



July 17, 2006

**VIA ELECTRONIC TRANSMITTAL**

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

Re: Comments to Business Opportunity Rule, R511993

Ladies and Gentlemen:

Melaleuca, Inc. submits the following comments to the Federal Trade Commission's proposed rulemaking entitled "Business Opportunity Rule, R511993" (the "Proposed Rule").

**Background Information on Melaleuca**

Melaleuca, Inc. has been in business since 1985. It manufactures (at facilities in Idaho and Tennessee) and markets consumable personal care, nutritional and home cleaning products directly to consumers using a catalog shopping system. Melaleuca Independent Marketing Executives refer customers to Melaleuca and earn commissions on products purchased from Melaleuca by those customers. Marketing Executives also earn commissions on product purchases by customers introduced to Melaleuca by other Marketing Executives in their marketing organizations. Commissions and other compensation to Marketing Executives are paid only based on customer product purchases. Melaleuca estimates that it has fulfilled over 90,000,000 customer product orders in its 21 years of business.

As of May 31, 2006, Melaleuca had over 169,000 active Independent Marketing Executives. Over 675,000 households in the United States ordered products from us in the last year. Each month Melaleuca Marketing Executives enroll anywhere from 18,000 and 63,000 households as new Melaleuca customers, some of whom will also become Marketing Executives and enroll other new customers. Most customers are referred to Melaleuca by a neighbor, relative or friend who is a Melaleuca Marketing Executive.

**The Melaleuca Customer Referral Process**

The typical customer referral process involves a Marketing Executive inviting several friends and friends of friends for a 45 – 60 minute meeting in the Marketing Executive's home. During that in-home presentation the Marketing Executive will describe the benefits of a few of Melaleuca's over 300 products and encourage the guests to enroll as a Melaleuca customer to buy directly from the company using the company's catalog. The cost to enroll as a customer is \$25. A person may enroll either as a Preferred Customer or a Direct Customer. A Preferred Customer commits to purchase a minimum amount of product each month directly from Melaleuca (approximately \$45 worth) and receives a 30 – 40% discount from the regular price. Direct Customers also purchase products directly from Melaleuca but make no minimum monthly purchase commitment and receive no discount. All customers (both Preferred and Direct) receive catalogs and product information from Melaleuca. A person enrolls as a Melaleuca customer by filling out and submitting to Melaleuca a Customer Membership Agreement form along with the \$25 membership fee.

All Melaleuca products have a 60-day 100% satisfaction guarantee. Melaleuca also refunds the \$25 customer membership fee in the event the customer decides to cancel his or her Melaleuca membership within 60 days.

### **The Melaleuca Marketing Executive Application Process**

At the in-home presentation the Marketing Executive will generally also explain the Melaleuca income opportunity. A person can apply to become a Marketing Executive by filling out and signing a Marketing Executive Application and Agreement form and paying a \$29 fee. For those persons who wish to enroll as a customer and apply to become a Marketing Executive the \$29 Marketing Executive application fee includes the \$25 customer membership fee. For the \$29 application fee the Marketing Executive receives a business kit that contains printed and electronic information about Melaleuca, its products, the compensation available to a Marketing Executive and instructions on how to refer customers to Melaleuca. Signing and submitting the Marketing Executive Application and Agreement merely constitutes the person's application to become a Marketing Executive. When that person successfully refers a relative or friend to become a Melaleuca customer their Marketing Executive Agreement will be activated and they will be entitled to receive commissions on the purchases of that and all other customers they refer.

