

Federal Trade Commission
Notice of Proposed Rulemaking
Business Opportunity Rule
16 CFR Part 437

September 26, 2006

REBUTTAL COMMENTS

In Response to:

Consumer Awareness Institute (a.k.a. Jon M. Taylor)

522418-70056
522418-10051
522418-12684
522418-12748
522418-10058
522418-10266
522418-12262
522418-12585

Pyramid Scheme Alert (a.k.a. Robert FitzPatrick)

522418-06415
522418-70036
522418-70037
522418-09379
522418-70047

I am a court certified expert in network (multilevel) marketing (MLM), and a full time MLM participant, advocate, and consultant for the last 16 years. I have previously submitted comment (# 522418-12553) on several gross flaws within the Rule as it pertains to network marketing.

This rebuttal is directed towards the numerous gross flaws in the commentary of Mr. Taylor and Mr. FitzPatrick.

Considering the length of the verbose manifesto submitted by these two “Anti-MLM Zealots” (as they are commonly known throughout the MLM industry) it is, of course, not practical to rebut each specific comment related to MLM. I had intended to rebut only those comments that pertained specifically to the proposed new business opportunity rule (“new rule”), however after reading every word of the numerous documents submitted by Taylor and Fitzpatrick I found that literally 100% of their commentary related specifically to MLM, and not to “business opportunities.” Furthermore, virtually all but one small section of one large document among the many lengthy documents submitted by Taylor even related to the new rule at all. In stead, Taylor has used the opportunity to comment on this new rule to, once again, plead with the FTC to pay attention to him and his anti-MLM propaganda. Mr. Fitzpatrick has also apparently abused this comment opportunity related to the new rule to gain the FTC’s attention towards his anti-MLM material.

Unlike Taylor and Fitzpatrick, I will not distract the FTC from the real issue being debated here, that being the proposed new business opportunity rule, with an exposé of Taylor and Fitzpatrick, and their ignorant, misguided and wholly unjustified attempts to destroy all things MLM. However, I will offer such an exposé for your further research, should you choose to explore it. Please consider the article “Anti-MLM Zealots: Do They Have a Point?” which can be found here: <http://www.marketwaveinc.com/articles/zealots01.asp> (Parts 2 through 4 relate to FitzPatrick, Parts 8 and 9 relate to Taylor).

Specifically to Jon Taylor, I ask that you consider the following:

1. Although his material includes charts, graphs, alleged “studies” and “statistical analyses”, and other forms of alleged “research”, it is actually, when viewed closely, little more than his opinions, theories, biased estimates, and in many cases, completely fictitious data pulled from thin air. Furthermore, upon close analysis you will find that the over 50,000 words comprising Taylor’s material is actually the same group of arguments stated over and over. On it’s surface his material does indeed create the illusion of substance, but as is clearly revealed in the above-mentioned critique of Taylor’s work, does not stand up to even the most modest scrutiny.
2. I was interviewed by Taylor several years ago as part of his “research” into MLM. His subsequent portrayal of my comments were completely misleading and I was, I strongly feel, deliberately misquoted in an effort by Taylor to manufacture additional support of his anti-MLM propaganda (please see above mentioned article for details).
3. When challenged as to his “expertise” specific to MLM, and the motive for his anti-MLM attacks, Taylor insists he was a very “successful” distributor for Nu Skin in the early 90s. Yet, paradoxically claims he “lost money” in his short, one-year attempt to build a business with Nu Skin. Nowhere in his entire Everest size mountain of biographical material does he ever reconcile these diametrically opposing positions.

Specifically to Robert Fitzpatrick, I ask that you consider the following:

