Amway v. International Sales Aids

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Amway v. International Sales Aids

Case: Amway v. International Sales Aids (1974)

Subject Category: Trademark

Agency Involved: Private Civil Suit

Court: E. District of Arkansas

8th Circuit

Case Synopsis: International Sales Aids (ISA) sold motivational brochures and flyers to Amway distributors, utilizing the Amway name and other Amway owned and trademarked product names. It sold these printed products to Amway distributors, who violated their distribution agreement with Amway by purchasing such products from a company other than Amway. The company sued, claiming that the use of the Amway name on products that directly competed with Amway unlawfully diluted their trademarks' value.

Legal Issue: Is the use of Amway's trademarks in literature produced by an unrelated company on the use and sales of Amway products a violation of federal trademark law?

Court Ruling: The Court held that ISA's use of Amway's trademarks violated the federal trademark laws by diluting the marks. The owner of ISA was also an Amway distributor, and began publishing and distributing motivational and instructional materials to other Amway distributors. Amway claimed that the literature appeared to come from, and be authorized by, Amway. The Court held that the literature was deceptive in that regard, and that by appearing to be authorized by Amway when it was not, diluted their trademarks in violation of federal law.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: Unauthorized use of a company's trademarks may run afoul of federal trademark laws.

Amway v. International Sales Aids, No. LR-73-C-81 (1974): The Court held that ISA's use of Amway's trademarks violated the federal trademark laws by diluting the marks. The owner of ISA was also an Amway distributor, and began publishing and distributing motivational and instructional materials to other Amway distributors. Amway claimed that the literature appeared to come from, and be authorized by, Amway. The Court held that the literature was deceptive in that regard, and that by appearing to be authorized by Amway when it was not, diluted their trademarks in violation of federal law.

Amway Corporation v. International Sales Aids, Inc., et al.

District Court, E. D. Arkansas, W. Div.

No. LR-73-C-81

Decided May 28, 1974

James A. Mitchell, Randall G. Litton, John E. Stephen, and Price, Heneveld, Huizenga & Cooper, all of Grand Rapids, Mich., and George E. Pike, Jr., and Smith, Williams, Friday, Eldredge & Clark, both of Little Rock, Ark., for plaintiff.

John T. Harmon, and Harmon, Wallace & Hilburn, both of North Little Rock, Ark., for defendants.

Henley, District Judge.

This is a suit for trademark infringement and unfair competition brought by plaintiff, Amway Corporation, against two Arkansas corporations and an individual citizen of Arkansas. Jurisdiction is predicated upon 15 U.S.C., section 1121 and 28 U.S.C., section 1338. Both injunctive and pecuniary relief is sought. The defendants deny that plaintiff is entitled to any relief.

Contemporaneously with the filing of the complaint plaintiff moved for a preliminary injunction and supported its motion by affidavits. The Court set a hearing on the motion and it was agreed by both sides that in the course of the hearing the factual issues in the case, other than the pecuniary ones, would be developed fully and later briefed and submitted to the Court with the understanding that should the Court determine that plaintiff is entitled to relief questions of damages and of an accounting for profits would be the subject of further development. Following the hearing a preliminary injunction was issued and has remained in force.

The Court has now considered the pleadings in the case, the exhibits thereto, the affidavits that have been submitted, oral testimony, documentary exhibits, and the post-trial briefs of counsel. This Memorandum Opinion incorporates the Court's findings of fact and conclusions of law with respect to the issues that are now before it.

Plaintiff is a Michigan corporation having its principal place of business in Ada, Michigan. It is engaged in the business of manufacturing and selling a great variety of items of consumer merchandise, which items are sold at retail to consumers by individual distributors. Amway products include such things as cleaners and polishes, insecticides, moth proofing preparations, germicides, soaps, detergents, rust removers, deodorants, cosmetics, toilet goods, products used in the care of babies, electric massagers, kitchen ware, certain items of clothing, and other items of consumer goods too numerous to mention. Amway also produces and distributes for the use of its distributors and consumers printed material such as printed sales aids, forms, cards, manuals, pads, stickers, catalogs, charts, labels, decals, handbooks, instruction sheets, calendars, plaques, tags, ad reprints, and similar items.

