



The Himalayan Goji Company™



June 19, 2006

RE: Business Opportunity Rule, R511993

Dear Federal Trade Commission:

I am writing you on behalf of FreeLife International, Inc. ("FreeLife") and its thousands of independent distributors ("Marketing Executives") to express concern and disagreement with a proposed new business opportunity rule being promoted by the Federal Trade Commission ("FTC") and others at 16 CFR § 437. 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 FreeLife Marketing Executives that have been given an opportunity to pursue the American Dream.

First, we want to note that the thousands of FreeLife independent businesses have developed their independent businesses through their association with our company, that has been in business for nearly a decade. Those independent 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 Marketing Executives with FreeLife, 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 businesses.

FreeLife has discussed the new proposed regulations with many of its 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 thousands of independent businesses such as those of our independent Marketing Executives, 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 confidential information and other burdens could destroy or substantially damage FreeLife's and its independent Marketing Executives' businesses.

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.

"To serve each other by promoting good health, well-being and the opportunity for an abundant life"

The language used by those preparing the proposed rule reflects a lack of understanding regarding how our independent Marketing Executives' 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.

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

1. 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.

First, the FTC obviously ignores the burden this places on our company and the thousands of independent businesses operated by its Marketing Executives. There are no designated geographic territory limitations on any of our Marketing Executives' independent businesses. It would be virtually impossible for any of those Marketing Executives, 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 FreeLife 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 Marketing Executives operating in the same geographic area. It is therefore impossible for them or the company 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 company to provide each of the thousands of independent Marketing Executives with a constantly updated list of the names, addresses and telephone numbers of the Company's nationwide Marketing Executives 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 Company and that of the independent Marketing Executives 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 company products. Virtually every company like FreeLife 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 Marketing Executives discuss the possibility of becoming a customer or independent business person within their downline are being recruited by other

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friends. Requiring them to create and maintain physical copies of these records, and presumably forward copies of those same documents to FreeLife, 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 Marketing Executives and the company. If the rule is interpreted to apply to our independent Marketing Executives, 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 FreeLife, the company and presumably the Marketing Executive would have to make the substantial written disclosures within each initial disclosure statement. However, the independent Marketing Executive would not personally possess the type of information required for the disclosure. Nor is it clear how you can expect the company to provide the information for such disclosures, since each independent business person would be making the statement, not the company. It therefore appears the company 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.

Nevertheless, our Company and most other reputable direct sales companies, already have a corporate income disclosure statement which we believe addresses the legitimate concerns raised by the FTC in this regard. We believe it would be much more effective to discuss approved disclaimers or corporate disclosures such as our Company's current disclosure, than the rule's current proposal.

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 Marketing Executives 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 FreeLife has a liberal refund, return and rescission policy that has been in place and effective for nearly a decade, there is virtually no risk

to the "purchasers." Many of them in fact sign up in that first meeting so they can become a Marketing Executive and purchase the product at wholesale.

The proposed FTC rule will at least double the number of meetings each independent Marketing Executive will have to have. In most instances the independent Marketing Executives would in fact have to set up a subsequent meeting to provide additional materials on the company and products, since 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 Company 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 company, as most reputable direct selling companies, has a liberal return/cancellation policy. There is no payment required to become a Marketing Executive and there is a thirty day unconditional refund on all products sold. Anyone that becomes an independent Marketing Executive may terminate the agreement at any time. Unlike virtually any other business, the independent Marketing Executive not only can terminate upon notice, the company agrees to repurchase any resalable product purchased in the prior year if the Marketing Executive 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.

³ For example, two businesses may litigate 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.

Although this requirement would not currently affect Freelif, 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, 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.

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. 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 forth in that letter that the proposed rule fails to meet the standards set forth in the Paperwork Reduction Act.

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.

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." [cite]

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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 FreeLife opportunity has 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,~~

~~Raymond J. Faltinsky, Esq.
CEO and Co-Founder of FreeLife~~