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FEDERAL TRADE COMMISSION
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June 1, 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

Dear Federal Trade Commission:

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I am writing you on behalf of New Vision USA, Inc. and Vemma Nutrition Company (collectively "the Companies") and their thousands of independent distributors to express concern with a proposed new business opportunity rule being promoted by the Federal Trade Commission ("FTC") and others at 16 CFR § 437. I am the current president and CEO of both Companies. The proposed rule seems to be an example of big government interfering with private enterprise, to the detriment of small business operators and potential small business people like the thousands of Companies' independent distributors that have been given an opportunity to pursue the American Dream.

First, we want to note that thousands of the Companies' independent businesses have developed their independent small businesses through their association with our Companies. Those independent small business owners in many instances were not originally in a position financially to start their own businesses. It was only due to the ease with which they could become independent distributors with our Companies, with no significant investment, other than their time and effort, and lack of governmental "red-tape," that they have been able to build their successful independent small businesses.

We have discussed the new proposed regulations with many of our independent business associates and competitors. We all agree this proposed rule appears to be a classic case of the government "throwing out the baby with the bath water." While the proposed rule may inhibit some improper scam businesses,[1] it will also damage or destroy hundreds of thousands of independent businesses such as those of our independent distributors, as well as many of the companies that make those businesses possible. Rather than encouraging or protecting free enterprise, the FTC's proposed rule will be destroying it. The increased costs, delays, recordkeeping, disclosures of

[1] It has been our experience that those willing to act illegally find ways around procedural barriers that regulators attempt to enact to make their jobs easier. The honest person is normally simply forced out of business.

confidential information and other burdens could destroy or substantially damage the Companies' and its independent distributors' small businesses.

The language used by those preparing the proposed rule reflects a lack of understanding regarding how our independent distributors' small businesses are developed and perhaps an intent to stop these businesses all together, since they repeatedly refer to these businesses as a "pyramid scheme." Virtually everyone involved in or knowledgeable about the industry recognizes that a "pyramid scheme," as opposed to a legitimate network marketing or direct selling business, is illegal. The FTC's comments seem to start with the presumption that all such businesses are illegal.

Before founding New Vision in 1995 and later Vemma, I grew up in a family that built their own independent small businesses as distributors for a direct sales company. I built my own successful independent small business as a distributor starting at the age of 18. I have been impressed with and experienced first hand the opportunity direct sales provides, when combined with the right products and marketing plan, for anyone to have an opportunity to build their own business with little formal education or investment. This equal opportunity for anyone willing to work was one of the things that caused me to found my Companies after my family and I had personally experienced the benefits of the industry.

Before we started our own companies, my family and I built our own successful small businesses. It was the success of those businesses that put us in a position to start these companies. I am proudest, however, of the success of our Companies and how they have allowed people throughout the United States and the world to develop their own independent small businesses and help themselves and others improve their lives. I am therefore very concerned about the extremely negative impact the proposed rule would have on hundreds of thousands of those independent small businesses.

The following are some of the most significant burdens, impractical obstacles and costs unnecessarily established by the proposed rule.

1. <u>The requirement of disclosure of the name, city, state and telephone number for at least 10 prior purchasers nearest to the prospective purchaser's location, or alternatively, a nationwide list of prior purchasers within the last three years</u>.

First, the FTC obviously ignores the burden this places on our companies and the thousands of independent small businesses operated by their independent distributors. There are no designated geographic territory limitations on any of our independent distributors' independent businesses. It would be virtually impossible for any of those independent distributors, as one of thousands of independent businesses, to know, let alone disclose, the contact information for "the ten purchasers nearest to the prospective purchaser's location." Nor, as a practical matter, would our Companies be able to do.

The impossible burden resulting from requiring a company with thousands of independent business distributors nationwide to prepare a disclosure list of the ten purchasers nearest to an unidentified prospective purchaser is obvious. The nature of direct selling is often mouth to mouth and impromptu. There are normally a number of independent distributors operating in the same geographic area. It is therefore impossible for them or the Companies to at any given time have with them the ten purchasers nearest to a previously unidentified potential purchaser.