Amway's annual sales volume is some $200,000,000, and it has some 200,000 individual distributors who sell its products directly to consumers or to other Amway distributors.

Amway engages in extensive advertising of its products and of its sales organization and selling methods. Its advertising budget runs into millions of dollars a year. Some of that money is spent on general advertising in the news media, but the great bulk of its advertising consists of material that goes out to individual distributors and consumers.

Amway is the owner of a number of registered trademarks. Its principal mark is AMWAY, which is registered in the Patent Office in nearly fifty different classes. Two of the registrations relate to the use of the mark on printed and partially printed material and on certain other items of advertising and promotional material.

Plaintiff also owns 47 other registered marks; each of those marks is the trade name of a particular Amway product. The following are a few examples:

AMVAN (bubble bath); BUFF-UP (leather conditioner and polisher); DETER (personal deodorant); DRIFAB (cleanser); EGYPTIQUE (cologne); L.O.C. (all-purpose cleaning concentrate); REMOVE (dry-cleaning compound); SILVER SURF (after-shave lotion); TABLEAU (women's hosiery); WITHER (herbicide); WHISKEY WHIZ (shaving cream); ZOOM (furniture, rug, and upholstery cleaner).

In addition to the products the names of which have been registered as trademarks, there are many Amway products that have distinctive trade names that have not been registered.

The principal defendant in the case is Joe Tiller who resides in Little Rock, and who has been engaged in the business of commercial printing for a number of years. Around 1965 Mr. Tiller organized the corporate defendant, Nationwide Publications, and remained in control of it until International Sales Aids was formed in 1972. When International was formed, it acquired all of the capital stock of Nationwide, and Mr. Tiller and his wife were issued 75 percent of the capital stock of International.

International is a mere holding company and had not engaged in any business operations as of the time of the hearing in this case. The Court finds that Mr. Tiller is in control of both corporations, and references to him alone in this opinion should be construed to the extent appropriate as applying likewise to one or both of the corporate defendants.

The controversy between plaintiff and the defendants arises from the fact that Mr. Tiller, through Nationwide, publishes and distributes to individuals who are on his mailing list and who are distributors of Amway products material that relates to those products and to Amway's method of doing business. The Court finds that much of that material moves in interstate commerce.

Amway sells to distributors at least some of the items of literature that it publishes, and to the extent that Amway distributors buy similar material from Tiller rather than from Amway, Amway's sales are diminished. It is in that sense only that Amway and Mr. Tiller are competitors since Mr. Tiller does not manufacture or sell items of merchandise that compete with Amway products. He simply prints and sells literature about the products and Amway's business methods.

The record reflects that Mr. Tiller became an Amway distributor himself in 1969, and he has done quite well at it, having earned enough from his sales of products to consumers and other distributors to purchase a new car and to take his wife and himself on a trip around the world. His activities as an Amway distributor have not interfered with his printing business which, as stated, is conducted through Nationwide.

Before undertaking to state the specific contentions of the parties the Court deems it well to describe in some detail Amway's method of doing business because that method of doing business is as much involved in the case as are Amway products that are sold ultimately to members of the consuming public. The description about to be given may well contain some oversimplifications and perhaps minor errors, but the Court deems it sufficient for present purposes.

The record discloses that Amway was organized in the late 1950's by two individuals who had experience in the direct selling of consumer goods; they enlisted other persons to engage in the selling of Amway products, and with the passage of the years Amway's business has grown to the extent indicated already. Its products are sold all over the United States and its possessions, in Canada, and in some foreign countries, including the United Kingdom. There is no reason to believe that its products are not of high quality, and it is inferable that during its life Amway has acquired a good business reputation and a very substantial business goodwill.

Individuals only can become Amway distributors; corporations are not eligible for distributorships. Husbands and wives, like Mr. and Mrs. Tiller, frequently work together in distributing the products. Distributors sell to consumers at a 30 percent mark-up.

