FEDERAL TRADE COMMISSION: Herbalife Press Conference
July 15, 2016, 10:00 a.m. EDT

JUSTIN COLE: --Federal Trade Commission. I'm Justin Cole, the director of Public Affairs. At this time, we'd appreciate it if those of you in the room have your devices on silent. And those of you that are joining the conference by the telephone, if you could mute your speaker phones. Chairman Ramirez will provide opening remarks, after which we will first take questions from media in the room, and then those journalists joining us by phone. So with that, I will turn it over to Chairman Ramirez.

CHAIRMAN RAMIREZ: Good morning, everyone. And thank you for joining us here today. I'm here to announce a very significant law enforcement action that the Federal Trade Commission has taken against the Los Angeles based multilevel marketing company Herbalife.

The company has agreed to a settlement with the FTC that includes a $200 million judgment for refunds to many of its distributors, and forces the company to implement a major restructuring of its business operations. In a complaint filed today in the Central District of California, the FTC has charged Herbalife with deceiving hundreds of thousands of hopeful people who saw Herbalife's promotional campaigns in English and in Spanish, and signed on for what they thought was a legitimate and lucrative business opportunity selling Herbalife nutritional and personal care products. The company promised people a dream, a chance to change their lives, quit their jobs, and gain financial freedom.

distributors for recruiting others to join and purchase products to advance in the marketing program rather than in response to actual retail demand for the product.

Today's $200 million settlement, one of the largest consumer redress settlements obtained by the Federal Trade Commission, will provide compensation for many of the company's distributors for the losses they've suffered. The order will prohibit deceptive marketing tactics such as the promises of a lavish lifestyle and untold riches, and the false implication that typical participants are likely to earn career-level incomes. The settlement also requires Herbalife to revamp its multi-level distributor compensation plan so that for the first time the company must track retail sales to customers, pay rewards to its distributors based on those sales, and collect retail receipt information to ensure that those sales are real.

This will change the current systems incentives that reward distributors primarily for recruiting a downline of people who will buy product at wholesale without regard to retail demand. As part of the restructuring, Herbalife will be required to create two distinct categories of participants. Preferred customers who can take advantage of discount purchases of Herbalife's products, but cannot resell product, recruit, or receive compensation, and business opportunity participants who can try to earn money retailing the products. And to make sure everyone in the organization gets the message, 80% of the company's net sales will have to be comprised of real sales to real users, or the reward payments that go primarily to the minority of profit making high level distributors will be cut. Herbalife will also be required to pay for an independent compliance auditor who will monitor the implementation of our enforcement order and ensure that Herbalife adheres to today's agreement.

This settlement will transform the way Herbalife will conduct business in the future. And we hope the principles it embodies will set an example for the multi-level marketing industry more generally. I'd like to conclude by thanking the FTC staff, and the Bureau of Consumer

MATT GOLDSTEIN: Hi, good morning. So Herbalife, in their press release had said that the FTC had found that the company was not an illegal pyramid scheme. It might [INAUDIBLE] to the complaint, I actually don't see the words pyramid scheme appear anywhere. So maybe I missed it. So can you comment on that?

CHAIRMAN RAMIREZ: Sure. We didn't allege a pyramid deception count. But what we did allege was an unfairness count. We are charging that Herbalife's compensation structure unfairly rewards recruiting that is ultimately unrelated to retail demand. So we focus less on the label than on making sure that the facts in the complaint alleged, what we consider to be the core problem with Herbalife's business practices, and our focus also was in obtaining timely structural relief for consumers going forward. And also for achieving meaningful relief for consumers who lost money as a result of Herbalife's practices.

MATT GOLDSTEIN: Thank you.

OPERATOR: Next, we'll got to line on Diane Bartz with Reuters. Please go ahead.

DIANE BARTZ: Hi there. Just to be clear, so Herbalife is excluded from signing up new distributors as a way to reasonably and compensate existing distributors, correct? That is excluded.

CHAIRMAN RAMIREZ: So what our order does is that it provides for very rigorous structural relief that is designed to ensure that rewards are based on retail sales to customers and not on the recruiting of a downline of people who will buy the product at wholesale. So that's what it's designed to do. And let me just walk through the core elements in the order so that you understand how we seek to achieve that. We are seeking to do that by requiring Herbalife to create two distinct categories of participants, preferred customers and business opportunity participants. We're also requiring that Herbalife provide rewards payable only on verifiable retail sales.

And as part of that, we also placed limits on personal consumption. Also to continue to pay rewards at the current levels, the company's net sales must be overwhelmingly comprised of rewardable volume. And we also have in place, and we'll have in place an independent compliance monitor that will ensure that Herbalife abides by these provisions. And then of course the FTC itself, we will be watching very closely to ensure that these provisions are implemented.

