

Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

COMMENTS OF
SOUTHERN PROGRESS CORPORATION
Responding to the Request for Public Comment
Business Opportunity Rule, R511993

Southern Progress Corporation
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Introduction

Southern Progress Corporation, which operates Southern Living at HOME, submits the following comments to the Federal Trade Commission's proposed rule entitled "Business Opportunity Rule, R511993" (the "Proposed Rule").

Through its subsidiary, Southern Living At HOME, Southern Progress is a member of the Direct Selling Association ("DSA") and fully supports DSA's comments regarding the Proposed Rule. Because Southern Progress will be disproportionately impacted by, and has particular concerns regarding, certain provisions in the Proposed Rule, Southern Progress submits these additional comments to separately address several of its concerns.

Background Information on Southern Progress Corporation and Southern Living at HOME

Southern Progress Corporation has a rich heritage of excellence and integrity, beginning with the first publication of The Progressive Farmer magazine in 1886. During its almost 120-year history, Southern Progress has established itself as one of the largest lifestyle publishers in the country, publishing *Southern Living*, *Cooking Light*, *Health*, *Coastal Living*, *Southern Accents*, *Cottage Living*, *The Progressive Farmer*, and *Sunset* magazines. A subsidiary of Time Inc. and Time Warner Inc., Birmingham-based Southern Progress has operations across the U.S. and its magazines have a combined readership of almost 50 million households.

The company also operates a direct selling party-plan division, Southern Living At HOME. Southern Living At HOME was created in January 2001 to bring the pages of the magazine to its readers by selling decorative house wares, pottery and other products. These products are sold at neighborhood parties by Southern Living At HOME's organization of Independent Consultants. With over 35,000 Independent Consultants and wholesale revenue of over \$26 million in the first year of operation, Southern Living At HOME provides a fulfilling opportunity for persons interested in part-time self employment or supplemental income.

Independent Consultants join Southern Living At HOME by signing an annual agreement and purchasing a Starter Kit for \$199.00, plus the applicable taxes and shipping and handling for residents of Alaska or Hawaii. This Starter Kit contains Southern Living At HOME products and business supplies with a retail value of \$500.00. The kit can be returned for a full refund anytime within twelve months of joining Southern Living At HOME. This is the only business related product purchase that Consultants are required to make as all inventory is owned and retained by Southern Living At HOME. Southern Living At HOME makes no income claims. Our Consultants' earnings are based upon their personal party sales. Royalties can be earned once the Consultant recruits new Consultants and becomes eligible to earn royalties based upon his or her team's sales.

Southern Progress' Comments

Southern Progress supports the Commission's efforts to prevent businesses, including sellers of business opportunities, from using unfair and deceptive business practices. Southern Progress believes, however, that the Proposed Rule unnecessarily subjects legitimate, law-abiding

enterprises such as Southern Living at HOME to an overbroad and unduly burdensome regulatory scheme. More specifically, certain obligations imposed by that regulatory scheme are overbroad and unnecessary in relation to their intended purpose, impose undue compliance burdens, and/or ignore important countervailing interests. Southern Progress will address only two of those provisions here: the affiliate litigation disclosure requirements contained in Section 473.3(a)(3) and the reference requirements contained in Section 473.3(a)(6).

Affiliate Litigation Disclosure

The Proposed Rule would require companies meeting the "business opportunity" definition to disclose, among other things, all legal actions concerning "misrepresentation, fraud, securities law violations, or unfair or deceptive practices" in which they, their affiliates or certain representatives have been involved over the previous ten years. Southern Progress understands that DSA is addressing in its comments the overbreadth of the category of legal actions covered by the Proposed Rule and the adverse effects such disclosures could have on the legitimate business activities of the companies involved. Southern Progress joins in those comments. The overbreadth addressed by DSA is even more pronounced, however, for companies like Southern Progress that are part of broad (and legitimate) corporate structures. Of particular concern to Southern Progress, the Proposed Rule would require the disclosure of any of the identified legal actions against "any affiliate or prior business of the seller," with affiliate defined as "an entity controlled by, controlling, or under common control with a business opportunity seller."

The affiliate litigation disclosure requirement would impose an incredible burden on Southern Progress and is far broader than necessary to achieve the asserted goals of the Proposed Rule. The definition of "affiliates" in the proposed rule encompasses all of Time Warner, which includes hundreds of companies. Southern Progress is a wholly owned subsidiary of Time, Inc., which is in turn a wholly owned subsidiary of Time Warner, a publicly traded company. As a result of this ownership structure and the size of its corporate parent, Southern Living At HOME has approximately 15 direct affiliates and over 80 domestic affiliates within Time Inc. alone. Based on the known number of active cases as of July 2006, Southern Progress estimates that at any given time, Time Warner affiliates are involved in over 400 legal actions that would have to be reviewed for Southern Progress to determine which, if any, of them would have to be reported under the Proposed Rule. Such a review would be unduly burdensome and by itself would require much more time than the 1-3 hours (for the first year) or 1-2 hours (for subsequent years) that the Commission predicted would be required to compile and maintain information regarding all required disclosures.

Southern Progress understands that the principal purposes of the affiliate litigation disclosure requirement are to assist prospective purchasers in evaluating the business opportunity they are considering and to thwart "fraudulent business opportunity sellers [operating] through multiple related affiliates, or us[ing], sequentially or simultaneously, a variety of corporate identities in order to avoid detection." Southern Progress does not believe that the information sought will be of any significant utility to the vast majority of the potential consultants who consider a part-time sales opportunity with Southern Living At HOME each year. In any event, the scope and detail of the disclosures required under the Proposed Rule far exceed what could even arguably be necessary to serve those purposes.

