

**Before the  
FEDERAL TRADE COMMISSION  
Washington, DC**

**Business Opportunity Rule, R511993**

**COMMENTS OF GARY D. HAILEY, VENABLE LLP**

**Introduction**

On April 12, 2006, the Commission published a notice of proposed rulemaking for a new trade regulation rule governing the sale of business opportunities. This notice of proposed rulemaking takes into consideration the comments that were received in response to an advance notice of proposed rulemaking published in 1997 – almost a decade ago.

We believe that the proposed rule suffers from one very fundamental flaw: its definition of business opportunity is vague and overbroad rather than focusing on clearly fraudulent business opportunities (or specific fraudulent practices).

The Notice of Proposed Rulemaking ("NPR") notes that most of the fraudulent business opportunities that have been the subject of Commission law enforcement initiatives were work-at-home scams and pyramid marketing schemes. The NPR also notes that fraudulent business opportunities usually have one or more common elements – e.g., work-at-home schemes typically promise buy-back assistance, pyramid schemes typically promise commission tracking and payment assistance, and both schemes often rely on exaggerated earnings projections.

In its attempt to encompass every conceivable deceptive business opportunity, the Commission has proposed a rule that appears to apply to sellers that should not be subject to the proposed rule's disclosure requirements and other regulatory provisions. In particular, "earnings claim" and "business assistance" are defined far too broadly. Both definitions contain reasonably specific examples of deceptive or fraudulent practices, but both introduce those examples with the phrase "including, but not limited to," and include vague, "catch-all" provisions that undercut the clarity and specificity of those examples. It would be better for the Commission to use Section 5 to go after fraudulent or deceptive sellers whose practices were not clearly covered by the proposed rule.

These comments focus on the failure of the proposed rule to appropriately define "business opportunity" so as to exclude the provision of information and education (including the sale of publications or training) relating to investing or other activities designed to generate income. One of the elements of the proposed rule's definition of a business opportunity is the provision of "business assistance," which includes the offer of "advice [or] information . . . in connection with the establishment or operation of a new business." Read literally, this definition would appear to encompass authors of publications on how to make money in real estate or in the stock market or on eBay, and many other legitimate sellers of informational and educational products and services who should not be lumped in with sellers of work-at-home scams and pyramid marketing schemes.

In addition, these comments address certain other aspects of the proposed rule, including its provisions relating to what are termed "earnings claims" (and the disclosures triggered by such claims), the proposed requirement that information be disclosed seven calendar days before a prospective purchaser makes any payment, and other disclosure document-related issues.

Given the breadth and complexity of the proposed rule and the many issues that deserve further exploration and consideration before a final rule is promulgated, we urge the Commission to hold hearings with cross-examination and post-hearing rebuttal submissions, as specified in Section 18(c) of the FTC Act. While holding one or more informal public workshops would be better than simply relying on written comments, we believe that more formal rulemaking hearings would generate a more comprehensive record and lead to a superior final outcome. The Commission staff has invested many years in the current proposed rule, and it is only appropriate that the Commission move deliberately and with great care before making a final decision of such significance.

If hearings (or one or more workshops) are held in connection with this proposed rule, we request the opportunity to testify and otherwise participate in those hearings (or workshops) on behalf of our interested clients. These comments provide a preview of our expected testimony, but that testimony would also include our reactions to other relevant comments and contain additional information that would supplement these comments.

### **The Commission Should Make It Clear That the Proposed Rule Does Not Apply to Sellers of Publications or Training Merely Because Those Publications or That Training Provides Information or Advice Concerning the Generation of Income**

Section 437.1(d) of the proposed rule sets forth three definitional elements for the term "business opportunity." First, the seller must solicit the prospective purchaser to enter into a new business (as opposed to merely soliciting the purchase of goods and services that can be used in a business). Second, the seller must directly or indirectly receive payment or other consideration. Third, there must be either an "earnings claim" or an offer to provide "business assistance," which is further defined as "the offer of

material advice, information or support . . . in connection with the establishment or operation of a new business."

In our view, this definition is far too broad because it appears to encompass offers to sell publications, training, and other educational or informational goods and services whose content relates to income-generating activities.

