

CONSUMER AWARENESS INSTITUTE

A non-profit corporation
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REBUTTAL OF DSA COMMENTS (522418-12055 through 12096) REGARDING FTC BUSINESS OPPORTUNITY RULE

ATTN: FTC officials considering this rebuttal of Direct Selling Association (DSA) comments:

Thank you for this opportunity to debunk some of the many deceptions put forth by the DSA. This forum could have long term beneficial effects, assuming FTC personnel finally forge ahead with meaningful disclosure.

Below is my rebuttal of comments by Direct Selling Association (DSA), comments numbered 522418-12055, 12058, 12061, 12066, 12070, 12074, 12079, 12083, 12087, 12092, and 12096 — all by Joseph Mariano, et al.

Qualifications of this analyst, Dr. Jon M. Taylor (and request for a hearing)

Consumer Awareness Institute was initially set up by Jon M. Taylor, Ph.D., in the late 1970's to do research and to educate on consumer issues. However, in 1997, the focus changed to one problematic issue that absorbed all our resources – the phenomenon of multi-level marketing (MLM), a unique marketing model that makes use of numerous deceptive marketing practices that were doing incalculable damage to consumers. These schemes promoted participation in what amounted to endless chains of recruitment of participants as primary (sometimes only) customers.

Dr. Taylor has presented, testified, and/or presented papers to the National White Collar Crime Center, Economic Crime Summit Conferences (2002 and 2004), Senior Fraud Summit Conference, and before officials at the Federal Trade Commission. While acting as a director of Pyramid Scheme Alert, Dr. Taylor organized the first conference on product-based pyramid schemes for federal and state regulators in Washington, D.C., on June 1, 2001. He has consulted on numerous state and private legal actions against MLM firms, some of them members of the Direct Selling Association (DSA), and has performed extensive comparative and statistical research to help regulators and consumers clearly identify which schemes cause the most damage in terms of loss rates, aggregate losses, and number of victims world-wide. Dr. Taylor has evaluated the compensation plans of over 200 MLM firms, most of them past or present members of the DSA. Much of this research and resultant consumer guides are posted on the web site – www.mlm-thetruth.com.

Addressing FTC officials personally, I, Jon M. Taylor, personally request a hearing or opportunity to present summaries of my research to aid the process of developing meaningful disclosure to protect consumers – something which all qualified experts (not funded by the DSA/MLM lobby) agree is sorely needed. For my unique qualifications to address these issues, read my bio at - <http://www.mlm-thetruth.com/JonTaylorsStory.htm> and vita at - <http://www.mlm-thetruth.com/JMTaylorVITA6-6.pdf>

The Direct Selling Association (DSA), recently taken over by chain sellers, now promotes chain selling (pyramid marketing) – even more than legitimate direct selling.

First and foremost, consider the source of this voluminous series of comments (522418-12055 through 12096 – from the DSA). What is today known as the Direct Selling Association was formed in Binghamton, New York in 1910 as the Agents Credit Association, which evolved over time to become the Direct Selling Association in 1968. For several decades, the organization consisted of legitimate agents or direct sellers to bone fide markets; no chain selling or pyramid marketing schemes were included. However, in the 1960's MLM companies (MLM's) began to make their appearance, though still less than 5% of the membership in 1970.

In the 1990's officers of MLM's began to see the advantage of joining this organization. Apparently they reasoned that if an MLM is a member of the Direct Selling Association, it must be doing legitimate direct selling. This could be compared to a farmer seeking a greater price for his pigs by selling them as horses. So he places horsehairs on their rumps, herds them into the horse corral, and declares, "There, you can see that the pigs are in the horse corral and no longer in the pig pens. This proves that they are horses."

The DSA is correct in at least part of their definition of what constitutes direct selling: "Direct Selling is the sale of a consumer product or service, person-to-person, away from a fixed retail location. These products and services are marketed to customers by independent salespeople."

The problem with the DSA definition is that it fails noticeably to exclude what legitimate direct selling is NOT; i.e., the recruitment of an endless chain of participants as primary (or only) customers. In fact, using definitional guidelines in FTC cases (such as Omnitrition, Equinox, Skybiz, and Trek Alliance), as well as in most state statutes against pyramid schemes, the key element of a pyramid scheme is compensation obtained primarily from recruitment activities, rather than from actual sales to end users who are not in the network of participants in the sales device or scheme. This distinction can best be determined by careful examination of the compensation plan of an MLM program. If the rewards or income from building a downline is the primary motivator and if retail sales to non-participants is secondary or only nominal, it should be considered an illegal pyramid scheme.

