

FEDERAL TRADE COMMISSION: Herbalife Press Conference
July 15, 2016, 10:00 a.m. EDT

JUSTIN COLE: --Federal Trade Commission. I'm Justin Cole, the director of Public Affairs. At this time, we'd appreciate it if those of you in the room have your devices on silent. And those of you that are joining the conference by the telephone, if you could mute your speaker phones. Chairman Ramirez will provide opening remarks, after which we will first take questions from media in the room, and then those journalists joining us by phone. So with that, I will turn it over to Chairman Ramirez.

CHAIRMAN RAMIREZ: Good morning, everyone. And thank you for joining us here today. I'm here to announce a very significant law enforcement action that the Federal Trade Commission has taken against the Los Angeles based multilevel marketing company Herbalife.

The company has agreed to a settlement with the FTC that includes a \$200 million judgment for refunds to many of its distributors, and forces the company to implement a major restructuring of its business operations. In a complaint filed today in the Central District of California, the FTC has charged Herbalife with deceiving hundreds of thousands of hopeful people who saw Herbalife's promotional campaigns in English and in Spanish, and signed on for what they thought was a legitimate and lucrative business opportunity selling Herbalife nutritional and personal care products. The company promised people a dream, a chance to change their lives, quit their jobs, and gain financial freedom.

Herbalife's marketing materials claimed consumers regardless of their background or experience, could earn part time income ranging from \$500 to \$1,500 per month, and substantial full time income, showing pictures of Herbalife members enjoying expensive houses, luxury cars, and exotic vacations. Testimonials, also in English and in Spanish, assured consumers that they could achieve this dream. Some Herbalife distributors reported earning \$16,000 per month. Others said they were multimillionaires.

In one sales pitch an Herbalife distributor asked, how many of you would like to make at least \$1 million a year in income? Another said, we went from bankruptcy to being set for life. But the FTC has charged that this wasn't true. That the dream portrayed by Herbalife and reinforced in these and other testimonials was an illusion. The vast majority of Herbalife distributors found they could make little or no money selling Herbalife products.

In 2014, the average amount that more than half of the elite distributors, known as sales leaders, received in a year as reward payments for recruiting others into the Herbalife program that amount was less than \$300. The company's own survey results show that the majority of people who invested the most to build a real retail business, people who leased space, opened a nutrition club, and worked long hours made no money or lost money. The small minority of Herbalife distributors who did make a lot of money were paid by early Herbalife not for selling the company's products, but for buying the products themselves and then successfully recruiting large networks of others to do the same. That's why in addition to charging deception, the complaint alleges that Herbalife's compensation structure is unfair because it rewards its

distributors for recruiting others to join and purchase products to advance in the marketing program rather than in response to actual retail demand for the product.

Today's \$200 million settlement, one of the largest consumer redress settlements obtained by the Federal Trade Commission, will provide compensation for many of the company's distributors for the losses they've suffered. The order will prohibit deceptive marketing tactics such as the promises of a lavish lifestyle and untold riches, and the false implication that typical participants are likely to earn career-level incomes. The settlement also requires Herbalife to revamp its multi-level distributor compensation plan so that for the first time the company must track retail sales to customers, pay rewards to its distributors based on those sales, and collect retail receipt information to ensure that those sales are real.

This will change the current systems incentives that reward distributors primarily for recruiting a downline of people who will buy product at wholesale without regard to retail demand. As part of the restructuring, Herbalife will be required to create two distinct categories of participants. Preferred customers who can take advantage of discount purchases of Herbalife's products, but cannot resell product, recruit, or receive compensation, and business opportunity participants who can try to earn money retailing the products. And to make sure everyone in the organization gets the message, 80% of the company's net sales will have to be comprised of real sales to real users, or the reward payments that go primarily to the minority of profit making high level distributors will be cut. Herbalife will also be required to pay for an independent compliance auditor who will monitor the implementation of our enforcement order and ensure that Herbalife adheres to today's agreement.

