



July 14, 2006

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

THE TIMBERLAND COMPANY

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Attn: Mr. Donald S. Clark, Secretary

RE: Business Opportunity Rule R 511993

Dear Mr. Clark:

The Timberland Company ("Timberland") is a public company, incorporated in Delaware, whose stock is traded on the New York Stock Exchange. Timberland designs, develops, engineers, markets, and distributes, under the Timberland brand and various other brands, premium quality footwear, apparel and accessories for men, women and children. Timberland products are sold throughout the world, and are sold in the United States solely through independent retailers, department stores, athletic stores (such as Footlocker) (collectively, "retailers") as well as at Timberland owned and operated retail outlets (specialty stores and factory outlets) and on Timberland's own website, [www.timberland.com](http://www.timberland.com).

Timberland does not charge fees to retailers for the right to purchase Timberland products to sell at retail to consumers. These Timberland retailers sell other companies' products as well as Timberland products in their retail outlets and, for this purpose, purchase these products from Timberland and other similarly situated companies at *bona fide* wholesale prices. Timberland, like its competitors, provides product and sales training to its retail accounts. These retailers' product purchasing decisions are primarily dictated by their own marketing strategies and consumer sales rather than any Timberland-imposed requirements to purchase either specific products or quantities of products.

We write this comment letter because we are concerned that the broad language contained in the Proposed Business Opportunity Rule ("Proposed Rule") could inadvertently, unfairly and unnecessarily be interpreted to include companies

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such as Timberland. Timberland's payment and distribution structure, which is shared by most other branded product distributors, has been recognized by the FTC and all states that regulate the offer and sale of franchises as not being in need of any pre-sale disclosure regulation; for this reason, the FTC and the state franchise regulators created the *bona fide* wholesale price exemption to exclude such arrangements from regulation.

The Proposed Rule eliminates the *bona fide* wholesale price exemption and, thus, could make Timberland and, we presume, most other product distributors, a "Seller" of a "Business Opportunity" as defined in Sections 437.1(d) and (g) of the Proposed Rule. The FTC Notice of Proposed Rulemaking ("Notice") does not explain why the exemption was eliminated for the overwhelming number of product distributors who could be affected by the change, nor does it describe any instances of consumer injury or problems attributable to these product distributors or otherwise offer any insight about why the public interest will benefit by eliminating the exemption. It appears that the sole basis for eliminating the *bona fide* wholesale price is the FTC's desire to regulate pyramid schemes. As the FTC states in the Notice: "were it not for the minimum investment and inventory exemptions in the Franchise Rule, many pyramid schemes would be covered..." (at page 25). Pyramid schemes are a unique concept that have little or no similarity -- in business structure, presence of consumer problems, etc. -- to the vast number of product distributors who could be adversely affected by the exemption's elimination. We are hopeful that the FTC can craft a more focused definition of a "Business Opportunity Seller" that will cover the pyramid schemes that are of concern to the FTC without, at the same time, burdening the vast number of product distributors whose businesses are totally different from pyramid schemes. The need to distinguish the two groups is especially important since the *bona fide* wholesale price exemption has worked so well in the 26+ years that the FTC Franchise Rule has been in effect and the 30+ years that many of the state franchise registration/disclosure laws have been in effect, as evidenced by the absence of any record or even mention of consumer protection problems.

Product distributors like Timberland have no financial incentive to mislead buyers into becoming retailers of Timberland products because the retailer's initial product order is limited to a commercially reasonable quantity for resale, and no further product orders are likely to be made unless the initial inventory is sold.

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Moreover, retailers are not obligated to either repurchase inventory or continue to carry Timberland products.

In addition, the proposed disclosure document that Timberland and other product distributors would be required to provide is very unlikely to be useful to the prospect. The most important disclosure, i.e., a list of other retailers, is unnecessary, since this information is readily available to prospective buyers; more specifically, Timberland, like other product distributors, publicizes its distributors' identities; at a minimum, that information enables consumers to know where to purchase that brand's products. Thus, a prospective Timberland retailer need only log onto the Timberland website, or consult the yellow pages of any telephone directory, or log onto a variety of internet sites to identify other Timberland distributors, and we presume that the same search methodology is likely to be present with most other product distributors. Moreover, Timberland, like most product distributors for whom the *bona fide* wholesale price exemption would likely be applicable, sells to established businesses. Thus, the retailers are experienced businesspersons who already are knowledgeable about the industry, have existing distribution relationships with other manufacturers, and are seeking to add Timberland to their assortment of products. For these reasons, we question the value to retailers of the limited disclosures that they would receive under the Proposed Rule.

In conclusion, Timberland believes that the Proposed Rule should not apply to Timberland or any other product distributor who currently is exempt from franchise regulation under the *bona fide* wholesale price exemption. The long history of franchise regulation demonstrates that no consumer injury is present; the payment structure of the product distribution arrangement discourages any potential abuses; and the proposed disclosure will not assist prospective buyers but will create a burden for the sellers. We urge the FTC to focus the Proposed Rule's coverage on those groups where a demonstrated need for regulation is present and to ensure with clear language that branded product wholesalers like Timberland are excluded from the Proposed Rule.

Respectfully submitted,

Danette Wineberg  
Vice President, General Counsel and Secretary