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Research, education, and advocacy for consumers on selected issues

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ATTN: FTC Staff:

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**RE: Serious problems with the latest staff report – especially in the light of new information – and a #10,000 challenge, Part 11**

On page 23 of the staff report, we read the following:

*We are not persuaded by a second set of commenters who advocate creating an exemption for all MLMs by crafting a definition of multi-level marketing opportunity.<sup>66</sup> In the RNPR, the Commission rejected a similar suggestion that the Rule include a definition of “pyramid scheme” that would exclude legitimate MLMs from coverage while ensuring pyramid schemes remained covered.<sup>67</sup> The Commission reasoned that any definition of “pyramid scheme” would provide bad actors with a road map for restructuring their businesses to skirt the definition, at least facially, and thereby provide them with a safe harbor that could undercut law enforcement efforts. Similarly, we believe that any definition of “multi-level marketing opportunity” would allow fraudulent business opportunity sellers to manipulate their corporate structure to evade coverage by the Rule.*

True enough, but on pages 20-24, it is clear that the FTC is somehow exempting MLMs from having to comply with the Business Opportunity Rule. How can the FTC exempt MLMs from compliance from the Rule without defining MLM and how it is different from other business opportunity sellers? Surely no court would uphold such ambiguity if the question ever came up.

Incidentally, for what it’s worth, in Chapter 2 of my book *The Case (for and) against Multi-level Marketing*, I provide the only definition of multi-level marketing based on extensive independent research (not funded by the MLM industry):

*Multi-level marketing (MLM) is a purported income opportunity, in which persons recruited into a pyramid of participants make ongoing purchases of products and services, and recruit others to do the same, and they still others, etc. – in an endless chain of recruitment and personal consumption, in order to qualify for commissions and bonuses and to advance upward in the hierarchy of levels in the pyramid. Product purchases become the means of disguising or laundering investments in what is in fact a product-based pyramid scheme.*

*Typically, prospects are lured into the scheme with exaggerated product and income claims. And because the pay plan is heavily stacked in favor of those at the highest levels in the pyramid, the vast majority of participants spend more than they receive and eventually drop out, only to be replaced by a stream of similarly misled recruits, approximately 99% of whom are likewise destined to experience loss and disappointment.*

In earlier comments and in the attached chapters from my book, clear and compelling evidence is provided (and additional evidence referred to) that shows widespread and massive fraud within the entire MLM industry. The statistics cited in Chapter 7 are based on average earnings statistics published by the MLM companies themselves. The actual calculations have been validated by an Applied Statistician, a Certified Financial Planner, and an Actuary.

Let me review the logic and significance of the findings reported in Chapter 7 (especially Appendix A), supported by the chapters preceding it. First, analyses of over 350 MLMs for which I could obtain detailed compensation plans showed all of them (that's 100%) to be both recruitment-driven and top-weighted. That means that the rewards are heavily weighted towards recruiting a downline, not selling products to non-participants. None of them (that's 0%) provided significant rewards for part-time or seasonal work, contrary to DSA claims. The only way to earn significant profits is through sustained full-time recruitment efforts. Persons who dropped out for a time or did not maintain "pay-to-play" minimums were penalized with loss of income – making the promise of "residual income" a sham for the vast majority of participants.

I was able to obtain sufficient average earnings data to analyze profit and loss rates for 30 MLMs. All of them (that's 100%) showed loss rates exceeding 99%, even using assumptions regarding expenses and retention rates favorable to the MLMs – with an average loss rate of 99.6%. Yet all of them (that's 100%) misrepresent their programs as "income opportunities" or "business opportunities," etc., along with a whole litany of other misrepresentations (See Chapter 8 of my book. And these do not include many of the numerous fraudulent product claims as reported by Dr. Stephen Barrett on his web site – [www.MLMwatch.org](http://www.MLMwatch.org))

To reiterate what I wrote earlier, in a classic 1974 ruling, the FTC found in the very structure of "multi-leveling" or "pyramid selling" (now called multi-level marketing, or MLM) "an intolerable potential to deceive."<sup>1</sup> This statement proved to be powerfully prophetic, as all this research demonstrates.

