



October 30, 2010

Federal Trade Commission/Office of the Secretary
Room H-135 (Annex S) 600
Pennsylvania Avenue, NW
Washington, DC 20580

RE: Revised Proposed Business Opportunity Rule, R511993

Position Statement of NG Franchise Services

We fully support the FTC in its laudatory consumer protection objective to challenge fraudulent and deceptive business practices. Along with other industry professionals, we respectfully offer constructive comments and recommendations to allow the FTC to achieve its objectives and to avoid an undue hardship to the MLM/Direct Selling industry.

Profile of Firm Providing Comment:

For almost 20 years, we have served as advisor and Internet franchise buyer lead generation source. We have assisted start-up, emerging and mature franchise companies headquartered throughout the U.S. and abroad.

In 2001 our company (then operating as Franchise.com) received FTC Franchise Staff approval for our franchise e-disclosure service. We sold the Franchise.com trademark in 2007 and amended our company name to NG Franchise Services. We continue to be the leading provider of franchise e-disclosure services to the franchise sector using the brand name FDDPlus.com (an acronym for Fast Document Delivery Plus). Our service is utilized by many of the largest franchise systems as well as many smaller ones.

In 2001 at the request of Steven Toporoff, former FTC Franchise Program Director, we added an electronic return receipt to our e-disclosure process. Our system had already met the FTC's requirement to deliver a single file document.

To comply with Mr. Toporoff's request for an electronic return receipt our programmer designed our process to deliver the receipt to the franchise company sender when the potential franchise buyer accepted the franchisor's invitation to receive their franchise disclosure document. When the invitation is accepted our system produces an Acknowledgement of Receipt which is delivered by email to the sender.

Receipts are also stored in the franchisor's online account for future access with all transaction history searchable. The system includes exact disclosure document version control.

In 2008 the FTC enacted the Amended Franchise Rule. One requirement to that amended rule was that a franchisor confirms that the downloaded document has been opened successfully. We accordingly added a step to our FDDPlus process that returns an electronic receipt when the recipient validates by clicking a link in the downloaded file that the document has been opened successfully. This notification is now considered the Acknowledgement of Receipt which is emailed to the sender. The last receipt associated with the intended recipient is archived in the franchisor's account in perpetuity.

Also per the Amended Franchise Rule contact information for all sales people involved must be entered into the disclosure document receipt. Using our system senders select one or more salesperson contacts from a list of contacts which have been preloaded into their FDDPlus.com account. Using a template the contacts selected are inserted into what becomes the final disclosure document receipt. Contact information includes name, address, phone number, and email address. When the intended recipient accepts the invitation to download the disclosure document they have an opportunity to add more seller contacts if left out by the sender. The buyer and the sellers contacts are inserted into the Acknowledgment of Receipt notification and copy stored online. Both acceptance and acknowledgment receipts are emailed to the sender (and others in the franchise company designated by the franchisor to receive notifications).

The FDDPlus.com system also includes an online filing cabinet for franchise sellers to store key documents online, such as franchise applications, executed franchise agreements, notices, etc.

The Amended Franchise Rule also has a requirement for franchisors to annually update their franchisee and company owned unit histories (creating Item 20 schedules). Accordingly we also added an area where an account administrator can keep their franchise buyer histories up to date. The system calculates and updates FTC required schedules respective to terminations, renewals, closings, openings, and new franchise sales. It can create Franchise Abstracts for each franchisee with a "click of a mouse".

A Constructive Critique of the FTC Revised Proposed Business Opportunity Rule

As a preface, the following comments are offered with the utmost respect and appreciation of the FTC Staff analysis and explanation of the Revised Proposed Business Opportunity Rule.

It is clear that the FTC listened attentively to the approximately 17,000 letter submissions regarding the appropriate scope of the Proposed Business Opportunity Rule and its impact on the MLM/Direct Selling/Direct Sales/Network Marketing industry.

For those businesses you determine must comply with the Revised Proposed Business Opportunity Rule, this observer believes those procedures you are requiring would be overly burdensome If not handled electronically.

