



July 17, 2006

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

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I am writing this letter on behalf of The Pampered Chef, Ltd. to strongly support the comments about Business Opportunity Rule, R511993 (Proposed Rule) submitted by the Direct Selling Association. In addition, we are pleased to have this opportunity to provide some additional comments about the proposed Business Opportunity Rule. While our comments acknowledge the public policy goal of protecting the public against business opportunity frauds, they also underscore the need to distinguish direct selling opportunities, like that offered by The Pampered Chef, from business opportunity frauds. Any new franchise or business opportunity regulation should recognize the fundamental differences between legitimate direct selling opportunities and business opportunity frauds. To explain and highlight these differences, we first provide some background about The Pampered Chef and its business.

The Pampered Chef, Ltd.

The Pampered Chef, Ltd. (Pampered Chef) was founded by Doris Christopher in her suburban Chicago home 26 years ago. Recognizing the need for time-saving kitchen tools and techniques designed to make cooking quick and easy, Mrs. Christopher came up with a simple, innovative plan: offer professional quality kitchen tools directly to consumers through in-home cooking demonstrations performed by a sales field of "Pampered Chef Consultants." With a \$3,000 investment, she put her plan into action.

Over the years, The Pampered Chef has grown into a very successful company. In late 2002, The Pampered Chef became part of the Berkshire Hathaway family of businesses.

Pampered Chef Consultants Offer Cooking Shows

Today, The Pampered Chef continues to grow. More than 70,000 Pampered Chef Consultants demonstrate and offer more than 300 exciting kitchen tools, pantry products and cookbooks through home parties called "Cooking Shows" to more than 12 million customers across the country annually. More than 80% of the products which are offered to customers are exclusive. And all products are easily identifiable under federally-registered trademarks which are licensed to The Pampered Chef.

At Cooking Shows, Pampered Chef Consultants demonstrate multi-functional and high-quality products in the home of a host. Hosts are often family members, friends and acquaintances

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whom the Consultants ask or who volunteer to hold Cooking Shows in their homes and who, in return, receive the opportunity to purchase discounted merchandise. Hosts, in turn, invite family, friends and neighbors to attend Cooking Shows. Consultants, with the help from the host and her guests, prepare and serve Pampered Chef recipes which showcase Pampered Chef products. The participatory and instructive nature of the Cooking Show creates a differentiated and dynamic environment, and the relationship bond between the Consultant and customers generates repeat business and grassroots marketing. The Cooking Show also generates sales field growth. After attending a Cooking Show, Pampered Chef hosts and customers are attracted by the business opportunity and become Consultants themselves.

Becoming a Pampered Chef Consultant

While each person has her own goals and objectives for starting a Pampered Chef business¹, each must enter into an Independent Consultant Agreement with the Company and pay \$90 for a Kit to start. The Independent Consultant Agreement plainly describes the terms of the Consultant's business relationship with the Company. The Agreement confirms the independent contractor relationship between the parties and it sets out the manner by which the Consultant will sell and distribute the Company's products. Among other things, the Consultant agrees to offer products in a truthful manner, conduct herself in a manner that reflects the highest standards of integrity and responsibility and present the Company's business opportunity in a truthful manner. In turn, the Company agrees to pay the Consultant commissions based on actual product sales to customers.² Per the terms of the Consultant Agreement, either the Company or the Consultant may end their business relationship for any reason and at any time. And upon the termination of the Agreement, the Company will refund to the Consultant 90% of marketable goods purchased by the Consultant within 12 months of the date of termination (90% Buy Back). Notably, neither the Agreement nor the Company requires a Consultant to maintain any inventory of product, further reducing the financial risk involved in the opportunity.

The \$90 starter kit purchased by a Consultant contains more than 20 best-selling products and education materials giving tips on how to book Cooking Shows with potential hosts and how to conduct Cooking Shows. The kit also contains business supplies that a new Consultant needs to begin to hold Cooking Shows. Putting aside the education materials and the business supplies, the retail value of the products in the kit total \$269 -- about three times more than the kit

¹ Based on our experience, people start a Pampered Chef business for many reasons. Some do it for the products, including those in the starter kit as well as those additional products they may earn. Others do it for fun. Many have full-time jobs and join The Pampered Chef to further supplement their income. Many like the flexible hours afforded by the opportunity. They can care for their children during the day and earn additional income for the family. Some join because they enjoy the adult interaction of a Cooking Show. Others enjoy teaching others about ways to make family mealtimes easier. Others join for short term financial objectives such as holiday spending money. For this reason, some Consultants may only be active in the business the latter half of the year.

