policies and procedures inapposite to those portrayed to the public and Plaintiff, and relied upon by Plaintiff when joining the Kyani organization.

Misnomer of Team Fusion

26. Team Fusion is a web-based network marketing platform marketed by Defendants to Kyani Distributors as a necessary tool for running their business. In fact, without access to Team Fusion a Distributor is unfairly limited to the content and offerings made to the Distributor when they join. Initially, Team Fusion was designed to assist Distributors grow their business by providing a platform for networking, promotional events, training, and sending and receiving essential business material through social media. Now, all dealings in connection with the Kyani business, i.e. product marketing, promotional events, sales convention, and training are conducted through Team Fusion.

27. The concept of Team Fusion was in its infancy when Plaintiff joined Kyani. Understanding the necessity of such an application to compete in a multilevel marketing business, Plaintiff actually invested its own money into the concept and development of Team Fusion as well as assisted in Team Fusion’s implementation.

28. Although originally designed to benefit Kyani Distributors, the Inner Circle, with the backing of the Kyani, have used Team Fusion and the ability to restrict access to its content

to alter the operating procedures of Distributors, including bonus structures, for the financial gain of those in the Inner Circle. Defendants have created a pyramid scheme and attempted to extort payments from Plaintiff and its downlines under the guise of “gifts” and “contributions” for the sole benefit of those in the Inner Circle.

29. What was initially developed as a tool to assist Distributors in growing their business has been turned into a weapon for the Inner Circle to exercise unfettered power and steal business from Plaintiff while intentionally deceiving the public, all in an effort to line their own pockets with more profits.

Defendants Interfere with Plaintiff’s Business

30. Almost immediately after joining Kyani, Defendants attempted to manipulate, interfere with, and convert Plaintiff’s business to its own in an effort to increase profits for those in the Inner Circle. In August of 2014, Plaintiff sought to recruit Dana Harper (“Harper”) as a Distributor. Plaintiff and Harper had previously worked together in another multilevel business venture and had been friends and business partners for over five years. Harper was directly sponsored by the Plaintiff in the prior multilevel business and together Plaintiff and Harper built a large successful business. The size of that business was widely known by Stevens, Bradford and Boulch. While courting Harper, Harper’s brother-in-law Arnold Oniyama joined Kyani as a Distributor. Mr. Oniyama was both sponsored by and placed in Plaintiff’s downline.

31. Shortly thereafter, Harper informed Plaintiff that he wanted to join Kyani and be sponsored by Plaintiff; however, Harper requested that he be placed under the downline of Stevens, a member of the Inner Circle. Harper informed Plaintiff that Stevens had threaten to bar Harper from key meetings and deny Harper personal development training if he were placed under Plaintiff’s downline.

32. Plaintiff confirmed Harper's statements in a conversation with Stevens who also threatened Plaintiff with being "blackballed" from events and not receiving the recognition from Team Fusion necessary to grow its business unless Harper was placed under Stevens. As Harper was the brother-in-law of Mr. Oniyama, the placement of Harper in the downline of any Distributor other than Mr. Oniyama's violated Kyani procedures.

33. With no other choice, Plaintiff was forced to place Harper under Brandon Johnson, a Distributor he had never met; however, Plaintiff remained Harper's sponsor and thereby received bonuses under the Kyani Global Compensation Plan. This forced placement was to the benefit of the Inner Circle, and specifically Defendants Stevens and Bradford. Additionally, the placement benefited distributor Brandon Johnson.

34. Harper soon became a top seller and Harper's business grew to significant sales volume. Harper's success, and by default the bonus received by Plaintiff as his sponsor, made members of the Inner Circle jealous.

35. As a result, Stevens and members of the Inner Circle approached Plaintiff and offered to pay money in exchange for Plaintiff changing Harper's sponsorship to Stevens; however, Plaintiff refused. Soon thereafter, Harper and his business partner, Nick D'Amico complained to Plaintiff that they were being neglected by Stevens, Bradford and other members of the Inner Circle because Plaintiff received the most financial benefit. Realizing that Harper and D'Amico needed help, Plaintiff contributed financial resources to assist Harper and D'Amico though the purchase of airline tickets when both complained that Stevens and Bradford refused to assist them.

36. Still, the tactics used by the Inner Circle were effective, and Harper requested Plaintiff make changes to Harper's downline sponsorship at a financial loss to Plaintiff. When

Plaintiff refused, Harper and D'Amico brought complaints to The Inner Circle in order to ostracize Plaintiff from the Team Fusion network.

37. In an effort to pressure Plaintiff to agree to the changing of Harper's sponsorship for the benefit of the Inner Circle, the Inner Circle began to make the same threats to anyone, not just Harper, associated with Plaintiff. Other Distributors sponsored by Plaintiff and members of Plaintiff's downline were told they would not be allowed to access Team Fusion or the materials published through the application unless they demanded a change in their genealogy and disassociated themselves from Plaintiff.