This could be true for MLM's in particular, if not using Internet processes.

For example this observer foresees the following process being used by Sellers and Salespersons to comply with the FTC proposed Business Opportunity Rule:

1. Seller mails all language version disclosure forms to their salespeople
2. Salesperson copies those language version disclosure forms applicable to his/her business
3. Salesperson writes in his/her salesperson name on disclosure form
4. Salesperson copies multiple applicable version salesperson named disclosure forms for future distribution to potential Buyers
5. Salesperson delivers the appropriate Disclosure Form to the potential buyer for signature
6. Salesperson faxes, mails, or scans and emails signed Disclosure Form to Seller
7. Salesperson logs potential Buyer purchase with disclosure date onto a form for noting post 7 day follow-up day with buyer
8. Seller creates a file and inserts disclosure form into Salesperson's pending Buyer file
9. Seller monitors that Buyer does not make payment or executes a purchase contract prior to termination of the 7 day waiting period.

The above is mostly paper based and not environmentally friendly.

Methods should be utilized disclosing to Buyers in a uniform manner so that the Seller remains in compliance with your proposed Business Opportunity Rule. Salespersons should be alerted when the selling cycle can restart only after the seven day waiting period. Sellers should be able to confirm they are in compliance to accept purchase agreements and/or payments.

Knowing the huge number of potential Buyers to which MLMs and Direct Sales Companies will need to disclose to and retain records for, it will be very burdensome for Sellers to comply unless they do so using an electronic system.

We propose that Sellers develop their own secure online system, or utilize a system such as FDDPlus.com. They should allow their salespeople log in permissions for selecting preloaded Disclosure Form by language version. Preloaded versions could already have certain standard information about the opportunity completed and uploaded into the system by the Seller.

The balance of data being required or suggested herein (Salesperson contact information, Buyer information, and listed References) would be auto filled into the Disclosure Form template by the system. Salesperson would send the potential Buyer the invitation to be disclosed.

By using a system as described above Sellers can easily comply with your proposed FTC Business Opportunity Rule disclosure form and document retention requirements.

As outlined above electronic Internet solutions already exist to help Sellers comply with FTC disclosure requirements. Using applications such as FDDPlus.com, or a system the Seller develops themselves will quite frankly minimize their burden significantly.

Further to this we have several recommendations:

1. For the Disclosure Form add a field for the Buyer's name above the Seller's Name with additional fields for address, phone number, and email address. Having only a signature will make it difficult for the Seller to match up the Buyer to a final sales agreement. Some national groups have many common surnames example "Patel". Reading and relying on a possible unreadable signature and matching it to an agreement might prove difficult. One integrated system can readily solve this issue, especially if the agreement is also electronically signed.
2. We suggest you add two check boxes in the proposed Buyer named areas at the top of the Disclosure Form, and add an additional signature line at the bottom of the form with a date line. In certain cases buyers will be a husband and wife team or an existing company.
3. Add lines for Salesperson: ID Number, phone, and email address for Seller and potential Buyer reference.
4. For the References to be easily and fairly provided we suggest the FTC require additional Buyer fields on the Disclosure Form, such as State and Zip Code. By doing so the Buyer's zip code can be matched to the nearest existing References. This would yield FTC disclosure results closer to that of your earlier proposal that Buyers be provided with contact information for References located nearby them.

References could be selected by the system on a random basis. Providing this randomly could lessen the risk of Sellers feeding their happiest existing Reference contacts only to potential Buyers vs. the Buyer being able to contact an assortment of non satisfied and satisfied References.

Using an online solution such as that offered by FDDPlus.com Sellers could upload all their existing Buyers contact data (References) into the system, and the system would automatically match up and place into a Disclosure template contact data for required References.

5. For those Sellers using electronic disclosure we recommend that the FTC allow for the Buyer, Seller, and Salesperson contact data and disclosure date to be inserted into a Disclosure template page to be added electronically as the last page of the disclosure document (behind the Seller's language version FTC required Disclosure Form).

Thank you for the opportunity to submit this comment.

Respectfully,

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