

August 11, 2006

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex W)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

RE: Business Opportunity Rule, R511993

To Whom It May Concern:

First, I would like to thank the FTC for the opportunity to participate in the rulemaking process.

I'm currently involved in what I like to call a "Direct Marketing Opportunity" and have been since the fall of 2004. I'd like to offer my comments from the perspective of a Direct Marketer and as a former law Enforcement and Correctional Official. I have a fair working knowledge of the administrative law process and of course I have extensive experience dealing with the criminal mindset.

I have reviewed the proposed Business Opportunity Rule: R511993, and respectively offer the following input for consideration. I would like to individually address the five proposed disclosure rules and demonstrate their detrimental effects on the legitimate business operator.

(1.) Seven day waiting period

The average consumer is not going to know about this waiting period. I can guarantee that a fraudulent business operator certainly will not disclose this to the prospect. Even if the consumer did know of the waiting period, at best, this measure will merely delay the crime for 7 days. I don't see where this will be a viable deterrent or provide any major protections to the consumer.

With that being said, I would like to address how this will harm the legitimate business interests of the direct selling industry. This will certainly inconvenience the business owner—as well as customers that may desire to participate immediately in an opportunity.

The waiting period seems to cast a derogatory shadow on the business. "Direct Marketers" already have been damaged by the fraudulent acts that occur in the MLM industry. Anything else that expands the "This is a scam mindset" is going to seriously affect legitimate business owners.

(2.) List of nearest references

I am greatly concerned about the affects and feasibility of this requirement. I am certain that most prospects will not want their personal contact information freely distributed. I am also concerned about how this will conflict with the "National Do Not Call list requirements".

I do not think that most prospects will want to be contacted as a reference. The potential to lose control of the individual's privacy is too great with this proposal. We must also realize that there are confidentiality issues at stake here as well. Most prospects may wish to buy/participate in certain opportunities and not have this information disclosed.

I can even show a scenario where this could put the individuals at risk for physical harm. In some domestic violence cases the abused will sometimes seek extra income to escape the abusive relationship. If by chance one of these reference calls was intercepted by the wrong party (the abuser),

then the reference person could be at risk. This is just one of the many security and confidentiality concerns I have.

In terms of offering any protection to a consumer this measure fails as well. Fraudulent individuals can easily come up with a list of buddies as references that would be willing to help victimize a consumer.

This rule would place a tremendous burden on legitimate business owners while doing little to protect the consumer—In fact this rule creates additional vulnerabilities for the prospects.

### (3.) Earnings claim statement

I can see where this could easily be faked, while at the same time it creates another burden upon the legitimate business owner. I feel like this will only hamper legitimate businesses and will not deter fraud.

I fully support the requirement to provide valid data, however it will be essentially impossible for the consumer to validate the figures provided by anyone for that matter.

The rule seems to require a fairly extensive array of data. It would not be feasible for the average business owner to compile and maintain complex data for this purpose.

### (4.) Legal actions

This rule has several issues that concern me. Requiring the disclosure of all legal actions seems to raise constitutional liberty concerns. I think certain courts have established that individuals have a protected liberty interest in their “reputation”. By requiring an individual to disclose a criminal charge prior to being found guilty would seem to cross the line.

In this country, we are supposed to be presumed innocent until proven guilty. I don’t think that a regulation that requires an individual to “cast a derogatory shadow upon their reputation without proof of guilt” would stand up to a court challenge.

There are issues with the civil action disclosures as well. It is entirely possible that an individual could be involved in an action that has been “sealed” by the court. I would think that it would be improper to disclose information from any currently pending case—regardless of the circumstances.

We must remember too that there are a variety of federal “whistleblower” type actions that fall into the guidelines of this rule. This rule would require a whistleblower to tell every prospect he/she encounters that they are a “whistleblower”. What becomes of this person’s federal protections in this situation?

Of course we must look at this situation further to realize that the required disclosures in this rule are yet again things that a criminal can easily avoid. It is highly unlikely that they will truthfully disclose this information and even if they do the consumer will still have no failsafe way to validate it.

The legitimate business owner would be exposed to the possibility of losing private and confidential information and risk disclosure of protected activities.

### (5.) Cancellations and refunds

This rule seems to suggest that cancellations and refunds are indicative of inappropriate actions on the part of the business owner. Any business will experience cancellations and refunds. Unless the business owner goes to extra lengths to document each individual reason for these events then the basic numbers will not reflect the true activities of the business. For example, if a customer dies-this will likely result in a cancellation of an account. This certainly doesn’t reflect any wrong doing on the part of the business owner, but if a regulatory agency’s rule suggests a “derogatory connection to the number of refunds and cancellations” then the consumer may adopt that belief.

**SUGGESTED ACTIONS**

- 1.) I would like to formally request that the 5 disclosure rules as proposed in Business Opportunity Rule, R511993 be abolished based on my observations above.
- 2.) I propose that the FTC take measures to create a National Direct Marketing Licensing Program.
- 3.) I propose that the FTC take actions to create a Nationwide Licensing and Disbarment database to track fraudulent business operators.
- 4.) Said database would allow for a quick screening of prospects for undesirable traits, and would be used by the FTC to maintain the Licensing Program.
- 5.) The title Multi-level marketing has become so associated with fraud that this in itself is a detriment to a legitimate business operator. To help counter this, I propose that all future rules, etc. identify this industry with the name "Direct Marketing" or an appropriate derivative of that term. It is desirable for me to separate myself from fraudulent operations as well as titles which tend to cast a derogatory shadow.

Once again I thank you for the opportunity to participate in the rulemaking process. I want to pledge my full support for your mission in protecting the consumers and ask that you consider my proposals as viable options for effectively performing your mission without infringing on the legitimate business owners interests.

Sincerely,

Kerry L. Thomas

Direct Marketer