DIRECT SELLING ASSOCIATION
1667 K Street, NW, Suite 1100, Washington, DC 20006-1660
202/452-8866 • Fax 202/452-9010
www.dsa.org

June 22, 2009

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex S)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: DSA Comments Regarding the Federal Trade Commission's Rule Concerning Cooling-Off Period for Sales at Home or at Certain Other Locations, Project Number P087109

Dear Secretary Clark:

On behalf of the Direct Selling Association (DSA) and its member companies, I am pleased to submit these comments on the Federal Trade Commission (the Commission) Rule Concerning Cooling-Off Period for Sales a Home or at Certain Other Locations, 16 CFR 429 hereafter referred to as the Rule or the Cooling-Off Rule. These comments are offered by DSA in response to your request for public comment contained in the 74 Fed. Reg. 18170 (April 21, 2009).

DSA supports and shares the Commission's goal of preventing abusive high-pressure sales tactics and ridding the marketplace of fraud. We appreciate having an opportunity to participate in the review process for this Rule.

As the Commission is aware, DSA supported the promulgation of the Rule and actively pursued adoption of similar legislative enactments in all 50 states. DSA respectfully suggests consideration of amendments to the Rule that will effectively enhance the impact of the Rule and its protections for consumers. These changes would help ensure there is no confusion regarding the application of the Rule and at the same time encourage and simplify compliance by affected businesses, while enhancing the protection of consumers. Specifically, DSA suggests the following:

- Permit alternatives to the requirements of the Rule for companies that offer 100% money-back guarantees and other similar protections

- Amend the environmentally unsound and practically unnecessary two receipt requirement
- Evaluate simplification and shortening of the cooling-off language
- Increase the threshold amount to reflect inflation
- Pre-empt certain inconsistent and confusing state and local laws

I. Introduction and General Background

Founded in 1910, DSA is the non-profit national trade association of the leading companies that manufacture and distribute goods and services sold directly to consumers by personal presentation and demonstration, primarily in the home. More than 200 companies are members of the association, including many with well-known brand names. DSA's mission is to protect, serve and promote the effectiveness of member companies and the independent business people they represent. To ensure that the marketing by member companies of products and/or the direct sales opportunity is conducted with the highest level of business ethics and service to consumers among its roles, DSA promulgates and oversees an independently administered code of ethics program that protects both customers and salespeople. Approximately 15 million individuals sold for direct selling companies as independent contractors with estimated retail sales of $30.8 billion in 2007.[1]

The Cooling-Off Rule stems from numerous complaints received by the Commission in the 1960s and 1970s. The complaints involved deceptive practices by sales agents in gaining admission to homes, using high-pressure sales tactics, making misrepresentations of quality or price, and charging high prices for low quality merchandise, as well as the general nuisance to persons resulting from visits by uninvited persons. The purpose of the Rule was to eliminate the possibility of a buyer making a decision under pressure, or in a confusing situation.

II. Continued Need for the Cooling-Off Rule

As DSA has indicated in previous submissions regarding the Rule, DSA feels very strongly that the Rule serves a valuable purpose for consumers. Because DSA is committed to the promotion of the highest ethical standards for the direct selling industry, DSA supported the Rule's original promulgation as a way to mitigate the effects of deceptive and high-pressure sales tactics.

While DSA believes that the problems which gave rise to these concerns have largely been eliminated, we also believe the Rule continues to serve the needs of consumers and sellers by enhancing the confidence of consumers in direct selling and serves as an ongoing deterrent to any firm or salesperson tempted to use high-pressure sales tactics. Consumers should enjoy the ease, convenience and simplicity of purchasing in their homes, without fear of being pressured into an irrevocable commitment by virtue of unscrupulous salespersons' unethical practices, such practices are prohibited by the

[1] DSA 2008 Growth and Outlook Survey.

DSA's own Code of Ethics. While all problems have not been eliminated totally from the direct selling marketplace, they are now no more of a concern than in other industries due at least in part to the Rule and to DSA's self-regulatory efforts through DSA's independently administered Code of Ethics.

DSA and its member companies take compliance with the Cooling-Off Rule very seriously. In fact, DSA probably does more to promote knowledge and understanding of and compliance with the Rule than any other non-governmental agency. Education regarding the Rule is a key part of the review process that all DSA member companies must undergo before being admitted into membership. It is also part of our periodic review of all current DSA members. As the Commission is aware, the Rule has frequently been part of DSA's educational offerings to its member companies. The Commission has been gracious in providing experts on the topic to give presentations at these meetings.

Accordingly for the reasons set forth above, DSA strongly supports continuation of the Rule.

III. Proposed Changes for Consideration

A. Permit alternative compliance for companies that offer 100% money-back guarantees and other similar protections

The Commission has made it clear that, regardless of a company's cancellation and return policy, the cooling-off notice is required on their receipts. In addition to 100% money-back guarantees, many DSA member companies offer other cancellation and return policies that are far more generous than what is required by the Cooling-Off Rule. Some may offer one week, 15-day, 30-day or even longer cancellation periods. DSA recommends that companies be allowed to substitute the language giving notice of these superior protections for that of the Cooling-Off Rule. A direct selling company must give notice of the Commission Rule even thought that company may give consumers a much longer right to cancel the purchase.

