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FTC PUBLIC WORKSHOP ON THE BUSINESS OPPORTUNITY RULE  
COMMENT, Project No. P084405

1. INTRODUCTION

Tupperware welcomes the opportunity to amplify further its comments on the Revised Notice of Proposed Rulemaking (RNPR). We understand that you are holding this workshop to gather additional insight and not to hear a recitation of the written comments we submitted last May and June. Accordingly, I will focus most of my remarks on our remaining definitional concerns with regard to the RNPR.

At the outset, I want to reiterate our appreciation for the effort of the Commissioners and staff to narrow the scope of the proposed Business Opportunity Rule. We were pleased to see last Spring that the Commission specifically stated in the Federal Register Notice that the revisions narrowed the scope of the proposed rule “to avoid broadly sweeping in sellers of multi-level marketing opportunities” and that your agency intended to avoid inadvertently including in the new regulatory regime companies using traditional product distribution arrangements.

While Tupperware does not believe that the Business Opportunity Rule will apply to our company, we operate in an environment where regulatory certainty is critical to a billion dollar business such as ours. Accordingly, I wish to refer you to our written comments, which provide several suggested ways to make entirely clear to whom the Commission intends to apply the Rule. In the explanatory statement accompanying the RNPR, the Commission stated that it believes it has other authorities to regulate conduct of multi-level marketing companies and we encourage you to finalize the BOR by clarifying further the exemptions and exclusions already provided in the revised text.

By way of background, we are a publicly traded global direct seller of premium innovative products, including our Tupperware brand of kitchen and home products and beauty and personal care products sold through brands such as BeautiControl. I am proud to note the lifetime guarantee on our products, which also helps distinguish us from competitors and many of the companies whom the Commission is trying to regulate through this rulemaking.

Our products are sold to consumers outside traditional retail store channels, with independent contractor sales consultants comprising the vast majority of the sales force. Our consultants recruit and train other consultants and we currently have an average active sales force of 152,000 in the United States representing the Tupperware and BeautiControl brands. With their help, Tupperware is now found in more than 90 percent of U.S. homes today. Particularly in this economy, the ability of Americans to start as Tupperware consultants with minimal obstacles is a critical element to helping families make ends meet.

My purpose in participating in this workshop is to help the Commission understand more fully the need for additional clarity in the final version of the Business Opportunity Rule. Businesses need bright lines in order to understand the definition of a business opportunity, or in the alternative, explicit safe harbors to stay within. We believe that the Commission can make some tweaks without sacrificing the efficacy of the overall new regulatory regime and its ability to stifle the kinds of illegitimate business opportunities that stimulated the agency's initial activity.

## 2. Bright line exception

An example of the kind of bright line exception that we support and the clearest way for the Commission to ensure that companies like Tupperware are not swept in is to exempt from coverage of the BOR any business opportunity where the seller is a publicly traded company and the required investment by the business opportunity purchaser does not exceed \$250, such purchaser receives merchandise whose retail value is equal to or greater than the required investment, and the seller agrees to buy back the unused inventory within a period of time such as one year for at least 90 percent of the purchaser's cost. Publicly traded companies are already subject to regulatory scrutiny and are not the kind of entities that engage in the kind of scams that FTC seeks to police under the BOR. By combining a reasonable dollar threshold with a requirement that the exempt entity is a publicly traded company, this proposal should give comfort to the Commission that only reputable firms would be exempt. It would also ensure that consumers suffer virtually no economic harm in pursuing such a business opportunity since the combination of the low cost of entry with the high percentage and long-term return policy would leave little amounts unreturned if somebody was dissatisfied.

## 3. "REQUIRED PAYMENT"

In the event that the Commission does not include a categorical exemption such as the one I just described, we encourage the Commission to clarify the definition of "required payment" to more accurately show the agency's intention to exclude companies like Tupperware. Whether a company is included in the new regulatory regime or not depends greatly on the definition of "business opportunity." A key element of that definition is whether the prospective purchaser of the business opportunity has made a "required payment." The RNPR defined "required payment" in section 437.1(o) to include all consideration that the purchaser must pay to the seller but exempted payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

**Solution:** We would like the Commission to consider clarifying that no "required payment" occurs when the business opportunity seller agrees to buy back from the business opportunity purchaser any unused inventory within 12 months of purchase for at least 90 percent of such purchaser's cost. In other words, a required payment is only a payment when one does not have the ability to get almost all of your money back. We

believe 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. When a company like Tupperware has a contractual return policy that significantly limits the exposure of potential purchasers of the business opportunity, we satisfy the agency’s objective. Further, by creating the kind of exemption proposed here, the agency will likely encourage the greater availability of satisfactory return policies and lower the effective at-risk amount to only a few dollars (no more than 10 percent of the initial cost of the products). We believe that clarifying or expanding the exclusions from required payments will not operate to undermine the objectives of the business opportunity definition. Instead, it would allow the definition to reflect the business reality of the multi-level operating model.