Therefore, as a practical matter, the only way to comply with the proposal is for the Companies to provide each of the thousands of independent distributors with a constantly updated list of the names, addresses and telephone numbers of the Companies' nationwide independent distributors over the prior three years. This would be an administrative nightmare, if not impossible.

Furthermore, one of the most significant and confidential aspects of each independent business like those of our Companies and that of the independent distributors is the contact information of the people in the downline of their businesses - i.e., the "purchasers" or people they have recruited to purchase and sell the companies' products. Virtually every company like ours requires the names and information of the distributors and customers to be maintained as confidential and used solely to build their businesses and customer bases. Many of the people the independent distributors discuss the possibility of becoming a customer or independent business person within their downline are being recruited by other companies. They may also already be a customer or distributor for another company. Some of the potential purchasers are already operating their own independent business for another company. To require independent distributors or our Companies to disclose confidential contact information regarding the ten people nearest them in their organization, or alternatively a "nationwide" list of purchasers over the past three years, would be devastating to their businesses, not to mention our Companies' business. One of the most common areas of litigation in this industry involves distributor raiding by competing companies or distributors for competing companies. This proposed disclosure would foster even more litigation.

Second, the above referenced requirement flies in the face of many recent laws and expectations regarding privacy rights. What would be your reaction if every business offering to sell you a product not only would not agree to keep contact information regarding you confidential, but in fact told you that if you buy our product "your contact information can be disclosed to other [potential] buyers,"[2] particularly when the potential buyer could be a competitor.

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[2] Although the FTC's suggested language is "other buyers," in reality it is to any potential buyer, since the proposed disclosure occurs before any decision is made to buy.

2. Disclosure of cancellation or refund policy, the total number of oral or written cancellation or refund requests, over the prior two years, regardless of whether or not the request was proper.

This requirement once again reflects a total lack of appreciation for how the industry works and the burden it would place on our Companies and each of their thousands of independent small businesses. Our Companies, like most network marketing companies, encourage the independent business person to first address any questions regarding refunds or cancellations, since that person is the one who previously dealt with the individual. The FTC's proposed rule is therefore placing the burden on thousands of independent businesses to keep records of, and report to our Companies, all oral or written inquiries regarding refunds or cancellations. Our Companies in turn are placed in jeopardy of the independent distributor not relaying all such requests to them, particularly those that may have been orally resolved based upon a misunderstanding, and therefore our Companies could unknowingly be in violation of the proposed rule. Furthermore, our Companies have always emphasized to all their independent distributors that requests for refunds and/or cancellation should be liberally granted, absent clear evidence of fraud or misconduct. The proposed FTC rule will punish those companies that encourage such a liberal rule.

3. Each seller must keep 3 years of records of all versions of documents required by the rule, including disclosure receipts, each contract, each oral or written refund request, etc.

Many independent small businesses like our Companies' independent distributors will sign up hundreds if not thousands of distributors in a one year time. Many will sign up so they can purchase the product at a wholesale price, since first and foremost in most of our independent distributors' minds is the fact they are sharing high quality health products with their friends. Requiring them to create and maintain physical copies of these records, and presumably forward copies of those same documents to our Companies, will be a costly and consuming administrative task, as well as one which will take up considerable storage space.

4. Earnings claim disclosure that any direct or indirect claim about income, including disclosure of the name of the person making the claim, date of earnings, number and percentage of all purchasers during the time period that received the same earnings, etc.