At the present time any individual may become an Amway distributor if he is sponsored by an existing distributor, if he purchases an instructional kit for $15, and if he makes a written application for the distributorship and accompanies it with a fee of $4. A person applying for a distributorship agrees in writing that he will abide by the Amway Code of Ethics and Rules of Conduct. Distributorships are renewable annually, and with each annual renewal the distributor again agrees to abide by the Code and Rules.

There are two levels of Amway distributors, “direct distributors” and “indirect distributors.” Any person who comes into the Amway organization today does so as an indirect distributor. As such a distributor, he is eligible not only to sell Amway products at retail but also to sponsor other persons who may desire to come into the organization. If he sponsors other persons, he is entitled to sell Amway products to them as well as to ultimate consumers, and the Court finds that the financial success of an indirect distributor varies directly with his ability to bring other people into the program so that he can sell to them as well as to members of the public. If he is sufficiently diligent in his efforts and is able to build up and maintain for a specified time a certain sales volume, he is eligible upon the completion of a course of training to become a direct distributor.

A direct distributor buys his goods directly from Amway and also acquires from Amway advertising material, promotional matter, and sales aids. An indirect distributor normally acquires his goods and supplies from his own sponsor or from the direct distributor that heads up his group. Both direct distributors and indirect distributors may sell to consumers, and, indeed, direct distributors and sponsoring indirect distributors are required to make at least ten retail sales a month to at least ten different customers if they desire to retain their status. However, direct distributors sell mostly to indirect distributors whom they have sponsored, and sponsoring indirect distributors sell mostly to other indirect distributors whom they have sponsored.

Ignoring retail sales that may be made by direct distributors, an Amway product moves from Amway to the ultimate consumer in three vertical steps, namely, from Amway to a direct distributor, from the direct distributor to an indirect distributor, and from the indirect distributor to the consumer. But, as indicated, before finally reaching the consumer, the product may move laterally several times from one indirect distributor to another indirect distributor in the same line of distributorship, or group. FN1

As long as an Amway product is moving within the Amway organization, that is to say, from distributor to distributor within a group, there is no increase in the wholesale price that Amway charged for the product in the first instance. Distributors who sell to other distributors make money out of such sales by receiving refunds or discounts based on their own “purchase volume” and on the “purchase volume” of the other distributors to whom they sell. This system of refunds or discounts is somewhat complicated and no useful purpose would be served by undertaking to describe it in detail.

In its promotional material dealing with its marketing plan Amway lays stress on the fact that in the long run distributors cannot make money simply by selling to other distributors, the bulk of the goods must ultimately be sold to consumers. Moreover, a distributor who has sold products to one of his sponsorees is required to buy the goods back upon demand of the purchaser if the goods are still in merchantable condition.

An indirect Amway distributor may be as active or inactive in the business as he chooses to be. He is not required to become or remain a sponsoring distributor; he is not required to lay in any particular stock of goods or to meet any particular sales quotas, or to spend any particular amount of time in his sales efforts.

That most Amway indirect distributors are relatively inactive is evidenced by the fact that an “average” Amway distributor is a housewife who sells goods to friends and neighbors and may expect to earn $35 to $40 per month. Active and successful distributors who sponsor other distributors may earn several hundred dollars a month as a result of their activities and those of the distributors sponsored by them.

Amway naturally undertakes to keep its distributors highly motivated, and it does so in part by appealing to their patriotism and to their supposed devotion to the “American Way of Life” and to the “American System of Free Enterprise.” FN2 Amway also seeks to inspire its distributors with loyalty to the company and to each other, and to fill them with fervor and enthusiasm.

Turning from program to products, it is at once obvious that from their very nature many of the products are capable of producing harm if improperly used or if used by people who may be allergic to them. It can also at least be argued that many of the products contain ingredients that are ecologically harmful when used in excess or, indeed, when used at all. Thus, it is clear that with respect to its products and their use Amway is subject to the jurisdiction of many federal and state regulatory agencies charged with the enforcement of various and sundry regulatory statutes and regulations promulgated thereunder. Moreover, while Amway seems to have been fortunate in this area, it is subject to products liability suits that may be filed by persons who may suffer injury resulting from their use of Amway products. It behooves Amway, therefore, to use at least ordinary care in manufacturing and labelling its products and in giving directions for their use if it is to avoid falling foul of the regulatory agencies and being involved in products liability litigation. Moreover, a failure to use such care may subject Amway to criminal prosecutions under certain statutes.

