

**Keynote Remarks of FTC Chairwoman Ramirez
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Direct selling, a \$36 billion industry, plays a robust role in the marketplace and has the capacity to provide consumers with valuable goods and services and an opportunity to try an entrepreneurial experience. The Federal Trade Commission, as you know, has been active in this area for decades.

We hear often from members of the direct selling industry, and one of the themes is the negative public perception about how the industry operates. Multi-level marketers have a tremendous opportunity to address these concerns by enhancing transparency and fostering credibility across the industry. There are three important facets to that I would like to address this morning: self-regulatory initiatives to improve compliance and level the playing field; realistic and candid communication about the limited nature of the earnings potential; and practices showing that MLM companies are making real sales to real customers.

I. Self-Regulatory Initiatives

The Direct Selling Association works persistently as the voice of self-regulation in this market. And, as DSA president Joe Mariano emphasized, the DSA Code of Ethics can play an important role in modeling behavior for its members. I want to commend that the DSA established a mechanism to handle complaints about the practices of member companies, including reports about those complaints and included lifestyle and earnings claims.

And, as Mr. Mariano noted, the DSA plans to take further steps next year to bring greater transparency to the industry. It is encouraging to see both the steps that have been taken so far and the recognition that this work is far from finished. This activity also reflects that the DSA has heard, and is open to hearing, concerns from the FTC.

I would like to use the majority of my time to address areas where multilevel marketers need to take effective action to halt the practices that understandably damage the credibility of the whole industry. One is misleading income representations. Other concerns business structures that are unfair or deceptive because they are not focused on real sales to real customers.

II. Legitimate MLMs Must Accurately Represent Business Opportunities

I will start with misleading income representations. Earnings claims, regardless of whether they are express or implied, are highly relevant to consumers in making their investment decisions. In fact, we find that earnings claims are often the single most decisive factor in those choices. So it should be no surprise that the FTC takes earnings misrepresentations seriously.

False and unsubstantiated earnings claims are deceptive and unlawful under Section 5 of the FTC Act. Unfortunately, however, our law enforcement experience shows that many MLMs continue to misrepresent the amount of money participants are likely to earn. In fact, in all of our cases against multilevel marketers, the FTC has alleged that the defendants made false earnings representations. These misrepresentations cause real harm to consumers and they need to stop.

A legitimate multilevel marketer must accurately represent its business opportunity and what a participant is likely to earn. These representations must be truthful, not misleading, and

substantiated. Practically speaking, it means that multilevel marketers should stop presenting business opportunities as a way for individuals to quit their jobs, earn thousands of dollars a month, make career-level income, or get rich because in reality, very few participants are likely to do that. Although it may be true that a very small percentage of participants do have success of this type, testimonials from these rare individuals are likely to be misleading because participants generally do not realize similar incomes.

The fact that most MLM participants do not earn substantial incomes is new. The low incomes received by most MLM participants is something that the Dnee Dir

happened to sales? In only two months, they plummeted from over \$475,000 to less than \$11,000⁸. As it turned out, at most, only a small minority of sales had been motivated by actual product demand, whether internal or external.

So, what does an MLM organized around real customers look like? You can see one approach laid out in the recent consent order we obtained in the Herbalife case⁹. The order identifies two classes of people who are not pursuing the business opportunity: “retail customers” who simply buy product from Herbalife distributors and ~~do not~~ have any direct connection to the company; and “preferred customers,” who have registered with Herbalife as customers and do not participate in the Herbalife business opportunity¹⁰. Under the order, there are a number of requirements that are intended to ensure that preferred customers represent a genuine class of discount buyers and are not simply business opportunity participants under another name. Preferred customers, for instance, are not permitted to resell product, recruit, or receive multilevel compensation¹¹.

The Herbalife order also reflects the law’s justified skepticism of compensation based on the presumed “internal” or “personal” consumption of recruits who are pursuing a business opportunity. To address this issue, the order incorporates a number of provisions that impose reasonable limits on the compensation paid for the consumption of products by business opportunity recruits. I will highlight one in particular: at least ~~two~~ thirds of the compensation paid by Herbalife must be based ~~on~~ sales to retail customers or preferred customers, not on consumption by business opportunity participants¹².