² Notably, commissions are not paid solely on the basis of recruiting or introducing others to the Pampered Chef opportunity. In addition, a Consultant may also earn commissions based on the product sales of those individuals whom he introduces to the Pampered Chef opportunity.

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purchase price. That is likely one reason why the Company does not frequently receive requests for refund of investment from individuals who decide not to pursue a Pampered Chef business. But when it does receive one of those requests, it is the Company's practice to issue a 100% refund of the purchase price of the kit for a person who requests a refund within 3 business days after their Consultant Agreement is received by the Company.³ If the request for refund falls outside of the 3-day "Cooling-Off" period, then the Company refunds \$81 -- 90% of the kit price⁴. Of course, the Company requires return of the kit before a refund is issued. All of the above -- (1) a 3-day right of rescission or "Cooling-Off" period; (2) the 90% Buy Back; (3) the retail value of products in the kit as compared to kit price; and (4) the lack of any requirement to maintain inventory -- significantly minimizes the risks for any individual who wishes to start a Pampered Chef business.

The Pampered Chef Champions Ethics in Business.

The Pampered Chef has been a member of the Direct Selling Association (DSA) for 20 years. The Company proudly displays the DSA member company logo on its catalogs and on the sales receipt provided to each customer. The Company strongly supports the Code of Ethics. It complies with all aspects of the Code of Ethics to ensure full disclosure of The Pampered Chef opportunity to potential consultants and full disclosure to potential customers. Like all DSA member companies, the Company prominently links to the Code of Ethics from its corporate website. That link enables people to easily find out how to file on-line or written complaints against a member company. According to our records, The Pampered Chef has received between 10 and 20 complaints each year. Notably, the Company has received only one complaint from a Consultant. And even that one complaint did not relate to the opportunity per se; it related to a misunderstanding regarding a deadline to submit orders to qualify for a monthly promotion.

The Pampered Chef has also been an active good-standing member of the Better Business Bureau (BBB) of Chicago and Northern Illinois for eight years. In 1998, the BBB of Chicago and Northern Illinois recognized The Pampered Chef with the Torch Award for Marketplace Efforts. The Company is also a BBBOnline Participant. As a qualifying company, The Pampered Chef posts the BBBOnline Seal on its website signaling to consumers and to potential new consultants that it is a reliable and trustworthy on-line business. The BBB also gives the Company a venue to resolve issues with people. Since 2002, The Pampered Chef has received between 9 and 30 complaints each year; however, none of those complaints have related to the Pampered Chef business opportunity.

³ This 3-day "Cooling-Off" period is also offered to customers of product purchases.

⁴ The 90% Buy Back also relates to any inventory purchased by the consultant (even though not required to be purchased). The Company will honor the 90% Buy Back guarantee at anytime a Consultant ends his or her business relationship with the Company.

While The Pampered Chef welcomes the opportunity to resolve complaints sent to the DSA and the BBB, it is clear that the number of complaints reported to the DSA Code of Ethics Administrator and to the BBB is miniscule as compared to 12 million customers that purchase Pampered Chef products annually. And, with respect to complaints about the business opportunity, such complaints against The Pampered Chef simply do not exist.

The Proposed Rule Imposes Extraordinary Burdens on The Pampered Chef.

Unquestionably, it is in everyone's interest to eliminate illegal pyramid schemes, work at home frauds and other business opportunity frauds. Any effort to eliminate those schemes, however, should not adversely affect legitimate direct selling opportunities such as that offered by The Pampered Chef. Yet, the Proposed Rule does exactly that. It imposes new and extraordinary burdens on The Pampered Chef. Several examples of how the Proposed Rule unnecessarily burdens The Pampered are set out below.

The Waiting Period Is Unwarranted and Will Negatively Impact The Pampered Chef.

Section 437.2 of the Proposed Rule requires that certain disclosures be given at least seven calendar days before a prospective purchaser signs a contract or makes a payment to a seller. This proposed 7-day waiting period is impractical and will adversely alter the way The Pampered Chef conducts its business.

The process by which a Pampered Chef Consultant introduces an individual to the possibility of a Pampered Chef opportunity is relatively simple and straightforward. After providing an individual with information about the Company⁵ -- typically during and after a Cooking Show, the Consultant provides the individual with an Independent Consultant Agreement. The individual then completes and signs the Consultant Agreement and makes a \$90 payment for a starter kit. The agreement and the payment are then submitted to the Company, and within several business days, the new Consultant receives the kit enabling her to start her business. Business materials within the kit detail and further explain the commissions and bonuses a Consultant can earn, as well as how the Consultant can participate in other incentive programs.

