

Commissioner Maureen K. Ohlhausen¹
DSEF Self-Regulation and Consumer Protection Panel
Direct Selling Education Foundation (DSEF)
April 7, 2015

Thank you for the kind introduction, Gary. The description for today's conference states that companies, industries and the public sector all share responsibility for consumer protection. I agree. As consumer expectations for transparency and corporate responsibility continue to evolve, so too must the framework used to safeguard the public.

There are three elements that must be present to provide effective consumer protection: law enforcement, education and self-regulation. I like to think of it as a three-legged stool. If any of these factors is missing or not functioning effectively, the stool will at best be off-balance and at worst, topple over.

Enforcement: Federal consumer protection enforcement comes primarily from the FTC. We enforce a number of statutes and rules, including Section 5 of the FTC Act. Section 5 is elegantly simple: it prohibits companies or individuals from engaging in unfair or deceptive acts or practices.² The Commission gave additional guidance on this broad language in the early 1980s, when it adopted the unfairness and deception statements.³ Section 5 has withstood the test of time and is at the core of our enforcement efforts.

An example of our enforcement work under Section 5 is a case we settled last month with Allstar Marketing Group, a direct marketing company selling "as-seen-on-TV" type products

¹ The views expressed in these remarks are my own and do not necessarily reflect the views of the Federal Trade Commission or any other Commissioner.

² See 15 U.S.C. § 45(a)(1).

³ See FED. TRADE COMM'N, FTC POLICY STATEMENT ON DECEPTION (1983), *available at* <http://www.ftc.gov/ftc-policy-statement-on-deception>; FED. TRADE COMM'N, FTC POLICY STATEMENT ON UNFAIRNESS (1980), *available at* <http://www.ftc.gov/ftc-policy-statement-on-unfairness>.

such as Snuggies and the Magic Mesh door cover.⁴ It has agreed to pay \$7.5 million in consumer restitution to settle FTC charges in connection with its deceptive “buy-one-get-one-free” promotions. In its marketing, the company promised that it would double the offer for consumers, if they paid processing and handling fees. According to the complaint, consumers were led to believe that they would then be getting two \$19.95 products for “less than \$10 each,” while in fact, the total cost with the undisclosed fees jumped from the advertised price of \$19.95 to \$35.85. Once all of the offers ended, consumers were not told the total number of items they were actually buying or the total amount they would be billed. The Commission has also alleged that Allstar charged those consumers who hung up mid-call, not intending to complete a sale.

Education: Both industry and government share the responsibility for consumer and business education. At the FTC, we have a Division of Consumer and Business Education that publishes a wide range of information to help consumers understand how to protect themselves and to help businesses understand how to comply with the law. I know that DSEF emphasizes education for direct sales associates and consumers. I also commend you for your partnership with CBBB that has “increased awareness and understanding – and appreciation – of the importance that the direct selling industry places as an industry on ensuring it is an ethical and trustworthy marketplace.”⁵

Self-regulation: That leaves the third leg of the stool and the topic of my remarks: self-regulation. When I talk about self-regulation, I define it as a broad concept that includes any attempt by an industry to moderate its conduct with the intent of improving marketplace behavior for the ultimate benefit of consumers. There are a range of possible forms and types of self-

⁴ Press Release, Fed. Trade Comm’n, Direct Marketer Agrees to Pay \$8 Million for Deceiving Consumers (Mar. 5, 2012), available at <https://www.ftc.gov/news-events/press-releases/2015/03/direct-marketer-agrees-pay-8-million-deceiving-consumers>.

⁵ Press Release, Direct Selling Education Foundation, DSEF-Supplied Content Enriching CBBB, Consumers (Apr. 25, 2012), available at <http://www.dsef.org/2012/04/25/dsef-supplied-content-enriching-cbbb-consumers/>.

regulatory organizations, including trade groups, industry organizations, and third-party certifiers.

- Self-regulation has several advantages over government regulation.
 - It can be more prompt, flexible, responsive, and easier to reconfigure than major regulatory systems that must be changed via legislation or agency rulemaking.
 - Self-regulation will be well-attuned to market realities where self-regulatory organizations have obtained the support of member firms.
 - Judgment and hands-on experience enable bright-line rules that are workable for firms.
 - Through compliance generated through “buy-in,” it can offer a less adversarial, more efficient dispute resolution mechanism than formal legal procedures.
 - The cost burden falls on industry participants rather than general taxpayer.
 - Self-regulation may be the only option for certain advertising practices where government intervention is limited by First Amendment concerns.
- Self-regulation also has limits.
 - The integrity of a self-regulatory program can be undermined by voluntary participation and mixed motives for firms regarding long-term industry goals vs. short-term business objectives.
 - Some guidelines or codes lack clear or workable standards.
 - Insufficient resources can lead to dependence on member firms’ lobbying and financial influence.
 - It has the potential to weaken competition or create entry or innovation barriers.