Since customers purchase products directly from Melaleuca, Marketing Executives are not required, and in fact have no incentive, to purchase an inventory of products from Melaleuca. Marketing Executives who are also customers of Melaleuca will purchase products only for their own personal use as customers. If a Marketing Executive elects to terminate his or her Marketing Executive Agreement at any time within the first 120 days, Melaleuca will refund the full \$29 application fee upon the Marketing Executive's return of the business kit. If a Marketing Executive elects to terminate his or her agreement at any time after the first 120 days and within the first year, Melaleuca will refund 90% of the \$29 application fee upon return of the business kit to Melaleuca. In addition, in the event a Marketing Executive terminates his or her Marketing Executive

Agreement at any time (even after the first twelve months), Melaleuca will buy back any resalable products purchased by the Marketing Executive within the previous twelve months at 90% of the cost to the Marketing Executive. In the past year 244,250 people have signed and submitted Marketing Executive Agreements to Melaleuca. In that same period of time 7,604 Marketing Executives have requested to cancel their agreements and all 7,604 received refunds of their \$29 application fees.

The majority of new customer and Marketing Executive enrollments occur at the in-home presentation. Because of the 60-day, 120-day and one year refund guarantees described above, new customers and Marketing Executives have virtually no risk of loss.

### **FTC Anti-fraud Enforcement**

Melaleuca fully supports the FTC's efforts to protect consumers from unscrupulous persons and enterprises. We recognize that there are many "bad actors" who attempt to mirror legitimate businesses in order to defraud and deceive unsuspecting and innocent consumers. The existence of these players in the marketplace contributes to an air of suspicion and skepticism that Melaleuca must constantly counteract. Melaleuca and other legitimate direct selling companies will benefit to the extent that the FTC is successful in imposing and enforcing strict rules to stop the fraud on consumers.

However, we believe the Proposed Rule goes too far in its regulatory scope and will severely impact legitimate businesses such as Melaleuca. Due to the administrative burdens and impractical requirements of the Proposed Rule Melaleuca believes it, along with many other good direct selling businesses, will have serious challenges to stay in business in the United States if the Proposed Rule is adopted in its present form. The loss of legitimate businesses from the marketplace will only serve to damage consumers, giving them less product choices at higher prices from fewer companies.

### **Concurrence with DSA Comments**

Melaleuca is a member of the Direct Selling Association. We have actively participated in the preparation of the comments to the Proposed Rule submitted by the DSA and fully support those comments. In addition, Melaleuca wishes to submit its own comments to the Proposed Rule.

### **Melaleuca's Comments**

Melaleuca desires to be constructive in the comment process. If the FTC were ultimately to conclude that some rule should be issued, Melaleuca believes that there are viable alternatives to the Proposed Rule that will give the FTC increased power in stopping the bad actors while at the same time allowing the legitimate businesses to operate within a less regulated free enterprise atmosphere. In that spirit Melaleuca submits the following comments to the Proposed Rule.

1. **\$500 investment threshold.** The Proposed Rule’s revised definitions of “business opportunity” and “business assistance” adequately expand the reach of the Proposed Rule to cover most if not all of the bad actors in the marketplace. These revised definitions alone will give the FTC broader reach to shut down these players. However, these definitions also extend the reach of the Proposed Rule to legitimate low risk businesses like Melaleuca who will be heavily burdened by Proposed Rules requirements (as more fully detailed below). **Melaleuca recommends that the FTC exempt from the application of the Proposed Rule those companies that require less than a \$500 initial investment and offer and honor a post-investment right of termination and refund guarantee. The FTC might even consider a requiring companies that wish to qualify for this exemption to post a bond or security deposit as added assurance that the companies would honor their money back guaranties.** Opportunities that require a small investment (less than \$500) coupled with a valid refund guarantee pose little or no risk to persons interested in the opportunity.

2. **Seven-day waiting period.** The Proposed Rule provides that it is an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for any seller to fail to furnish a prospective purchaser a written disclosure document at least seven calendar days before the prospective purchaser may sign a contract or make a payment. A pre-purchase waiting period may be warranted in some instances in the case of large or complex investments, like franchise purchases. However, to impose any pre-purchase waiting period on the purchase of a low or no risk and low initial investment small business or income opportunity, like that offered by Melaleuca, is not necessary in order to give adequate protection to the purchaser. This is especially true in light of Melaleuca’s customers’ and Marketing Executives’ generous post-purchase right to rescind the contract and obtain a full refund. The payment of the \$29 Marketing Executive application fee is a much smaller and less significant “investment” decision than a person’s decision to purchase such things as a major appliance, a computer, an automobile or even a house. Yet, to our knowledge no federally mandated waiting period is required for any of these purchases.

