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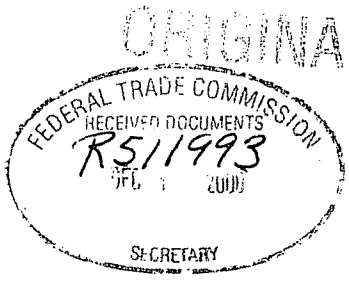
Jon M. Taylor, Ph.D.,
President & author:
5 Red Flags of a Product-based Pyramid Scheme, The Network Marketing Game, et al

TO: Federal Trade Commission
600 Pennsylvania Avenue NW, Wash., DC 20580



November 26, 2008

ATTN: William E. Kovacic, Chairman
Pamela Jones Harbour, Commissioner
Jon Leibowitz, Commissioner
J. Thomas Rosch, Commissioner
Donald S. Clark, Secretary of the Commission

RE: Notice of Corruption of the Proposed Business Opportunity Rule

Dear Mr. Clark:

Based on my understanding of the Administrative Procedure Act (APA - Title 5 of the U. S. Code), the rulemaking process as applied to the original and revised proposed Business Opportunity Rule has recently been severely compromised, calling into question the validity of any rule the FTC may choose to enact. The details are included in the following outline with details in the Appendixes.

As clearly demonstrated, FTC officials engaged in ex parte communications with a very interested party, the Direct Selling Association (DSA), which has become the lobbying arm of the MLM (multi-level marketing) industry – which industry generated most of the comments on the Rule submitted to the FTC. As my comments posted on the FTC web site suggest, this is part of a pattern of techniques used by the DSA to prevent or weaken laws that would protect consumers against the most unfair and deceptive practices in the business opportunity field – MLM/pyramid/chain selling schemes, such as those that are members of their organization.

The FTC is charged with the duty to protect consumers against fraud, including against the massive fraud engaged in against consumers by MLM business opportunity sellers. It is disheartening, to say the least, to realize that the FTC has allowed the DSA to roam unbridled over the rulemaking process.

Under U.S.C. Title 5, I do not see how the FTC can go forward with a Business Opportunity Rule, in the light of this corruption of the rule-making process. Please respond by December 20 with your plan to rectify this situation – or acknowledgment that a Business Opportunity Rule will not be enacted at this time.

Sincerely,

Jon M. Taylor, MBA, Ph.D., President, Consumer Awareness Institute
and Advisor, Pyramid Scheme Alert
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Notice of Corruption of the Proposed Business Opportunity Rule

By Jon M. Taylor, MBA, Ph.D., Consumer Awareness Institute, and Advisor, Pyramid Scheme Alert

In April, 2006, in an effort to curtail false earnings representations and other abuses of business opportunity sellers, the FTC proposed a Business Opportunity Rule and invited comments from the public. However, a serious corruption of the rule-making process has occurred with respect to the original and a Revised Business Opportunity Rule[1], as outlined below.

1. The initial Proposed Business Opportunity Rule led to *over 17,000 comment letters*, the vast majority of them from MLMs (multi-level marketing companies) and participants in MLM/pyramid/chain selling schemes. They claimed the rule would threaten their livelihood. This is not surprising, since extensive research shows that *99% of participants in such schemes lose money*, and disclosure of meaningful information such as average earnings (or losses) of participants, would discourage prospective recruits from joining and buying into their programs. *It could dash any hope by participants in these schemes of recovering their investments and of eventually reaping a profit.*

2. *Yielding to extraordinary pressure*[2], in March, 2008, the FTC altered the proposed Rule to a Revised Business Opportunity Rule (RBOR) that would exempt MLMs[3]. To

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[1] In a press release posted on the FTC web site in April 2006, the FTC proposed –

. . . . a rule to protect consumers from bogus business opportunities and further enhance law enforcement efforts in this area. The rule would cover business opportunities commonly touted by fraudsters, while minimizing compliance costs for legitimate businesses. Currently, the FTC brings law enforcement actions against fraudulent business opportunities under two laws, the Franchise Rule and the FTC Act. Neither is specifically designed for the unique scams that occur frequently with business opportunities. . .

