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January 17, 2011

Federal Trade Commission
Office of the Secretary
Room H-113H, Annex S
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Business Opportunity Rule

Dear Commissioners:

Tupperware welcomes the opportunity to provide comments on the Staff Report concerning "Disclosure Requirements and Prohibitions Concerning Business Opportunities" (Notice of Publication, 75 Fed. Reg. 68559, Nov. 8, 2010).

At the outset, I want to reiterate our appreciation for the effort of the Commissioners and staff in your effort to promulgate the Business Opportunity Rule. We were pleased to see in the Business Opportunity Rule Revised Notice of Proposed Rulemaking (RNPR)(73 Fed. Reg. 16110, March 26, 2008) and again in the recently published Staff Report that the FTC is inclined to narrow the scope of the proposed rule "to avoid broadly sweeping in sellers of multi-level marketing opportunities." We believe you have avoided inadvertently including in the new regulatory regime companies such as Tupperware that use traditional product distribution arrangements.

At this stage of the regulatory process, many of our concerns with the original proposed Business Opportunity Rule are resolved. Nonetheless, we would like to provide you with our thoughts on the modified regulations set forth in the Staff Report and to urge you to reconsider some of the points we have raised in our prior submissions. Please note that we are not providing comments on the proposed Disclosure Document given our belief that the Business Opportunity Rule will not apply to Tupperware.

Bright Line Exemptions

Businesses operate in an environment where regulatory certainty is critical. We recognize that the FTC needs flexibility to enforce the Rule against bad actors that seek loopholes. However, it may be appropriate to provide a bright line exemption such as one for certain publicly traded companies or where the initial investment by a purchaser of a business opportunity does not exceed \$500 and where the purchaser receives merchandise whose retail value is equal to or greater than the required investment, as long as there is a chance for the purchaser to return unused inventory within 12 months at 90 percent of the purchaser's cost.

The Staff Report offers no new analysis to contradict the notion that these two types of safe harbors would be appropriate. The Commission concluded that "none of these

factors is determinative of whether a company is, in fact, a pyramid scheme or otherwise engaged in deceptive conduct.” However, given the breadth of regulatory reporting requirements imposed currently on publicly traded companies (such as those traded on the New York Stock Exchange and others with large market capitalization), such companies are not likely to engage in the type of deceptive or fraudulent business practices targeted by the proposed Business Opportunity Rule. Also, the fraudulent actors are not going to provide purchasers of a business opportunity a low dollar investment, a favorable return policy, and merchandise worth as much as, or more than, the investment amount. Nor do we believe that just by setting a minimum payment threshold, the agency would “provide scam operators with a means to circumvent the Rule.” Additionally, the Commission has noted that it continues to have other authority under Section 5 of the Federal Trade Commission Act to protect consumers from harm. In conjunction with the other recommended elements (return policy and valuable merchandise), this kind of bright line exemption would provide regulatory certainty for legitimate companies. Such a rule might also induce business opportunity sellers to adopt these policies (in order to meet the safe harbor), which would likely have a more positive impact on business opportunity purchasers and the consuming public than leaving it out. As a result, we are hopeful that the Commission will reconsider its reluctance to establish a bright line exemption in the final version of the Business Opportunity Rule.

The §437.1(c)(3) test -- “Otherwise Assisting”

In the absence of a bright line exemption, our analysis has focused primarily on how “business opportunity” is defined in Section 437(c). As we have noted in prior submissions, a key definitional element of “business opportunity” is the phrase -- “otherwise assisting” -- in the definition of “providing locations, outlets, accounts, or customers” in §437.1(m). After reviewing the RNPR and its predecessors, we suggested that there is a need for a safe harbor in order to assure that legitimate multi-level marketing enterprises can continue to provide free training and information to business owners, without such enterprises having to incur the inordinate expense associated with compliance – which would be on top of the costs already incurred for the provision of the enterprise’s time, efforts and resources to consultants at no cost.

Given the importance of this factor, we reviewed the Staff Report carefully to ascertain how “providing locations, outlets, accounts or customers” is defined and the use of the “otherwise assisting” clause in that definition. We are pleased that your agency has accepted our recommendation and that of other commenters to add the new proviso clause: “provided, however, that advertising and general advice about business development and training shall not be considered as ‘providing locations, outlets, accounts, or customers.’” We are particularly pleased that Footnote 174 of the Staff Report cites specific types of advice and training as clearly outside the scope of the definition and thus not triggers of the disclosure requirements, relying in part on our own comments on the RNPR.

We encourage you to accept the Staff Report recommendation for the new proviso, since it will even more clearly establish your intent that the rule will allow the continuing provisions of general business advice and training free of charge to help our sales consultants succeed. In the absence of this clarification, businesses that provide such training at no charge could inadvertently fall under the aegis of the rule. This would create the perverse incentive not to offer training that would boost the income of our consultants in order to avoid regulation. The clearer safe harbor added in the Staff Report

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goes a long way to eliminate such tensions and will permit us to continue offering our sales consultants the skills and information needed to conduct a successful business.

Required Payment

In the absence of the categorical exclusions we have sought, we reiterate our desire that the Commission clarify the definition of "required payment," which was not changed in the Staff Report. Our prior comments noted that individuals sometimes pay to become sales consultants solely to obtain at less than retail cost the products that are part of the company's sales kit for personal use. We suggested that the Commission clarify that no "required payment" occurs when the business opportunity seller agrees to buy back from the purchaser of the business opportunity any unused inventory within 12 months of purchase for at least 90 percent of the purchaser's cost. We maintained that this makes good policy because the underlying purpose of the "required payment" definition is to help business opportunity purchasers avoid paying out a lot of their own money without a fair chance of recouping their outlays.

We respectfully suggest that the Staff Report commentary on the points made by commenters is somewhat limited in scope. The staff cited our concerns and those of other commenters and responded that "the staff believes that these concerns are misplaced and that the proposed changes to the definition of 'required payment' are unnecessary." One element of the rationale staff provides for its conclusion is that "in order to be covered by the Rule, an entity must meet each of the three definitional components of the term 'business opportunity.'" (Staff Report at 57) We believe there is too much at stake for legitimate companies to rely upon this definition and it is not sufficient to say that the rationale for leaving it unchanged is that a company is still exempt if one of the other two subparts of the business opportunity definition does not apply. We would point out that in Canada, companies such as Tupperware are exempt from similar regulations as long as we sell kits to our sales consultants for no more than manufacturer's costs plus shipping fees. Accordingly, we encourage you to reconsider the "required payment" definition as contained in the Staff Report and to modify it, with appropriate safeguards.

Conclusion

We recognize this has been a long and labor intensive process for the Commission and staff. We thank you for your consideration of our views. We are proud of our business and the opportunities we provide to our hard-working consultants. In that regard, we commit to continuing to work with you and your staff, and to be a resource, to ensure that any federal regulation of business opportunities will effectively target identified abuse and avoid impeding legitimate business opportunities.

Sincerely,

Maureen M. Fries
Assistant General Counsel, The Americas