For example, let's consider a widely available book: *How to Earn Up to \$100,000 a Year or More from Home by Mail: The Complete Guide to Starting Your Own Home-Based Mail Order Business*, by Terrence Thomas. Virtually any attempt to sell such a book – even one that did little more than mention the book's title – could be characterized as a solicitation to enter into a new business. Virtually all such attempts will involve some sort of payment, so the second element of the definition would be satisfied. Finally, the very title of the book contains both an earnings claim ("earn up to \$100,000 a year or more") and represents that the book will provide "material advice, information or support . . . in connection with the establishment or operation of a new business" ("the complete guide to starting your own home-based mail order business").

We're confident that the Commission would never bring a rule enforcement action against the author or publisher of this book, or a bookstore that advertised and sold it. Such an action would be inconsistent with the Commission's "mirror image doctrine," and possibly inconsistent with the First Amendment. But the fact that the proposed rule could be interpreted to allow such an action is proof that its definition of business opportunity is far too expansive.

Let's look at some examples of educational courses that would be covered by the proposed rule. For example, the Cambridge Center for Adult Education (a non-profit organization that was incorporated in 1876 as the Cambridge Social Union and is currently supported by grants from the Cambridge, MA Arts Council and many well-known foundations and businesses) offered a one-day course in June 2006 called "Starting Your Own Import Business." The CCAE's online course catalog describes the course as follows:

This exciting seminar will introduce you to the lucrative business of importing. Whether you currently own a small business and are looking for new product lines, or simply want to explore an exciting new business, this course will cover the basics of importing at minimal cost. Discover how to locate overseas supplies, how to pay foreign suppliers without financial risk, and how to set up international transportation, documentation, and U.S. Customs regulations. You'll also learn about thousands of various products from around the world, many of which are not currently on the U.S. market. This course has been designed for first-time importers with no experience.<sup>1</sup>

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<sup>1</sup> [http://www.ccae.org/catalog/courses/course\\_details.php?id=526095](http://www.ccae.org/catalog/courses/course_details.php?id=526095).

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The same month, the Arts Extension Service of the University of Massachusetts (Amherst) offered a one-day course called "Getting Paid to Talk: An Introduction to Professional Voice-Over." Its online catalog described that course as follows:

Have you ever been told you have a great voice? Learn about the great income you can earn by doing voice-over work for television, film, radio, books on tape, documentaries, video games and the internet. Discover what it takes to break into this exciting business, including how to prepare the all-important demo, how to research potential employers, and how to adapt your abilities to the demands of the voice-over industry. Listen to examples of actual demos recorded by professional voice-over artists to help refine your own demo. You will even have a chance to record a commercial script under the direction of our producer! This class is informative, lots of fun, and a great first step for anyone interested in voice-over work professionally.<sup>2</sup>

Northern Virginia Community College offers courses ranging from "Successful Real Estate Investing" ("Create wealth by investing in real estate, just as most self-made millionaires do. This course will show you the fundamentals of safe and successful real estate investing. Topics covered will include how to locate good buys, negotiate with sellers, creative financing, working deals with investors and much more"<sup>3</sup>) to "Learn to Buy and Sell on eBay" ("If you've ever dreamed of working from home or just earning extra income by buying and selling goods online, our experienced instructors will guide you every step of the way. You'll learn how to create titles that get noticed, how to craft advertising copy that sells items quickly and for top dollar, and how to create and upload photos of the items you are selling. You'll also learn how to safely conduct financial transactions, how to accept credit card payments, and how to pack and ship any item hassle-free"<sup>4</sup>) to "Publish It Yourself: How to Start and Operate Your Own Publishing Business" ("Convert manuscripts into extra income by starting your own publishing company. Avoid common pitfalls that can slow the growth of your publishing enterprise. Learn how to format your works in a way that will save you hundreds of dollars. Find out everything you need to know to profit from your own publishing company: how to plan and design a cover, select paper, register your works, choose a printer, price your

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<sup>2</sup> [http://www.umass.edu/aes/courses\\_workshops/credit\\_free/class\\_description.htm](http://www.umass.edu/aes/courses_workshops/credit_free/class_description.htm).

<sup>3</sup> <http://www.nvcc.edu/alexandria/continuing/allcourses.asp>.

<sup>4</sup> <http://www.ed2go.com/cgi-bin/oic3/newcrsdes.cgi?name=nvccal&course=eby&title=Learn^to^Buy^and^Sell^on^eBay&departmentn um=BP&path=1>.

products, acquire barcodes, market your books, establish distribution channels, fulfill orders, and more"<sup>5</sup>).