Based upon the FTC's comments, it is unclear whether this requirement applies to the independent distributors and the Companies. If the rule is interpreted to apply to our independent distributors, then whenever one of them represents that he or she earned supplemental income, or even if she said she earned her investment back within one year, which is nominal with our Companies, the Companies and presumably the independent

distributor would have to make the substantial written disclosures within each initial disclosure statement. However, the independent distributor would not personally possess the type of information required for the disclosure. Nor is it clear how you can expect the Companies to provide the information for such disclosures, since each independent business person would be making the statement, not the Companies. It therefore appears the Companies and the independent distributors are both in a catch 22 situation. We also find the FTC's "Earning Claim" required by law to be ironic when we are bombarded on a daily basis about the phenomenal monies that can be won in individual state and multi-state powerballs and lotteries, with no similar requirement of disclosure for those governmental entities.

5. The above referenced disclosures must be made in a separate pre-printed form, without other materials, and signed by the prospective purchaser, at least seven business days before any contract or payment can be signed or received.

If the proposed rule is intended to mean a disclosure separate and apart in time and place from other materials, as it appears on its face to require, this requirement would in our opinion destroy the ability of most independent distributors to do business because of both the difficult if not impossible burdens it imposes on them and the fact it will at least double the administrative time and cost for each to do business. Most if not all of their businesses are built on one-on-one or group meetings with the individuals involved. They typically introduce them to the product, provide materials to them about the company and products, answer their questions and sign them up to be a distributor at that time. Since the Companies have a liberal refund, return and rescission policy that has been in place and effective for nearly since their inception, there is virtually no risk to the "purchasers." Many of them in fact sign up in that first meeting so they can become an independent distributor and purchase the product at wholesale.

The proposed FTC rule will at least double the number of meetings each independent distributor will have to have. In most instances the independent distributors would in fact have to set up a subsequent meeting to provide additional materials on the company and products, since he or she cannot give them with the disclosure statement, and then a third meeting seven days after the first meeting to sign the agreement. They would also have to constantly be contacting the Companies for updated pre-printed forms. The increased cost of renting meeting places, driving, mailing, etc., even ignoring the down time, loss of hours and momentum, will be devastating to thousands of independent distributors' businesses. This last requirement, for all intents and purposes, could put many of them out of business.

Furthermore, our Companies, as most reputable direct selling companies, have a liberal return/cancellation policy. There is a nominal fee required to become an independent distributor for New Vision and there is a 100%, unconditional, money-back guarantee on all products sold. In addition, there is no payment required to become an

independent distributor for Vemma and there is a thirty day, 100%, unconditional money-back guarantee on all products sold. Anyone that becomes an independent distributor may terminate the agreement at any time. Unlike virtually any other business, the independent distributor not only can terminate upon notice, the Companies agree to repurchase any resalable product purchased if the distributor terminates the relationship. Under the circumstances, clearly the burden imposed by the proposed seven day waiting rule outweighs any perceived benefits or potential risk.

6. Disclosure of All "Legal Actions" for Past 10 Years, Regardless of Relevancy, Outcome or Merit.

The proposed rule requires that sellers of business opportunities provide disclosures regarding all legal actions (regardless of outcome) concerning "misrepresentation, fraud, securities law violations, or unfair or deceptive practices" from the previous ten years. This disclosure would include civil court cases and arbitrations, all governmental actions including criminal matters and administrative law actions, including cease and desist orders or assurances of voluntary compliance. This requirement that direct sellers create, monitor and maintain, and update and then make available, a report on such a broad scope of legal proceedings would be an impracticable burden. The rule would require disclosure of legal proceedings *potentially unrelated* [3] to the business opportunity transaction, as well as legal proceedings that were favorably resolved for the business opportunity seller, settled, or otherwise completed in such a way as to be irrelevant to the recipient of the report.

In our litigious society, many commercial enterprises today face the challenge of frequent legal proceedings.[4] These legal actions might involve claims of misrepresentation, yet have no relevance to the purchase or sale of a business opportunity. Take for example, legal proceedings between corporations over an intellectual property matter. A litigant might allege misrepresentation; that lawsuit (and others like it) would have to be reported under the proposed rule.

