

Symbiosis Enterprises

Thomas R. Van Drielen

June 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

RE: Business Opportunity Rule, R511993

Dear Sir/Madam,

The proposed New Business Opportunity Rule R511993, if not modified, will be a significant impediment and burden to my business. The proposed rulings, although well-intended, represent a significant burden to the free market trade. If the rules proposed for the network marketing industry were applied to any business that sells direct to the consumer, the rules would become an overwhelming burden.

While I support some of the proposed rulings (with modification), I am distinctly opposed to a seven-day waiting period. The logistics would be difficult, if not impossible, to implement. For example, would the seven day waiting period begin with the point of contact, the time of a brief overview, or the time a prospect views a website? The way my business is structured, a prospect could stumble, or google, onto my website, like what they see, and register spontaneously without any knowledge on my part.

I am firmly convinced that a seven day waiting period would be injurious to my business. Very few businesses, whether network marketing and/or direct sales, could tolerate such a delay in business processes. A more appropriate ruling would be to require all companies to issue a full refund for "change of mind" for up to seven days. Many states, including my native California, already have a three day period during which a person can rescind a direct sales agreement without penalty and with full refunds. If the FTC were to amend the seven day ruling to reflect already existing laws, then the FTC would have a ruling that protects consumers and protects my business.

The rule requires that any earnings claim statement made by the distributor or company to a prospect, whether written or oral, general or specific, be validated with a detailed "Earnings Claims Statement Required By Law." Additionally, the distributor would be required to provide written substantiation of any earnings claim made upon request. The disclosure of an average earnings income statement is good business practices because it establishes realistic expectations. However, I oppose being forced to provide written substantiation because it is an excessive burden. In my business, the cost of substantiation would exceed the original income from the sale, considering the investment of money to enter into the business is nominal and the profit is typically less than five dollars. This would be comparable to requiring a discount membership store, such as Costco or Sam's Club, to track, document, and substantiate, how much money the average member saves.

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The proposed previous litigation rule calls for the release of any information regarding prior litigation and civil or criminal legal actions involving misrepresentation, unfair or deceptive practices, even if you were found innocent. In our lawsuit-happy culture, anyone can be sued for anything almost with impunity. Regardless of the outcome, a company, or a distributor, would have to disclose the litigation and explain it to a new business associate which is patently unfair. For example, the investigation of Amway in the 1960's, which resulted in finding that Amway was a legal business entity, resulted in decades of confusion because the FTC and the press did not give equal print to acceptance that they did to investigation. I would support the disclosure of previous litigation of companies, executives, affiliated companies *only if the party is found guilty*. If the defendant is found not guilty, the opposing parties agreed to settle without admission of guilt, or the case is still pending, then it should not be necessary to disclose this information. If the parties agreed to settle without admission of guilt, there usually is some public document available, particularly if it involves a government agency and further disclosure therefore would be unnecessary. If litigation is pending, it shouldn't be commented upon. Any American citizen expects to be considered innocent until proven guilty. Should business owners expect less?

Lastly, the proposed ruling about references *requires* the disclosure of a minimum of 10 purchasers closest to the network marketing business owner. While it is a good practice to provide references of satisfied customers, this is a burden for small businesses and, as a requirement, is a violation of personal confidentiality. Unfortunately, requiring the release of this information can threaten the business relationship of the references who may be involved in other companies or businesses. In addition, it subjects these references to cross-marketing by competitors. I am recommending that contact information for purchasers be available upon request, that their availability be published on company materials, and that due to Internet-marketing, they not be limited to geographic proximity.

The network marketing industry is one of the few remaining opportunities for people to leverage their time and limited resources to earn additional income or to create a new career. Once scoffed at by investors, many network marketing companies are publicly traded on Wall Street including Herbalife, Nu Skin, Pre-Paid Legal Services, USANA and others. Network marketing is being used by many highly regarded companies such as Barnes and Noble, Circuit City, Hickory Farms, Bass Pro Shops, Auto Zone Parts Stores, and hundreds, if not thousands, more. Top business management leaders and *New York Times* best-selling authors Robert Kiyosaki, Paul Zane Pilsner, and Steve Covey have endorsed network marketing.

The industry is also growing in popularity and contributes to the US economy. This growth should be encouraged. There are an estimated 13 million Americans involved in this network marketing industry today. Lastly, the network marketing industry contributes to our growing economy. Sales of products and services through network marketing are estimated at more than \$29 billion in 2003.

I have owned a conventional contract manufacturing and product development business for over thirty years. Simultaneously, I have been involved in the network marketing industry for more than twenty years. During those twenty years, I have sequentially participated in at least eight network marketing companies. During those same twenty years, I became involved, or stopped involvement, with hundreds of suppliers for my conventional business. For each network marketing business that went out of business, I encountered ten conventional business suppliers who went out of business.

Why did I participate in so many network marketing companies? Initially, I would become a distributor in order to enjoy discount pricing on products of superior quality to those found in

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conventional retail stores. With most companies, I could purchase a distributorship and products for less cash outlay than if I were to buy the same products as a customer. Over the years, I approached becoming a distributor, or joining a membership store like Costco, as very similar. My current network marketing business provides me access to hundreds of thousands (perhaps even million) of products, much more than would be available with just a Costco membership.

I am now retired from my conventional business. My home based business provides a nice supplement to my fixed retirement income.

I understand and value the role of the FTC mission "to stand up for America's free market process and for its consumers, who benefit from competitive markets in which truthful information flows." However, I believe these proposed rulings exceed what is necessary and needs significant modification. We live in a free market economy wherein people have the responsibility of making informed decisions based on best information. A better approach would be to provide consumers with objective criteria when analyzing a business opportunity and let an informed market proceed.

Thank you, in advance, for reviewing and posting my comments.

Best regards,

Thomas R. Van Drielen