1. Fitzpatrick is the author of the book “False Profits” which is actually more an exposé of the classic pyramid scheme called “The Airplane game” than MLM. In total, only eight MLM companies are even mentioned by name and only four are discussed in any detail. Even then we only hear anecdotal evidence based on the experiences of a handful of failed distributors (there are currently over 1,500 MLM companies in operation in the U.S., and over 10 million distributorships). FitzPatrick acknowledges that the Airplane Game is the "center piece" of his book and devotes a substantial portion of it to a detailed personal journal of his experience with it. Of those MLM companies mentioned, the vast majority of his attention is on Amway. He is highly critical, and relates numerous examples, of tactics that were virtually exclusive to Amway (a.k.a Quixtar, a.k.a Alticor), then couches his comments in language that suggests such tactics are universally practiced throughout the entire MLM industry. But then, this is a common foible in every Anti-MLM Zealot's argument. That being, the actions of a few high profile regulatory or media targets is indicative of how the other 99% of MLM companies operate. It is not.
2. In Fitzpatrick’s second book, “Pyramid Nation” he takes on the FTC for it's "failure to oversee multilevel marketing companies." But only a single page flip away he states "between 1996 and 2000, the Federal Trade Commission has prosecuted more pyramid schemes than in the previous seventeen years." Keep in mind that to Mr. FitzPatrick "multilevel marketing companies" and "pyramid schemes" are synonymous. He backs up his point by dropping names such as Equinox, Jewelway and Five Star Auto Club, among others. He suggests that the only reason the FTC hasn't prosecuted the other 1,500 MLM companies is not because the others have done nothing wrong (the most logical and obvious reason), but because the FTC has become complacent and inattentive and simply hasn't got around to them yet.
3. Fitzpatrick’s work is riddled with a litany of verifiably incorrect facts and figures related to the MLM industry, it’s history, it’s method of compensation, it’s business model, and it’s illegality. (Numerous examples are revealed in the above referenced article). His point of view appears to be based on only a small faction of participants, and on outdated personal experiences related to MLM trends of the 1970s and 80s. His anti-MLM position has little relevance to the vast majority of MLM programs operating in the U.S. today.

In regards to both Taylor’s and Fitzpatrick’s comments relevant to the new proposed rule, their suggested alternative, more aggressive approach towards specifically (and only) the MLM industry is entirely

unwarranted, unworkable, and in some cases unfairly illogical to the point of absurdity. For example:

1. Both state that MLM companies, when stating “average earnings” should be required to factor in all those distributors who made no attempt to build their business, even those who did utterly nothing beyond filling out their distributor application. This, of course, is tantamount to surveying all those who purchased a weight loss product in an effort to reveal the effectiveness of the product, and including all those who never actually consumed the product. This suggested revision to the new rule was submitted by Taylor and FitzPatrick for one reason: To artificially deflate “average earnings” figures in an effort to embolden their mythical “no one makes money in MLM” claims.
2. Both claim that market saturation is inevitable in spite of the fact the MLM industry is over 70 years old, moves less than 2% of the GNP, and many MLM programs are over 20 years old (some exceed 40 years) and are still growing. Their proposed solution to this non-existent dilemma is that MLM companies should inflict territorial restrictions on the area in which a distributor may market their products or enroll distributors. This, of course, would only serve to actually *create* local market saturation, thus becoming a self-fulfilling prophecy.
3. Both suggest that MLM companies should be required to state distributor “net” earnings, which, of course, would be impossible to determine. There is no feasible way for the company to know what the business related expenses are for each of their distributors, nor can only the distributor’s product orders be subtracted from gross earnings since there is no way of knowing what every distributor did with this product. Was it resold at a profit? Was it personally consumed (thus an asset, not an expense)? Furthermore, as both Taylor and FitzPatrick should be acutely aware, MLM is no different than any other form of business in that expenses often exceed income during the early building stages. And, unlike most other forms of business, can provide ongoing future income that is no longer dependent on *any* expenses to maintain (other than perhaps a small monthly product order). Again, such a suggestion appears disingenuous if it’s alleged “consumer protection” motive, and instead will only serve to artificially bolster the anti-MLM data both Taylor and FitzPatrick present.

In conclusion:

Robert FitzPatrick and Jon Taylor have made their case to you that essentially *all* MLM operations are illegal pyramid schemes and should be eliminated, or at least regulated out of existence. Yet, FitzPatrick acknowledges that MLM is “backed by an ex-president” (Ronald Reagan) and “defended by top law firms.” He claims MLM even has its own caucus in Congress. Inc. Magazine, Forbes, Entrepreneur, and Success Magazine, among many others within the business media, have all published positive articles about this industry. MLM is recognized as a legal business model by all fifty state’s Attorneys General, the FTC, the vast majority of the House, and Senate, and many state and federal courts, and has been for decades – not to mention the SEC and the several hundred thousand investors in MLM company stock (which has been rising significantly over the past several years). Yet, both FitzPatrick and Taylor believe they are right, and all of these entities (including the FTC) are wrong. FitzPatrick also claims the “great majority” of the three largest U.S. based MLM company’s sales are outside the U.S. - so apparently the MLM industry is fooling the citizens, courts, and regulators in over 60 other countries too!

Or, maybe the ex-president, top law firms, business media, multitude of investors, our state and federal government – and the several *million* of those who participate in this industry – are the one’s who’ve got it right, and Robert FitzPatrick and Jon Taylor are wrong.

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