Not only must Amway use care with respect to its products, it must use care with regard to its advertising and with regard to the representations that it makes about its sales program. In that connection it appears to the Court from the evidence and from plaintiff's brief that Amway is much concerned lest it be charged with unlawful “pyramid selling” whereby the individual salesmen at the bottom of the “pyramid” may find themselves with stocks of goods on hand which they cannot sell and with respect to which they cannot recover their investment.

Without stopping to go into detail, the Court finds that Amway in fact uses care in connection with its products and in connection with the literature that it disseminates with regard to both products and program. And for the protection of its business and of its goodwill and reputation Amway relies on its trademarks and trade names and to a substantial extent upon the obligations which its distributors assume when they pledge themselves to observe the Amway Code of Ethics and Rules of Conduct, some of which relate to the published material which Amway sends out to its distributors and much of which finally reaches the hands of and is read by retail purchasers of Amway products.

Section 7 of the Code of Ethics obligates a distributor to “use only Amway-authorized and produced literature concerning the Amway Sales and Marketing Plan and Amway products.” As far as this case is concerned, the most important Rule of Conduct is found in Part III of those Rules. Part III begins with some explanations about trademarks and trade names and plainly warns distributors that Amway will not tolerate infringements of its marks or names. And Rule 1 states specifically that: “No Amway distributors may produce or procure from any source other than Amway any literature relating to the Amway Sales and Marketing Plan or any Amway product.”

Another Rule which is of somewhat less importance appears as Part II, Section B, Rule 4 of the 1972 edition of the Code and Rules; in earlier years the Rule seems to have had a different number. The Rule provides that if a distributor wishes to sell a product other than an Amway product, he is free to do so provided that he does not sell to another Amway distributor whom he has not sponsored personally.

With respect to the challenged activities of Mr. Tiller and Nationwide, the record reflects that Mr. Tiller first got the idea of publishing and selling what may be called “Amway material” from a West Coast distributor who had moved to Arkansas. That distributor advised Tiller that a California corporation identified as CVC Sales & Service was publishing literature relating to Amway products and to the Amway program, and that it was being well received by West Coast distributors. Mr. Tiller arranged for a friend and business associate, Fred King, to secure samples of CVC material, and Tiller began to copy it and sell it by mail and in interstate commerce to Amway distributors in various parts of the country.

The Court finds that Amway has never given Mr. Tiller or any other person or corporation any authority to disseminate the literature in question, and that it has never acquiesced in such unauthorized dissemination. Defendants' contention to the contrary is rejected.

The Court also finds that Amway has had no control whatever over the contents of the Tiller literature, and that unless injunctive relief is granted in this case Amway will have no control over whatever Mr. Tiller may choose to publish and distribute in the future.

While the Court does not find that Mr. Tiller has ever intentionally made any misstatements about Amway products or knowingly given any improper directions or suggestions for their use, the Court does find that in at least two instances mistakes have been made that could conceivably have caused harm to Amway. And the Court further finds that Mr. Tiller has recommended some procedures to Amway distributors that Amway does not recommend and of which it does not approve.

Amway first had difficulty with Mr. Tiller, or Mr. Tiller first had difficulty with Amway, in 1971 about a booklet entitled “Ain't It Great,” which Tiller had published and offered for sale to Amway distributors. That publication did not refer directly to Amway and did not involve any question of trademark infringement, but its publication did involve a violation of Rule 4 of Part II of Section B of the Rules of Conduct that has been mentioned, that is to say, Tiller had sold a non-Amway “product” to an Amway distributor or to Amway distributors whom he had not sponsored personally.

This rule violation was called to Tiller's attention by Mr. Stephen A. Bryant, Amway's chief attorney and principal witness before the Court. Correspondence ensued between Tiller and Bryant in which the former contended that the rule in question was invalid; however, Tiller agreed ultimately to discontinue the publication.