This settlement will transform the way Herbalife will conduct business in the future. And we hope the principles it embodies will set an example for the multi-level marketing industry more generally. I'd like to conclude by thanking the FTC staff, and the Bureau of Consumer Protection, and the Bureau of Economics who devoted countless hours over many months to investigate this case and secure this important settlement for consumers. And in particular, I'd like to express my gratitude to Louis Greisman, Monique Avaca, Janet Ammerman, Christine Todaro, Dan Hanks, Laura Solis, Andrew Stivers, David Givens, and Doug Smith. Thank you, and I'm happy to answer any questions.

JUSTIN COLE: And so at this point, if we could just take questions from media in the room, please. And if you could state your name and media outlet when you ask a question, thank you.

CHAIRMAN RAMIREZ: Anybody on the line who'd like to ask a question?

OPERATOR: If you have a question on the phone line, press star 1 at this time. And did you want to take the phone questions at this time?

CHAIRMAN RAMIREZ: Yes, please go ahead.

JUSTIN COLE: We'll be on the line with Matt Goldstein with The New York Times. Please go ahead.

MATT GOLDSTEIN: Hi, good morning. So Herbalife, in their press release had said that the FTC had found that the company was not an illegal pyramid scheme. It might [INAUDIBLE] to the complaint, I actually don't see the words pyramid scheme appear anywhere. So maybe I missed it. So can you comment on that?

CHAIRMAN RAMIREZ: Sure. We didn't allege a pyramid deception count. But what we did allege was an unfairness count. We are charging that Herbalife's compensation structure unfairly rewards recruiting that is ultimately unrelated to retail demand. So we focus less on the label than on making sure that the facts in the complaint alleged, what we consider to be the core problem with Herbalife's business practices, and our focus also was in obtaining timely structural relief for consumers going forward. And also for achieving meaningful relief for consumers who lost money as a result of Herbalife's practices.

MATT GOLDSTEIN: Thank you.

OPERATOR: Next, we'll got to line on Diane Bartz with Reuters. Please go ahead.

DIANE BARTZ: Hi there. Just to be clear, so Herbalife is excluded from signing up new distributors as a way to reasonably and compensate existing distributors, correct? That is excluded.

CHAIRMAN RAMIREZ: So what our order does is that it provides for very rigorous structural relief that is designed to ensure that rewards are based on retail sales to customers and not on the recruiting of a downline of people who will buy the product at wholesale. So that's what it's designed to do. And let me just walk through the core elements in the order so that you understand how we seek to achieve that. We are seeking to do that by requiring Herbalife to create two distinct categories of participants, preferred customers and business opportunity participants. We're also requiring that Herbalife provide rewards payable only on verifiable retail sales.

And as part of that, we also placed limits on personal consumption. Also to continue to pay rewards at the current levels, the company's net sales must be overwhelmingly comprised of rewardable volume. And we also have in place, and we'll have in place an independent compliance monitor that will ensure that Herbalife abides by these provisions. And then of course the FTC itself, we will be watching very closely to ensure that these provisions are implemented.

DIANE BARTZ: I also had another question. I notice that Herbalife has now hired a second former FTC commissioner, this time a chairman. This is starting to look a little cozy. Can you comment on the propriety of that?

CHAIRMAN RAMIREZ: We have very strict ethical rules. So you can address any questions about the chairman's being retained by Herbalife to him. What I will say is that here at the FTC we have focused exclusively on the facts of the case.

We've have focused exclusively on the law that applies. And we've entered into what I believe, is a very strong settlement that provides meaningful robust relief for the consumers who were most affected and lost the most money, due to Herbalife's practices. And we're imposing very strong structural relief that we believe will make a very significant difference going forward, and will ensure that Herbalife operates as a legitimate multi-level marketing company.

DIANE BARTZ: OK, the last question. I would like to see the compliance monitor's reports as they come out, how would I do that?

CHAIRMAN RAMIREZ: We can provide you additional information. The information contained in those reports could very well contain confidential information that we would not be in a position to release publicly. But we can certainly have a further discussion Diane, with you about that.

DIANE BARTZ: Thank you so much.

CHAIRMAN RAMIREZ: Any the other questions?