. Since the results were so consistent throughout the entire sample reported in Chapter 7, it is safe to conclude that MLM as an industry is an unfair and deceptive practice – the very kind of practice the FTC is pledged to protect against. The staff who prepared the latest report can no longer honestly claim that we consumer advocates fail to provide evidence of widespread fraud in the MLM industry.

Without going into details of numerous legal cases here, a simple Google search for "MLM fraud" yields 1.8 million results! The losses suffered since the 1979 Amway decision are staggering – hundreds of billions of dollars<sup>2</sup> in losses suffered by hundreds of millions of participants worldwide, based on DSA statistics (which the DSA interprets as sales revenues, but are actually losses for over 99% of participants).

The fact that 17,000 MLM commenters (out of millions the DSA/MLM cartel appealed to with form letters to parrot) wrote to complain about the initial Rule is irrelevant. In fact, the enormous pressure by the DSA/MLM cartel to avoid having to provide basic transparency of such minimal information should have been a clue to the staff that they have something to hide. And indeed they do, as my research proves.

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1 Holiday Magic, Inc., Docket No. 8834, slip op. pp. 11-14 [84 F.T.C. 748 at pp. 1036-1039] (Oct. 15, 1974); Ger-Ro-Mar, Inc., Docket No. 8872, slip op. pp. 8-12 [84 F.T.C. 95, at pp. 145-149] (July 23, 1974), rev'd in part 518 F.2d 33 (2d Cir. 1975).

2 These are correct approximations. Please correct the typo in Part 5 of my comments, which included an attachment for chapter 9, page 4, where it stated hundreds of *millions*, instead of *billions*.

*Problems with staff report, Part 11, page 3:*

The staff recommendation and the Commission's agreement to fall back on case-by-case enforcement of Section 5 assumes a few "bad actors" in the MLM field that would not be an intolerable case load for the FTC. My research and that of others clearly proves that such is not the case. Hundreds of MLMs are currently and blatantly violating Section 5, which should not be surprising, given the fundamentally flawed and fraudulent structure of all endless chain or pyramid selling schemes – a.k.a. MLMs.

Can the FTC afford to increase its staff 100 times to deal with such a case load? I think not. The FTC admits to prosecuting only 17 cases in ten years! If the FTC tackled one case at a time, 100's of MLMs would be defrauding millions of participants while one was going through a long and expensive investigation. Almost no consumer protection would be provided with this option, and recovery of losses would be infinitesimal compared to aggregate losses leading up to the investigations.

The initial IPBOR which included all business opportunity sellers is a manageable, cost-effective way of addressing MLM fraud, or at least providing some consumer protection. Relying on case-by-case enforcement for such massive fraud in a fundamentally flawed industry is not.

All of my comments, and others supporting them, leave the FTC staff with a clear choice. On the one side is the DSA and MLMs acting in concert like a cartel to make certain that transparency is not provided to prospects for their assistance in making informed choices. On the other side are us consumer advocates who are urging the FTC to act responsibly to protect consumers against unfair and deceptive practices. The twain do not meet. One must choose to side with the DSA/MLM cartel, or to side with consumers the FTC is pledged to protect.

From my own limited retirement funds, I have pledged \$10,000 to any official of a state or federal agency responsible to protect against unfair and deceptive practices who can identify any class of business opportunities that is more unfair and deceptive, and at the same time more viral and predatory than MLM,. The details of this challenge are outlined in Part 1 of my Comments.

To use a modern expression, I am "calling out" the FTC staff responsible for the Business Opportunity Rule – and the Commission itself – to make a clear and unequivocal choice – between the interests of the DSA/MLM cartel – or the interests of consumers and the general public it is pledged to protect.

Very sincerely,

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