Here's one final example. SEAK, Inc., a for-profit entity, offered a one-day course titled *How to Start and Build a Successful Expert Witness Practice*, which the company's website described as "an intensive introductory workshop that is designed to show prospective and novice expert witnesses exactly what will be expected of them and how to start and build a successful expert witness practice. This course is specifically designed for prospective and novice expert witnesses and requires no advanced knowledge or training. Attendees will learn from experienced faculty in a step-by-step fashion how to start and build a successful expert witness practice." This course includes sessions on "Spreading the Word – Marketing Your New Expert Witness Practice" ("In this segment, the faculty will show attendees numerous techniques to cost effectively market an expert witness practice and get high quality cases. Included, will be a frank discussion of what works and what doesn't work. Techniques discussed include networking, word of mouth, 24/7 marketing, internet marketing, directories, advertising, writing, speaking and expert witness referral agencies.") and "Essentials of Expert Witness Practice Management" ("In this section attendees will learn the nuts and bolts of expert witness practice management. Included will be a discussion of how much to charge, what to charge for, how and when to collect your fee, how to prepare a basic retention agreement, and expert witness risk management. Sample forms will be provided to attendees.").<sup>6</sup>

All these courses solicit prospective purchasers to enter into a new business. Some of the statements relating to the income that can be derived from such businesses (e.g., "lucrative," "great income," etc.) may be too vague to meet the definition of "earnings claim," although others (e.g., "Create wealth by investing in real estate, just as most self-made millionaires do," "Learn how to format your works in a way that will save you hundreds of dollars," etc.) may meet that definition. But it seems clear that all of these descriptions offer "business assistance" as that term is defined by the proposed rule – that is, "the offer of material advice [or] information . . . in connection with the establishment or operation of a new business," including (among other things) the "[a]dvising or training . . . [of] the purchaser in the promotion, operation, or management of a new business."

Some of the particular sellers in the examples above may not be subject to the Commission's jurisdiction because they are non-profit entities or state agencies. But many sellers who clearly are subject to the Commission's jurisdiction solicit prospective purchasers to enter into the same new businesses, and offer the same kinds of business

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<sup>5</sup> <http://www.ed2go.com/cgi-bin/oic3/newcrsdes.cgi?name=nvccal&course=piy&title=Publish^It^Yourself:^How^to^Start^and^Operate^Your^Own^Publishing^Business&departmentnum=BP&path=1>.

<sup>6</sup> <http://seak.com/semjune06Startandbuild.htm>.

assistance. If what these sellers and others like them are selling, offering to sell, or promoting constitute business opportunities, they are subject to the requirements of the proposed rule – a result that we cannot imagine was intended by the Commission.

The Commission should make it clear (in the rule itself, and in the rule's statement of basis and purpose) that soliciting the purchase of publications and/or training does not constitute soliciting a prospective purchaser to enter into a new business, even if the subject matter of those publications and/or training relates to how to generate income by starting a new business.

In addition, the definition of "business assistance" should exclude the mere provision of advice and information (whether delivered via publications or through personal communication) and include only specific actions that have a clear historical association with fraudulent business opportunity marketing – e.g., location assistance, payment assistance, etc. The proposed rule does list a number of specific actions that are likely to be indicative of problem business opportunities, but then adds a too-broad catch-all provision relating to "advising or training."

As noted above, enforcement of the proposed rule in cases involving the promotion and sale of publications that present money-making techniques would often be inconsistent with the Commission's "mirror image doctrine" and the First Amendment. In the past, the Commission staff has taken a very narrow view of the mirror image doctrine, and attempted to limit its application strictly to publications – books, tapes, etc. This has led to strange results, at least on occasion. For example, in one investigation, the staff took the position that the promotion and sale of videotapes or audiotapes of educational seminars or lectures that had been presented originally to a live audience were covered by the mirror image doctrine. But the staff argued that the promotion and sale of admission to those live seminars was not covered by the mirror image doctrine.

This kind of hypertechnical analysis worships form and ignores substance. The issue should not be the medium in which the message is presented. What is being sold here is "advice" or "information," to use the language of the proposed rule – and the Commission should not be regulating the sale of information regardless of what kind of subject matter is involved.