The FTC concluded its press release by asserting its mission: "*The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them.*"

[2] *At least three of these letters came from former high level FTC officials who at one time worked in important position related to consumer protection.* To those of us advocating on behalf of consumers, *this turnabout from consumer protection to fraud protection is incredible, since MLM clearly is at the forefront of a business model which is clearly an unfair and deceptive trade practice (Section 5), costing tens of millions of victims worldwide tens of billions of dollars in losses every year.*

The FTC also received letters from 85 Congressmen, who had been successfully lobbied by MLMs to object to the inclusion of MLM in the proposed business opportunity rule. I have not checked their records of campaign contributions to see how much was donated to their campaigns by MLMs and the DSA (Direct Selling Association), *the organization that has aggressively lobbied for the weakening of statutes that protect consumers against pyramid schemes.* This happened in Utah, where I live, when DSA member firms donated extensively to key political figures to assure exemption of MLM from prosecution as pyramid schemes. *Whether or not they paid money to these Congressmen to assure their support, because of their huge numbers of participants in their endless chains of recruitment, their promises of jobs and votes can be very compelling.*

independent consumer advocates who are aware of the research (not funded by MLM), this is ludicrous, since non-MLM business opportunity promoters that would be covered are relatively insignificant in comparison, and they do not have the reputation for massive fraud that is characteristic of the hundreds of MLM programs now operating.

3. The FTC proposed instead to use Section 5 to prosecute MLMs on a case-by-case basis. Based on prior experience with FTC inaction against hundreds of product-based pyramid schemes, we see this as totally unworkable. I have personally analyzed over 250 MLM programs and can assert that *virtually all of them are violating Section 5.* The FTC only has sufficient personnel to go after a small sample (less than 1-2%) of them, as in the past. To take one at a time would not only be impractical, but would facilitate the defrauding of millions of persons while waiting for the FTC to get to all the programs. In the meantime, hundreds of additional MLMs would have sprung up, as they are now doing, and millions of additional consumers would be victimized in the interim. No rule would be better than a bad rule, such as this one.

4. After the comment period for rebuttals of comments on RBOR) was closed, I twice emailed Monica Vaca at the FTC, who was at that time administering RBOR. I expressed some concerns about FTC interpretations of my earlier comments and about some unjustified attacks against me personally by an MLM proponent in his comments. Ms. Vaca responded by saying *"it would be inappropriate for staff to consider material that is not part of the rulemaking record."* My letters are quoted as Appendix A, and her letter is quoted as Appendix B.

5. An informant alerted me to an ex parte communication with at a "Legal Issues of the Day" seminar sponsored October 23-24 in Alexandria, Virginia – by the DSA[4]. One of the presenters was Lois Greisman, Associate Director of the Division of Marketing Practices at the FTC. Another was Lem Dowdy, FTC Attorney. As indicated in the DSA press release (Appendix C), this was not merely a one-way presentation. Note the following statement:

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[3] After intense lobbying by the DSA (which claims to have 285 MLM members and 13.3 million MLM distributors) to have MLM exempted from the Rule, the FTC proposed a Revised Business Opportunity Rule. In a press release posted on the FTC web site in April 2006, these changes were noted:

After evaluating the comments received on the April 2006 notice, the Commission has decided to issue an RNPR [Revised Notice of Proposed Rulemaking] that is more narrowly focused than the April 2006 proposal. As proposed now, the Business Opportunity Rule would still cover those schemes currently covered by the interim Business Opportunity Rule, and it would expand coverage to include work-at-home schemes. The revised proposal, however, would not reach multi-level marketing companies or certain companies that may have been swept inadvertently into scope of the April 2006 proposal.

[4] **DSA press release, program, and registration costs and restrictions.** See Appendix A for the DSA press release confirming the above. For the official announcement on the DSA web site, go to – http://www.dsa.org/press/press_releases/index.cfm?fuseaction=show_release&Document_id=1928
The full program can be accessed at –
http://www.dsa.org/press/misc/index.cfm?documentID=1808
Registration information can be accessed at –
http://www.dsa.org/forms/meeting/MeetingFormPublic/view?id=2C1DD00000076

" Attendees will have the opportunity to ask questions and engage in an open dialogue with these representatives, encouraging understanding between our industry and this important government regulator."

