



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 19, 2017

Joseph N. Mariano
President
Direct Selling Association
1667 K Street, NW
Suite 1100
Washington, DC 20006

Dear Mr. Mariano,

Thank you for your recent letter following up on my October 2016 remarks at the Direct Selling Association's Business & Policy Conference. I appreciated the opportunity to address DSA members at the conference and to describe specific steps that the multi-level marketing industry can take to operate lawfully. As I emphasized in my remarks, those steps are critically important given the serious economic injury that an illegal operation can inflict on both consumers and competitors that abide by the law. I am pleased to hear that you have shared a copy of my remarks with DSA members.

In your letter, you ask whether the Federal Trade Commission plans to issue additional guidance regarding MLMs. As you know, guidance benefits both consumers and businesses by facilitating and thus increasing compliance with the law. To date, the Commission has issued substantial guidance detailing the key tenets legitimate MLMs must follow. This guidance includes the 2016 *Herbalife* enforcement action and consent order, as well as the FTC's other litigated and settled cases. My October 2016 remarks, which are now posted on the FTC's website, are also instructive and set forth additional guidance to the MLM industry, describing in detail how industry members can enhance transparency and ensure they stay on the right side of the law.¹ Additionally, in December 2016, we announced the settlement of our action against multi-level marketer Vemma and have published several blogs reiterating and reinforcing the central tenets legitimate MLMs are required to follow.²

¹ See Keynote Remarks of FTC Chairwoman Ramirez at DSA Business & Policy Conference (Oct. 25, 2016), available at www.ftc.gov/system/files/documents/public_statements/993473/ramirez_-_dsa_speech_10-25-16.pdf.

² See Fed. Trade Comm'n, *Redress checks and compliance checks: Lessons from the FTC's Herbalife and Vemma cases* (Jan. 10, 2017), available at <https://www.ftc.gov/news-events/blogs/business-blog/2017/01/redress-checks-compliance-checks-lessons-ftcs-herbalife>; Fed. Trade Comm'n, *Dismantling a pyramid: Lessons from the Vemma settlement* (Dec. 15, 2016), available at <https://www.ftc.gov/news-events/blogs/business-blog/2016/12/dismantling-pyramid-lessons-vemmas-settlement>; Fed. Trade Comm'n, *It's no longer business as usual at Herbalife: An inside*

This guidance makes clear that, to abide by the law, MLMs must incentivize real sales – in other words, profitable and verifiable sales – to real customers – specifically, those outside the MLM network. Any compensation paid to distributors must be driven by such sales. And MLMs should keep track of retail sales transactions with customers outside the MLM network to ensure that compensation to their members is linked to actual retail sales rather than the recruitment of additional participants.

I note that the DSA press release of January 11, 2017 takes issue with the distinction the FTC has drawn in our business guidance between internal and external retail product sales. Let me emphasize that, to be consistent with the FTC’s and courts’ well-established skepticism regarding “internal” or “personal” consumption, your members are advised to impose reasonable and transparent limits on the compensation paid for any consumption of product by business opportunity participants. Further, a legitimate MLM should not use targets or thresholds for compensation or any other benefit that can be met by mere product purchases. Rather, business opportunity participants should buy product only in response to actual customer demand. To use your example, while it is certainly true that salespeople may enjoy purchasing the products they sell at retail, they are compensated only for sales made to retail customers, not for buying the product themselves.

Finally, as with any business opportunity, earnings claims must be truthful and non-deceptive or misleading. In this regard, MLMs should have effective monitoring programs in place to ensure participants do not convey misleading claims or present unrealistic “lifestyle” testimonials that are true for only a tiny minority of participants to prospective participants.

Let me close by noting that consumer and business education are a vital part of the FTC’s work. In 2015 alone, the agency published 143 consumer protection blogs and distributed more than 17 million copies of our print publications, and consumers and business people viewed more than 48 million pages of FTC information online. We do not seek public comment on these materials because our guidance typically summarizes existing law or FTC cases, and provides tips and advice to consumers and businesses that is not itself binding. To the extent that DSA and its members have additional questions about how to comply with the law, they should feel free to reach out to Lois Greisman, Associate Director for the Division of Marketing Practices, at lgreisman@ftc.gov.

I trust you will share this response with your members.

Sincerely,



Edith Ramirez
Chairwoman

look at the \$200 million FTC settlement (July 15, 2016), available at <https://www.ftc.gov/news-events/blogs/business-blog/2016/07/its-no-longer-business-usual-herbalife-inside-look-200>.



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Joseph N. Mariano
President

BY COURIER

December 9, 2016

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chairwoman Ramirez:

Thank you again for your remarks at the DSA Business & Policy Conference on October 25, 2016. I know that DSA members (with whom I have shared a copy of your remarks) have gained great insight into your thinking. As you know, DSA has had a long, strong, and continuing interest in working with the FTC to ensure that any Commission actions, including statements of policy and direction, effectively protect consumers, (including the more than 20 million people involved as individual direct sellers), and reflect the unique nature of our business model.

If industry guidance is being considered, we request the opportunity to meet with the members of the Commission or the Commission's staff prior to issuance. Specifically, we would like to discuss the process by which the public will be notified and provided an opportunity to comment. Additionally, we would like to speak with you concerning the *form* such guidance might take, and the process by which the public will be notified and provided an opportunity to comment concerning the *substance* that would be contained in such guidance.

Thank you again for your attendance at the Conference and for your engagement with the DSA on this matter.

Sincerely,

Joseph N. Mariano
President
Direct Selling Association