The process is also designed to capture the excitement generated by the Cooking Show and the enthusiasm of the new recruit who wants to try starting her own Pampered Chef business. Often, people who want to become a Pampered Chef Consultant have had some experience with the Company before deciding to try the opportunity; many are former hosts of Cooking Shows⁶ and customers. The inherent delay of the proposed waiting period will likely stifle their enthusiasm. The proposed waiting period also unnecessarily postpones her opportunity to earn money. And

⁵ The Company makes marketing materials about the Company available for a consultant to use. To ensure that the Pampered Chef opportunity is not misrepresented and any claims about the opportunity, itself, are based on documented facts, all marketing and other business materials are reviewed and approved by the Company's Legal Department before they are distributed to Consultants.

⁶ More than 80% of new consultants have hosted a Cooking Show before becoming a Pampered Chef consultant.

it could impact her success in the business. Our experience demonstrates that the shorter the time between when an individual first decides to try a Pampered Chef business and when she conducts her first Cooking Show, the more likely she will experience greater success in her business. And if the individual has not had any prior experience with the Company before deciding to try the opportunity, the proposed waiting period is likely to cast suspicion over the opportunity itself. A potential Consultant will ask herself what makes this business complex and wrought with so many issues that despite a start-up cost of only \$90, it requires a Waiting Period before a person can start.

The simplicity of the process of becoming a Pampered Chef Consultant is intentional as our business is not complicated. The process is designed to be straightforward for the Consultant who introduces the opportunities for others. In many instances, the recruiter is also conducting her business on a part-time basis. The proposed waiting period will undoubtedly complicate and burden the process for her.

When considering the potential requirement of a waiting period, it is very important to remember that the financial risk of the Pampered Chef opportunity is very low. Unlike franchise operations where an individual is considering a significant investment, the cost to try the Pampered Chef business opportunity is only \$90. If an individual changes her mind within 3 business days after the Agreement is submitted, then the Company will provide a 100% refund of the purchase price of the kit. If the individual changes her mind later, then the Company will provide a 90% refund of the purchase price of the kit. Another option is for the individual to keep the kit as the value of the quality kitchen tools in the kit are more than \$90. The proposed waiting period makes the recruiting process for a \$90 business opportunity so cumbersome and complicated that it creates an unnecessary barrier to entry into The Pampered Chef opportunity, particularly given post-sale protections already in place -- the 3-day "Cooling-Off" or rescission period and the 90% Buy Back that Pampered Chef offers to anyone who wants to start a Pampered Chef business.

The Disclosure Document Is Impractical and Will Cast a Shadow of Suspicion Over The Pampered Chef.

Under Section 437.3 of the proposed Rule, each potential Consultant will receive a detailed disclosure document identifying earnings claims, pending legal actions, the cancellation and refunds made by a company and references located nearest to the potential Consultant. The requirement of such a detailed disclosure for the \$90 business opportunity offered by The Pampered Chef implies that the Company is doing something wrong -- at least to a degree that the Commission needs to require detailed disclosures akin to what is required for franchise opportunities in which thousands of dollars are invested.

The Detailed Disclosure and the Waiting Period Are Impractical.

Consider how the proposed disclosure and waiting period would practically work. A host of a Cooking Show may express an interest in The Pampered Chef opportunity following her

Cooking Show. First, the Consultant would need to take the interested host's name and address so that she could locate 10 references living closest to the host. The Consultant would then need to follow up with the Home Office to identify those references. Afterwards, the Consultant would contact the host and give the host the most up-to-date disclosure information. That follow-up would likely be a face-to-face meeting. Presumably, the Consultant would need to have the host sign a disclosure and acknowledge receipt of the disclosure. That receipt would then be sent to the Home Office for record-keeping purposes. The Consultant would then need to create her own system to remind her to follow up 7 days later. Only then could the Consultant provide a Consultant Agreement to the host. After all of this back and forth a host would finally be able to make the \$90 investment to start a Pampered Chef business. The detailed disclosure, combined with the waiting period, will undoubtedly chill interest in the opportunity as well as chill interest in introducing others to The Pampered Chef business opportunity.

The Disclosure of Legal Actions is Drafted Too Broadly and is Confusing.