38. Upset by Plaintiff's unwillingness to cower to the Inner Circles demands, Defendants began to publicly disseminate libelous statements regarding Plaintiff's character, work ethic, and leadership. Plaintiff learned of the public dissemination through members of its own downline who received the communication from innercircle@teamfusionwebsite.com. Soon, Defendants were not only threatening those associated with Plaintiff with no access to Team Fusion, they were also threatened with expulsion from the organization.

39. Defendants' fear tactics were effective, and Plaintiff began receiving communications from multiple Distributors in his downline complaining of pressure from the Inner Circle to change their genealogy and disassociate themselves with Plaintiff.

40. When Plaintiff attempted to confront the Inner Circle and put an end to the unfair business practices and violations of the Kyani policies, the Inner Circle responded by saying "we have corporate in our pocket" and Kyani "knew what they were doing."

41. When Plaintiff notified Kyani of the actions taken by the Inner Circle its pleas for help went unanswered. True to the statements made by the Inner Circle, Kyani did nothing to curb the Inner Circles fear tactics and threats made to Plaintiff and its business. It was apparent

by Kyani's complacency regarding the actions by the Inner Circle that Kyani not only knew of the actions being taken by the Inner Circle, but also support them.

42. Much to Plaintiff's dismay, its attempts to quash the Inner Circles actions only caused the Inner Circle to intensify their actions to manipulate and interfere with Plaintiff's business.

Defendants Manufacture New Policies

43. One of the most glaring examples of Defendants' interference with Plaintiff's business came in September of 2015, when Davenport and other members of the Inner Circle held a secret meeting with members of Plaintiff's genealogy and demanded they execute a loyalty and oath clause to a document entitled "Team Fusion Code of Conduct."

44. The Team Fusion Code of Conduct established new policies and procedures inapposite to the Kyani Polices. Specifically, the Team Fusion Code of Conduct restricted the ability of Plaintiff and other Distributors to build positions in the Kyani Compensation Plan by limiting each distributor to one position. It further removes the ability of Distributors to sign up family members in the entirety. Moreover, the Team Fusion Code of Conduct demands that Plaintiff and other Distributors place the needs of the Team Fusion, i.e. the Inner Circle, first.

45. During the secret meeting, Distributors in Plaintiff's downline were told that unless they signed the "loyalty oath" to the Team Fusion Code of Conduct they would be expelled from the organization. In fact, Court Bradley, a Diamond Leader in Plaintiff's downline, refused to sign the document and was immediately expelled.

46. During this same meeting, Bradford made slanderous and disparaging statements about Plaintiff's business and his quality as a leader in an attempt to pressure those in attendance

to not only sign the loyalty oath, but also to distance themselves from Plaintiff and aligned their financial interests with the Inner Circle.

47. Through the Team Fusion Code of Conduct, the Inner Circle, with approval of Kyani, rewrites the entire business model and organizational structure of the Kyani multilevel marketing business portrayed and represented to Plaintiff to induce Plaintiff into joining Kyani. Under the terms of the Team Fusion Code of Conduct, Defendants have given themselves the power to manipulate the genealogy of Distributors and redirect compensation earned under the Kyani Global Compensation Plan for their own financial gain and establish an illegal pyramid scheme.

Defendants Attempt to Extort Illegal Payments

48. Defendants have further used access to Team Fusion as a weapon to extort financial payments for the benefit of those in the Inner Circle. Labeled as “gifts” or “contributions,” Defendants routinely demand monetary payments from Plaintiff and its genealogy followed by threats of expulsion or restricted access to Team Fusion for those who do not “contribute” claiming they are not part of the “team.”

49. Specifically, the Inner Circle has demanded that Plaintiff contribute \$5,000 to a “bonus program” for new Distributor teams under the Inner Circles downline. Further, the Inner Circle has demanded Plaintiff contribute \$5,000 to a legal fund for Stevens and Bradford, which upon information and believe, involves the same or similar actions taken by Stevens and Bradford while active with another multilevel marketing company.

Defendants Share Volume Information

50. Defendants’ tactics to gain control over and interfere with Plaintiff’s business, i.e. entitlement to its profits and bonuses, are not limited to defamatory statements and threats of

expulsion. In an effort to lure existing and potential business away from Plaintiff, Defendants have illegally shared volume information falsely portraying sales figures for those in and associated with the Inner Circle. This transmission of “volume information” is also used by the Defendants to portray to the public inflated numbers that do not accurately reflect the profit or sales of the company. Through Team Fusion and other social media outlets, Defendants routinely publish misleading statements regarding sales numbers and income which not only violates Kyani Policies; it violates the law.

51. Not only have Defendants deceptively and illegally shared volume information, Defendants deceptively portray the Kyani business as that outlined in the Kyani Policies, when in fact, the ability to sell Kyani products is dependent on access to Team Fusion which is controlled by the separate and inapposite “Team Fusion Code of Conduct.” The deception portrayed to Plaintiff and the public by Defendants are its attempt to hide the fact that Defendants have instituted nothing more than a pyramid scheme designed to benefit those at the top, i.e. the Inner Circle.

VI. CAUSES OF ACTION

First Cause of Action Violation of Texas Deceptive Trade Practices §17.46 et seq. (Against Defendant Kyani Inc.)