As time went on Bryant learned that Tiller and Nationwide were disseminating other Amway material that Amway considered to infringe its marks and to be objectionable otherwise. Bryant called on Tiller to cease and desist from the publication and invoked in that connection Rule 1 of Part III of the Rules of Conduct relating to Amway literature. Tiller replied by vigorously attacking that Rule as being in restraint of trade and commerce.

It was at about this stage of the controversy that International Sales Aids was incorporated and acquired the corporate stock of Nationwide. On one occasion Tiller advised Bryant that Nationwide was being sold to another corporation but in response to further inquiries from Bryant refused to give the details of the sale or to identify the principals in the transaction. As of this juncture Tiller seems to have been afraid of losing his distributorship, which was of substantial value to him, and the Court at least suspects that Nationwide's stock was turned over to International to create the impression that Tiller had no proprietary connection with Nationwide while at the same time concealing or attempting to conceal from Amway the fact that he and his wife owned controlling interest in International.

Continuing to receive complaints from distributors about Nationwide's publications, Amway undertook to obtain samples and was at length able to secure the items which brought about the filing of this suit and which were introduced in evidence.

Plaintiff contends here that the defendants have infringed its trademarks in violation of 15 U.S.C., section 1114(1), and have diluted its marks in violation of Ark.Stats.,Ann., Cum. Supp., section 70-550. It is further contended that defendants have engaged in unfair competition with Amway, have tortiously interfered with Amway's business and business relationships, that Mr. Tiller has breached his own contractual obligations to Amway, and that he and Nationwide have caused other distributors to breach their contracts with Amway. Additionally, plaintiff complains that the contents of the challenged material are in certain respects inaccurate and misleading and are apt to be damaging to Amway in a variety of ways.

The defendants deny infringement and dilution of plaintiff's marks and deny Amway's charges of unfair competition and other charges. Defendants specifically contend that the provisions of the Code of Ethics and Rules of Conduct that have been mentioned are in restraint of trade and unenforceable. Defendants also say that there is no merit to plaintiff's complaints about the content of the defendants' literature. Defendants also assert that the Court lacks jurisdiction of the dilution claim based on state law and possibly of other non-federal claims put forward by plaintiff.

As to jurisdiction, the Court has statutory jurisdiction with respect to plaintiff's claim of trademark infringement and the claim of “unfair competition.” Section 1338(a) of 28 U.S.C. gives the federal courts jurisdiction of any civil action arising under the patent, copyright, and trademark laws of the United States. And section 1338(b) provides specifically that those courts have jurisdiction of a claim of unfair competition when joined with a substantial and related claim arising under the laws mentioned in section 1338(a). As to other non-federal claims advanced by plaintiff, the Court has a discretionary pendent jurisdiction, which the Court is convinced should be exercised here. United Mine Workers v.

Gibbs, 1966, 383 U.S. 715; Hughes v. Ford Motor Credit Co., E.D. Ark., 1973, 360 F.Supp. 15; Wright, Law of Federal Courts, 2d Ed., p. 64.

Taking up, first, the claim of trademark infringement which is based on 15 U.S.C., section 1114, that section, insofar as here pertinent provides that it is an actionable infringement of a registered trademark for any person to "* * * use in [interstate] commerce any reproduction, counterfeit, copy or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive * * *." (15 U.S.C.A., § 1114(1)[a].)

The Court finds that the registered marks owned by Amway are valid and that they have been infringed. Defendants' literature introduced in evidence demonstrates that the mark AMWAY and other registered marks of the plaintiff have been reproduced literally and repeatedly by the defendants.

It does not appear to the Court that the defendants have used the reproductions of the marks as labels for their literature as trademarks are generally used to identify the source of goods. Rather, the reproductions appear in the textual material disseminated by the defendants. That may constitute an infringement, however, where the textual use of the words is such as to convey the idea that the material in question emanated from the owner of the mark or that use of the mark was authorized by him. See: B.&L. Sales Associates v. H. Daroff & Sons, Inc., 2 Cir., 1970, 421 F.2d 352, 165 USPQ 353, and Dawn v. Sterling Drug, Inc., C.D. Cal., 1970, 319 F.Supp. 358, 167 USPQ 721.