Under the proposal, a ten-year rolling record of such legal proceedings would have to be maintained and distributed to all potential purchasers of a business opportunity. A small direct selling company, which promotes itself to 10,000 individuals per month that experienced a single lawsuit or arbitration claim against that company, would be forced to make more than 120,000 disclosures in one year. A larger enterprise,

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[3] One example would be two businesses with an intellectual property issue. In the context of such claims (which might have no relationship to business opportunity issues) allegations of misrepresentation might arise. Such legal proceedings must be reported under the proposed rule.

[4] The United States Chamber of Commerce's Institute for Legal Reform reports, for example, that more than 17 million cases were filed in state courts alone in 1997. This obviously does not include arbitration or other legal proceedings.

with more legal proceedings to report, and more potential recruits, would suffer a significantly magnified obligation.

Additionally, the rule as currently drafted is unclear in its scope. A direct selling company, if covered by the rule, might be obligated to report not only legal proceedings involving the company itself,[5] but also legal proceedings involving any member of its independent contractor salesforce. If thus interpreted, the proposed rule would create a truly unmanageable burden with regard to this disclosure alone, in that a company would be forced to track such legal proceedings over a ten-year period, maintain a database of that docket, and distribute the information. Again, much of the legal proceedings could be unrelated to the business opportunity.

For example, one of my companies has been involved in two legal proceedings over the past ten years which contained allegations of deception. One was a claim filed by my step mother, following my father's death, unrelated to any business opportunity. It was frivolous and dismissed with prejudice. Another lawsuit alleging deceptive acts that was filed by a third party was dismissed with prejudice by the court following the filing of a motion to dismiss by the company on the grounds it failed to state a recognizable cause of action. Nevertheless, your current rule could be interpreted to require me to list "yes" on the pre-printed response to whether the company had "been the subject of any civil or criminal action for misrepresentation, fraud, securities law violations or unfair or deceptive practice." Your form then only provides for me to list the caption of each action, with no explanation. The damaging affect such a response would make when presented to a total stranger, with no explanation, despite the frivolous nature of the legal proceedings, is obvious.

In addition to the above-referenced specific concerns, we take issue with the FTC's representation that this proposed rule would only affect a limited number of businesses and would not run contrary to any of the considerations of the Paperwork Reduction Act of 1995. As the Direct Selling Association ("DSA") has pointed out to you, that industry association estimates its members alone are comprised of more than 13.6 million direct sales people in the United States. While our Companies are members of the DSA, other non-member companies have hundreds of thousands of independent distributors in the United States. Even without considering the substantial number of other direct selling businesses that do not belong to the DSA, that means that over 13 million small independent businesses will be affected by the proposal.

Furthermore, we have reviewed and concur with the DSA's May 12, 2006 letter submitted to the FTC's Office of Management and Budget. We agree for the reasons set

[5] The obligation would include litigation involving "its officers, directors, sales managers, or any individual who occupies a position or performs a function similar to an officer, director or sales manager or the seller or any employees who are involved in business opportunity sales activities."

forth in that letter that the proposed rule fails to meet the standards set forth in the Paperwork Reduction Act. A copy of that letter is enclosed for your convenience.

Please understand that we agree with the purpose behind the FTC proposed rule. Those operating schemes and defrauding consumers in our industry damage those of us operating legitimate businesses as well as general consumers. We believe, however, that a better solution is to encourage or mandate the type of procedural safeguards companies like New Vision and Vemma have implemented over the past by our Companies and others, rather than the well intentioned but unworkable rules discussed in this letter. We would be happy to work with your agency and others in the industry to reach the goal of reducing fraud in our industry.

However, for all the reasons discussed above, we strongly recommend that the proposed new business opportunity rules, or at least the provisions discussed above, not be adopted as currently proposed. The Companies' opportunities our Companies provide have opened doors and provided opportunities to thousands of small businesses that they thought would never exist, while at the same time allowing them to share health products they use and believe in with friends and business associates. Your proposed rules, if adopted, would for all practical purposes foreclose those opportunities for thousands of independent businesses.

Very truly yours,

Benson K. Boreyko
President/CEO
New Vision USA, Inc.
Vemma Nutrition Company