In other words, most of the revenue from MLM members of the DSA is from highly leveraged chain selling schemes, or (to use the FTC term) “pyramid marketing schemes.” They are not legitimate direct sellers at all. So lumping chain sellers with legitimate direct sellers in the DSA’s extensive collection of statistics is highly misleading. If the standards used to identify illegal pyramid schemes in other cases (such as Equinox and Trek Alliance) were used by the FTC and the states, nearly all of these chain selling or pyramid marketing schemes would be found to be illegal pyramid schemes. This would include most MLM’s in the DSA membership roster. Indeed, some DSA members have recently been shut down by the FTC or other law enforcement agencies for conducting illegal pyramid schemes.

Using deceptive tactics, the DSA lobbies to legalize blatant chain (pyramid) selling.

As further proof of the motivation of DSA officials to protect chain selling more than legitimate direct selling, DSA lobbyists have been aggressively lobbying state legislatures to weaken their statutes against pyramid schemes. Using highly deceptive lobbying techniques, they have been successful in duping legislators (and even some in law enforcement who testify for the bills) in getting such bills passed in several states. They even attempted in 2003 to get a bill through Congress (HR1220) that would have exempted MLM companies from prosecution as pyramid schemes.

Examples of deceptive lobbying include the testimony of DSA President Neil H. Offen, who claimed in hearings before a 2005 Utah legislative committee that the DSA represents “90,000 direct sellers” in Utah who depend on direct selling for income. While it is possible that 90,000 Utahns may have joined various MLM’s, they are primarily buyers of MLM products who join in the hope of some day recruiting enough people to get enough in commissions to recoup their investments – which recent research shows rarely happens. As the aforementioned tax study demonstrated, except for TOPP’s, few participants in “recruiting MLM’s” ever report an income on their taxes, and few sell to end users in any volume.

The thing these DSA-initiated bills have in common is not the promotion of legitimate direct selling, but technically illegal chain selling or product-based pyramid schemes. For more information, go to the DSA page on our web site at - <http://www.mlm-thetruth.com/dsa.htm>. The information on the Pyramid Scheme Alert web site, which includes information about the DSA’s efforts to influence legislation before Congress, is also helpful. Go to – <http://www.pyramidschemealert.org/PSAMain/news/FLSB2648.html>

The deceptive legislation that has been passed in several states underscores the urgency of a rule requiring meaningful disclosure by MLM companies, since it may be one of the only real protective measures available to protect consumers.

Complicated? Not useful? Have the DSA communicators ever seen the disclosures required by franchisers? Have they not seen the complicated financial disclosure documents required by the SEC? By comparison, the earnings claims disclosure requirement of the FTC would be a piece of cake.

DSA/MLM member firms have historically avoided voluntarily providing meaningful disclosure documenting earnings claims. In fact, I surveyed the presidents of 60 leading MLM firms in the hopes of getting information crucial to the making of good decisions by prospects of MLM programs. The results were predictable: None of the MLM officers were willing to provide the requested information. The "Network Payout Distribution Study" was reported in my July 1 and July 17 comments (tracking # 52218-12748) and is available online at – <http://www.mlm-thetruth.com/NWMPayoutstudy-6-6.pdf>

This study illustrates what we consumer advocates have known for years. Meaningful disclosure of earnings information must be mandated by the FTC, much as the FTC requires for franchises and the SEC requires for publicly traded companies.

In addition to the aforementioned tax study, I have gathered statistics on earnings of MLM's (for which such data was available) and compared them with statistics on odds of winning at gambling that I obtained from Las Vegas casinos. After debunking the deceptions in the reporting of the MLM's, I found the odds of profiting from craps or the roulette wheel at Caesar's Palace in Las Vegas were far greater than for recruiting MLM's, including several who were members of the DSA. These statistics were sent by express mail July 1, and they can be obtained online at – <http://www.mlm-thetruth.com/COMPARE12MLMs-vsSellingvsNPSvsVegas-2p-6-06.pdf>

And as I explained in my (aforementioned) July 13 comments to the FTC, what is needed is not less disclosure, but far more disclosure, so far as it is honest and meaningful. Not only should average moneys paid to participants at given levels in the pay plan be reported, but also average moneys paid by participants to the company in products and purchases. It is the net figure reflecting money in minus money out that is important for prospects to make an intelligent decision.

It does not matter if the products purchased from the company are used, sold, given away as samples, stored, or disposed of; the total average of payments to the MLM company needs to be disclosed if earnings disclosure is to be meaningful. This is particularly relevant for chain sellers, since our research demonstrates that most of the revenues received by these companies come from recruits (in the form of incentivized purchases), and not from sales to legitimate customers not in the network of participants. Such honest and meaningful disclosure would show that nearly all participants lose money, even before operating expenses are subtracted. So for obvious reasons, the DSA will come up with every possible excuse for not disclosing such information.

