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Federal Trade Commission
Office of the Secretary, Room H-113 (Annex C)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Comment on Cooling-Off Rule Regulatory Review, 16 CFR 429
Project No. P087109

Dear Commissioners:

I am writing this comment in response to the Commission's request for public comment concerning proposed changes to the Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations ("Cooling-Off Rule" or "Rule"). For the reasons set forth below, the Commission should not increase the exclusionary amount from \$25 to \$130.

I. Statement of Interest, Background and Experience

I am an attorney in private practice in the Commonwealth of Massachusetts since 1982. For the past 20 years I have devoted a substantial portion of my practice to representing the victims of deceptive MLM schemes, including in such cases as *Webster v. Omnitrition International, Inc.*, 79 F.3d 776, 782 (9th Cir. 1996), *cert. den.* 519 U.S. 865 (1996); *Capone v. Nu Skin Canada, Inc.* Case No. 93-C-2855 (D.Utah); *Rhodes v. Consumers' Buyline, Inc.*, 868 F.Supp. 368 (D.Mass. 1993); *Jacobs v. Herbalife International, Inc.*, Case No. CV 02-01431 (C.D.Cal.); and *Minton v. Herbalife International, Inc.*, Case No. BC 338305 (Cal.Super.Ct., Los Angeles Cty). In the course of my practice I have interviewed or deposed hundreds of participants in MLM schemes, reviewed tens of thousands of documents which were produced by MLM firms subject to confidentiality orders, and studied the compensation plans of scores of MLM companies.

I have worked *pro bono* for a number of non-profit organizations involved in the effort to educate and protect consumers from deceptive and fraudulent MLM schemes, including Pyramid Scheme Alert (www.pyramidschemealert.org), the Consumer Awareness Institute (www.MLM-thetruth.com),

Quackwatch (www.quackwatch.com and www.mlmwatch.org), MLM Survivor (www.mlmsurvivor.com) and the Rick Ross Institute for the Study of Destructive Cults, Controversial Groups and Movements (www.rickross.com). Since 1995 my *pro bono* work has included a number of submissions to the Commission in its rule-making proceedings involving the Franchise Rule and proposed Business Opportunity Rule, in which I have argued for disclosure and conduct regulation of the MLM industry.

I am not receiving any compensation from any party for submitting this comment.

II. Increasing the Exclusionary Limit From \$25 to \$130 Will Have the Unintended Consequence of Exempting the Initial “Start-Up Kit” Purchase of Most Multi-Level Marketing Plans

At first glance, the Commission’s proposal to increase the exclusionary limit from \$25 to \$130 to account for the effects of inflation since 1972 appears to be reasonable. However, the increase would have the unintended consequence of exempting most multi-level marketing (MLM) plans from coverage under the Cooling Off Rule. Most MLM plans call for prospective “distributors” to purchase a “start-up kit,” including product samples, in conjunction with enrolling in the plan. MLM recruitment generally does not occur at fixed retail locations; therefore the solicitation and sale of MLM start-up kits is within the scope of the Rule. The Direct Selling Association (DSA), most of whose members employ MLM compensation plans, states that “the median cost for the start-up kit is \$99.” *See* <http://www.dsa.org/ethics/legitimatecompanies.pdf>. Accordingly, most MLM start-up kits (i.e., all such kits costing over \$25) are subject to the Cooling Off Rule. Increasing the exclusionary amount will have the effect of exempting most MLM start-up kits. The DSA’s comment in support of changing the Rule fails to mention these facts or the impact the increase will have on its members. In fact, the proposed increase would benefit most of the DSA’s members by exempting start-up kit purchases costing less than \$130, and it will harm consumers who will lose the protections of the Rule when they are recruited to join MLM sales organizations. Moreover, if the increase becomes effective, those few MLM companies which currently charge more than \$130 for a start-up kit will lower their prices to take advantage of the exclusionary amount, while those which currently charge less will be free to raise their start-up kit price to \$129.

The consumer’s purchase of an MLM start-up kit is a critical event in the MLM recruitment process. As explained in the comment submitted by economist Stacey Bosley, the cooling off period is vital for consumers, given the importance of “urgency” in MLM recruitment. Once committed to the MLM company via the start-up kit purchase, the consumer will be more likely to continue making qualifying purchases in order to advance in the scheme, and will suffer losses well in excess of the

exclusionary amount. It is well established that the vast majority of participants in MLM schemes lose their investments. *See generally* Fitzpatrick, Robert The Myth of the MLM Income Opportunity, <http://pyramidschemealert.org/PSAMain/resources/MythReport.html> and Taylor, Jon, The Case (For and) Against Multi-level Marketing, <http://mlm-thetruth.com/research/case4and-against-mlm/> . Since the Commission has seen fit to exempt MLM plans from its Business Opportunity Rule, the Cooling Off Rule is one of the few protections consumers have against being pressured into joining deceptive MLM business opportunities.

In addition, the inflation justification is itself suspect. As explained by economist William Keep in his comment, the poorest U.S. households have barely kept up with inflation since 1972. These are the households which are most susceptible to the typical MLM pitch, which promises financial independence and job security while making deceptive earnings claims.

I urge the Commission to keep the exclusionary amount at \$25. I appreciate the opportunity to submit this comment.

Sincerely,

~~Douglas~~ M. Brooks