A trade regulation rule should not be drafted so that it can be stretched to cover every conceivable future situation. The Commission can use Section 5 to attack new kinds of scams, or to take care of business opportunity sellers whose wrongdoing seems clear but is difficult to define with specificity – what one might term "I know it when I see it" fraud.

Rules enable the Commission to be more efficient when it comes to punishing and deterring clearly illegal acts. They are like highway speed limits – we can agree on what is likely to be an unsafe speed on a specific type of highway or under certain driving conditions, and then punish clear violations without allowing someone to defend his driving 90 mph on I-95 on the grounds that he is a very skilled driver and it wasn't

raining or snowing. But having a nationwide 20 mph speed limit just to make sure that no one ever drives too fast on a narrow, twisting mountain road or a crowded urban street makes no sense. Even if we trust the police to use their enforcement discretion appropriately, having such a law would expose many safe drivers to the risk of getting a ticket and deter perfectly safe and legitimate conduct.

The current rule also errs far on the side of overbreadth. The Commission should follow the principle of "first, do no harm" when it finalizes its rule. The current proposal seems to go far beyond the regulation of business opportunity sales practices that have been traditionally characterized as illegal. We suggest that it would be a better idea to follow the approach that was followed in the original Telemarketing Sales Rule – stick to bread-and-butter issues for now and amend the rule later if necessary, rather than biting off more than you can chew.

## **Other Comments**

### **1. Earnings Claims**

The proposed rule provides that the making of an "earnings claim" in connection with an offer to sell a new business subjects the seller to rule coverage. Such claims trigger certain disclosures – namely, "[t]he beginning and ending dates when the represented earnings were achieved" and "[t]he number and percentage of purchasers during that time period who achieved the stated level of earnings."

The Notice of Proposed Rulemaking states that the Commission's law enforcement history in this area demonstrates that false or deceptive earnings representations underlie virtually all of the fraudulent business opportunity schemes that it has attacked over the years. According to the NPR, these claims have taken the form of purported historical earnings statistics (e.g., "Our operators have earned X dollars a year") and unsupported earnings projections (e.g. "You will earn X dollars your first year"). Such representations should be truthful and substantiated, of course, and perhaps it is reasonable to require the proposed disclosures for historical earnings statements and predictions of this type.

But the proposed rule defines "earnings claim" as any representation "that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits." The examples of earnings claims given in the proposed rule and NPR do not include individual testimonials from previous purchasers, but it appears that reference to one or a few "success stories" – even when truthful and accompanied by clear and conspicuous typicality disclaimers – would trigger rule coverage.

Such a position is inconsistent with the Commission's *Guides Concerning Use of Endorsements and Testimonials in Advertising* (16 C.F.R. Part 255). One or a small

number of specific testimonials – which often relate unique particulars of the testimonial's individual experience or present variable and not entirely consistent outcomes achieved by different individuals -- do not necessarily convey the claim that all prospective purchasers will achieve the same or similar results. In fact, the use of testimonials that contain specific statements about consumers' experiences communicate the message that consumer experiences with a product or service are varied and individual. This is especially true when such testimonials comply with Part 255.2 of the *Guides* by including statements that "clearly and conspicuously disclose the limited applicability of the endorser's experience to what consumers may generally expect to achieve."

The *Guides* take the position that such disclosures are sufficient to prevent any possible misimpression that a testimonial's experience is representative of what consumers generally will achieve when such is not the case. That principle should apply to testimonials concerning business opportunities as it applies to all other testimonials – there is no logical distinction that justifies different treatment for business opportunity testimonials. Therefore, any final Business Opportunity Rule should make it clear that properly qualified testimonials are not "earnings claims" as that term is defined in that rule.

On a more practical level, sellers of publications or educational and informational goods and services – whom we have argued should be generally exempted from rule coverage – would almost never be able to comply with the disclosure requirements contemplated by Section 437.4 of the proposed rule because they rarely if ever have sufficiently comprehensive information concerning the experiences of "all" their customers to satisfy that proposed rule provision.

Marketers of work-at-home business opportunities who promise to purchase items assembled by their customers or to pay them for the services they perform at home will know how much (or how little) they have paid out to their customers. Multilevel marketers keep close track of the quantity of goods sold to participants, the commissions earned by those who are in "upstream" positions, etc., which may allow them to calculate and disclose average earnings over a particular time period. But a marketer who sells books or CDs, or who offers live seminars or other educational sessions will usually have no idea of how much their customers earn or otherwise achieve as a result of those publications or that training unless those customers contact the marketer and volunteer that information.