As a practical matter, the seven-day waiting period requirement would effectively put almost all of our Marketing Executives out of business. Based upon the in-home presentation model described above, the Marketing Executive could not collect and submit to Melaleuca any Marketing Executive Agreements for at least seven days after the in-home meeting. The persons attending the meetings may live close to the Marketing Executive, but just as often may live long distances away. The Marketing Executive would need to locate and follow up with each person after the seven-day period has expired.

One of the key factors that make the Melaleuca business opportunity attractive to persons is the ease with which the business can be done. The vast majority (over 99%) of Melaleuca Marketing Executives operate their Melaleuca businesses on a very part time basis. We estimate that there are very few Marketing Executives that dedicate more than 10 to 15 hours a month to their businesses. A Marketing Executive earns a 7% commission on the purchases of end-user customers in his or her organization. On

average a Marketing Executive will make from \$2.50 to \$5.00 per customer per month. The seven-day waiting period will require a follow up with each potential purchaser that will effectively double the amount of time that a Marketing Executive would need to spend with the business each month. With this additional time requirement Melaleuca would no longer be an attractive business opportunity for most people. We estimate that if the seven-day waiting period is kept in the Proposed Rule, the vast majority of our Marketing Executives will exit our company. Our business will die. It may not happen overnight, but we are sure it will happen within a few short years after the adoption of the Proposed Rule.

The Notice of Proposed Rulemaking states that the waiting period “ensur[es] sufficient time for prospective purchasers to review the sellers’ disclosures before putting money at risk.” Because Melaleuca Marketing Executives can rescind and receive a full refund, they do not put any money at risk as a practical matter, rendering the waiting period unnecessary. Melaleuca therefore encourages the FTC to eliminate the seven-day waiting period requirement, or provide an exemption from the application of this requirement and the entire Proposed Rule to companies such as Melaleuca that have a low initial investment requirement and offer and honor a post-purchase right of rescission and a full refund.

**3. Delivery of disclosure document.** The Proposed Rule requires that a seller of a business opportunity furnish a prospective purchaser a disclosure document in duplicate form that the prospective purchaser must sign and return to the seller. In the case of Melaleuca this would mean that when a Marketing Executive does an in-home presentation to several prospective customers, the Marketing Executive would need to give to and ask each person to read and sign the disclosure document. The Marketing Executive would need to give the document to every person at the in-home presentation. That is because, as described above, most persons who enroll to become Melaleuca customers also sign the Marketing Executive Agreement even if they do not plan on becoming a Marketing Executive at that time.

**This requirement unfairly paints legitimate businesses like Melaleuca with a tar brush that it does not deserve. Melaleuca is not aware of any other type of low dollar business transaction in which sellers are required by federal law to present and purchasers are required to sign such a document. We believe that the fact that prospective purchasers would be required to receive, sign and return a copy of the disclosure document of itself will create an air of suspicion and doubt in the minds of prospective purchasers that will result in an unnecessary obstacle to their purchase decision.**

In addition, the Proposed Rule requires that copies of the signed disclosures be retained for a period of three years. As stated at the outset of this letter, Melaleuca Marketing Executives enroll between 18,000 and 63,000 new customers and prospective Marketing Executives each month and make presentations to at least twice that number. Assuming an average of 50,000 presentations per month, this means that Marketing Executives will need to send to Melaleuca, and Melaleuca will need to store, 1.8 million disclosure

documents over a rolling three-year period. This is a significant additional administrative burden that far outweighs any asserted benefit.

