

1 Cedric Chao (Bar #76045)
CChao@mofocom
2 William L. Stern (Bar #96105)
WStern@mofocom
3 James M. Schurz (Bar #145874)
JSchurz@mofocom
4 MORRISON & FOERSTER LLP
425 Market Street
5 San Francisco, California 94105
Telephone: 415-268-7000
6 Facsimile: 415-268-7522

7 Mark R. McDonald (CA SBN 137001)
MMcdonald@mofocom
8 MORRISON & FOERSTER LLP
555 West Fifth Street, Suite 3500
9 Los Angeles, California 90013-1024
Telephone: 213-892-5200
10 Facsimile: 213-892-5454

11 James R. Sobieraj (*Pro Hac Vice Pending*)
Dominic P. Zanfardino (*Pro Hac Vice Pending*)
12 BRINKS HOFER GILSON & LIONE
455 N. Cityfront Plaza Drive
13 Chicago, Illinois 60611
Telephone: 312-321-4200
14 Facsimile: 312-321-4299
E-mail: jsobieraj@usebrinks.com

15 Attorneys for Defendant Quixtar Inc.
16

17 UNITED STATES DISTRICT COURT

18 CENTRAL DISTRICT OF CALIFORNIA

19 WESTERN DIVISION

20 ORRIN WOODWARD, BILLY FLORENCE,
DON WILSON, TIM MARKS, CHUCK
21 CULLEN, KIRK BIRTLES, RANDY HAUGEN,
CHRIS BRADY, JIM MARTIN, ARON
22 RADOSA, CHUCK GOETSCHER, DAVID
BRANDY, BENJAMIN L. DICKIE, BRUCE
23 GILBANK, AND MIKE MARTENSEN, on
behalf of themselves and those similarly situated,

24 Plaintiffs,

25 v.

26 QUIXTAR INC., a corporation,

27 Defendant.
28

Case No. CV 07-05194 GAF (JTLx)

**DEFENDANT QUIXTAR INC.'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION,
PROVISIONAL CLASS
CERTIFICATION AND EXPEDITED
EVIDENTIARY HEARING**

Date: September 12, 2007
Time: 9:30 a.m.
Room: 740
Judge: Honorable Gary A. Fees

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1 **I. INTRODUCTION**

2 This lawsuit was filed by a break-away group of fifteen Quixtar Inc.
3 distributors, called Independent Business Owners (“IBOs”), who for months had
4 been secretly planning to leave, go into competition with Quixtar, and take with
5 them thousands of other Quixtar IBOs. Standing in Plaintiffs’ way, however, is a
6 contractual ban against IBOs competing and soliciting for a limited period of time.
7 Plaintiffs needed to first clear those legal landmines, so they journeyed to California
8 to file this suit by largely *Michigan* residents against a *Michigan* company to
9 invalidate provisions in a contract containing a *Michigan* choice-of-law clause.¹
10 They ask the Court to declare those provisions void.

11 Before hearing Plaintiffs’ motion, the Court should decide two threshold
12 issues. First, the Anti-Injunction Act, 28 U.S.C. § 2283 (“the Act”) bars a federal
13 court from entering an injunction that would interfere with a state court proceeding.
14 Here, a Michigan state court on August 24 entered a preliminary injunction, finding
15 enforceable the very provisions Plaintiffs seek to have the Court enjoin. Plaintiffs’
16 preliminary injunction would directly conflict with the Michigan Order.²

17 Second, Quixtar has concurrently filed a motion to dismiss or compel
18 compliance with Quixtar’s dispute resolution procedures. As the same Michigan
19 court has now observed, “there is no question that such disputes must be resolved
20 through arbitration.” Those two matters should be decided first.

21 Even if the Court were to deny both of Quixtar’s threshold motions and reach
22 this motion for preliminary injunction, it should deny it. Plaintiffs’ motion is faulty
23 for several reasons.

24

25

26 ¹ Plaintiffs admit that Michigan law supplies the rule of decision. (Memorandum in
Support of Motion for Preliminary Injunction, 21:7-8 [“Plntfs’ Memo.”].)

27 ² Prior to filing this opposition, Quixtar invited Plaintiffs to withdraw their motion
28 in light of the Anti-Injunction Act. So far, they have declined.

1 **II. SUMMARY OF ARGUMENT**

2 If the Court does not agree that the Anti-Injunction Act bars Plaintiffs’ relief
3 and that this dispute is subject to Quixtar’s ADR process, only then would the
4 Court need to reach this motion. In that event, the Court should deny Plaintiffs’
5 motion for preliminary injunction for several reasons.

6 First, Plaintiffs cannot show irreparable injury. The Court has already
7 determined that Plaintiffs’ showing “falls far short of demonstrating irreparable
8 harm”³ and Plaintiffs have done nothing since to buttress that showing. Even if
9 they had, Plaintiffs are all *former* IBOs. As such, they have no stake in the “new”
10 contract. Whatever its terms, that contract will never affect them.