The Court agrees with plaintiff that the use by the defendants of the word AMWAY printed variously, the use of the other product names, and the content and tenor of much of the "Amway material" distributed by defendants leaves the impression that it came from Amway or was at least authorized by it. As to much of the material, one into whose hands it came could hardly think otherwise unless he happened to know the true source of the literature and the fact that it was being published without Amway's knowledge or consent. The distributors who ordered the literature from Mr. Tiller or from Nationwide doubtless knew where the material was coming from, and some of them may have known that Mr. Tiller and his corporation were not supposed to be distributing it. It does not follow, however, that such knowledge would be shared by distributors further along the line or by consumers who might have occasion to read the material. It is true that some of the items identify Nationwide Publications as the printer, but that identification, to the extent that it would be noticed by an unsophisticated distributor or consumer, or by a sophisticated one for that matter, would not necessarily negative the idea that the material actually was being disseminated by Amway or with its knowledge and consent. As the Court indicated in the course of the hearing, if one observes a well known trademark appearing on a printed piece of paper, a chewing gum wrapper for example, one does not ordinarily stop to inquire who did the actual printing.

Assuming arguendo, however, that the use of the marks on some of the items under consideration would not lead to confusion as to the source of the items, nevertheless the Court agrees with the plaintiff that such use would unlawfully dilute the marks in violation of Ark.Stats.,Ann., Cum.Supp., section 70-550, which authorizes injunctive relief against a dilution *21 of a registered mark or of a mark valid at common law notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

Section 70-550 is section 12 of Arkansas Act No. 81 of 1967. An identical statute was enacted in California during the same year and was before the Court in Dawn v. Sterling Drug, Inc., supra. Statutes like those of Arkansas and California appear to be codifications of the common law "doctrine of dilution" of trademarks which was at times applied to cases in which a junior appropriator of a mark who was not in competition with the original appropriator applied the mark to dissimilar goods. See 52 Am.Jur. Trademarks, Tradenames, and Trade Practices, §§ 97 and 98, and 87 CJS, Trade-Marks, Trade-Names and Unfair Competition, § 77, p. 304. The doctrine, as it existed at common law, was recognized by the late Chief Judge Trimble of this Court in Elder Manufacturing Co. v. Martin Trenkle Co., E.D. Ark., 1950, 90 F.Supp. 889, 86 USPQ 431, a case in which plaintiff had registered the mark "Tom Sawyer" for use in connection with the sale of boys' garments and in which the non-competing defendant had begun to use the same mark in connection with the sale of paint.

In 87 CJS, supra, it is said:

"The dilution doctrine protects the good will built up for a trade-mark from dilution by another's mark. It extends the protection of the trade-mark law to a situation presented when similar marks are used on dissimilar goods, and has no application when the question is whether the marks being used on goods of substantially the same descriptive properties are similar enough to cause confusion in the minds of customers with respect to the source of the goods. The underlying rationale of the doctrine is that gradual diminution or whittling away of the value of a trade-mark as the result of the extensive use of the identical or similar mark constitutes an invasion of a property right in the mark, and gives rise to an actionable wrong not dependent on a showing of a competitive relationship of the products or the likelihood of confusion of the purchasers thereof * * *."

And in Dawn v. Sterling Drug, Inc., supra, 319 F.Supp. at 363, 167 USPQ at 721, the Court said that the purpose of statutory protection from trademark dilution "is to prevent truly coined marks from becoming a part of the ordinary language."

To the extent that Mr. Tiller's customers and later distributees know that Amway is not publishing the literature in question and has not authorized Mr. Tiller to publish it, his activities tend to create the impression that the Amway marks are in the public domain and can be used by anyone to describe anything. And, it must be remembered that what Mr. Tiller can do legally, any other commercial printer can also do.

