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July 1, 2008

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,

On behalf of Planet Antares, Inc., we are very pleased that the Federal Trade Commission (hereinafter "FTC" or "Commission") has taken into consideration the comments of hundreds of businesses, entrepreneurs, and consumers regarding the Proposed Rule. We will continue to support the Commission's efforts to fight fraudulent business practices that harm consumers and tarnish the reputation of legitimate businesses. However, we cannot support a rule that sweeps so broadly as to irreparably harm legitimate businesses that provide valuable income and investment opportunities for consumers.

Many of the comments received by the Commission confirm our fundamental position that the FTC should expend its energy and resources targeting the fraud perpetrated by unscrupulous actors, rather than regulating the business models used to build legitimate organizations.¹ Furthermore, the comments raise similar points that we made in our May 27, 2008 Comment—the Proposed Rule stifles legitimate business activities, such as providing valuable business assistance and training.² Several comments state that the Rule, as proposed, would

¹ See Comment from Avon Products, Inc., #535221-00015, at 4 (May 27, 2008); Comment from the Direct Selling Association, #535221-00050, at 2 (May 27, 2008); Comment from Primerica Financial Services, Inc., #535221-00056, at 3 (May 27, 2008).

² See Comment from Avon Products, Inc., #535221-00015, at 2 (May 27, 2008); Comment from the Direct Selling Association, #535221-00050, at 5 (May 27, 2008); Comment from Mary Kay, Inc., #535221-00041, at 6 (May 27, 2008); Comment from Pre-Paid Legal Services, Inc., #535221-00049, at 9 (May 27, 2008); Comment from Primerica Financial Services, Inc., #535221-00056, at 8 (May 27, 2008); Comment from Tupperware Brands, #535221-00031, at 5 (May 27, 2008).

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unintentionally encompass various direct selling and multi-level marketing (“MLM”) programs.³ Although the record indicates that these types of programs are to be excluded from the Proposed Rule’s scope, the comments raised concerns regarding the reach of the Rule, as proposed, and the probability that the Proposed Rule would continue to cover legitimate business activity.⁴ This further supports the notion that direct sellers and MLMs cannot be distinguished from other legitimate business opportunity sellers under the Proposed Rule, and reinforces our position that all parties should be treated equally. The comments also reiterate our belief that the Proposed Rule will harm legitimate businesses and consumers alike.

Consequently, we reiterate our position that the Commission withdraw the Proposed Rule and continue to address fraudulent business tactics under Section 5 of the Federal Trade Commission Act (“FTC Act”). If the Commission continues to move forward with this rulemaking proceeding, Planet Antares reiterates its request that the Commission conduct evidentiary hearings on the issues identified in the comment the company filed, as provided for in the FTC Act,⁵ and the regulations establishing procedures for rulemaking.⁶ For ease of administration, those issues could be designated in the following general categories:

1. Whether the Proposed Rule satisfies the strict legal standard for rulemaking under Section 18 of the FTC Act;
2. Whether the rulemaking record reflects reliable evidence of prevalence of harmful deception in the business opportunities identified;
3. Whether providing location assistance is an accurate indicator of a fraudulent business opportunity;
4. Whether the Proposed Rule would likely be effective at reducing the harm of fraud;
5. Whether the cost of the Proposed Rule would far exceed the benefits;
6. Whether the Proposed Rule would harm consumers, sellers and competition by chilling sales and reducing demand for legitimate business opportunities;

³ See Comment from the Direct Selling Association, #535221-00050, at 2 (May 27, 2008); Comment from Pre-Paid Legal Services, Inc., #535221-00049, at 2 (May 27, 2008).

⁴ See 73 Fed. Reg. 16110, 16121 (Mar. 26, 2008); Comment from Venable, LLP, #535221-00024 (May 27, 2008) (discussing the potential application of the Proposed Rule to sellers of publications or training that make truthful representations about leads).

⁵ 15 U.S.C. § 57a(b)(1)(C).

⁶ See 16 C.F.R. § 1.13(b), (c)(2)(ii).

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7. Whether mandated disclosure of references' personal information would damage sellers and harm purchasers by (a) disclosure of trade secrets, (b) creating a poaching or target list, (c) providing biased information, (d) risking the safety of purchasers, (e) creating an environment ripe for antitrust violations, and (f) creating additional costs and confusion for consumers;
8. Whether the disclosure of references' personal information would raise privacy and data-security concerns or conflict with the Gramm-Leach-Bliley Act or the California Constitution;
9. Whether the Proposed Rule is narrowly tailored to be easily implemented; and
10. Whether the Proposed Rule satisfies the procedural requirements under the APA and the FTC Act, or violates the First and Fifth Amendments of the U.S. Constitution.

Evidentiary hearings are warranted to enable the Commission to fully understand the impact of the Proposed Rule on legitimate businesses. At such hearings, we ask that Planet Antares be given the opportunity to examine and cross-examine appropriate persons, and offer witnesses and other submissions in support of its position.⁷

William C. MacLeod

⁷ *Id.* Section 1.13(d)(5).