The Commission's concern regarding business opportunity sellers manipulating corporate identities to avoid detection is not raised in the context of publicly traded companies and their subsidiaries, such as Southern Progress and its affiliates. The disclosure requirements applicable to, and the public oversight of, Time Warner and other public companies serve to insure that their activities are open to broad scrutiny and that their material litigation is fully disclosed.

Nor could the Commission's concern warrant disclosure of litigation against Southern Progress and other Time Warner controlled affiliates that is unrelated to the sale of business opportunities. Of the over 400 legal actions currently pending that Southern Progress would be required to review under the Proposed Rule, Southern Progress is involved in only three. Southern Progress recognizes that certain of its affiliate legal actions could conceivably be relevant to a prospective Southern Living At HOME consultant if those actions involved the sale of business opportunities. But that is not the case. Aside from Southern Living At HOME, no Southern Progress affiliate is involved in the sale of business opportunities, as those terms are defined in the Proposed Rule. And it simply could not be significant to a prospective Southern Living At HOME consultant if, for example, Home Box Office, New Line Cinema or Time Warner Cable were investigated or sued (much less found liable) for some alleged misrepresentation wholly unrelated to the sale of a business opportunity as defined in the Proposed Rule. Yet the Proposed Rule as presently drafted might be read to obligate Southern Progress to disclose those actions.

Finally, however many of the over 400 cases would ultimately have to be disclosed, the litigation disclosures required by the Proposed Rule would impose a significant burden on prospective Southern Living At HOME consultants and would significantly harm Southern Living At HOME's business. Most prospects investigate Southern Living At HOME (and presumably other direct selling opportunities) as a means to supplement their income on a part-time basis. The large, and largely irrelevant, disclosure Southern Progress would be required to make would exponentially increase the volume of material such prospects would receive. At best, the disclosure would burden and confuse these prospects. At worst, it would deter them from further investigating the Southern Living At HOME opportunity and thereby hurt Southern Living At HOME and its current consultants as well.

Southern Progress proposes that the Proposed Rule be revised to exclude from the disclosure requirement affiliate legal matters for affiliates that are publicly traded or are subsidiaries of publicly traded companies. Southern Progress also proposes that, if publicly held companies and their affiliates are subject to any litigation disclosure requirement, the Proposed Rule be revised to require disclosure of only those affiliate legal matters involving the sale of business opportunities. Such a requirement would more directly relate to the Commission's asserted goals while reducing the unnecessary burden on businesses with numerous affiliates not involved in the sale of business opportunities. These proposed revisions would also potentially make the litigation disclosure more meaningful to, and reduce the burden on, prospective purchasers.

Reference Requirement

The Proposed Rule would essentially require companies meeting the "business opportunity" definition to disclose contact information for either the prior ten purchasers of the business

opportunity nearest the prospective purchaser's location or all purchasers within the last three years. Southern Progress understands that DSA is addressing in its comments various practical, business, and privacy concerns related to this reference requirement, and joins in those comments. Southern Progress comments separately to emphasize that the disclosure of non-public information regarding Southern Living At HOME (or other direct selling) consultants is inappropriate and should not be required. For current consultants that disclosure would not even be authorized. For prospective consultants, the "authorization" arguably implicit in the proposed notice of disclosure is simply inadequate.

The Proposed Rule fails to adequately protect the privacy interests of current Southern Living At HOME consultants. Thirty-five thousand consultants have joined Southern Living At HOME with the reasonable expectation that their contact information will not be disclosed to third parties without their consent. The Proposed Rule would shatter that expectation by affirmatively requiring Southern Progress to disclose that information as to some or all of these consultants to every prospect. The Commission's assertion that "this type of information is often readily available and in the public domain from such sources as telephone directories" only serves to refute the need for the reference requirement and in any event will be of little comfort to those Southern Living At HOME (and other direct selling) consultants who have chosen not to publicize their personal information.

The Proposed Rule also fails to adequately protect the privacy interests of future Southern Living At HOME consultants. The Proposed Rule purports to address privacy concerns by requiring a disclosure to prospects that "[i]f you buy a business opportunity from the seller, your contact information can be disclosed in the future to other buyers." Yet the only way a prospective consultant can protect his or her privacy under this proposal is to decline the opportunity, however appealing it might otherwise be. Thus, rather than protecting privacy, the Proposed Rule at most would require notice that such privacy would be lost.

The Proposed Rule also "seeks comment on whether the Rule should permit purchasers the opportunity to opt-out of the disclosure of their contact information." One key flaw in the opt-out mechanism is that it places responsibility for protecting the privacy of the prospect with the prospect herself. That is, to ensure that his or her contact information would be kept confidential, a prospect would have to make an affirmative request. Southern Progress feels strongly that any default should protect, not require disclosure of, personal information, and therefore strongly opposes the reference options proposed by the Commission.

Southern Progress proposes that, if any Proposed Rule with a reference disclosure requirement is adopted, it at most contain an opt-in provision whereby current and future consultants would be provided an opportunity to permit sellers to disclose their contact information to future prospects. Such an opt-in mechanism would both protect purchasers' privacy interests while still likely furthering the Commission's goals by providing a mechanism by which the identities of some willing prior purchasers could be made available to prospects.

Conclusion

Southern Progress appreciates this opportunity to provide comments to the Proposed Rule. If the Commission were ultimately to decide to adopt a final rule, we urge the Commission to narrow the Proposed Rule to exclude legitimate businesses such as Southern Living At HOME. We also urge the Commission to revise the Proposed Rule to better balance the burdens it would impose with the benefits it seeks to provide. We believe that our comments and DSA's comments provide constructive suggestions how to accomplish both of these goals.

Sincerely,

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