11 Second, Plaintiffs are estopped from assailing these noncompete and nonso-
12 licitation clauses. Plaintiffs use the same clauses in contracts with affiliated IBOs.
13 Moreover, as members of the Independent Business Owners Association
14 International (“IBOAI”), an independent trade association made up of Quixtar
15 distributors, at least six Plaintiffs approved these provisions. And several Plaintiffs
16 have served as Quixtar conciliators and were on panels that enforced these
17 provisions.

18 Third, Plaintiffs are not “likely to prevail,” Quixtar is. They have framed the
19 issue wrongly. The issue is not whether Quixtar is a “pyramid scheme.” The
20 question is whether the entry of a preliminary injunction before the arbitrator even
21 has a chance to rule would put Quixtar at risk of a meaningless award in the event
22 these provisions were later found to be lawful. The answer is yes.

23 Fourth, even if the Court were to accept the issue as Plaintiffs frame it, they
24 still lose. Plaintiffs insist these provisions should be nullified because Quixtar is an
25 “illegal pyramid scheme.” But they never cite the one case that matters, *In the*
26 *Matter of Amway Corp.*, 93 F.T.C. 618 (1979). There, after an exhaustive four-year

27
28 ³ Order re: Plaintiffs’ *Ex Parte* Application to Shorten Time, p. 2 (Aug. 14, 2007).

1 investigation, the FTC concluded: “The Amway Sales and Marketing Plan *is not a*
2 *pyramid plan.*” *Id.* Plaintiffs have not met their burden of proof.

3 Fifth, unclean hands, balance of hardships, and interests of public policy all
4 tilt sharply against Plaintiffs’ request for preliminary injunction.

5 Finally, Plaintiffs also ask for “provisional class certification.” They hope to
6 use the very group they are raiding—the absent class member-IBOs who are their
7 “downlines”—to supply the element of irreparable injury that these fifteen
8 Plaintiffs themselves lack. But “provisional class certification” was abolished in
9 2003. The Court should not abet Plaintiffs’ attempt to use their “downlines” as
10 human shields.

11 This Court should deny Plaintiffs’ motion for preliminary injunction, provi-
12 sional class certification, and expedited evidentiary hearing.

13
14 **III. THE ANTI-INJUNCTION ACT BARS THE RELIEF PLAINTIFFS
SEEK**

15 Plaintiffs’ request for an injunction is barred by the Anti-Injunction Act, 28
16 U.S.C. § 2283.⁴ The Act provides that “[a] court of the United States may not grant
17 an injunction to stay proceedings in a State court.” 28 U.S.C. § 2283.

18 Plaintiffs admit that they “do not seek damages against Quixtar.” (Compl.,
19 ¶ 2.) They “merely seek a judicial declaration that the noncompetition and nonso-
20 licitation provisions of the uniform Quixtar distributor agreement are unenforceable
21
22

23
24 ⁴ Quixtar has concurrently filed a motion to dismiss or stay under the abstention
25 doctrine of *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491 (1942). At the time
26 that motion was filed, the Michigan court still had not entered its preliminary
27 injunction order. Now it has. The issuance of that Order has converted this from a
28 discretionary matter of abstention to a non-discretionary matter prohibiting this
Court from granting the relief Plaintiffs seek. The difference is that under a
Brillhart analysis, the Court would dismiss or stay this action, whereas under the
Anti-Injunction Act, the Court retains jurisdiction to decide Quixtar’s pending
motion to compel arbitration.

1 as a matter of law....” (*Id.*) The Act bars not just Plaintiffs’ request for preliminary
2 injunction, but the entirety of the relief Plaintiffs seek.⁵

3 On August 24, 2007, following lengthy oral argument, a Michigan state court
4 entered a preliminary injunction against Woodward and Brady. (*See* Opinion and
5 Order in *Quixtar Inc. v. Woodward, Brady, et al.*, No. 07-08413-CK [“Order”].)⁶
6 There, the Michigan state court found the Quixtar noncompete and nonsolicitation
7 clauses enforceable *pendente lite* and enjoined Woodward and Brady⁷ from:

8 “(1) using their Line of Sponsorship to sell, distribute,
9 promote competing products, services, or other business,
10 ventures, or otherwise interfere in the business of Quixtar
11 or its IBOs; (2) soliciting, recruiting, or attempting to
12 recruit other IBOs to Compete with Quixtar’s business or
take actions not in conformity with its Rules of Conduct;
and (3) disparaging or intentionally diminishing the
reputation of Quixtar.”

13 (Order, p. 6 (RJN, Ex. A).) The Michigan court also made these findings as regards
14 the same provisions these Plaintiffs ask this Court to preliminarily enjoin:

- 15 • “The [IBO] contract on its face appears to contain reasonable provi-
16 sions governing the conduct of IBOs and former IBOs regarding
17 competing with [Quixtar], soliciting IBOs to compete with
18 [Quixtar], and protecting confidential and otherwise proprietary
19 information.” (*Id.* at p. 3.)