⁸ Id.

⁹ See FTC v. Herbalife Int’l of Am., Inc. No. 165217 (C.D. Cal. July 25, 2016) (Stipulated Order for Permanent Injunction and Monetary Judgment) [hereinafter Order]

¹⁰ Id. at Def. I,

month and almost all of those purchases were driven by the desire to get ahead in the compensation plan rather than by genuine product demand.

Under the Herbalife order, the company is prohibited from imposing any requirement that a business opportunity participant purchase a minimum quantity of products. It also prohibits business opportunity participants from joining an automatic or similar program involving standing orders of product. And, targets or thresholds are permitted only if they are met exclusively through sales to retail customers or preferred customers.¹⁵ These provisions underscore that an MLM should always be focused on making sales to real customers who are not pursuing business opportunity. MLMs should not contrive ways to get their business opportunity participants to make purchases for reasons other than actual retail demand.

The fourth point I want to highlight is that compensation paid by a legitimate MLM must be tied to real sales to real customers. If an MLM's participants buy product that does not result in real sales to real customers, this revenue should not be used to fund compensation.

It goes without saying that a legitimate MLM should not pay compensation solely for enrolling or recruiting a new participant. This means there should be no counter fees, recruitment bounties, or anything else of the sort.

For example, in Herbalife we are requiring the company to track the percentage of wholesale revenue earned from product that is (i) sold to a retail or preferred customer, or (ii) within the limits established for compensating reasonable personal consumption by business opportunity participants. If at least 80% of Herbalife's wholesale revenue is accounted for within these categories, the order imposes a cap limiting the total amount of compensation Herbalife can pay to its participants.¹⁶

¹⁵ Id. at §§ I.F.1.-I.F.3.

¹⁶ Id. at § I.A.4.

What does this mean in practice? If, hypothetically, half of the product that Herbalife sells wholesale ~~is~~ in verifiable retail sales as defined by the order and half does not, the total rewards that the company can pay are limited to the 50% that consists of verifiable sales to customers. On the other hand, if the vast majority of product purchases ~~is~~ ~~are~~ retail sales, total compensation can be high. ~~And if they are not, then the total compensation will be much lower.~~

All of the points I have highlighted are intended to operate in combination to provide reasonable assurance that product purchases will be driven by real product demand. Providing this assurance is both appropriate and necessary; it is not enough for an MLM to simply assume the existence of real sales to real customers.

Finally, I want to note that, although this is less common today, in the past some MLMs have sought to rely on policies similar to those referenced in the Commission's 1979 Amway decision – specifically, the ~~so~~ called “buyback,” “70 percent,” and “10 customer” rules ~~as~~ a sufficient basis for assuming that the ~~product~~ ~~is~~ purchased by real customers to satisfy genuine demand. This reliance is misplaced. The Commission found those policies were effective given the specific facts in Amway¹⁷ but neither the Commission nor the courts have ever endorsed those policies ~~for~~ the MLM industry at large¹⁸. Indeed, the existence of a refund policy and a low refund rate do not necessarily mean that consumers are satisfied with their business opportunity, and both the “10 customer” and “70 percent” rules offer, at best, ~~weak~~ a attenuated evidence of a business focused on real sales to real ~~customers~~¹⁹.

¹⁷ In re Amway Corp. 93 F.T.C. 618 (1979)

¹⁸ See, e.g., Omnitrition 79 F.3d at 784 (observing that holding in Amway ~~was~~ no broader than specific factual findings of that case).

¹⁹ See FTC v. Pantron I Corp. 33 F.3d 1088, 1098 (9th Cir. 1994); Omnitrition 79 F.3d at 783.

IV. Conclusion

Let me conclude by thanking you for allowing me to share some of my thoughts about reforms that the MLM industry should undertake in order to operate lawfully and prevent consumer harm. The industry's self-regulatory efforts to date are steps in the right direction, but more needs to be done. For our part, the FTC will be issuing further guidance for MLMs, but believe the principles that I have outlined today should provide an important foundation for structuring business practices in the MLM industry in a way that provides consumers with truthful information and helps prevent consumer harm.

Thank you.