

SUBJECT: Comments re FTC Business Opportunity Rule, R511993

July 13, 2006

Introduction

We are Robert G. Pellerin and Patricia H. Pellerin, and we are independent business owners (“IBO”) with a registered affiliation with Quixtar, Inc. We have been business owners for several years and have received appreciable benefit from our affiliation, both financially and in personal growth. When we registered our affiliation, there was ample information for us to make an informed decision, and we provide such information to potential business owners.

As business owners, we are very interested in and concerned with the FTC’s April 12, 2006 Notice of Proposed Rulemaking (“NPR”), which sets forth rules that, if adopted as drafted, would directly affect the conduct and profitability of our business in a negative manner. We applaud the FTC’s stated intention to protect innocent Americans by combating fraud and prohibiting practices that are unfair or deceptive. However, the proposed rules would handcuff those of us operating legitimate businesses in a legal and ethical manner. We strongly urge revisions to the proposed rules that are consistent with the following discussion.

Issues

We are particularly concerned with the following aspects of the proposed rules: 1) 7-day waiting period; 2) disclosure of legal actions; 3) disclosure of prior purchasers; and 4) extensive earnings disclosures.

1. 7-day Waiting Period

We object to § 437.2 and its requirement that at least seven days must pass between the sharing of information regarding a business opportunity and the time a purchaser signs a contract or makes a payment. This is an unacceptable restriction of trade that would harm our business by stifling growth.

Quixtar has a small upfront investment (\$50-200, depending on options) and a 30-day refund policy. Because the purchaser has no risk, there is no need for a waiting period before registering his/her affiliation with Quixtar. Imposition of a waiting period would impede a new business owner from rapid growth, which would most likely extend the time experienced before becoming profitable and therefore increase the drop-out rate.

For example, a new IBO (having waited the seven days himself) might introduce someone (Person 1) to the business opportunity on Aug. 1. Person 1 could not register and start his business until at least Aug. 8. On Aug. 8 Person 1 introduces the opportunity to Person 2, who has to wait until Aug. 15 to register. Then on Aug. 15 Person 2 introduces the opportunity to Person 3, who cannot register until Aug. 22. Upon seeing the opportunity on Aug. 22, Person 4 waits until Aug. 29 to register his affiliation. So over the course of four weeks, the new IBO can only register four people in a leg of

his network. In contrast, absent a waiting period, all of this could have been established in less than a week.

There is nothing that prevents a potential purchaser from taking however long he/she wants to perform whatever research he/she deems necessary. Those who have enough information to make a decision in less than seven days should not be prohibited from moving forward on their own timetable.

To the extent the FTC believes a waiting period is essential, we strongly suggest that there be no waiting period for any business opportunity that offers at least a 30-day buy-back policy. This would provide some protection for people purchasing a business that has no refund policy (where advance research is more critical), while not impeding the growth of legitimate businesses that do not impose the same level of risk because a full refund is available.

2. Disclosure of Legal Action

We object to § 437.3(3) and its requirement that any of certain legal actions against the seller (et al) must be disclosed to a prospective purchaser. This requirement is unnecessary and does not afford the purchaser the protection the FTC seeks to provide.

The most significant flaw of this provision is that it requires disclosure of all actions *regardless of the outcome*. In other words, the concept of “innocent until proven guilty” is thrown out the window. Very few people, given the caption of a lawsuit, would take the initiative to actually look up the case and attempt to understand what it was about. And unless they had legal training, most would not understand what they were reading anyway. Instead of taking the time and energy to research a case, most people would assume that if a business has/had a lawsuit filed against it, that the business must have done something wrong. In addition, because of the blanket requirement to disclose any legal action, regardless of the outcome, anyone with a perverse intention to denigrate a business opportunity could simply initiate a claim – allegations need not be proven.

There are many sources available to prospective purchasers to research a business opportunity if they are so inclined. For example, most people know that the Better Business Bureau documents complaints against businesses and their resolution (if any). Most (if not all) states have consumer protection departments that exist to deal with consumer fraud and related complaints. The FTC itself receives numerous complaints, as evidenced by this NPR.