Now I would like to highlight some examples of effective industry self-regulation models. I will start with alcohol industry self-regulation overseen by several trade associations. This is an area where self-regulation can address issues of concern to the public without raising First Amendment issues associated with government regulation.

Last Spring, the FTC released a report on self-regulation in the alcohol industry.⁶ Initiatives to address concerns about underage exposure to alcohol marketing are contained in guidelines promulgated by the three major industry trade associations: the Distilled Spirits Council of the United States (DISCUS), the Beer Institute, and the Wine Institute. The voluntary self-regulatory codes contain provisions designed to limit where alcohol advertising and

⁶ See FED. TRADE COMM’N, SELF-REGULATION IN THE ALCOHOL INDUSTRY: REPORT OF THE FEDERAL TRADE COMMISSION (2014), available at <http://www.ftc.gov/reports/self-regulation-alcohol-industry-report-federal-trade-commission-0>.

marketing may appear, to reduce underage targeting. As of January 2011, all three of the trade associations required that 70 percent of the audience for advertising consist of legal drinking age adults.⁷ Their data show that about 93 percent of the television, radio, print, and online advertising placements had a legal drinking age audience composition of 70 percent or higher.⁸

Since 2006, all three trade associations have implemented procedures for external review of complaints.⁹ DISCUS's review board has considered over 20 complaints since 2009. It has found violations in response to three of eight complaints about DISCUS member companies and all members found to have violated the code agreed to take appropriate responsive action.¹⁰ Since 1999, the alcohol industry has substantially improved in self-regulation, including adoption on two occasions of higher placement standards, adoption of media buying guidelines and audit provisions, and adoption of systems for third-party review of advertising complaints.¹¹

Entertainment and media is another area where traditional government regulation is restricted by First Amendment concerns. Thus, a robust self-regulatory framework is particularly important in this sector.

To respond to public concerns about violent content and suitability for children, the motion picture (MPAA), music recording (RIAA), and electronic game (ESA) industries have each implemented a self-regulatory system that rates or labels products.¹² Their systems govern the placement of advertising for R-rated movies, M-rated games and explicit-content labeled recordings, and they require the disclosure of rating and labeling information in advertising and

⁷ *Id.* at 12.

⁸ *Id.* at 14.

⁹ *Id.* at 26-27.

¹⁰ *Id.* at 26-27.

¹¹ *Id.* at 34-35.

¹² MOTION PICTURE ASSOCIATION OF AMERICA, FILM RATINGS: UNDERSTANDING THE FILM RATINGS (2014), available at <http://www.mpa.org/film-ratings/>; RECORDING INDUSTRY ASSOC. OF AMERICA, PARENTAL ADVISORY: PARENTAL ADVISORY LABEL PROGRAM (2014), available at http://riaa.com/toolsforparents.php?content_selector=parental_advisory; ENTERTAINMENT SOFTWARE RATING BOARD, ESRB RATINGS (2014), available at <http://www.esrb.org/ratings/index.jsp>.

on product packaging. The most recent FTC report on this issue in 2009 found that all three industries generally comply with their own standards regarding the display of ratings in advertising and labeling.¹³ The electronic game industry continues to have the strongest self-regulatory code and enforcement of restrictions on marketing, advertising, and selling mature-rated games to younger audiences.¹⁴ The Commission has recommended that industry standards and best practices be updated and tightened, particularly to adapt to the increasing distribution of entertainment material online.

I would also like to touch on a perennial hot topic: weight-loss advertising. Last year, the FTC and the BBB testified together at a Senate Commerce hearing on weight loss scams. Both testimonies confirmed how well FTC and BBB work together to protect consumers from false and deceptive advertising in the weight loss area.¹⁵ In the past decade, the FTC has brought nearly 100 law enforcement actions, and since 2010, it has collected over \$100 million in consumer restitution. Through its “Gut Check” reference guide, the FTC seeks cooperation from media outlets to screen advertisements that are clearly, on their face, false. The guide advises media outlets on seven common claims that are—literally—just too good to be true, such as claims that consumers can lose ten pounds a week with no diet or exercise.¹⁶

¹³ FED. TRADE COMM’N, MARKETING VIOLENT ENTERTAINMENT TO CHILDREN: A SIXTH FOLLOW-UP REVIEW OF INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING, AND ELECTRONIC GAME INDUSTRIES, at i (Dec. 2009), *available at* <http://www.ftc.gov/sites/default/files/documents/reports/marketing-violent-entertainment-children-sixth-follow-review-industry-practices-motion-picture-music/p994511violententertainment.pdf>.

