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Via Electronic Submission

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex S)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Business Opportunity Rule Workshop

Comment, Project No. P084405

Dear Secretary Clark

I am submitting the following comments in reference to the public workshop held on June 1, 2009 in the rule-making proceeding regarding the Business Opportunity Rule.

Over the past 14 years I have submitted comments to the Commission in reference to the need to protect consumers from unfair or deceptive practices in the multi-level marketing (MLM) industry. These include a comment in response to the Commissions' April 7, 1995 Request for Comment on the Franchise Rule, a comment dated July 16, 2006, in response to the Commissions' Notice of Proposed Rulemaking regarding the Business Opportunity Rule, and a rebuttal comment dated July 1, 2008, regarding the Revised Proposed Business Opportunity Rule. I respectfully refer the Commission to my prior comments, which provide a more detailed discussion of my background and experience, as well as the basis for my views on the need for regulation in this area to avoid further the substantial and devastating harm suffered by the vast

majority of participants in MLM "opportunities," *whether or not* they can be characterized as pyramid schemes.

I appreciate that the public workshop had the relatively narrow purpose of addressing the format of the proposed pre-sale disclosure document. It is my understanding that the Commission anticipates that a staff report will be issued in the Fall of 2009, and that there will be a further opportunity for public comment at that time. I will therefore restrict my comments in this letter to the issues discussed at the public workshop relative to the disclosure document.

I note that the representative from Tupperware raised the issue of whether, despite the efforts of the MLM industry's lobbying efforts, the proposed rule might still be broad enough to cover MLM opportunities. I will not repeat here the many compelling reasons why the rule should cover MLM opportunities, which are detailed in my prior submissions.

The bankruptcy history of the company, promoters and key persons should definitely be included in the legal actions section. The burden of including such information is slight, while the value to consumers – who are only being provided with a one-page disclosure – is substantial. If nothing else, disclosure of a prior bankruptcy will prompt the consumer to investigate the offering more thoroughly. Mr. Macleod suggests (Transcript pp. 33-34) that there may be bankruptcy filings unrelated to fraudulent conduct, implying that consumers may misunderstand the significance of the filing. Such a misunderstanding is a consequence of using a simplified, stream-lined form – which is something that Mr. Macleod's client – a business opportunity seller – would otherwise prefer.

Disclosure of the company's refund policy should include a "black box" warning (similar to that required for certain adverse side effects of prescription drugs) that the refund will not cover all of the business losses typically incurred by participants in business opportunities. I would refer to my previous submissions, which address this subject in detail. I am not aware of any MLM refund policy that provides for the recovery of such losses. There should also be bold print disclosure of any applicable deadlines, and any other limitations, such as that goods must be in their original packaging. Finally, disclosure of the number and percentage of persons who request and receive refunds should be required, as this is extremely significant information for persons attempting to evaluate a business opportunity.

As to earnings claims, I do not believe that promoters should have the option to state that no earnings claims are made. In the real world, no business opportunity is sold without some sort of earnings claim. A disclosure form which permits the promoter to disclaim making such claims (by checking the "no" box) simply gives the promoter a defense, based on "unreasonable reliance" that they would not otherwise have in a subsequent fraud action by the purchaser. Thus, the existence of a disclosure form which is intended to assist he consumer actually makes the consumer worse off. Alternatively, if a company expressly disclaims making earnings claims, there ought to be a black box

warning to the effect that any suggestion that the consumer will make money at the proposed venture is a lie, and that any supposed opportunity for which the promoter declines to provide earnings information should be treated with extreme caution. However, simply providing the promoter with the option of checking the “no” box on the form is an invitation to fraud.

Thank you for the opportunity to submit my comments.

Respectfully,

/Douglas M. Brooks/_____
Douglas M. Brooks

DMB/s