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Federal Trade Commission
Office of the Secretary
Room H-135 (Annex S)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Business Opportunity Rule, R511993

Dear Sir or Madam:

Avon Products, Inc. ("Avon") is very pleased that the Federal Trade Commission ("FTC") took into consideration its comments to the FTC's Proposed Business Opportunity Rule, 71 Fed. Reg. 19,054 (Apr. 12, 2006) when the FTC issued its Revised Proposed Business Opportunity Rule ("the Rule"), 73 Fed. Reg. 16,109 (Mar. 26, 2008) (to be codified at 16 C.F.R. pt. 437). Avon greatly appreciates that the FTC recognizes that Avon's business practices benefit purchasers and that Avon's business model is easily distinguishable from fraudulent schemes.¹

Avon especially appreciates the FTC's explicit statement that it does not intend for legitimate multilevel marketing businesses ("MLMs") to be swept into the coverage of the Rule. RNPR at 16. The revisions go a long way to ensure that potentially fraudulent offerings will be effectively regulated, while legitimate direct selling companies will not be unduly burdened.

¹ Revised Notice of Proposed Rulemaking ("RNPR") at 21 ("fees top MLM [multilevel marketing] companies charge prospective distributors for the right to sell products are low"); 22 & n.56 ("With its low cost/risk design, many Representatives take advantage of its ease of entry and exit to come and go as their needs/goals change.") (quoting Avon's July 16, 2006 letter); 23 (the proposed waiting period would significantly burden entry); 23-24 (the proprietary nature of distributor lists and harm to competition between distributors if these lists were disclosed); 25 (information about legal actions is publicly available for publicly-traded companies like Avon); 26 (reduced relevance of average earnings because distributors spend varying amounts of time selling); 27 (the simple and straight-forward nature of transactions between Avon and its distributors).

The definition of “business opportunity,” however, remains slightly too broad and could be interpreted as such, which would undermine the FTC’s intention to explicitly exclude legitimate direct selling companies. Avon, therefore, believes that the Rule should be further clarified to ensure that the definition of “business opportunity” does not inadvertently include those businesses which the FTC has indicated it wishes to exclude.

Avon suggests three refinements.

1. The Definition of Required Payment Should Be Clarified so as Not to Inadvertently Encompass Helpful Selling Aids Used by Legitimate Companies like Avon

The second element of a “business opportunity” is that the “prospective purchaser makes a required payment,” § 437.1(c)(2), which is defined in § 437.1(o) and excludes “payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.” The exception might be too narrow in that it could be construed as not applying to the sales kits that Avon includes in the initial offering. These sales kits are sold to independent sales Representatives without a profit, for a de minimis fee (\$10). The kits fully explain the business fundamentals and provide necessary equipment such as sales brochures, sales receipts, a tote bag, product samples, etc.

To ensure that these useful tools do not pull legitimate direct sellers into the definition of a “business opportunity,” Avon urges the FTC to add them to the explicit exceptions of subsection (o). The exclusion would thus read “A required payment does not include payments for the purchase of **sales aids and kits at cost or** reasonable amounts of inventory at bona fide wholesale prices for resale or lease.”

2. The Seller Representations Element of “Business Opportunity” Should Be Clarified to Ensure the Exclusion of Legitimate Companies like Avon that May Offer Supportive Business Tools like Referral Services and Website Capabilities

The third element of a “business opportunity” addresses representations sellers make to potential distributors to encourage them to participate in the operation. Section 437.1(c)(3)(ii) states:

The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will: ... [p]rovide outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser’s goods or services.

This element is further defined in § 437.1(l) as “furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers...”

The inclusion of potential customers creates a risk that the section might apply to direct selling companies, such as Avon, that occasionally refer potential customers to Avon independent sales Representatives. For instance, potential customers who contact Avon directly or who are seeking a Representative are referred to Representatives; likewise,

potential customers who visit the Avon website can search for and locate a local independent sales Representative. This practice facilitates product sales – though the portion of a Representative’s customers that is derived in this manner is minimal. Avon does not guarantee that Representatives will receive customers by reference or that any potential customers referred will translate into actual sales. **The system is aimed at helping potential customers find Representatives, rather than helping Representatives find potential customers.**

Similarly, the inclusion of internet outlets creates a risk that the section might extend to legitimate companies like Avon that offer Representatives optional business tools – like website capabilities – to facilitate product sales. In Avon’s program, once an individual becomes a Representative, she/he can chose to become an eRepresentative and conduct business through a website in addition to other traditional direct selling means. This sales capability, whereby the Representative pays \$7.50 per campaign to use certain intellectual property rights, services and ongoing maintenance of Avon’s website template, is optional and does not guarantee customers or sales. The website itself does not constitute the earnings opportunity, but instead is an optional sales tool available to Avon’s independent sales Representatives.

The definition of “business opportunity” should be clarified to avoid sweeping companies like Avon and its approximately 500,000 U.S. independent sales Representatives into the ambit of the Rule based on useful referral practices and business tools. Avon recognizes that the FTC included potential customers in its definition to protect consumers from unscrupulous sellers that promise customers to potential distributors, attempting to minimize the perceived risk of the venture. To keep this protection without inadvertently including companies that provide helpful referral services, § 437.1(c)(3)(ii) should be revised to read “The seller, expressly or by implication, orally or in writing, **as part of offering the business opportunity**, represents that the seller or one or more designated persons will...” This revision will focus the definition on the potentially misleading representations sellers of “business opportunities” make to convince prospective distributors to sign up – while leaving legitimate direct selling companies outside the Rule’s coverage.

Additionally, the definition of “providing locations, outlets, accounts, or customers” in subsection (l) should be clarified to explicitly exclude referral services and website capabilities like those offered by Avon. Avon therefore suggests adding the following language to the end of § 437.1(l): “**Providing locations, outlets, accounts, or customers does not include services a seller may provide that refer interested parties to a purchaser or optional website capabilities the seller may offer to a purchaser, provided that the seller does not represent that either will guarantee customers or sales.**”

Conclusion

Avon appreciates this opportunity to work with the FTC as it develops a rule that protects consumers from fraudulent business opportunity schemes without overly burdening the operations of legitimate direct selling companies. As the FTC recognized in

its RNPR, Section 5 is the best way to target any unfair and deceptive practices of MLMs and direct selling companies. However, if the Rule is not carefully worded it could be interpreted to unnecessarily sweep in those legitimate companies like Avon. With this in mind, Avon is proposing changes that may appear minor, but are critical for executing the FTC's stated intention not to harm legitimate direct selling companies.

Avon looks forward to discussing these proposed changes with you.

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