Section 437.3 (3) of the proposed rule will require The Pampered Chef to disclose all legal actions involving the Company, its key personnel and its sales field and claims of "misrepresentation, fraud, securities law violations, or unfair or deceptive practices" over the prior ten years. This proposed requirement is burdensome as it is overbroad and confusing. It requires the disclosure of all legal actions that are potentially unrelated to the business opportunity. For example, claims of misrepresentation are not uncommon in disputes with contract manufacturers or in intellectual property disputes. It is also overbroad in that it requires the disclosure of legal actions regardless of outcomes or material significance to the Company or the business opportunity. In the same way that Ford is not required to make a pre-sale disclosure of all legal actions to a purchaser of a \$20,000 car before the purchase is made, why is The Pampered Chef required to disclose all legal actions before an individual decides to invest \$90 to start a Pampered Chef business? There is also confusion as to whether the Company is obligated to report legal actions involving its sales field members. The reporting of legal actions involving 70,000 sales field members and not necessarily relating to the business opportunity will be a daunting, costly and time-consuming task.

The Disclosure Regarding Cancellations and Refunds Does Not Provide Noteworthy Information and Could Be Misleading.

Section 437.3 (5) of the proposed Rule requires The Pampered Chef to identify the number of business opportunities offered for two years prior to the disclosure and to identify the number of oral and written cancellation requests during that period for the sale of the business opportunity. Although relatively few individuals return a starter kit to the Pampered Chef, it does not necessarily mean that all continue to pursue a Pampered Chef business. Some may decide not to pursue the opportunity further, but are happy to keep the products. Clearly, this data is flawed for evaluating the opportunity. Moreover, a high turn-over does not necessarily mean the business opportunity is not legitimate. Many people try the opportunity for a period of time –

(e.g., to fulfill a short-term financial objective) and then decide to later exit. The easy entry into and exit from the business is what attracts many to the opportunity in the first place.

The Requirement to Provide References Is Impractical.

Under Section 437.3 (6) of the proposed Rule, The Pampered Chef will be required to maintain a geographically manageable, comprehensive database of its consultants who have sold its products for the last three years, including names, cities, states, and telephone numbers. This rule requires the disclosure of all Pampered Chef consultants, or the disclosure of the identities of the ten geographically nearest consultants to a potential Consultant.

The Pampered Chef considers the identities of its sales field a trade secret. The Pampered Chef guards such highly confidential and proprietary information. It is one of the Company's most valuable assets as the Company's entire method of distribution of its products is solely through its Consultants. Because the Company believes its Consultants give it a competitive edge among other direct sellers, it takes significant measures to protect this proprietary information. For example, all contracts with third parties having access to this proprietary information must sign a confidentiality agreement. That Agreement identifies this information as confidential and proprietary. It restricts the use of such information only for the specific purposes authorized by The Pampered Chef. In addition, this restriction continues into perpetuity. Clearly, any requirement to disclose the sales field information jeopardizes the Company's competitive advantage.

When evaluating this proposed disclosure, it is also important to consider the privacy rights of Pampered Chef consultants whose contact information would be released. Having already acknowledged the importance of privacy rights, the Commission must also weigh the privacy rights of Consultants vis-a-vis the benefits to be gained by such disclosure as well as the practical difficulties in making such disclosure.

Contrary to what the Commission believes, it is not difficult to locate a Pampered Chef consultant. Many are listed in telephone directories. Even if not listed in telephone directories, an individual can go to the DSA's website to obtain Company information or directly to the Company website to obtain information. An individual may contact the Company's lead line and under the structure of the lead line, the individual's contact information is forwarded to a Consultant for follow up.

Moreover, there are practical difficulties with respect to references. If a host at a Cooking Show expressed an interest in The Pampered Chef opportunity to the Consultant, the Consultant would not be able to provide a list of the ten nearest purchasers at the time the Consultant would provide the guest with the disclosure as she would not know which 10 Consultants lived closest to the guest considering the opportunity. Rather, the Consultant would need to check with the Company's Home Office and then at some later time provide the requisite disclosure identifying

the 10 references. Moreover, the proximity of those 10 references would not necessarily mean that they would provide the most relevant information to that guest considering the opportunity. Again, this requirement would create another cumbersome and burdensome barrier to entry.

The Disclosure of Earnings Claims Is Burdensome as the Definition of Earning Claim Is Overly Broad.

The Pampered Chef recognizes the importance of substantiating earnings claims. As a DSA member, The Pampered Chef closely adheres to the Code of Ethics requirement not to misrepresent the actual or potential sales or earnings of its opportunity and to ensure that any earnings or sales representations are based on documented facts⁷. Notwithstanding its commitment to these standards, we believe that the proposed earnings disclosure are complex and will confuse the interested parties about The Pampered Chef opportunity.