Melaleuca understands that the purpose of the disclosure document is to give prospective purchasers of business opportunities relevant information about the opportunity that they are contemplating purchasing. **However, in the case of small investments where the purchaser is protected by a right of rescission and a money back guarantee, the purchaser will have a risk free opportunity to evaluate the merits of his or her tentative decision by experiencing the products and the business first hand. Certainly that is a better way to evaluate the merits of a proposal than looking at a disclosure document. We encourage the FTC to eliminate the disclosure document requirement, or provide an exemption from the application of the Proposed Rule for companies such as Melaleuca that have a low initial investment requirement and offer and honor a post-purchase right of rescission and a full refund.**

**4. Litigation disclosure.** The Proposed Rule requires that the disclosure document include a list of civil or criminal legal actions for misrepresentation, fraud, securities law violations or unfair or deceptive practices involving the seller, its affiliates, officers, directors, sales managers and sales employees. We have several objections to this requirement. First, our prospective Marketing Executives are also our prospective customers. This requirement will put direct selling companies at an extremely unfair disadvantage in the U.S. marketplace with respect to major retailers and manufacturers with whom they compete for product sales. For example, to our knowledge none of Proctor & Gamble, Lever Brothers, Wal-Mart or Walgreen are under any federally mandated requirement to make a point-of-sale disclosure to consumers regarding their litigation, even very relevant product liability litigation. We believe that, if the Proposed Rule were put into place, Melaleuca would need to disclose just one lawsuit that took place over 7 years ago and which Melaleuca won on every count. However, even with the disclosure of just one lawsuit, there is no doubt that people attending an in-home presentation about Melaleuca will question what is wrong with a company that is required by law to disclose its litigation history. That will lead to questions about the litigation that the average Marketing Executive will be ill equipped to respond to accurately and succinctly. At least the Marketing Executive will be able to explain that Melaleuca won the lawsuit. However, we have to wonder what would he or she have been able to say during the three or so years that the lawsuit was pending. It sounds pretty hollow to say, “Well, Melaleuca is being sued for fraud and misrepresentation, but they are going to win so don’t worry about it.” The requirement to disclose litigation will even create unnecessary doubt and suspicion in the minds of existing Marketing Executives. The result will be fewer persons signing up as customers and applying to be Marketing Executives. To require companies like Melaleuca who compete with the Wal-Marts and the Proctor & Gambles of the world to disclose legal actions will create an unfair and unnecessary barrier for fair competition in the marketplace. And while it seems appropriate that franchisors are required to disclose litigation under the Franchise Rule, that rule involves investments much larger than the \$29 Melaleuca Marketing Executive application fee.

Second, we foresee that a requirement to disclose litigation could produce an incentive for our competitors or those who wish to do us harm or take advantage of us to promote frivolous litigation simply so that we would be required to disclose such actions, thus causing both existing and potential customers to doubt our ethics. And third, companies who are under this disclosure requirement will have an artificial incentive to settle matters before they get to litigation, even cases they should win, in order to avoid having to disclose them. We are concerned that the plaintiffs' bar will have a heyday once it becomes aware of this vulnerability.

We understand why it could be very helpful to consumers if the unscrupulous players in the business opportunities arena were required to disclose their sordid litigation history. However, for companies like Melaleuca who have a proven track record of consumer protection, the requirement to disclose legal actions will have a far reaching impact that will create no additional consumer protection but will greatly harm the companies' ability to carry on their businesses. **Again, we encourage the FTC to exempt from the Proposed Rule companies like Melaleuca that have a low initial investment requirement and that offer and honor a right of rescission and a full refund.**