In addition, the internet is, sometimes unfortunately, an unrestricted forum for information. Just last week, we had a prospective IBO elect to believe misinformation and lies on the internet rather than getting facts from a legitimate source. This individual lost out on a valid opportunity because of misleading information and bald-faced lies. The last thing we need is to be required to imply more negative about our business opportunity by disclosing lawsuit references – particularly when there is a finding of no wrongdoing.

3. Disclosure of Prior Purchasers

We object to § 437.3(6) and its requirement to disclose the personal information of prior purchasers of a business opportunity. This is an unacceptable breach of privacy that will do nothing to prevent or limit deceptive trade practices. The proposed alternative of providing a complete list of prior purchasers (rather than the ten closest) would only compound the privacy violation with no added benefit. And limiting the disclosure to business owners established in the last three years would likely eliminate the most successful business owners and thus would provide a skewed viewpoint. Disclosing the personal information of other IBOs would also jeopardize the personal contact nature of the Quixtar business opportunity.

As business owners, it is up to us to decide to whom we reveal our business affiliation. No one should be required to have personal information revealed to persons unknown as a condition of purchasing a business opportunity.

Directing a prospective purchaser to ten other business owners would significantly jeopardize our ability to register the prospect's business affiliation through us. Other IBOs would have financial incentive to "poach" the prospect and persuade him/her to register affiliation with them rather than us. This would violate the personal contact nature of our business that is so important to its viability. Other people, who would not have come into contact with our prospect without our disclosure, should not benefit from that disclosure – yet there is nothing that would prevent exactly that outcome.

Finally, the NPR suggests (footnote 180) that privacy invasion concerns are minimized because the street addresses of the references would not be provided. The omission of street address information does not in any way reduce the intrusion. First, receiving a telephone phone call from someone else's prospect looking for information about our business is an unacceptable intrusion in and of itself. But, even more importantly, anyone using a reverse lookup directory can obtain street address information based on the telephone number. (See, for example, www.yellowpages.com, which has a "Look up by Phone Number" feature.) There are no privacy protection provisions whatsoever in the NPR. And we believe this privacy is of critical importance.

This disclosure requirement does not accomplish the FTC's stated intention. It does nothing to assist potential purchasers in verifying the seller's claims, because it does not represent a reliable source. The significant invasion of privacy and harm to our business cannot be reconciled with the limited benefit conferred to prospective purchasers.

4. Extensive Earnings Disclosures

We object to §§ 437.1(h) and 437.4, which require extensive earnings disclosures. This requirement is overly burdensome and could require disclosure of personal information.

The definition of "earnings claim" in § 437.1(h)(1), in conjunction with the provisions of § 437.4, would require the seller to have in his/her physical possession at the time a business opportunity is presented written documentation in support of each and every number used in explaining the opportunity – since each number would be considered an

earnings claim by definition. In addition, § 437.3(2) would require that this documentation be attached to the disclosure document. This is an unnecessary burden and not likely to lead to a more informed purchaser due to the potentially voluminous and confusing documentation.

The required earnings claim statement described in § 437.4(4) is overly inclusive and could inappropriately require a business owner to reveal personal financial information. Under no circumstances should a business owner be required to release personal financial information to anyone unless specifically ordered to do so by an appropriate government agency conducting a fraud investigation. Moreover, such information would be totally meaningless to a potential purchaser. Each individual builds a business according to his/her own ambition level, which is completely unrelated to someone else's ambition level. In addition, each business is unique in its structure such that two businesses generating similar volume may experience different levels of earnings based on how each is constructed. It is for this reason that a generic example is used to explain the compensation plan – i.e., if one builds a business that looks like this, this is the income that can be generated.

Conclusion

Each individual has a personal responsibility to make an informed decision. Recognizing that not everyone acts on that responsibility, the FTC seeks to protect those foolish enough to invest in a business opportunity without getting the facts. However, the proposed rules will inflict significant harm to those business owners operating legitimate businesses. Many of the concerns the FTC seeks to address in the NPR would be remedied by requiring a 30-day cancellation and refund policy, minimizing the risk exposure facing a new business owner. Thirty days would provide ample time for new business owners to see first-hand from the inside how a business operates and to conduct whatever additional research they deem appropriate. To the extent the FTC elects not to require a refund policy, the FTC's proposed rules should be limited to those businesses that do not offer cancellation and full refund.

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