52. Plaintiffs re-allege each and every allegation contained in the preceding paragraphs as though fully set forth herein.

53. Defendants have violated Tex. Bus. & Comm. Code §17.01 et seq. by engaging in false, misleading, or deceptive acts and practices in the conduct of their trade and commerce in Texas. Defendants engaged in “False, misleading, or deceptive acts or practices” by committing the following acts prohibited by Texas law:

- a. Causing confusion or misunderstanding as to the source, sponsorship, and approval of goods or services;
- b. Causing confusion or misunderstanding as to affiliation, connection, or association with another;
- c. Representing sponsorship, approval, affiliation or connection which does not exist;
- d. Disparaging the business of Plaintiff by false and misleading representation of facts;
- e. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- f. Promoting a pyramid promotional scheme;
- g. Demanding financial payment labeled as “gifts” or “contributions”

54. By engaging in these acts, Defendants have caused Plaintiff to suffer economic and noneconomic losses. Furthermore, Defendants have forced Plaintiff to engage attorneys and incur attorney fees and costs associated with addressing Defendants’ wrongdoing.

55. Defendants are therefore liable to Plaintiff and Plaintiff is entitled to recover the following pursuant to Tex. Bus. & Comm. Code §17.50:

- a. Economic damages. If Defendants’ actions are found to have been committed knowingly, Plaintiff may recover up to three times the amount of economic damages, and damages for mental anguish. If Defendants’ actions are found to have been committed intentionally, Plaintiff may recover damages up to three times the amount of both economic damages and mental anguish.
- b. Court costs;

- c. Reasonable and necessary attorneys' fees; and
- d. Punitive damages.

Plaintiffs are also entitled to recover pre- and post-judgment interest, at the statutory rate or at such other rate as is set by this Court.

56. Therefore, in accordance with Tex. Bus. & Comm. Code §17.50, Plaintiff seeks all money damages, punitive damages, attorney fees, and any other relief allowable under Texas law and deemed appropriate by this Court, which is believed to exceed the jurisdictional requirement of this court.

**Second Cause of Action
Tortious Interference with a Prospective Business Relationship
(Against All Defendants)**

57. Petitions re-allege all allegations in paragraphs

58. There was a reasonable probability that Plaintiff would have entered into business relationships with third parties it was recruiting to join its business. Defendants knew of Plaintiff's potential business relationships and consciously interfered with and prevented said relationships by (1) disseminating defamatory, slanderous, and libelous statements during promotional events and through the network marketing platform Team Fusion portal regarding Plaintiff personally and its business and (2) publishing inaccurate sales and volume information to Plaintiff's prospective business relationships and the public.

59. Defendants knew or were substantially certain that its actions would interfere with Plaintiff's prospective business relationships. As a result of Defendants' tortious and unlawful conduct Plaintiff was damaged in that Plaintiff has lost potential business relationship, sponsorships, and placement of new Distributors in its downlines and lost sales, commissions, bonuses and profits that would have been realized by Plaintiff's had Defendants not interfered with their relationship.

60. Therefore, Plaintiff seeks all money damages, punitive damages, attorney fees, and any other relief allowable under Texas law and deemed appropriate by this Court, which is believed to exceed the jurisdictional requirement of this court.

**Tortious Interference with Existing Business Relationship
(Against All Defendants)**

61. Plaintiff re-alleges each and every allegation contained above as though fully set forth herein.

62. Plaintiff had existing, valid contracts with its sponsored distributors and distributors in its downline.

63. Defendants willfully and intentionally interfere with Plaintiff's business relationships by (1) disseminating defamatory materials during meetings and through the network marketing platform "Team Fusion" (2) threatening Plaintiff's business relationships with expulsion unless they disassociated themselves with Plaintiff (3) denying access to necessary training materials to Plaintiff's business relationships unless they disassociated themselves from Plaintiff (4) denying Plaintiff's business relationships access to meetings and promotional events unless they disassociated themselves from Plaintiff.

64. As a result of Defendants' tortious interference with Plaintiff's Business Relationships, Plaintiff has been damaged by loss of business, clients, sales, commissions, bonuses and profits.

65. Therefore, Plaintiff seeks all money damages, punitive damages, attorney fees, and any other relief allowable under Texas law and deemed appropriate by this Court, which is believed to exceed the jurisdictional requirement of this court.

VII. CONDITIONS PRECEDENT

66. All conditions have been performed or occurred for all claims asserted herein.

VIII. DEMAND FOR TRIAL BY JURY

67. Plaintiff hereby demands trial by jury on all claims for which the law provides a right to jury trial.

IX. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, HD Walz II Enterprises, Plaintiff herein, respectfully pray:

1. That all Defendants, will be cited to appear and answer herein;
2. For money damages in an amount to be determined by a jury;
3. For exemplary and punitive damages according to proof;
4. For costs of suit incurred herein, including reasonable attorneys' fees;
5. For such other and further relief, in law or in equity, to which may be justly entitled and this Court deems just and proper.

June 24, 2016

Respectfully Submitted,

CHRISTMAN KELLEY & CLARKE, PC

/s/ Dugan P. Kelley

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