It is unclear what the seller is supposed to do if he or she wants to present one or more honest testimonials but does not possess the required data concerning "all" its customers.<sup>7</sup> The marketer could always survey its customers after a year or two, but it is

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<sup>7</sup> Our understanding of proposed Section 437.3(a)(2) is that merely checking the "no" box does not release the seller from the obligation to attach an earnings statement if he or she does, in fact, make an earnings claim. If checking the "no" box provides a safe harbor, it would be relatively easy for a seller to avoid the requirement to provide an earnings statement.

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very unlikely that most or all of those customers would respond. The proposed rule requires the disclosure of the number and percentage of "all" purchasers during the stated time period who achieved at least the stated level of earnings. So unless the seller had information on 100% of its purchasers, it would not be possible for it to comply with that provision as it is currently written. Providing an earnings statement based on fragmentary data from only a few customers – probably the more successful ones – would not give prospective purchasers useful information upon which to base their purchase decisions.

In summary, we see two fundamental problems with the proposed rule provisions relating to earnings claims. First, those provisions are not consistent with the Commission's *Guides Concerning Use of Endorsements and Testimonials in Advertising*. Second, many sellers will not have information concerning the earnings of "all" their purchasers, and will therefore be unable to comply with the proposed rule's earnings statement requirement.

## 2. The Obligation to Provide the Disclosure Document Seven Days Before Accepting Payment

Section 437.2 of the proposed rule would require business opportunity sellers to provide a disclosure document to prospective purchasers at least seven calendar days before accepting any payment. This proposed provision is modeled on a similar requirement in the Commission's Franchise Rule, even though the NPR acknowledges that franchise sales are usually "more complex" than business opportunity sales, and that franchise purchasers may need more time to review the much lengthier and more detailed franchise disclosure document.<sup>8</sup>

Assuming that the proposed rule does apply to sellers of publications and other educational or informational goods and services, this seven-day requirement would be extremely burdensome.<sup>9</sup> If a customer called an 800 number to order a publication with his or her credit card, the seller would have to prepare the disclosure document, mail or e-mail it to the purchaser, and wait at least seven days before charging the credit card and

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<sup>8</sup> The NPR asserts that the scope of coverage of the proposed rule is much broader than that of the Franchise Rule, but "the compliance burden is much lighter." That statement is not consistent with the proposed seven-day disclosure timing requirement, which is essentially the same as the one contained in the Franchise Rule.

<sup>9</sup> Imagine if prospective airline passengers could not purchase tickets fewer than seven days in advance of their travel dates due to security concerns. The impact on the airlines – who get a lot of business from travelers who buy tickets less than one week in advance – would be catastrophic.

shipping the publication.<sup>10</sup> When consumers have come to expect delivery of books, CDs, DVDs, and similar products in two or three days (if not overnight), this requirement would have a very negative impact on sellers of publications relating to investment techniques or other money-making topics (assuming such sellers are covered by this rule, which we believe should not be the case). It also would harm those who offer educational services (whether in the form of in-person classes or workshops, teleconferences, etc.) by requiring them to cut off enrollment well in advance.

The stated purpose of this provision is to require that prospective purchasers be given relevant disclosures before putting their money at risk. But we believe that the proposed seven-day requirement is not only overly burdensome on sellers but also not a particularly effective way to protect consumers. Providing information about the seller's background, the number of refund requests, etc., is all well and good, but until the prospective purchaser has access to the business opportunity itself, he doesn't really know if he is getting what he was promised.<sup>11</sup>

We encourage the Commission to consider alternatives to a rigid, one-size-fits-all seven-day disclosure requirement. For example, customers who make purchases with credit cards have the right to a chargeback from their credit card issuer in certain circumstances. If a seller allows purchasers to cancel purchases and get refunds within a certain number of days after receiving what they have purchased (along with any required disclosures), that may obviate the need for the seven-day advance disclosure requirement. Such alternatives would protect consumers who are actually deceived without penalizing honest sellers by subjecting them to burdensome regulations aimed at dishonest sellers.

### 3. Other Comments Concerning the Disclosure Document

According to footnote 162 of the NPR, the proposed rule would require the disclosure of information about certain prior legal actions – including actions where the business opportunity seller prevailed.