**5. References.** The Proposed Rule requires that the seller must disclose the name, city and state, and telephone number of all purchasers within the last three years. If this number is more than ten, the seller may limit the disclosure to providing this information with respect to at least ten purchasers within the past three years who are located nearest to the prospective purchaser's location. We understand that the purpose of this requirement is so that potential purchasers will have the opportunity to contact existing purchasers and talk to them about their experience. This model, although perhaps appropriate in the franchise or large investment arena, is both impractical and unnecessary in the direct selling context. Melaleuca has several concerns with this requirement. First, it will create a huge administrative burden on Melaleuca and will further slow down and encumber the enrollment process. With this requirement, and in light of its 169,000 Marketing Executives, Melaleuca would need to set up some kind of internal "geographic proximity locator system," if such a system could actually be created, and hire numerous additional employees to man it at least 18 hours a day in order to handle inquiries. If the Proposed Rule were literally applied, and before being able to give out the disclosure document, a Marketing Executive doing an in home presentation would need to obtain the address of each of the prospective customers at the meeting. The Marketing Executive would then need to call or email in to Melaleuca the addresses of each of the prospective customers. The Melaleuca personnel receiving this information would then need to plug the addresses into the "geographic proximity locator system" and pull up the required information with respect to the ten Marketing Executives who live closest to each of the prospective customers. This list would likely be different for each of the prospective customers, and it would change from day to day. Melaleuca would then need to call or email this information back to the Marketing Executive who would then add it to the disclosure document for each prospective customer. In reality, this could not be done quickly enough to provide the information back to the Marketing Executive during the in home presentation. Consequently, the Marketing Executive would have to track down each of the prospective customers after

the fact and give them this information. The result for the Marketing Executive would likely be a high rate of lost enrollments. This would also create a burden so great and adversely impact the Marketing Executive's success rate so much that Melaleuca would no longer be an attractive income opportunity.

**Second, Melaleuca considers its list of Marketing Executives and customers to be highly confidential and proprietary. This list literally is Melaleuca's most valuable asset. Competitor companies and their distributors would love to get their hands on even a small portion of the list.** This disclosure requirement would provide a means whereby competitors could obtain the contact information for at least ten Melaleuca Marketing Executives at a time. They would obviously contact them as prospects for their own "business opportunity" causing disruption to our business and causing a hassle for the Marketing Executives that are contacted by our competitors. No one would want to be included on such a list, resulting in an even greater deterrent to becoming a Melaleuca Marketing Executive.

Third, this requirement creates huge privacy concerns with respect to the Marketing Executives whose names and addresses are being disclosed. The Proposed Rule requires that each prospective customer be given a statement that reads: "If you buy a business opportunity from the seller, your contact information can be disclosed in the future to other buyers." Given the general public's heightened and very real concerns about identity theft and right to privacy, this notice requirement will certainly put a deep chill on the enrollment process and be enough to cause many prospective customers to refuse to enroll. Moreover, the notice would provide no protection to all the current Marketing Executives who joined Melaleuca with the reasonable expectation that their contact information would not be disclosed to third parties without their consent.

Finally, this requirement is impractical and not necessary given the fact that almost all Marketing Executives join Melaleuca as customers, and have no investment risk by also becoming a Melaleuca Marketing Executive due to the generous right to rescind the contract and receive a full refund. To require a Marketing Executive who is doing an in-home presentation to provide ten references to the prospective customers/Marketing Executives is really analogous to requiring a Best Buy store to give each customer who wishes to purchase a couple of CD's a list of ten other purchasers who they could contact to learn about their experience with Best Buy.

**We encourage the FTC to exempt from this requirement companies like Melaleuca that have a low initial investment requirement and that offer and honor a right of rescission and a full refund.**

**6. Income disclosure.** Melaleuca applauds the FTC's position regarding truthful disclosure of income potential. The proliferation of outlandish and unfounded income claims by unscrupulous operators and undisciplined sales people not only harms unsuspecting consumers, but also contributes to a public distaste even for legitimate home business opportunities and direct selling companies. Melaleuca has always had a policy prohibiting its Marketing Executives from making false, misleading or inaccurate

income claims. Melaleuca even goes a step further and requires its Marketing Executives who make income claims to provide prospective customers an income disclosure document. Melaleuca's policy reads as follows:

Marketing Executives are prohibited from making false, misleading or inaccurate claims about their or other persons' compensation received under the Melaleuca Compensation Plan. If, when presenting the Melaleuca business opportunity, a Marketing Executive makes any claim regarding his/her compensation from Melaleuca, or the potential compensation payable under Melaleuca's Compensation Plan, the Marketing Executive must also show the person(s) receiving the presentation Melaleuca's current Marketing Executives Annual Income Statistics sheet.

