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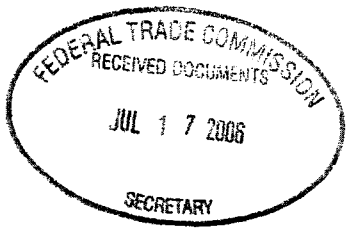

July 11, 2006

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

RE: Business Opportunity Rule, R511993

Position Statement of Babener and Associates on FTC Proposed Business Opportunity Rule, R551993

Our law firm, **Babener and Associates**, is writing to support comments and submissions of the DSA (Direct Selling Association) and MLMIA (Multilevel Marketing International Association) regarding the FTC Proposed Business Opportunity Rule, R551993. We fully support the FTC in its laudatory consumer protection objective to challenge fraudulent and deceptive business practices, but, along with other industry professionals, we believe that the proposed rule will not further its objective and will instead pose an undue hardship to the businesses of 14 million direct sellers whose sales revenue approaches $30 billion per year.

Profile of Firm Providing Comment:

For almost 25 years, this firm has served as legal advisor to startup, emerging and mature direct selling companies headquartered throughout the U.S. and abroad. The firm has served as legal counsel to many members of the DSA and MLMIA and, over the years, its legal advice has been sought out by such leading direct selling companies as Avon, Shaklee, NuSkin, Nikken, Melaleuca, Longaberger, Tupperware, Excel Communications, ACN, USANA, Prepaid Legal, Discovery Toys, etc. We have served on the DSA Lawyer's Council and Government Relations Committee and as a supplier member of the DSA, and we have served on the board of directors and as general counsel to the MLMIA. We have published extensively on the subject of direct selling and lectured at industry conferences and universities such as the University of Texas and University of Illinois. We have served as trial lawyer in many cases throughout

the U.S. on the subject of direct selling. The firm posts an educational website on direct selling, www.mlmlegal.com. We are frequently called upon by the media as an expert on the subject of direct selling, we have served on conference panels with regulatory officials and we are one of a handful of law firms in the U.S. that specialize in the area of direct selling.

A Brief Critique of the FTC Proposed Business Opportunity Rule:

In that detailed analysis and comment will be provided by industry trade associations such as the DSA and MLMIA, as well as many leading companies in the industry, and, **in that our firm has been an active participant in the dialog leading to those filings, we will not revisit, in detail, the arguments and analysis here.** Certain aspects of the proposed rule are of particular concern to the direct selling industry, and worthy of repeating here:

1. The underlying assumptions regarding the size and scope of the direct selling industry and the adverse impact on the industry are grossly underestimated in the FTC staff report on the proposed rule.

2. Requiring prospective sales recruits to wait seven days after a recruitment presentation to join a direct selling company will stifle recruitment in an industry that depends on an orderly development of a sales organization. A better approach would be to allow a seven day right of rescission, paralleling the FTC Cooling Off Rule.

3. Requiring direct sellers to provide information and identity of 10 sales associates, in close geographic proximity to a prospective salesperson, will be a logistical nightmare and a dramatic invasion of privacy of those whose information is shared. The proposed disclosure lays a foundation for identity theft and, in an industry where the majority of sales people are women, the disclosure of their identity information to "strangers" creates unwelcome opportunities for sexual predators.

4. Requiring direct sellers to release any information regarding prior litigation, whether or not at fault, is not only onerous and unfair, but creates an unwarranted stigma for legitimate companies involved.

5. In the course of crafting a separate business opportunity rule, elimination of the historical $500 expenditure threshold for triggering applicability of the FTC franchise rule is inconsistent with state business opportunity legislation, FTC franchise rules, and causes direct selling companies with minimal investments to be subjected to onerous record keeping and

disclosure rules that will become a major inhibitor of small business, a major contributor to the U.S. economy. In fact, after a few decades, in light of inflation, the threshold should be raised, not lowered. In reality, as is the case today, the frauds and cheats will not bother to comply with the proposed rule and the burden and damage of the new bureaucratic rules will be borne by legitimate businesses.

6. If the goal is to attack sleazy "fly by night" marketers of false and deceptive direct selling practices, a long line of FTC enforcement actions demonstrates that the FTC has the current authority, mandate and capability to attack fraudulent and deceptive practices.

The FTC and the direct selling industry are on the same wavelength in their goal of furthering consumer protection. However, virtually every constituency in the direct selling industry, companies, distributors, industry experts and professionals, believe that the FTC's Proposed Business Opportunity Rule dramatically misses the mark in achieving this goal, is not premised on an informed view of the industry and issues surrounding it, does not further consumer protection against "frauds and cheats," unintentionally casts an overly broad net that severely hampers the ability of legitimate businesses to operate and, if implemented, will have the result of crippling a major channel of distribution in the U.S. as well as the livelihoods of 14 million Americans that look to direct selling to help support their families.

Respectfully submitted,

Jeffrey A. Babener
Babener and Associates