Note: *The ex parte meeting was a revenue-generating event for the DSA. Specifically, the DSA charged Active DSA members $575, Direct Selling Non-Members $2,975, and Supplier Non-Members $2,600. In an effort to ensure that individuals or entities that opposed the DSA position (in connection with the Rule) from gaining access to this event, the DSA did not allow the media or the public to attend the event.*

6. I wrote Monica Vaca, protesting this ex parte communication – which is clearly forbidden – as indicated in her July 23 letter to me (and as outlined in U.S.C. Title 5, governing, among other things, the conduct of employees of federal agencies to protect against abuses of the rule-making process such as this). My letter is in Appendix D and is followed by Ms. Vaca's response in Appendix E.

7. In addition, based on personal information and belief, other individuals advocating for consumers were told they could not communicate with FTC personnel about this matter pending the rule's promulgation. Therefore, apparently *the FTC gave preferential treatment, to the exclusion of other interested parties, to the DSA by the FTC's participation in the DSA ex parte meetings.*

8. In her response, Ms. Vaca attempted to persuade me that the DSA ex parte meeting (which she admitted was attended by Ms. Greisman) was "consistent with our [FTC] rule making procedures." In an attempt to further convince me that the DSA ex parte meeting was appropriate (in compliance with applicable law), Ms. Vaca stated that "FTC staff regularly speaks with . . . trade organizations . . . to provide information about activities going on at the agency that may be of interest to such groups, including our (FTC) regulatory initiates."[5]

CONCLUSIONS

The FTC had information at least four months before it participated in the DSA ex parte meeting that would have caused a reasonable person, not intent on protecting the DSA's 285 MLM members and their 13.3 million MLM distributors, to question the legality of the practices of DSA member firms.

By participating in the ex parte meeting with DSA members, FTC employees have corrupted the Rule and compromised the integrity and mission of the Federal Trade Commission. As you are well aware, as a matter of law, once a rulemaking process has been corrupted, any final Rule will be invalid.

There are individuals who believe that the FTC abandoned its duty to consumers – in favor of protecting the financial interests of the DSA and its members – because of substantial donations DSA member firms have given to Republican lawmakers; including Republican lawmakers who wrote letters to the FTC in support of the DSA position in connection with the Rule. Others believe that Chairman Kovacic, who was

appointed to his post by President Bush, allowed the FTC to abandon its duty to consumers as the ultimate "thank you" to the DSA and its members for their financial support of Republican lawmakers. Whether these beliefs are real or perceived, the significant amount of contributions to Republican lawmakers, at the very least, gives rise to the appearance that these contributions have influenced the decision of the FTC in connection with the Rule – to the great detriment of consumers.

I have no basis on which to rely that Chairman Kovacic, Secretary Clark, or the Commissioners will take the appropriate action to Notice the public that the rulemaking process (in connection with the Rule) has been terminated for the reasons that gave rise to this event; i.e., corruption of the rulemaking process. If the Commission attempts to enact a rule under these circumstances, this information – along with additional information withheld from this writing – will be transmitted to certain interested individuals who have the power and authority to address this issue, with a view to protecting consumers; as opposed to protecting the financial interests of the DSA and its members.

Appendix A: Letter from Jon Taylor to Monica Vaca

From: jonmtaylor@juno.com [mailto:jonmtaylor@juno.com]
Sent: Wednesday, July 23, 2008 2:21 PM
To: Vaca, Monica E.
Subject: My July 21 email to you

Ms. Vaca -

Did you receive the email I sent July 21? If is repeated below in case you missed it. Please confirm that you received it.