Melaleuca's Annual Income Statistics sheet covers the full spectrum of annual earnings (high, low and average) for each Marketing Executive status level and shows the percentage of Marketing Executives at each income level. A copy of the Annual Income Statistics sheet is enclosed, and is also available on the Melaleuca website at [www.melaleuca.com](http://www.melaleuca.com) (click "What is Melaleuca" then "About Us" then "Income Stats Report").

Although Melaleuca supports the FTC's desire to require accurate income disclosure, the Proposed Rule's earnings claim disclosure requirement poses significant challenges for direct selling businesses such as Melaleuca because it requires a different disclosure for each earnings claim. For example, if the Proposed Rule were to apply to statements by individual Marketing Executives, a Marketing Executive who discloses to prospects that he or she makes \$400 per month would have to make a different disclosure than a Marketing Executive who earns \$4000 per month. We understand that, although it could be read to suggest otherwise, the Proposed Rule was not intended to apply to statements by individual Marketing Executives. The same problem would exist, however, even with regard to statements by a company and its representatives.

In addition, the Proposed Rule requires that the earnings disclosure identify "the number and percentage of all purchases during the stated time period who achieved at least the stated level of earnings." You will note that Melaleuca states in its income statistics sheet the percentages but not the actual numbers of Marketing Executives who reached each level of earnings. The actual numbers of Marketing Executives at each earnings level is proprietary information. Giving the percentages is certainly all that a prospective Marketing Executive will need in order to understand the potential income opportunity. What is relevant to the prospective Marketing Executive is not that 5,723 Marketing Executives earned a certain amount, but that 3% of all Marketing Executives earned that amount. In addition, when comparing one company's income statistics to another, the only fair and relevant way to make that comparison would be if the number of people achieving each income level were stated as a percentage as opposed to the absolute numbers.

Although Melaleuca has been publishing its income statistics for many years and plans to always continue to do so, we seriously question whether a federally mandated requirement of income disclosure will produce the desired result of full and accurate disclosure to consumers. In order to ensure honest compliance with this rule at a minimum the FTC will need to have the right to audit companies' numbers. Otherwise, companies who feel at a disadvantage because the distributors' earnings are not as generous as their competitors will have incentive to fudge the numbers. In addition, consumers may be led to join up with the company that has the most generous earnings, even if in reality it also has the greatest failure rate. We believe that a federally mandated form of earnings claims disclosure is not necessary to protect consumers from being misled by companies that have a low initial investment requirement and that offer and honor a right of rescission and full refund, especially when enforcement actions under section 5 of the Federal Trade Commission Act will always be available. Therefore, we encourage the FTC to exempt such companies from this requirement and from the full Proposed Rule.

### **Bond or Security Deposit**

We have stated several times that we believe that companies that have a low initial investment requirement and that offer and honor a right of rescission and full refund should be exempt from the entire application of the Proposed Rule. However, we understand that the FTC may have concerns about companies that offer but do not honor a right of rescission and full money back guaranty. **We propose that one way to ensure that companies who seek an exemption from the Proposed Rule are really going to "put their money where their mouth is" would be to require them to post a bond or security deposit that could be drawn upon in the event the company fails to honor its promises.** Other countries in which Melaleuca does business have similar consumer protection systems that seem to function quite well.

### **Conclusion**

**Melaleuca believes that the Proposed Rule, if properly structured, will effectively enable the FTC to shut down many fraudulent businesses and prevent new ones from starting up. Legitimate businesses and consumers throughout the entire country will greatly benefit from this. However, in order that the Proposed Rule not have the effect of also shutting down or unfairly and unnecessarily burdening and penalizing legitimate businesses, we recommend that the FTC exempt from the rule businesses that have a low initial investment requirement and that offer and honor a right of rescission and full money back guarantee. We would also support a requirement that companies seeking such an exemption be required to post a bond or security deposit.**

Thank you for providing us this opportunity to comment on the Proposed Rule.

Sincerely,

Frank L. VanderSloot  
President & CEO

Enclosure