CONSUMER AWARENESS INSTITUTE

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Research, education, and advocacy for consumers on selected issues

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COMMENTS on FTC'S RPBOR Workshop Held June 1, 2009: The Revised Business Opportunity Rule Is Invalid and Must be Vacated – Part 2 (continued from June 15 comments)

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Scope and effects of the Business Opportunity Rule

One of the issues that came up during the workshop is what constitutes a business opportunity. When we rule out the purchase of an existing business at a fixed location and with protected territory, such as a franchise, we are left with a hodge-podge of entrepreneurial activity, the very type of activity that lends itself to fraudulent programs and promises. I would like to propose the Rule be applied primarily to a category of business opportunities called something like *packaged (or formatted) home business opportunities, or PHBO, for short*.

These types of enterprises appeal to people who want to work from home and don't want to do all the research, creative development, and trial-and-error market testing necessary to build a home business from scratch. They want something that's packaged by someone else, with proven products and sales strategies for selling them. And they want to work from home for a variety of reasons, such as not wanting to leave children to the care of others, lack of skills to compete in the workplace, distance from major markets, handicaps that restrict mobility, and freedom to be an independent entrepreneur not tied to a job or place of business.

This is the type of entrepreneurial activity the I understand the Rule is intended to cover and which fits the reality of the PHBO marketplace, about which I am in a position to speak with some authority, having worked and consulted in the field since 1966. I had some successes and some failures, but over time developed a keen interest in protecting consumers against the many fraudulent schemes that are promoted to these types of people.

Some of the most profitable of the PHBOs I encountered were in the field of direct selling, and the most unprofitable or fraudulent have been in MLM, posing as legitimate direct selling -- but which is better described as business opportunity chain selling; i.e., an endless chain of recruiting of "direct selling" or "business opportunity" participants as primary customers. **Since the MLM model incentivizes infinite expansion within finite markets, MLM is inherently flawed, uneconomic, and fraudulent.**

Transparency could hurt MLM for obvious reasons. This is why the DSA has gone to such extraordinary lengths to get its members exempted from the ambit of the RPBOR. The truth is always a threat to those who maintain a lie. If MLM as an industry complains that it will be hurt by a Rule that requires transparency for the protection of consumers, that by itself should be a clear sign to FTC personnel that something is amiss with MLM; i.e., something to hide.

In summary, **the FTC should not allow the DSA/MLM lobby to successfully block disclosure of essential information to consumers in one of the most fraudulent industries on the planet.** If the DSA and its MLM members are hurt by the truth – so be it! Most of the sponsors and promoters I have met are capable of finding work in legitimate industries. Even if no one will hire them, we should shed no tears if they are left to live off the billions they have bilked out of millions of vulnerable participants.

The FTC should consider being more proactive with business opportunity chain sellers.

The workshop announcement and Ms. Morrissey referred to the FTC's decision to lean on Section 5 to go after fraudulent MLM companies. But as discussed in my comments submitted June 15, this is simply not cost effective. The history of FTC enforcement gives no confidence that the FTC is up to the job without a massive increase in personnel and financial resources. Such cases are expensive and extremely time-consuming requiring legal processes that drain the resources of the Commission and of U.S. taxpayers. This is why the FTC admits to having prosecuted only14 MLM cases in the past ten years.

But the cost-effectiveness issue is not the worst of the problems created by exempting MLM from RPBOR. Millions of consumers are recruited by MLM promoters every year and are lured into spending their limited resources on MLM promises of "time freedom," "permanent residual income," "more time with your family," "the best alternative for struggling job-seekers," etc. – participation in which almost always leads to loss and disappointment. And unlike a legitimate business opportunity, typically in MLM the more a person invests in time, money, and effort, the more he/she loses (except for those at the top). Utilizing Section 5 on a case-by-case basis will not prevent billions of dollars in aggregate losses by millions of MLM participants.

A rule requiring adequate disclosure is essential if the FTC is to protect consumers from unfair and deceptive practices with PHBOs. Since victims of endless chains, such as RPBORs rarely file complaints for the reasons explained in my prior comments, reactive or complaint-based law enforcement simply does not work with these chains. Since in law enforcement, the squeaky wheel gets the grease, most fraudulent PHBOs will get no action with Section 5.