BTW, you probably noticed that the 89% of the rebuttal comments on the RPBOR were from MLM victims or consumer advocates who believe a rule exempting MLM would be a great disservice to consumers, providing MLM fraudsters with the cover of assumed MLM legitimacy. RPBOR as proposed would certainly aid and abet MLM fraud by providing an opening to all scams to go with an MLM model to avoid honest disclosure that would protect consumers but hurt the scammers.

- Jon M. Taylor, MBA, Ph.D., President, Consumer Awareness Institute
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July 21, 2008

Ms. Vaca -

By now you should be returned from your vacation - and to a mountain of emails!

Now that the comment period is closed, I feel a couple of comments are timely. On July 9, Len Clements of MarketWave, Inc., requested an extension of an additional two weeks for rebuttal comments. From other sources, I learned that he just overlooked the deadline and is looking for a chance to undertake a smear campaign to those of us who are advocating for consumers - as he has been doing for some time on the web. He can't directly challenge our research, as it is solid and based on the actual statistics and financial data provided by the MLM companies. So he attacks us personally - and often irrationally, calling us "anti-MLM zealots." We donate our time warning consumers against the worst scams partly because the incidence of such fraud is far beyond what law enforcement can cope with.

As for difficulty getting through to the FTC's page for submitting comments, the web address hasn't changed, and to my knowledge no one but him had difficulty getting through. And the fact that only a small number of comments were registered is reflective of the victory of the DSA in getting MLM exempted from the Revised Rule. The millions of people in the DSA members' recruitment pyramids and chains of participants have no reason to file comments now.

However, as I explained in my rebuttal comments, those of us advocating for consumers are very concerned. The RPBOR without MLM will only encourage the worst scams to modify their programs to come under the MLM exemption. The inevitable result would be the proliferation of hundreds of the worst scams in history, with the FTC unable to keep up with the abuse - powerless to stop it on a case-by-case basis using Section 5. Both RPBOR and Section 5 could be rendered ineffective, especially if the FTC yields to DSA wording.

The FTC exempted MLM from the Rule, at least partly due to 17,000 comments from participants who claimed it would threaten their livelihood. But I would bet you or anyone $1,000 that if an independent auditor took a random sample of 20 of the 17,000 MLM participants who submitted comments, even half could produce tax returns from 2007 showing a profit from MLM. These people who were encouraged to write in from templates provided them are nearly all hoping to some day gain enough in commissions to exceed their expenses. It is extremely rare for lower-level participants to ever report a profit on their taxes – nearly all lose money. This is substantiated by extensive research, as reported on my web site and that of Robert Fitzpatrick or Pyramid Scheme Alert.

One more thing. On page 20 of the FTC's "NOTICE OF REVISED PROPOSED BUSINESS OPPORTUNITY RULE" (RPBOR), I was quoted as saying that "although MLMs should be covered, the disclosures the Commission proposed in the IPBOR would be inadequate to remedy deceptive earnings claims."

I never suggested that average earnings should not be disclosed. I was merely referring to our experience with Nu Skin that even when an MLM company discloses information, it will do so in a deceptive manner. That said, it still needs to be disclosed so that persons who investigate them will have data to work from. We did that with Nu Skin and reported the results to the FTC and anyone else who was interested.

Again, MLMs have everything to gain by avoiding disclosure and should not be allowed to get away with it. And having a Business Opportunity Rule that excludes MLM would represent a terrible abrogation by the FTC of its responsibility to protect consumers and promote fair trade. Better to scrap the Rule altogether for now - pending further research - and a change to a more consumer-friendly administration.

- Jon M. Taylor, MBA, Ph.D., President, Consumer Awareness Institute
and Advisor, Pyramid Scheme Alert
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Web site for MLM research and guides - www.mlm-thetruth.com

Appendix B: Email from Monica Vaca of the FTC to Jon Taylor

:"Vaca, Monica E." <MVACA@ftc.gov>
To: <jonmtaylor@juno.com>

Subject: RE: My July 21 email to you
Date: Wed, Jul 23, 2008 01:37 PM

Dr. Taylor,

I have received your emails. While I appreciate your input, please note that it would be inappropriate for staff to consider material (including emails) that is not part of the rulemaking record. We have received the comments and rebuttal comments that you submitted (and can be found on the web site), and these are on the rulemaking record. However, the comment and rebuttal periods have now closed.