DIANE BARTZ: I also had another question. I notice that Herbalife has now hired a second former FTC commissioner, this time a chairman. This is starting to look a little cozy. Can you comment on the propriety of that?

CHAIRMAN RAMIREZ: We have very strict ethical rules. So you can address any questions about the chairman's being retained by Herbalife to him. What I will say is that here at the FTC we have focused exclusively on the facts of the case.

We've have focused exclusively on the law that applies. And we've entered into what I believe, is a very strong settlement that provides meaningful robust relief for the consumers who were most affected and lost the most money, due to Herbalife's practices. And we're imposing very strong structural relief that we believe will make a very significant difference going forward, and will ensure that Herbalife operates as a legitimate multi-level marketing company.

DAVID MCLAUGHLIN: OK. And actually, just going back to the monitor. So the monitor and the settlement going forward, is that overseen by the FTC, or will that be overseen by the court where this was filed? And will the reports be made public every time they're filed?

CHAIRMAN RAMIREZ: So that the monitor is an independent monitor. We will of course be working very closely with the monitor who will be in place for seven years. Ultimately, if we believe that there is a violation of what will be a court order, we will go to court to seek appropriate relief at that time. But we will be the ones who will be focusing on ensuring monitoring, working very closely with the independent monitor.

DAVID MCLAUGHLIN: And the reports are public?

CHAIRMAN RAMIREZ: Well, I can't say that because the reports very well may contain confidential business information. So I can't tell you right now. We will certainly make a determination about what may be appropriate to release publicly at a later time.

DAVID MCLAUGHLIN: OK, thank you.

OPERATOR: Next hold on the line is Carleton English with the New York Post. Please go ahead.

CARLETON ENGLISH: Hi. [INAUDIBLE] to say how today's decision would affect the operation of the so-called nutritional clubs?

CHAIRMAN RAMIREZ: Yes, there are a number of different parameters, including that only those members who have been in the Herbalife program for a year will really be in a position to move forward with the nutritional club. Our concern was that these were the people who invested the most money. And we estimate that they invested approximately or on average $8,500 to open a nutrition club to increase their sales. And in fact, based on our analysis, we believe that those people made very little or most often lost money. So we do have various protections in place to make an effort to ensure that that is mitigated going forward.

CARLETON ENGLISH: OK, thank you. That's it for me.

OPERATOR: Next, we'll go to the line with Dan McCrum with Financial Times. Please go ahead.

DAN MCCRUM: Thank you. You said you haven't focused on the term, but it certainly sounds like looking at the complaint and the focus on recruitment and the deception of consumers. [INAUDIBLE] certainly previous FTC descriptions of pyramid scheme behavior. Do you think you can talk us through the public interest argument that the FTC went through and how it came to [INAUDIBLE] not to prosecute as a pyramid scheme?

CHAIRMAN RAMIREZ: Well, look. All I can tell you very briefly is this is a settlement. What we aimed to do in our complaint was to allege the core facts that we believe constitute unfair and deceptive practices. And in addition, our aim was to ensure that we could obtain relief promptly and in a timely fashion, as opposed to litigating for perhaps years. So the focus again, was less on the label, but rather on making sure that our complaint adequately alleged what we are concerned about. And also provided appropriate both monetary and injunctive relief for consumers.

DAN MCCRUM: On that question of litigation. For years the basis for the industry existed [INAUDIBLE] in the Amway case. And then the FTC guidance [INAUDIBLE]. What are the implications for the rest of the industry? Does a clear definition need to be [INAUDIBLE] and do industry practices more formally need to change?

CHAIRMAN RAMIREZ: We will be providing additional guidance to the MLM industry more generally following this case. I think what we achieved in this case

BRENT KENDALL: Hi, it's Brent Kendall with The Wall Street Journal. Just wanted to ask in terms of the $200 million, for the people who bought lot of product and lost money, realistically how quickly do you think you could get money into their hands?

CHAIRMAN RAMIREZ: At this time it's too early for me to give you an estimate. We will provide information as soon as we have it. The next step for us is to make sure that we have all of the data that we need from the company in order to assess how we can distribute that money. Our goal of course, is going to be to get this money back into the hands of consumers as soon as reasonably possible.

OPERATOR: And next we'll go back to the line with Dan McCrum with Financial Times. Please go ahead.

DAN MCCRUM: [INAUDIBLE] I noticed the star and said it represented the opinion of three of the commissioners. What was the reason for that as opposed to--

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TED BRUND: Earlier in your remarks you made a distinction between a legitimate and a not legitimate multi-level marketing company. And I'm was wondering during the course of the FTC's work, what clarity you were able to bring to that distinction?