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June 24, 2009

David C. Vladeck, Director
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Proposed Business Opportunity Rule

Dear Mr. Vladeck:

I was a consumer litigator for the Wisconsin Department of Justice during most of my 30 years there, retiring in 1997. I began litigating pyramid schemes in 1969, against Koscot Interplanetary, and concluded with a successful action against Fortune in Motion in 1997. I drafted the Wisconsin prohibition against pyramids or 'chain distributor schemes' in 1970. Until 1979, the Commission viewed pyramids as a per se violation of Sec. 5. Commissioner Paul Rand Dixon wrote several decisions, Koscot, Holiday Magic, and Ger-Ro-Mar all of which reached this conclusion with little difficulty. I frequently worked in conjunction with the Commission's staff attorneys on these cases.

The Commission's Amway decision in 1979 erroneously concluded that Amway was not a pyramid because it had a provision in its dealer rules requiring retail sales and a buy-back program. This ruling has effectively legitimized pyramids, now called MLM's, as all other pyramids immediately adopted the 'Amway rules'. While the Commission did bring some pyramid cases, they involved extended litigation, a confusing legal standard, and a requirement that it prove that the 'Amway rules' were not enforced. The unfortunate by-product of this litigation was the implication that other companies, such as Amway, were legal since they were not sued. The Commission has never revisited the Amway decision to see if in fact it does have retail sales and a meaningful buy-back program.

The 1979 ruling made billionaires of the Amway founders and funded a highly effective public relations and lobbying effort which, for the past 30 years, has entrenched the dubious principles of the Amway decision and influenced a significant number of legislators and other governmental officials both state and federal. Timothy Muris was an Amway attorney prior to being appointed Chairman of the Commission. Perhaps the most disappointing commentary in this respect, at least from my perspective, is the involvement of former director of the consumer bureau, Joan (Jodie) Bernstein, who filed submissions in respect to the Business Opportunity Rule on behalf of the Quixtar Company, an Amway affiliate, and the firm Bryan Cave, L.L.P. In her rebuttal submission, she designated me a 'self-appointed' critic who filed nothing but a 'patronizing screed'. I found this beneath a person once the recipient of the Miles Kirkpatrick Award and in direct opposition to her service with the Commission.

The Business Opportunity Rule has been in process since early 2006 and was once intended to deal with the pyramid issue. I submitted comments on this rule. Since then, as evidence of the influence of the pyramid lobby, the rule has been amended to exclude pyramids – leaving rack jobbers and envelope stuffing proposals.

If promulgated in its current form, the Rule will stand in mute testimony to the dominance of the pyramid lobbying effort and the inability of the Commission to deal effectively with this matter. I would strongly urge you to suspend the promulgation of this rule until a complete review of the issues involved has been made. At a minimum, it would seem advisable to find out whether the underpinnings of the 1979 Amway decision were in fact based on a rational analysis. I have previously suggested this in my letter to Chairman Pitofsky in 2000, a copy is enclosed.

Pyramid selling has now been successfully promoted around the world, solely on the basis that it has been legalized in the United States. Yearly losses are well into the tens of billions of dollars – far exceeding the Madoff matter and with victims far less able to absorb the losses. The fact that pyramids, or endless chains, are per se illegal has been buried in the meaningless distinction between a pyramid and a Multi Level Marketing plan. It is the endless chain aspects of the plan that are illegal, not the existence or non-existence of retail sales or buy-back programs. This ambiguity results in the implication that there are legal MLM companies, as the term is used. It has been perfected by thirty years of well funded lobbying efforts.

With the current economic downturn many unemployed persons will be seeking alternate sources of income. Pyramids will exploit this fact and exacerbate the problem, as 99% of pyramid participants fail. This would be a tragic development, one that the Commission should seek to avoid.

I am willing to discuss this further if either you or your staff is so inclined.

Respectfully submitted,

Bruce A. Craig