The Commission's rationale for this proposed requirement is that the mere filing of certain legal actions against a seller is material<sup>12</sup> to prospective purchasers. Given the

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<sup>10</sup> This seven-day period could end up being significantly longer if the seller chooses to wait for the receipt form to be returned by the purchaser. While that is not strictly required to comply with the proposed rule, it may be a practical requirement because the seller has the burden of establishing that the purchaser received the document seven days in advance of receiving consideration.

<sup>11</sup> If you are in the market for a used car, it's nice to know whether the different used car dealers in the area have been the subject of law enforcement investigations, have generated an unusual number of complaints and/or refund requests, and so on. But none of that is a substitute for a test drive of the car you want to buy.

<sup>12</sup> Mere materiality should not be the issue here. There should be an element of reasonableness and rationality as well. The fact that a suit has been filed really says very little about the honesty and integrity  
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current state of affairs in the American legal system, this proposal is completely misguided. The threshold for filing such lawsuits is very minimal, and the proposed prohibition on including explanatory information concerning such legal actions will make it likely that many consumers will be misled more than enlightened by such a disclosure. And if the filing of legal actions alleging fraud or misrepresentation is material to purchasers of business opportunities, why isn't it equally material to purchasers of new or used cars, home repair and improvement services, and numerous other big-ticket goods or services?

In addition, requiring the disclosure of certain employees' past legal history could expose sellers to charges of unlawful employment practices. It is our understanding that one or more states prohibit hiring decisions based on a criminal arrest that does not result in a conviction. The proposed rule appears to require the disclosure of certain criminal charges against sales personnel even if those charges were dismissed or the defendant was found not guilty after a trial. Asking prospective employees to disclose such information may be inconsistent with state law.

The proposed disclosure requirement concerning refund requests would have a perverse effect. Sellers with liberal free-trial periods and refund policies who took pains to be responsive to consumer returns and refund requests might attract a large number of very casual purchasers who decided not to finalize purchases – and the result would be an apparently large number of dissatisfied customers.<sup>13</sup> By contrast, sellers who short-staffed their customer service telephones might appear to have low refund-request rates because they made it difficult for purchasers to get through to take advantage of a money-back guarantee.

Finally, requiring disclosure of a seller's customer names and telephone numbers to prospective purchasers is simply a terrible idea. As many of those who commented on the ANPR noted, this is essentially a requirement that a seller share some or all of its customer list – one of its most valuable trade secrets – with competitors. But what is truly surprising about this proposal is the Commission's utter disregard for the privacy of these customers.

The Commission has gone to great lengths to protect consumers from both large and not-so-large threats to their privacy. It rather blithely dismisses such concerns here,

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of a seller. The fact that a seller is a member of a particular race or religion would also be material to certain prospective purchasers, but the Commission would never require something that made it more convenient for such people to enforce their prejudices.

<sup>13</sup> New car dealers sometimes give consumers who come in for a test drive cash, gift certificates, tickets to sporting events, or other items of value. Not surprisingly, such offers will attract a certain number of people who have no intention of buying a new car. It would be a mistake to say that the dealer's cars were poor in quality or overpriced just because few of those free-riding consumers decided to purchase one after taking the test drive.

failing to even provide for an opt-out mechanism for customers who don't want their information shared. We would expect that the Commission will be persuaded to cure that deficiency by the comments it will receive in response to the NPR, but merely doing that does not cure the deficiencies of this proposed requirement.

For example, how is a prospective purchaser to know whether the information he or she gets from other purchasers is accurate? The proposed requirement is that the seller disclose the names of its customers who live closest to the prospective purchaser. It would hardly be surprising if those who had purchased a business opportunity in the past attempted to discourage competition from future purchasers by painting a negative picture of their experience with the seller.

## **Conclusion**

We have noted several specific problems with the proposed provisions relating to the proposed disclosure requirements contained in the proposed Business Opportunity Rule. But its more fundamental flaw is its failure to make it clear that the proposed rule does not apply to sellers of publications or training merely because those publications or that training provides information or advice concerning the generation of income.

We appreciate the opportunity to comment on the proposed rule, and look forward to participating in any future rulemaking hearings or public workshop conferences in order to further explain our views and to comment on the views of other commenters.

Respectfully submitted,

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