OPERATOR: Yes, next on the line is David McLaughlin with Bloomberg News. Please go ahead.

DAVID MCLAUGHLIN: Hi, thanks for taking my question. I just want to go back to the question earlier about the pyramid scheme. It sounds to me if I'm reading the release-- and I haven't looked at all the court filings. But it sounds like what you're saying is that this company had all the hallmarks of a pyramid scheme, isn't that right?

CHAIRMAN RAMIREZ: Our focus isn't on the label. Our focus again, was on articulating allegations in our complaint that we believe reach the core issue and the core problem with what we consider to be unlawful practices that Herbalife has engaged in. And are focused on getting quick immediate relief for consumers. So I will leave to you to draw your own conclusions based on the facts that are alleged in the complaint. But our focus was not on a particular label.

DAVID MCLAUGHLIN: OK, my only other question was if you had just any kind of estimate on any mentions or reliefs that the company caused substantial injury to consumers. And I was wondering if you had just an estimate about how much money that people lost that was due to the unfair practices? is it the \$200 million? Or is it something more than that?

CHAIRMAN RAMIREZ: I can't say that the \$200 million encapsulates all of the harm that may have been caused as a result of Herbalife's practices. But what I can tell you is that I believe that that figure provides meaningful relief for the distributors who lost the most money due to Herbalife's practices. So that's the best that I can do.

We're going to be calculating exactly how to apportion that refund program. And that's going to be administered by the Federal Trade Commission. We're going to be using and relying on data that's provided by Herbalife in order to ensure that this money gets back into the hands of those that were most affected by what we allege were Herbalife's unfair and deceptive practices.

DAVID MCLAUGHLIN: OK. And actually, just going back to the monitor. So the monitor and the settlement going forward, is that overseen by the FTC, or will that be overseen by the court where this was filed? And will the reports be made public every time they're filed?

CHAIRMAN RAMIREZ: So that the monitor is an independent monitor. We will of course be working very closely with the monitor who will be in place for seven years. Ultimately, if we believe that there is a violation of what will be a court order, we will go to court to seek appropriate relief at that time. But we will be the ones who will be focusing on ensuring monitoring, working very closely with the independent monitor.

DAVID MCLAUGHLIN: And the reports are public?

CHAIRMAN RAMIREZ: Well, I can't say that because the reports very well may contain confidential business information. So I can't tell you right now. We will certainly make a determination about what may be appropriate to release publicly at a later time.

DAVID MCLAUGHLIN: OK, thank you.

OPERATOR: Next hold on the line is Carleton English with the New York Post. Please go ahead.

CARLETON ENGLISH: Hi. [INAUDIBLE] to say how today's decision would affect the operation of the so-called nutritional clubs?

CHAIRMAN RAMIREZ: Yes, there are a number of different parameters, including that only those members who have been in the Herbalife program for a year will really be in a position to move forward with the nutritional club. Our concern was that these were the people who invested the most money. And we estimate that they invested approximately or on average \$8,500 to open a nutrition club to increase their sales. And in fact, based on our analysis, we believe that those people made very little or most often lost money. So we do have various protections in place to make an effort to ensure that that is mitigated going forward.

CARLETON ENGLISH: OK, thank you. That's it for me.

OPERATOR: Next, we'll go to the line with Dan McCrum with Financial Times. Please go ahead.

DAN MCCRUM: Thank you. You said you haven't focused on the term, but it certainly sounds like looking at the complaint and the focus on recruitment and the deception of consumers. [INAUDIBLE] certainly previous FTC descriptions of pyramid scheme behavior. Do you think you can talk us through the public interest argument that the FTC went through and how it came to [INAUDIBLE] not to prosecute as a pyramid scheme?

CHAIRMAN RAMIREZ: Well, look. All I can tell you very briefly is this is a settlement. What we aimed to do in our complaint was to allege the core facts that we believe constitute unfair and deceptive practices. And in addition, our aim was to ensure that we could obtain relief promptly

and in a timely fashion, as opposed to litigating for perhaps years. So the focus again, was less on the label, but rather on making sure that our complaint adequately alleged what we are concerned about. And also provided appropriate both monetary and injunctive relief for consumers.

