

July 15, 2006

Sue Styer

Federal Trade Commission/Office of the Secretary  
Room H-135 (Annex W)  
Re: Business Opportunity Rule, R511993  
600 Pennsylvania Avenue NW  
Washington, DC 20580

I am writing to ask that you reconsider some of the requirements you are proposing to regulate the direct sales industry. Please know that I am thankful that we have the FTC working to protect average consumers like me, but in this case, you will be working against me, impacting my income, my future and my family's future. I understand that there are fraudulent groups out there, but this particular rule unfairly targets legitimate direct selling businesses.

I am an MXI Corp Associate who has been proud to be involved in this business for just over one year now. I began my business to enjoy better health benefits and supplement my current 9-5 income. This is a great part-time addition to my daily job requirements and this industry allows me the freedom to set my own hours and replace the loss of my husband's wages when he passed one and a half years ago.

I have worked in this kind of business for many years, representing home products, jewelry and health supplements. Each time I have enjoyed the freedoms mentioned above and made improvements to my family's daily well being and contribute to our income without sacrificing time away.

I am now alone and dependent solely on my income and find this direct sale format an extremely suitable way supplement that income, as well as, the importance of the health aspect of this product. MXI Corp allows me to enrich my daily health with the best products and share this healthy element with others.

### **Specific Concerns and Recommendations.**

I feel good about sharing MXI's very real business opportunity with others, and I want to continue to easily introduce Xocai Healthy Chocolate to more people who could benefit as I have. The regulations you are proposing would hinder me from doing so, and would hinder others in starting their business in the timeframe they choose. Specifically:

1. **Seven Day Waiting Period.** In my opinion, this requirement is one of the most devastating requirements. This means that a prospective purchaser cannot sign a contract or make a payment until seven days has elapsed from the time he was given all the required disclosures. This waiting period will certainly inconvenience and "chill" enthusiastic individuals anxious to participate in the MXI Corp business opportunity. It will also create an air of suspicion among prospective purchasers when told that the FTC requires such a waiting period.

This waiting period will also create tremendous inconvenience for those distributors who recruit on the road. It will require gathering contact information and following up seven days later, assuming that all the disclosures were given at the time of the meeting. This is an excessive administrative burden that requires making the sale twice.

**Recommendation:** I oppose this requirement because it is excessively burdensome. The waiting period does not begin until all disclosures have been satisfied. In many cases, under the proposed rule this cannot be done at the time of presentation because the required information cannot be known at that time. Requiring a seven-day waiting period before a distributor is allowed to even place an order would be destructive to the businesses of thousands of distributors who are building a business around Xocai products.

2. **List of Nearest References.** As part of the disclosure requirements, prospective purchasers will need to be given the names, addresses and telephone numbers of the 10 geographically nearest purchasers. The distributor will have to contact MXI Corp to gain access to the information required by this disclosure. This requirement is overly burdensome and evokes confidentiality and privacy concerns for all involved. Logistically speaking, because the distributor won't necessarily know where a prospective purchaser lives before meeting him, it will be difficult to have this information available to disclose until a later time. This will further prolong the seven-day waiting period. From a privacy perspective, all distributors will have to agree to have their names, addresses and telephone numbers disclosed to prospective purchasers for possible contacting. The disclosure of this information will not be limited to bona fide purchasers, but will have to be given to anyone who might be interested, including competitors. The reference information could then be used for any purpose. The required disclosure of this information will certainly discourage participation in the direct selling industry and will not be a significant deterrent to fraud businesses. It would be very easy for a fraudulent company to provide a list of "references" who are involved in the fraudulent business, but very burdensome on legitimate direct selling businesses.

**Recommendation:** Disclosure of business references should be done only upon request of the buyer. Also, some form of safeguard needs to be in place to avoid data collection by competitors that have no intention of buying. The availability of business references should be noted on the distributor enrollment or disclosure materials. These references should not be limited to closest geographic proximity because, in the era of Internet technology, they may not be located near the distributor.

3. **Earnings Claim Statement.** If the company or a distributor states or implies a specific level or range of income or profits, then an earnings claim statement is required to accompany the disclosures. The earnings claim statement must contain evidence that substantiates the claims. An earnings claim is defined very broadly, and can include photographs of cars, homes, and the like. The proposed rule also

requires potentially complex compilations of statistical matrices of time periods, demographic data and earnings claims.

**Recommendation:** I oppose the proposed earnings claim statement and written substantiation of the statement because it is an excessive burden. I would support an average earnings statement prepared by the company on a periodic basis, perhaps at fiscal year end, that could be included in the distributor disclosure materials.

4. **Legal Actions.** The proposed rule requires that distributors disclose all legal actions, regardless of the outcome, concerning “misrepresentation, fraud, securities law violations, or unfair or deceptive practices” during the previous 10 years. Not only would this rule require disclosure of litigation potentially unrelated to the business opportunity transaction, but also it doesn’t provide for disclosure of the outcome of the litigation. Thus, litigation that was favorably resolved for the distributor, or is otherwise irrelevant to the recipient of the disclosures, would still need to be provided. At the very least this requirement should be modified to take into account these problematic elements.

**Recommendation:** I support disclosure of previous litigation of companies, executives, affiliated companies and the like involving fraud and misrepresentation *only if the party is found guilty*. I oppose the disclosure of such information if the defendant is found not guilty or if the opposing parties agreed to settle without admission of guilt.

5. **Cancellations and Refunds.** The proposed rule would require that distributors disclose the total number of purchasers of the business opportunity in the last two years and the number of oral and written cancellation requests during that same period.

**Recommendation:**

- a. **Disclosure of cancellation or refund policy.** I support the disclosure of the policy.
  - b. **Statistics on Refund and Cancellation Payments.** I support this but only if it is averaged out over a one year period such as the company’s fiscal year.
6. **Elimination of the \$500 Business Threshold.** Elimination of the \$500 minimum investment requirement from the Franchise Rule would mean the current laws under the Franchise Rule would apply to all business opportunities, including my MXI Corp distributorship. This would force direct selling companies to comply with other provisions of the proposed rule that are more appropriate for businesses requiring a greater investment than a direct selling sales kit. This would be an excessive burden and clearly an unnecessary barrier to entry in the direct selling market.

**Recommendation:** I oppose the elimination of the \$500 business threshold.

The recommendations presented here would allow the direct selling company to preprint disclosure information that could be included in the distributor sales kit which the selling distributor would be required to present to the interested buyer. This would minimize the administrative burden presented by the proposed rule, and make it fair for all concerned.

The direct selling industry needs to be supported by the FTC. Here are some important facts about the industry.

### **Important Industry Facts**

- Sales of products and services reached \$29.6 billion in 2003 through an estimated 13 million distributors in America, according to the Direct Selling Association
- Sales of dietary supplements through direct selling/network marketing reached \$3.8 billion in 2004, according to the Nutrition Business Journal.
- There are 13 million Americans involved in the network marketing industry today, with distributors in all 50 states.
- The growth of the network marketing industry and its contribution to the economy should be encouraged.
- Network marketing is used by blue-chip corporations including Citigroup, MCI and IBM.
- Some network marketing companies are publicly traded on Wall Street including MannaTech, Herbalife, Nu Skin, Pre-Paid Legal Services, USANA and others.
- Top business management leaders and New York Times best-selling authors Robert Kiyosaki, Paul Zane Pilsner, and Steve Covey have endorsed network marketing as the best way to leverage oneself during this era of down-sizing, globalization, and outsourcing of jobs.

*Sue Styer*