The FTC needs to be proactive in dealing with PHBO chains. A Rule requiring significant disclosure will have a far more consumer-protective effect than going after a handful of the most obviously fraudulent of the hundreds of fraudulent MLMs that have been permitted to corrupt the PHBO marketplace.

Another irregularity in RPBOR rulemaking

Since the FTC held on to the draft of the workshop until one day before the deadline for submitting comments, I requested an extension for the submitting of these comments – which was granted. On reviewing the transcript, I found some obvious errata (some typographic errors, some content confusion) that needed to be corrected, so I immediately submitted this list of errata to Kathleen Benway, who is the contact person for these proceedings. For example, "a news" is not the same term as "Nu Skin" (page 95, line 20); "ambulant" is not the same as "MLM" (page 98, line 14); and "defunct" carries a totally different connotation that "debunked" (page 119, line 7). However, when the comment period was extended, the incorrect transcript remained posted the entire time. So I am including it here as an appendix for the record.

Appendix: ERRATA SHEET for the Rough Draft of the Transcript of the June 1 RPBOR Workshop - Remarks by Jon Taylor

Reference Page	Line(s)	Selection to be corrected	Corrected copy (inserted copy underlined)
√ 7	13	legitimate business opportunity~~y chains~~, endless chains	legitimate business opportunities -- endless chains
√ 22	25	. . . ~~and~~ how information is presented	. . . on how information is presented
√ 35	10	when you asked ~~me~~ for the details, . .	when you asked for the details, . .
√ 43	8	suggest in there that, for example, must . . .	suggestion in there that, for example, one must . . .
√ 43	**13**	**~~up in~~ the box**	**open the box**
√ 46	20	rules, . . .	rule, . . .
√ 51	24	. . . business opportunity.	. . . business opportunities.
√ 55	16-17	. . ~~It's not the most effective as stated over and over~~. . . .	

[NOTE TO TRANSCRIBER: I don't remember what I said here, but it does not make sense or fit, so I would ask that this sentence be eliminated.]

√ 68	16	. . . package	. . . packaged
√ 71	21-22	. . . feedback and another web site – I'm associated with literally thousands . . .	. . . feedback – and another web site I'm associated with -- literally thousands . . .
√ 73	8-9	. . . implied ~~with or without the information is provided~~	. . . implied. [end of sentence]
√ 75	17	that ~~– I don't know what I'm saying –~~	that - the analogy doesn't apply here.
√ 91	12-13	~~a~~multi level marketing . .]and repeated]	multi-level marketing [both times without the "a"]
√ 91	25	thousands, . .	include thousands, . .
√ 92	1	. . . , they call them TOPPs. that stand	. . . , I call them TOPPs. That stands

√ 92	5-6	. . ., ~~have~~ indexes	. . . , there are indexes
√ 92	20	. . . too broad~~en --~~	. . . too broad –
√ 93	5	. . . all you need is ~~a~~ commission shared by	. . . all you need is commissions shared by
√ 94	5	. . . that would amend ~~kit~~,	. . . that would amend it,
√ 94	16	. . . quarter a million dollars in political	. . . quarter of a million dollars from MLMs in . .
√ 95	20	part of ~~a news~~ statement of average ~~in~~ earnings.	part of the Nu Skin statement of average earnings.
√ 95	21	So ~~that~~ was taken from my ~~saying~~ that	So what was taken from my statement was that
√ 96	11	~~mlm.thetruth.com~~	mlm-thetruth.com [hyphen, not a period after mlm]
√ 97	8	week. It would take 357 years . .	week. At the rate of 14 every ten years, it would . . .
√ 98	14	~~ambulent~~ is exempt from the ambit . . .	MLM is exempt from the ambit . . .
√ 98	20	. . . the ~~ambient~~ of the	. . . the ambit of the
√ 99	9	its responsibility to ~~garden~~ and protect	its responsibility to guard and protect
√ 100	16	. . . truth were told, fraudulent	. . truth were told [balloon is popped], fraudulent

[NOTE TO TRANSCRIBER: The popping of the balloon was an important statement, even though not verbal.]

√ 119	7	things had to be ~~defunct~~. . .	things had to be debunked. . .
√ 119	21	Three, the rule applie~~d~~ to . . .	Three, the rule applies to . . .