#### 4. “BUSINESS ASSISTANCE”

A key definitional element of “business opportunity” is the phrase “business assistance.” The agency needs to do a better job of creating a safe harbor in order to assure that legitimate multi-level marketing enterprises such as Tupperware can continue to provide free training and information to business owners, without Tupperware having to incur the inordinate expense associated with compliance – which would be on top of the costs it already incurs for the provision of its time, efforts and resources to consultants at no cost.

Tupperware provides several types of business “assistance” to its business owners at no cost or on a voluntary basis as a “subscription service.” In addition, existing Tupperware business owners are encouraged to provide mentoring, training and guidance to new business owners. To the extent that assistance provided by either Tupperware or its sales force leadership could operate to bring the business within the scope of the RNPR, the FTC would create a huge disincentive to provide valuable training and assistance critical to the success of Tupperware business owners.

To elaborate on our written comments, let me illustrate. Tupperware provides the following training opportunities and business assistance either directly (or indirectly through its sales leadership):

- A Grand Opening Party, which we call the “GO Party,” is conducted by a senior Tupperware business owner (generally the recruiter) for the benefit of the new Tupperware business owner in order to provide him or her with training on the following:
  - \* How to organize a Tupperware party and assist the Party Host;
  - \* How to demonstrate Tupperware® products and their features/benefits;
  - \* How to use Tupperware® products to create the refreshments for the party guest;
  - \* How to complete product order forms and answer customer’s

- questions;
  - \* How to process payments for orders;
  - \* How to order products and Host gifts for delivery to customers; and
  - \* How to handle warranty returns
- Another example is our New Consultant Orientation classes for small groups of new Tupperware business owners, which are conducted by senior sales leaders who are experienced Tupperware business owners. This program is supported by training materials prepared by the Tupperware company, as supplemented by the program's field presenters. Attendance at this orientation is entirely voluntary, but attendance is rewarded by eligibility for additional product samples at no cost to the attendee.
- We also provide online training on various business activities including, but not limited to, the following:
  - \* Fundraisers using Tupperware® products;
  - \* Demonstration themes and recipes using Tupperware® products;
  - \* Recruiting new consultants; and
  - \* Dating new Hosts for Tupperware parties
- Catalogs, promotional flyers, host gifts, attendance gifts and other sales aids are available for purchase by Tupperware business owners, but are not required;
- Web-based Order Entry System for placement of product orders, collection and remittance of sales taxes, and credit card processing;
- Consultant websites at no cost for basic business communications and services and at a subscription price for upgraded services including a shopping cart feature;
- Lead generation (customers, hosts, recruits) through a consultant directory service that is available by subscription; and
- Customer care services for both business owners and customers

The foregoing training and business assistance, with the exception of the lead generation service, is designed to equip the new business owner with the skills and information necessary to operate a successful business. Tupperware company does not provide locations, outlets, accounts or customers to the business owner – although it could be argued that “recruiting materials” are designed to create new “locations or outlets” for the recruiting business owner and that lead generation and advertising activities conducted by the company are designed to provide new customers and/or recruits for the existing business owners. Clearly, to have these essential business activities be the vehicle whereby the exemption for multi-level marketers is “lost” and BOR compliance is required makes no sense and is at odds with the objectives articulated by the FTC. In the alternative, companies run the risk that no good deed goes unpunished. The FTC would be regulating a company that spends significant amounts of its own money to provide free assistance, training, and guidance at no cost to the purchaser of the BO and the consumer has the right to hold on to the products it

bought at a below-market price for up to a year and can return them all for a refund of all but \$7.90 or \$12.90.

**Solution:** We propose that to eliminate the risk of confusion as to what kind of business assistance triggers the regulatory regime of the Business Opportunity Rule, the Commission should establish in the Rule text a more clear safe harbor for legitimate business assistance along the lines we described in our written comments. For example, we would support the addition of the clause: “The provision of no cost marketing materials or business advice to purchasers on developing their own locations, outlets, accounts, or customers is not covered by this definition.” That sentence would go a long way toward ensuring that the Commission’s intention of exempting Tupperware and similar companies is obvious.

## 5. CONCLUSION

At the end of the day, unless the Commission takes steps as we have requested, it conceivable that a company could provide products and free training with no meaningful cost to the business opportunity purchaser because of an established and legitimate refund policy and the only way that company is exempt from the BOR is if the products are all for inventory for resale.

In conclusion, thank you again for the opportunity to elaborate on Tupperware’s written comments and to provide you with a bit more insight into how our operations would be affected by the current text of the revised Proposed Rule. We appreciate the Commission’s stated intent to avoid sweeping in companies like Tupperware and hope that with a bit more tweaking of the Rule text, you will be able to provide us the business certainty we need to continue to serve the public.