Sincerely,

Monica E. Vaca
Attorney
Federal Trade Commission
Division of Marketing Practices
600 Pennsylvania Ave., NW
Mailstop H-238
Washington, DC 20580
202-326-2245

Appendix C: Announcement of FTC presentation at DSA's Direct Selling Seminar, at which the FTC's Proposed "Business Opportunity Rule" would be discussed

FOR IMMEDIATE RELEASE

FTC to Attend Direct Selling Legal Seminar

Senior staff members of the Federal Trade Commission (FTC), the all-important regulatory agency charged with consumer protection and marketplace oversight, will be in attendance at the Direct Selling Association's 2008 Legal Issues of the Day Seminar, being held October 23-24 in Alexandria, Va.

Lois Greisman, Associate Director of the Division of Marketing Practices at the FTC, and Lem Dowdy, Attorney, will be present at the seminar and will provide presentations to attendees on subjects including: the FTC's role related to direct selling, its most recent Business Opportunity Rule, the Commission's definition of a pyramid scheme, the "cooling-off" rule and more.

Attendees will have the opportunity to ask questions and engage in an open dialogue with these representatives, encouraging understanding between our industry and this important government regulator.

Members interested in attending this Seminar should visit www.dsa.org/2008legal/ for registration information.

Appendix D: Email from Jon Taylor regarding ex parte meeting between FTC and an interested party, the Direct Selling Association

From: jonmtaylor@juno.com [mailto:jonmtaylor@juno.com]
Sent: Monday, October 27, 2008 9:07 PM
To: Vaca, Monica E.
Subject: Please explain a contradiction - ASAP

Ms. Vaca –

Please explain something to me. Below is a press release from the Direct Selling Association announcing an ex parte meeting in which representatives from the FTC were presenting information and taking questions about the Proposed Business Opportunity Rule in a seminar closed to the media and to non-paying parties last week. The agenda is described in detail on the DSA website. Click here for the link.

You may recall my writing you on July 21 (see below) to correct some if what I felt to be a misinterpretation of my comments by the FTC in its proposal for a revised rule - and also to correct misleading information posted by one of those making comments.

You responded (complete email below) on July 23 as follows:

"I have received your emails. While I appreciate your input, please note that it would be inappropriate for staff to consider material (including emails) that is not part of the rulemaking record. We have received the comments and rebuttal comments that you submitted (and can be found on the web site), and these are on the rulemaking record. However, the comment and rebuttal periods have now closed."

This seems strangely contradictory to me. While the FTC is willing to engage in free exchange during a seminar on the subject of the RPBOR with a very interested party who has in interest in protecting its member firms from making full and honest disclosure, those of us working to warn and protect consumers from such questionable schemes are excluded from further input. How can you justify this?

Also, is the FTC and the DSA providing full and complete transcript and recording of the proceeding so that those of us advocating for consumers can provide rebuttal on their behalf? Is the proceedings and contents of the ex parte meeting (seminar) being entered into the Federal Register? And will these comments at the seminar - and rebuttal comments - be posted and publicly advertised so that others may comment and rebut?

Please respond ASAP.

- Jon M. Taylor, MBA, Ph.D., President, Consumer Awareness Institute
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Appendix E: Response by Monica Vaca of the FTC regarding ex parte meeting

10-28-8

Hello Dr. Taylor,

FTC staff regularly speaks with bar associations, consumer groups, and trade organizations, among others, to provide information about activities going on at the agency that may be of interest to such groups, including our regulatory initiatives. Such outreach is consistent with our rule making procedures. The Associate Director for Marketing Practices, Lois Greisman, did speak last week to DSA. If you have questions or concerns about her remarks, please feel free to call her at: 202-326-3402.

Also, please note that I am no longer the contact person on the Business Opportunity Rule. I have moved to another office, but the Division of Marketing Practices continues to work on the rule.

Sincerely,

Monica Vaca