Whether the activities of the defendants constitute trademark "dilution" or not, they certainly constitute unfair competition with Amway in the sale of the literature in question. The defendants are not disseminating this material for the mere purpose of advertising Amway products or its program; they are selling it for profit, and they are undertaking to cash in on the goodwill that Amway has acquired by using the Amway marks and names; and to the extent that their efforts have been successful, they have inflicted at least some financial damage upon Amway.

Defendants' activities also constitute an unjustified interference with Amway's conduct of its business and with its relationships with its distributors and bring about breaches by distributors of their contractual obligations not to procure material about Amway products or the Amway Sales and Marketing Plan from sources other than Amway.

While the Court agrees with counsel for the defendants that a manufacturer may not lawfully impose unreasonable or unlawful restrictions upon the distributors of its products, the Court sees nothing unreasonable or unlawful in a manufacturer requiring his distributors to stipulate that they will look to him only for literature dealing with his products and sales program, particularly when the products and program are similar to those of Amway. The Court holds, therefore, that Rule 1 of Part III of the Amway Code of Ethics and Rules of Conduct is a valid and enforceable provision.

If corporate entities be ignored, it is obvious that Mr. Tiller personally has breached the Rule in question and has done so knowingly. But whether he has breached it or not, there is no question that he has caused other distributors to breach it, either knowingly or unknowingly.

While the Court has gone to some trouble to characterize the conduct of misconduct of the defendants as being this or being that, actually, the Court thinks that the plaintiff is entitled to relief on a more fundamental *22 ground that goes beyond such particular characterizations.

This is an era in which things like consumer protection, protection of the environment, and truth in advertising are much in vogue. Governmental regulation of business at both the federal and state levels is becoming increasingly more stringent. While some of the products that Amway manufactures and causes to be sold are more or less innocuous, many of them are not. Indeed, most of them contain powerful chemical ingredients and are capable of inflicting substantial harm if improperly used or if used by people who ought not to be using them. Moreover, while Amway denies emphatically that it is engaged in unethical or unlawful pyramid selling, it is obvious that its sales program possesses some features of that kind of selling although it may have adequate offsetting safeguards.

In such circumstances the Court feels that Amway's apprehensions about what may happen to it should the defendants' activities be permitted to continue are fully justified. The question is not so much what the defendants may have written about Amway products or about the Amway Sales and Merchandising Plan in the past as what they may write about it in the future if their activities continue.

The Court thinks that when a manufacturer develops a line of products like those of Amway, and when it develops a plan for the marketing of those products, that manufacturer should be permitted to control the advertising of its products and its plan and to control the representations and claims that are made with respect to them. Any other view would subject the manufacturer to intolerable legal and economic risks.

That does not mean that the manufacturer is free to publish anything that he or it may choose with respect to products or plan. He must stay within the law as it relates to such things as product testing and labelling, directions for the use of products, and claims or representations made with respect to the products and the marketing plan. And, of course, he is subject to the liabilities imposed by the tort law of the jurisdictions in which he operates or in which his goods are sold, to say nothing of the liabilities imposed by the criminal law of those jurisdictions.

But, subject to those restrictions, the Court feels that the manufacturer should be free to disseminate his own materials about his products and his business without interference from outside sources like the defendants in this case, regardless of by what name or names such interference may be called. And the Court is convinced that this immunity from interference should be protected by a court of equity in a case like this one.

A permanent injunction in accordance with the foregoing will be entered. Jurisdiction is retained for the purpose of passing on questions of damages and of an accounting if those issues are pressed by plaintiff. The Court should be advised if a hearing on those questions appears necessary.

Dated this 28th day of May, 1974.

FN1 An Amway group, as the Court understands it, consists of a direct distributor plus indirect distributors whom he has sponsored and other indirect distributors whom the original indirect distributors have sponsored, and so on down the line. A member of one Amway group is not supposed to sell to a distributor who is a member of another group. Mr. Tiller testified that after he was sponsored by a Mr. and Mrs. Ruffin, he sponsored about 20 distributors, and that at one time there were three or four hundred people in the group of which he was a member.

FN2 As one might have guessed, the word “Amway” is a combination of the words “American” and “way.”