For example, Section 437.4 (a) (4) of the proposed Rule requires The Pampered Chef to compile and disclose statistics describing "earners" of its business opportunity. For example, the Company will need to disclose statistical information regarding demographics and location of different levels of earners. See Section 437.4(a)(vi). The relevance of this information is questionable as it does not recognize principles inherent in our business. For example, people invest in the opportunity for a variety of reasons and their success is measured by those goals. They enter the business to accomplish individual goals. In addition, Pampered Chef Consultants are free to pursue their business anywhere in the United States; there are no geographic limitations imposed upon them other than what they impose upon themselves. Therefore, it is difficult, if not impossible, to understand how geographic and demographic information will demonstrate the certainty or level of a Consultant's earnings. Disclosing such information will likely lead to further confusion about our business opportunity.

Moreover, the definition of "Earnings Claims" under the proposed Rule is unclear. We request further guidance from the Commission to make the definition of "Earnings Claims" more concrete. The proposed Rule appears to make all non-direct, implied earnings claims subject to the disclosure requirements. As the proposed Rule is currently written, we are challenged to more fully comment on the burdens imposed by the rule. One thing is clear, however, legitimate companies, such as The Pampered Chef, will work to comply whereas business opportunity frauds likely will not make such efforts. In other words, the proposed Rule will not stop or deter those companies from continuing to offer fraudulent business opportunities.

Direct Sellers, Like The Pampered Chef, Are Distinguishable from Fraudulent Business Opportunities and Should Not Be Covered by the Proposed Rule

The scope of the proposed Rule is overbroad as the provisions of the rule impose significant burdens and costs on legitimate business opportunities offered by direct sellers, such as The

⁷ DSA Code of Ethics, Section A (8)

Pampered Chef. For this reason, we urge the Commission to consider excluding The Pampered Chef and other direct sellers from any business opportunity rule.

One way to exclude direct sellers is to maintain the minimum payment exemption. With the proposed rule, the Commission is seeking to eliminate the minimum payment exemption. The Pampered Chef urges the Commission to reconsider the elimination of the minimum payment exemption. The minimum payment exemption, combined with the 90% Buy Back as required by the DSA Code of Ethics provides a bright-line distinction between low risk direct selling activities, such as that offered by The Pampered Chef, and high risk business opportunity frauds. Business opportunity frauds will not offer and honor a 90% Buy Back, therefore, providing the Commission with a clear-cut and uncomplicated enforcement mechanism. Moreover, in the case of The Pampered Chef, the \$90 minimum start-up cost combined with the offering and honoring a 3-day "Cooling-Off" period and the 90% Buy Back clearly makes The Pampered Chef easily distinguishable from business opportunity frauds and, at the same time, minimizes the relatively small financial risk of starting a Pampered Chef business. In sum, the post-sale protections afforded by a "Cooling-Off" period and a 90% Buy Back will easily distinguish direct selling opportunities from business opportunity frauds without imposing burdens of the Pre-Sale protections contemplated by the proposed Rule.

Another way would be to exclude companies which engage in "Best Practices." Of course, this option would require certification of "Best Practices" by a third-party (e.g., the Direct Selling Association). These Best Practices could include many of the business practices that The Pampered Chef already incorporates into its business, including:

1. Company is the owner or the licensed user of federally registered trademarks or servicemarks identifying the Company. The trademarks and servicemarks make it easy for any person or law enforcement authorities to identify the Company when issues arise.
2. Company enters into a written agreement with each sales field member who distributes the Company's products. The agreement clearly sets out the business relationship and the material terms between the parties. The agreement also gives either party the right to end the agreement at any time and for any reason.
3. Similar to the right of rescission or "Cooling-Off" period offered to consumers for product purchases, Company also offers a right of rescission or "Cooling-Off" for purchase of the kit to start the business opportunity.
4. Company offers a 90% Buy Back as required by the DSA Code of Ethics.

Request for Public Hearings and/or Workshops

Per the Magnuson-Moss rulemaking requirements, The Pampered Chef requests that the Federal Trade Commission schedule public hearings and/or workshops to further discuss the impact of proposed Business Opportunity Rule, R511992 on The Pampered Chef and Pampered Chef Consultants as well as its impact on other direct sellers and their sales fields.

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Conclusion

We appreciate your thoughtful consideration of our comments. We are looking forward to working with the Federal Trade Commission to narrow the scope of the proposed Business Opportunity Rule, R511992 to eliminate business opportunity fraud without jeopardizing the compelling and legitimate business opportunity offered by The Pampered Chef and the opportunities afforded by other direct selling companies.

Very truly yours,

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