DAN MCCRUM: On that question of litigation. For years the basis for the industry existed [INAUDIBLE] in the Amway case. And then the FTC guidance [INAUDIBLE]. What are the implications for the rest of the industry? Does a clear definition need to be [INAUDIBLE] and do industry practices more formally need to change?

CHAIRMAN RAMIREZ: We will be providing additional guidance to the MLM industry more generally following this case. I think what we achieved in this case is unprecedented. I think the protections that we have in place here, they're aimed to ensure that going forward Herbalife operates legitimately. But I do think they provide important guidance to the rest of the MLM industry about what they need to focus on in order to ensure that they are not engaging in unfair deceptive practices. But we do intend to provide further guidance following what we're doing in this particular case.

DAN MCCRUM: [INAUDIBLE] FTC has historically acted through enforcement? It seems like it is ducking the opportunity to set clear law because it would be difficult to issue [INAUDIBLE].

CHAIRMAN RAMIREZ: No, I don't think that's the right conclusion to draw. We certainly enter into settlements a good amount of time. But we only enter into settlements when we think that it's appropriate relief for consumers. In our view, it's both beneficial for consumers for us to enter into what we think is strong relief, rather than litigating every single case to conclusion. That would certainly limit what we're able to do. I think we achieve a lot more when we enter into consents that we think are appropriate and meaningful

When we don't reach agreements that we consider to be appropriate and meaningful, we certainly litigate. We're litigating a case involving the multilevel marketing [INAUDIBLE] right now-- the Vemma case. And we are litigating a number of other cases that demonstrates that we can't reach a good settlement, we will not hesitate to litigate.

DAN MCCRUM: And one final [INAUDIBLE]. Just in terms of the scope of this settlement, [INAUDIBLE] outside of the US. Does this settlement concern only its US business or are you expecting international practices to change also?

CHAIRMAN RAMIREZ: This is focused on Herbalife's practices in the United States.

DAN MCCRUM: Great. Thanks you very much.

OPERATOR: And as a reminder, to queue up for a question, you may press star 1.

CHAIRMAN RAMIREZ: We have one question here in the room.

BRENT KENDALL: Hi, it's Brent Kendall with The Wall Street Journal. Just wanted to ask in terms of the \$200 million, for the people who bought lot of product and lost money, realistically how quickly do you think you could get money into their hands?

CHAIRMAN RAMIREZ: At this time it's too early for me to give you an estimate. We will provide information as soon as we have it. The next step for us is to make sure that we have all of the data that we need from the company in order to assess how we can distribute that money. Our goal of course, is going to be to get this money back into the hands of consumers as soon as reasonably possible.

BRENT KENDALL: Is there a ballpark? Months? A year?

CHAIRMAN RAMIREZ: I don't want to ballpark it. We will provide additional information. I'm giving you news. We've just settled this case. So the next step is of course, to determine how quickly we can do this.

We're going to be moving as quickly as we possibly can. And we will provide additional information once we have a better estimate of that. Any the other question on the phone?

OPERATOR: [INAUDIBLE] of Kate Gibson with CBS News.

KATE GIBSON: Hi there. I was wondering if the FTC [INAUDIBLE] Herbalife can continue as a business given how radically they're being asked to change or being told to change it?

CHAIRMAN RAMIREZ: Well, that's a question I think that should go to Herbalife. But I certainly think that what we have in place will ensure that Herbalife continues operating as a legitimate MLM. And that it will continue to operate in a way that will not engage in practices that are unfair or deceptive in a way that will not harm consumers.

Any other questions on the phone?

OPERATOR: Yes, hold on the line of Bonnie Patten with Truth in Advertising. Please go ahead.

BONNIE PATTEN: Hi and thank you. I know that you're not going put any labels on this, but it seems to me if we look at the [INAUDIBLE] case that while this complaint does not use the word pyramid scheme, would you agree that a prima facie case of a pyramid scheme is alleged with the allegations within this complaint?