To avoid confusion on the part of a consumer faced with two seemingly inconsistent terms under which to cancel a sale, DSA suggests that companies which clearly and conspicuously give a 100% money-back guarantee be allowed to substitute that guarantee for the present notice under the Rule. Consumers are likely to better understand this guarantee as compared to the cooling-off notice which still rings of "legalese" and contains paperwork requirements for sellers and buyers. Further, if allowed as an alternative method of compliance, companies would be highlighting their commitment to customer satisfaction above and beyond the limits set by the Rule.

Allowing this alternative compliance would also reduce the costs associated with printing and administering the cooling-off notice as well as the reduced costs associated with training of both home-office personnel and independent sellers.

Notice to the consumer would be given to customers on the sales receipt in a similar fashion as currently required by the Rule. For example, in place of the summary notice a guarantee notice could state:

> **You, the buyer, may return this product pursuant to our company's 100% Money-Back Guarantee. See (location: for example, "the reverse side") for an explanation.**

B. Amend the environmentally unsound and practically unnecessary two receipt requirement

The current Rule requires a completed form in duplicate. (16 CFR 429.1 b) If a consumer cancels, the two receipt requirement contemplates a consumer returning to the company or salesperson one copy of the receipt, while retaining one copy of the receipt.

Direct selling generates hundreds of millions of individual transactions annually, the requirement for a duplicate receipt generates hundreds of millions of additional pieces of paper that are not utilized by more than a small number of consumers. This requirement is wasteful, unnecessary and environmentally unsound.

Duplicates no longer necessary

When the Rule was initially promulgated in 1972 the duplicate copy requirement was understandable. The most logical manner of cancellation was the mailing of the printed receipt. The consumer needed to keep a copy. Today, with order taking (and cancellation) taking place over the phone, computer and mail the duplicate receipt would seem unnecessary. There is a virtually automatic record of sales and cancellations in most transactions. When paper cancellations are made, the almost universal access to copier machines makes the duplicate receipt superfluous.

Reduction of cost and environmental burden

The cost to produce, print and ship unnecessary paper could undoubtedly run into the many tens of millions of dollars. Additionally, the environmental waste occasioned by this unnecessary paper could be eliminated by DSA's suggested improvement to the Rule.

Most individual companies and governmental agencies have worked to reduce the amount of paper that they use. DSA and many member companies have made significant efforts to reduce, reuse and recycle paper. With one simple change to the Rule the Commission could make a meaningful impact in reducing the cost to companies and the negative impact of additional unnecessary pieces of paper.

Accordingly DSA recommends that the Commission consider eliminating the duplicate receipt requirement. Customers would still retain the exact same right to cancel. With a

one-page sales receipt companies could be required to have a mechanism in place to allow for cancellation without the customer having to return the original receipt.

C. Evaluate the efficacy of the existing cooling-off language

The current language, both the summary notice and full notice, uses almost 300 words to communicate a relatively simple and straightforward concept. The Commission has conducted studies to determine the efficacy of notice language in other proposed rules. We suggest the Commission conduct a similar study of the current cancellation notice, as well as possible changes that shorten and simplify the notice.

D. Raise the threshold amount to reflect inflation

The Commission should consider revising the threshold amount for application of the Rule to reflect inflation since 1972. The Commission instituted a threshold in recognition of the fact that the Rule was not to apply to purchases of an inconsequential amount to the average consumer. The Rule was never intended to cover inconsequential purchases.

If the threshold had been indexed to inflation, since 1972 the threshold amount would be more than $125. DSA recommends that the Commission consider raising the threshold amount so the Rule can be focused on more significant sales transactions and not to purchases of minimal cost.

E. Preemption of State and local laws and regulations

As is properly noted in the request for comments, "the Rule expressly preempts any state laws or municipal ordinances that are directly inconsistent with the Rule, including, for example, state laws or ordinances that impose a fee or penalty on the buyer for exercising his or her right under the Rule, or that do not require the buyer to receive a notice of his or her right to cancel the transaction in substantially the same form as provided in the Commission's Rule."

Today, all 50 states and the District of Columbia have cooling-off laws. The vast majority of these laws are identical to the Commission's Cooling-Off Rule. DSA encourages states to conform to the Commission's Cooling-Off Rule because of its benefit to consumers and the need for uniformity in the marketplace. A national standard would help to eliminate any possible confusion on the part of consumers.

A complete preemption of all state and municipal cooling-off ordinances is warranted in the case of the Cooling-Off Rule. Requiring different standards for different states is an unjustified burden on business and confusing to the consumer with little to no benefit. The Commission's Cooling-Off Rule is sufficient protection and should be uniformly used by all companies in all U.S. jurisdictions.

IV. Conclusion and Summary

In conclusion, DSA respectfully asks the Commission to consider the suggestions set forth in this submission. We request that the Commission maximize the effectiveness and efficiency of the Cooling-Off Rule by thoughtfully considering and implementing DSA's proposed changes.

Sincerely,

John W. Webb
Associate Legal Counsel
Direct Selling Association