¹⁴ *Id.* at i – iii.

¹⁵ See Prepared Statement of the Federal Trade Commission On Protecting Consumers From False and Deceptive Advertising of Weight-Loss Products (June 17, 2014), *available at* <http://www.ftc.gov/public-statements/2014/06/prepared-statement-federal-trade-commission-protecting-consumers-false-0>; Testimony of C. Lee Peeler, Hearing on Protecting Consumers from False and Deceptive Advertising of Weight-Loss Products before the U.S. Senate Committee on Commerce, Science, and Transportation (June 17, 2014), *available at* http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=35ec6f12-a143-47f5-b310-bced79eb83ad.

¹⁶ FED. TRADE COMM’N, GUT CHECK: A REFERENCE GUIDE FOR MEDIA ON SPOTTING FALSE WEIGHT LOSS CLAIMS (Jan. 2014), *available at* <http://www.business.ftc.gov/documents/0492-gut-check-reference-guide-media-spotting-false-weight-loss-claims#claims>.

Another area the agency has studied and reviewed is food marketing to children. We have seen a number of efforts to combat childhood obesity by entertainment and food companies, and FTC/HHS hosted a workshop on industry self-regulation efforts.¹⁷ In December 2012, the FTC released a study, “A Review of Food Marketing to Children and Adolescents: Follow-Up Report,” which gauges the progress industry has made since first launching self-regulatory efforts to promote healthier food choices to kids.¹⁸ It serves as a follow-up to the Commission’s 2008 report on food marketing requested by Congress.¹⁹

My last example is the Children’s Online Privacy Protection Act (COPPA). The revised version that went into effect in July 2013 continues the Safe Harbor self-regulatory program.²⁰ Safe-harbor status allows certain organizations to create comprehensive self-compliance programs for their members and are generally subject to the procedures provided in the Safe Harbor guidelines in lieu of formal FTC investigation and law enforcement.

Conclusion: Successful self-regulatory models include clear requirements; widespread industry participation; active monitoring; effective enforcement mechanisms; procedures to resolve conflicts; a transparent process; responsiveness to a changing market and to consumers;

¹⁷ Press Release, Fed. Trade Comm’n, FTC, HHS Announce Workshop on Childhood Obesity (May 11, 2005), available at <https://www.ftc.gov/news-events/press-releases/2005/05/ftc-hhs-announce-workshop-childhood-obesity>.

¹⁸ Press Release, Fed. Trade Comm’n, FTC Releases Follow-Up Study Detailing Promotional Activities, Expenditures, and Nutritional Profiles of Food Marketed to Children and Adolescents (Dec. 21, 2012), available at <http://www.ftc.gov/news-events/press-releases/2012/12/ftc-releases-follow-study-detailing-promotional-activities>. See also FED. TRADE COMM’N, A REVIEW OF FOOD MARKETING TO CHILDREN AND ADOLESCENTS: FOLLOW-UP REPORT (2012), available at <http://www.ftc.gov/sites/default/files/documents/reports/review-food-marketing-children-and-adolescents-follow-report/121221foodmarketingreport.pdf>.

¹⁹ Press Release, Fed. Trade Comm’n, FTC Report Sheds New Light on Food Marketing to Children and Adolescents (July 29, 2008), available at <https://www.ftc.gov/news-events/press-releases/2008/07/ftc-report-sheds-new-light-food-marketing-children-adolescents>. See also FED. TRADE COMM’N, MARKETING FOOD TO CHILDREN AND ADOLESCENTS: A REVIEW OF INDUSTRY EXPENDITURES, ACTIVITIES, AND SELF-REGULATION: A FEDERAL TRADE COMMISSION REPORT TO CONGRESS (2008), available at <https://www.ftc.gov/news-events/press-releases/2008/07/ftc-report-sheds-new-light-food-marketing-children-adolescents>.

²⁰ Press Release, Fed. Trade Comm’n, Revised Children’s Online Privacy Protection Rule Goes Into Effect Today (July 1, 2013), available at <http://www.ftc.gov/news-events/press-releases/2013/07/revised-childrens-online-privacy-protection-rule-goes-effect>.

sufficient independence from direct control by industry; and a procompetitive approach. I hope my comments on the components of effective self-regulation will be helpful in your efforts to develop a robust self-regulatory process.

Thank you for your time, and I am happy to answer any questions.