CHAIRMAN RAMIREZ: Again, I will leave to you to draw that conclusion. Our focus in this complaint was in addressing the core issues and in getting meaningful relief. So I don't want to have to repeat myself again. But the facts are alleged in the campaign that we've addressed what we believe to be the core problem with the compensation structure that Herbalife has in place. So I'll leave it at that.

BONNIE PATTEN: Thank you very much.

OPERATOR: And next we'll go back to the line with Dan McCrum with Financial Times. Please go ahead.

DAN MCCRUM: [INAUDIBLE] I noticed the star and said it represented the opinion of three of the commissioners. What was the reason for that as opposed to--

CHAIRMAN RAMIREZ: That is all of the commissioners right now. We have two vacancies at the commission. So there are only three of us. It just identified who we are. But it is a statement of the full commission.

Any other questions?

OPERATOR: Next, we'll go to the line with Matt Goldstein with The New York Times.

MATT GOLDSTEIN: I hate to belabor the point about pyramid scheme and labels. And I understand you say you don't want to label, and people draw their own conclusions. But since this was a negotiated settlement, should we assume that part of the settlement discussion was whether you would have a pyramid scheme claim against them, in the complaint that was filed?

CHAIRMAN RAMIREZ: Well look, I think this is belaboring the point. This is a settlement agreed upon resolution of this matter. We've alleged the issues that we are concerned about. And that's really our focus. And we're achieving what I think is really important monetary and injunctive relief that will ensure in my mind, that Herbalife, if it complies with these provisions, operates in legitimately going forward.

So that was the key objective. I think we've achieved that. And we will certainly do our best as we continue to ensure that that Herbalife complies with this.

MATT GOLDSTEIN: Did you review the language in their press release that affirmatively said that they were not declared to be a pyramid scheme? Because they're having that as an--

CHAIRMAN RAMIREZ: I do not agree with that statement. The word pyramid does not appear in our complaint. That is true.

But again, the core facts that we've alleged and that we consider to be problematic with their compensation structure are set forth in detail in our complaint. And again, I will leave to readers to draw their own conclusions. But they were not determined not to have been a pyramid. That would be inaccurate.

MATT GOLDSTEIN: So you don't endorse their statement--

CHAIRMAN RAMIREZ: I do not endorse that statement. No.

OPERATOR: Next hold on the line is Ted Brund, film maker. Please go ahead.

TED BRUND: Earlier in your remarks you made a distinction between a legitimate and a not legitimate multi-level marketing company. And I'm was wondering during the course of the FTC's work, what clarity you were able to bring to that distinction?

CHAIRMAN RAMIREZ: Well look, I've indicated that we will be providing further guidance to the MLM industry more generally. We have identified in our complaint what we saw to be the practices that we believe are unlawful. That they're both unfair and deceptive.

And that does include claims about earnings potentials and in addition to the structural issues that I've been focusing on in answering these questions. We will provide additional guidance to the MLM industry. But I do think that this settlement does provide an indication about what would concern us. And we'll be providing additional information soon on that score.

OPERATOR: Next on the line is Carleton English with the New York Post. Please go ahead.

CARLETON ENGLISH: Hi, I understand that you guys are not willing to go formal label. But if it was in the FTC power to allege that Herbalife was-- or any company is a pyramid scheme?

CHAIRMAN RAMIREZ: Yes, in terms of our authority, we have no limitations on what we allege. But again, I don't want to have to enter this question again. This is a settlement, but I firmly believe that we've addressed what the core issues are. We've described what the core issues are that deeply concerned us about the compensation structure.

And as a result of this settlement, we're achieving prompt relief and I believe effective relief for consumers going forward. So I will leave it at that. And I'll take one final question if there is one. But that's all I have time for.

OPERATOR: There are no further questions.

JUSTIN COLE: Thank you. So we'll conclude today's press conference there. Thank you for joining us. If there are any other members of the media that have additional questions, then please reach out to the Public Affairs office, and we will get back to you as soon as we can. Thank you.

OPERATOR: Ladies and gentlemen, that does conclude the conference.