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Herbalife's Events System, Subject of a Florida Racketeering Lawsuit, Also Violates the FTC Consent Order

- A lawsuit filed in Florida last week accuses Herbalife and its top distributors of racketeering
- Plaintiffs say they spent and lost thousands of dollars attending events described as "the guaranteed pathway to attaining life changing financial success"
- The event system, as revealed in the complaint, also violates the FTC Order in numerous ways – we start with three: Subsections II.D, I.F.1, and I.F.2.
- All of these violations occur even before recruits walk through the door

Every month, Herbalife Ltd.'s (HLF) top distributors organize events called Success Training Seminars (STSs). Held in airport hotel ballrooms and convention centers across the US, STSs bring distributors together for what top recruiters claim is training, mentoring and motivation. These monthly events are part of a continuous series of events – sometimes called as the "Circle of Success" – which includes weekly Herbalife Opportunity Meetings (HOMs), quarterly Leadership Development Weekends (LDWs) and annual Extravaganzas.

The Circle of Success became the subject of a racketeering lawsuit filed in Florida last week, which you can read here. Rodgers v. Herbalife describes what it says is "a corrupt organization of individuals and entities who act together, using misrepresentation and deceit, to sell access to a series of emotionally manipulative live events."

The message from top recruiters was consistent, according to the lawsuit: Attendance at events is critical for any distributor who expects to succeed at Herbalife.

"For those of you serious Herbalife Distributors in Miami, I'll tell you like we tell our team; Events/Trainings are non-negotiable!" defendants Jorge and Disney de la Concepcion are quoted in the lawsuit as saying on their popular Instagram feed, ahead of the May 2017 STS.

The plaintiffs include former Florida distributors Jeff and Patricia Rodgers: "The Rodgers rarely missed an event for the duration of their four-year involvement with Herbalife; attending more than fifty events, sometimes at a rate of two a week, and doing everything President's Team members told them was necessary to achieve financial independence. Even though they were losing money every month, Jeff and Patti continued to attend monthly Herbalife events where they were exhorted to double down their efforts with the guarantee that the pot of gold at the end of the rainbow was just within reach."

Here's where the problems begin.

Event Costs Not Disclosed

Event attendance imposes a significant cost on distributors.

A Consent Order imposed by the Federal Trade Commission on Herbalife's business in July 2016 requires Herbalife to disclose all information material to participants concerning the business opportunity, such as **"the total costs to participate, including trainings, brochures, and sales aids; any material restrictions, limitations, or conditions on operating the Business Venture; or any material aspect of its performance, efficacy, nature, or central characteristics." (Subsection II.D)**

Yet, Herbalife doesn't disclose that event attendance is a critical part of the business nor does it provide an estimate for the cost of attending these events.

In fact, Herbalife's contract with distributors states: "To become an Herbalife distributor, succeed in the business, advance in the Sales and Marketing Plan, or receive upline training or support, you are NOT required to buy any amount of materials, products, or services, either those produced by Herbalife or by a party other than Herbalife, or to attend any seminars, meetings, or events."

All eight plaintiffs describe a constant push by their uplines to attend events.

Plaintiffs Mike LaVigne, a veteran of the U.S. Army and the IT director for an Ohio county, and Jen LaVigne, an emergency services worker attended every scheduled event over a year and half years – the lawsuit lists 19 events in total. At each event they attended, speakers insisted that it was crucial to attend the next event.

"On top of their significant Herbalife losses, the LaVignes lost more than $5000 attending Circle of Success events," according to the complaint.

Minimum Purchases Imposed

Rodgers v. Herbalife also alleges that event expenses go beyond ticket purchases and travel costs. According to the complaint, distributors buy Herbalife products ahead of events in order to qualify for training and visibility.

STSs frequently include special training or mentoring sessions – but only for those who can show that they or their immediate downline distributors have purchased a set level of volume over a period of months.

