

Commissioner Maureen K. Ohlhausen¹
DSEF Self-Regulation and Consumer Protection Panel
Direct Selling Education Foundation (DSEF)
April 7, 2015

Thank you for the kind introduction, Gary. The description for today's conference states that companies, industries and the public sector all share responsibility for consumer protection. I agree. As consumer expectations for transparency and corporate responsibility continue to evolve, so too must the framework used to safeguard the public.

There are three elements that must be present to provide effective consumer protection: law enforcement, education and self-regulation. I like to think of it as a three-legged stool. If any of these factors is missing or not functioning effectively, the stool will at best be off-balance and at worst, topple over.

Enforcement: Federal consumer protection enforcement comes primarily from the FTC. We enforce a number of statutes and rules, including Section 5 of the FTC Act. Section 5 is elegantly simple: it prohibits companies or individuals from engaging in unfair or deceptive acts or practices.² The Commission gave additional guidance on this broad language in the early 1980s, when it adopted the unfairness and deception statements.³ Section 5 has withstood the test of time and is at the core of our enforcement efforts.

An example of our enforcement work under Section 5 is a case we settled last month with Allstar Marketing Group, a direct marketing company selling "as-seen-on-TV" type products

¹ The views expressed in these remarks are my own and do not necessarily reflect the views of the Federal Trade Commission or any other Commissioner.

² See 15 U.S.C. § 45(a)(1).

³

such as Snuggies and the Magic Mesh door cover.⁴ It has agreed to pay \$7.5 million in consumer restitution to settle FTC charges in connection with its deceptive “buy-one-get-one-free” promotions. In its marketing, the company promised that it would double the offer for consumers, if they paid processing and handling fees. According to the complaint, consumers were led to believe that they would then be getting two \$19.95 products for “less than \$10 each,” while in fact, the total cost with the undisclosed fees jumped from the advertised price of \$19.95 to \$35.85. Once all of the offers ended, consumers were not told the total number of items they were actually buying or the total amount they would be billed. The Commission has also alleged that Allstar charged those consumers who hung up mid-call, not intending to complete a sale.

Education: Both industry and government share the responsibility for consumer and business education. At the FTC, we have a Division of Consumer and Business Education that publishes a wide range of information to help consumers understand how to protect themselves and to help businesses understand how to comply with the law. I know that DSEF emphasizes education for direct sales associates and consumers. I also commend you for your partnership with CBBB that has “increased awareness and understanding – and appreciation – of the importance that the direct selling industry places as an industry on ensuring it is an ethical and trustworthy marketplace.”⁵

Self-regulation: That leaves the third leg of the stool and the topic of my remarks: self-regulation. When I talk about self-regulation, I define it as a broad concept that includes any attempt by an industry to moderate its conduct with the intent of improving marketplace behavior for the ultimate benefit of consumers. There are a range of possible forms and types of self-

⁴ Press Release, Fed. Trade Comm’n, Direct Marketer Agrees to Pay \$8 Million for Deceiving Consumers (Mar. 5, 2012), available at <https://www.ftc.gov/news-events/press-releases/2015/03/direct-marketer-agrees-pay-8-million-deceiving-consumers>.

⁵ Press Release, Direct Selling Education Foundation, DSEF-Supplied Content Enriching CBBB, Consumers (Apr. 25, 2012), available at <http://www.dsef.org/2012/04/25/dsef-supplied-content-enriching-->.

regulatory organizations, including trade groups, industry organizations, and third-party certifiers.

- Self-regulation has several advantages over government regulation.
 -

marketing may appear, to reduce underage targetin

Another area the agency has studied and reviewed is food marketing to children. We have seen a number of efforts to combat childhood obesity by entertainment and food companies, and FTC/HHS hosted a workshop on industry self-regulation efforts.¹⁷ In December 2012, the FTC released a study, “A Review of Food Marketing to Children and Adolescents: Follow-Up Report,” which gauges the progress industry has made since first launching self-regulatory efforts to promote healthier food choices to kids.¹⁸ It serves as a follow-up to the Commission’s 2008 report on food marketing requested by Congress.¹⁹

My last example is the Children’s Online Privacy Protection Act (COPPA). The revised version that went into effect in July 2013 continues the Safe Harbor self-regulatory program.²⁰ Safe-harbor status allows certain organizations to create comprehensive self-compliance programs for their members and are generally subject to the procedures provided in the Safe Harbor guidelines in lieu of formal FTC investigation and law enforcement.

Conclusion: Successful self-regulatory models include clear requirements; widespread industry participation; active monitoring; effective enforcement mechanisms; procedures to resolve conflicts; a transparent process; responsiveness to a changing market and to consumers;

¹⁷ Press Release, Fed. Trade Comm’n, FTC, HHS Announce Workshop on Childhood Obesity (May 11, 2005), available at <https://www.ftc.gov/news-events/press-releases/2005/05/ftc-hhs-announce-workshop-childhood-obesity>.

¹⁸ Press Release, Fed. Trade Comm’n, FTC Releases Follow-Up Study Detailing Promotional Activities, Expenditures, and Nutritional Profiles of Food Marketed to Children and Adolescents (Dec. 21, 2012), available at <http://www.ftc.gov/news-events/press-releases/2012/12/ftc-releases-follow-study-detailing-promotional-activities>. See also FED. TRADE COMM’N, A REVIEW OF FOOD MARKETING TO CHILDREN AND ADOLESCENTS: FOLLOW-UP REPORT (2012), available at [http://www.ftc.gov/sites/default/files/documents/reports/review-food-marketing-children-and-adolescents-NiC 0 Tw 9.006 Tw 0.337 0 Td16.759aiRf4\(a\)po7\(e\) SE4\(a\)dJ /TT Nf rLJ 0 a](http://www.ftc.gov/sites/default/files/documents/reports/review-food-marketing-children-and-adolescents-NiC 0 Tw 9.006 Tw 0.337 0 Td16.759aiRf4(a)po7(e) SE4(a)dJ /TT Nf rLJ 0 a)

sufficient independence from direct control by industry; and a procompetitive approach. I hope my comments on the components of effective self-regulation will be helpful in your efforts to develop a robust self-regulatory process.

Thank you for your time, and I am happy to answer any questions.