20
21 ⁵ “Rooted firmly in constitutional principles, the Act is designed to prevent friction
22 between federal and state courts.” *Sandpiper VIII. Condominium Ass’n, Inc. v.*
23 *Louisiana-Pacific Corp.*, 428 F.3d 831, 842 (9th Cir. 2005). It applies not just to
24 injunction claims, but also to declaratory relief claims. *See, e.g., Swenson v. T-*
Mobile USA, Inc., 415 F. Supp. 2d 1101, 1106 (S.D. Cal. 2006); *Google, Inc. v.*
Microsoft Corp., 415 F. Supp. 2d 1018, 1026 (N.D. Cal. 2005); *DeFeo v. Procter &*
Gamble Co., 831 F. Supp. 776, 778 (N.D. Cal.1993).

25 ⁶ A copy of the Order is attached as Exhibit A to the Request for Judicial Notice.

26 ⁷ By operation of law, the order applies not just to Woodward and Brady but also to
27 “their officers, agents, servants, employees, and attorneys, and on those persons in
28 active concert or participation with them who receive actual notice of the order by
personal service or otherwise.” Mich. Ct. R. 3.310(C)(4). Consequently, the
Michigan injunction now applies to all fifteen Plaintiffs.

- 1 • “[T]here is no question that [these] disputes [between Woodward/
2 Brady and Quixtar] must be resolved through arbitration.” (*Id.*)
- 3 • “Michigan law favors arbitration provisions, and enforcement of
4 the same.” (*Id.*)

5 The preliminary injunction Plaintiffs ask this Court to enter would directly
6 contradict those findings. They seek to enjoin “Quixtar from enforcing the non-
7 competition, data management, and arbitration provisions of the uniform Quixtar
8 distributor contacts [sic].” (*See* Plntfs’ Memo., 3:20-22.) Such relief is repugnant
9 to the Michigan court’s Order and is impermissible.

10 The Ninth Circuit found a virtually identical request barred under the Anti-
11 Injunction Act in a suit that, as here, involved the enforcement of contractual non-
12 compete provisions. In *Bennett v. Medtronic, Inc.*, 285 F.3d 801 (9th Cir. 2002),
13 the Ninth Circuit reversed an injunction entered against an out-of-state employer to
14 “preclude Defendants from seeking to enforce Plaintiff’s non-compete agreements
15 in any court.” *Id.* at 804. The court ruled that “[t]he effect of the court’s order
16 granting the motion is to halt the Tennessee proceedings.” *Id.* at 805.

17 The applicability of the Act is even clearer here than in *Medtronic*. Not only
18 would Plaintiffs’ requested relief frustrate the Michigan proceedings, here, the
19 injunction would directly contradict an order issued by the Michigan court enjoin-
20 ing *Plaintiffs’* conduct. (*Cf.*, Order, (RJN Ex. A).) That is exactly what a district
21 court may *not* do. *County of Imperial, California v. Munoz*, 449 U.S. 54, 58-59
22 (1980) (Anti-Injunction Act prohibits federal court from issuing injunction that
23 seeks to undo a state court order).

24 For all the foregoing reasons, Quixtar respectfully requests that this Court
25 determine as a matter of law that it cannot entertain the relief Plaintiffs’ seek
26 consistent with the Act and, on that basis, to deny Plaintiffs’ motion for preliminary
27 injunction. If it did, the Court could stop reading here.

1 We now turn to the merits of Plaintiffs' motion and, in the alternative, ask
2 that the Court deny it for all the reasons we will discuss.

3 **IV. BACKGROUND**

4 **A. Quixtar's Business Model.**

5 Quixtar is the successor-in-interest to Amway Corporation, a Michigan
6 corporation. It offers a unique business opportunity combining the efficiency of the
7 Internet with personal contact to sell its products. Quixtar has operated a multilevel
8 marketing ("MLM") Sales and Marketing Plan in North America since September
9 1, 1999. (Declaration of Gary VanderVen, ¶ 4 ["VanderVen II Decl."].)⁸

10 Quixtar distributes its products and services exclusively through individual
11 distributors, known as IBOs. (*Id.*, ¶ 4.) In addition to selling products and services
12 to consumers, an IBO may sponsor other IBOs by introducing them to the Sales and
13 Marketing Plan and providing them with information about the Quixtar business.
14 The sponsoring IBO then becomes responsible for training and supporting the new
15 IBO. The lineage or linkage between all IBOs within Quixtar's network of IBOs is
16 referred to as a "Line of Sponsorship" ("LOS"). (*Id.*, ¶ 14.)

17 **B. Quixtar's Trade Secrets.**

18 The LOS is one of Quixtar's most valuable assets. It includes not only a list
19 of Quixtar customers, but also the architecture and structure of the organization of
20 Quixtar's independent sales force, its sales commission structure, and its key
21 customers. The LOS is the exclusive channel through which Quixtar products are
22 marketed. The LOS network and its specific architecture of relationships set
23 Quixtar apart from less successful MLMs and provide a substantial competitive
24 advantage to Quixtar. Quixtar and its predecessor, Amway, have spent more than
25 40 years developing their unique and confidential distribution network. The good-

27 ⁸ Mr. VanderVen submitted an earlier declaration on August 21, 2007, in support of
28 Quixtar's "arbitration" motion, which will be referred to as "VanderVen I Decl."