Distributors also are pressured to qualify for VIP treatment at events. Sitting in the VIP section sends a message to a distributor's downline or potential recruits that they are following a winner into the Herbalife business. VIP treatment also requires proof of a minimum purchase of products – often running into the thousands of dollars.

The FTC Consent Order specifically prohibits Herbalife from imposing minimum purchase requirements. Under "Limitations on Thresholds, Targets and Requirements," the Order states: **"Business Opportunity participants shall not be required to purchase a minimum quantity of products, except that Defendants may require Business Opportunity Participants to purchase an initial start-up package or its equivalent, provided that no Multi-Level Compensation is generated or paid on the Purchase." (Subsection I.F.1)**

Yet, the complaint alleges a pervasive scheme to tie product purchases to event attendance, and does so with Herbalife's complicity.

Plaintiff Cody Pyle, who attempted the Herbalife business in Oklahoma, spent thousands of dollars a month to qualify for full participation in these events: "Diligent attendance at every event was not delivering any success for Cody Pyle. And at each of these events, speaker after speaker touted the necessity of qualifying VIP for events if one truly wanted to have life changing success with the Herbalife business opportunity. Attendees were told that there would be a direct correlation between VIP qualifications and the size of their Herbalife paychecks. Over Cody's two-year involvement with Herbalife he averaged 2451 in personally purchased volume points per month. But for three consecutive months beginning February 2016, Mr. Pyle purchased almost triple that amount of volume in a conscious effort to 'qualify for everything' at events as per instructed. But VIP qualification, like event attendance did nothing to help Cody succeed at the Herbalife business opportunity."

Payment of Commissions on Ineligible Volume

It's not surprising that top distributors push their organizations to qualify for everything, given that all this qualification volume stands to benefit them in the form of commissions, bonuses and advancement in the marketing plan.

The complaint describes a President's Team member urging her downline to go to the Extravaganza: "On that call, Defendant Dani Edwards states that Extravaganza attendance 'completely transformed' her life, allowing her to build up what she called 'legacy' wealth in just five years. She says she knows many people are 'putting together every single penny that they have,' to be able to attend the event. She claims it will be worth overcoming any 'excuse' not to attend, including; insufficient funds, an unsupportive spouse, a job, or the need to take care of children. Whatever a person's financial or emotional position, Defendant Dani Edwards claims that, `it is vital that you do whatever you have to do to get to this event.' ”

This do-whatever-it-takes message from the top may contribute to another violation of the FTC Order by encouraging distributors to falsify the purchases they make to qualify for everything as so-called “Documented Volume.”

As part of the conditions the FTC imposed on Herbalife's business in July 2016, it required Herbalife distributors to specify whether volume was “Documented Volume” or “Undocumented Volume.” Documented volume is volume purchased by “Preferred Customers,” individuals who sign up with Herbalife just to get a discount on the products for their own consumption. It's also volume purchased by a distributor that is later sold in a profitable transaction to a retail customer. Distributors must show proof of these sales by sending receipts, which including identifying information about the customers, to Herbalife.

Documented volume is volume on which commission can be paid and other rewards and discounts calculated. This is the type of volume that distributors are now expected to show proof of when qualifying for training and VIP treatment.

But how does a struggling distributor – who lacks Preferred Customers and Retail Customers – manage this? He's not eligible for training because he doesn't have enough volume. He doesn't have enough volume because he is not succeeding at the business. It's a Catch-22.

As a result, the Circle of Success system appears to encourage distributors to buy the necessary qualification volume themselves and then to falsify receipts. If distributors are doing this, then Herbalife's business violates the FTC Order by rewarding upline distributors based on ineligible volume.

The Order states**: “To the extent the [marketing] Program requires that a Participant meet a threshold or target** in order to (a) obtain or maintain a level or designation necessary to receive any particular type or amount of Multi-Level Compensation; (b) qualify or become eligible to receive Multi-Level Compensation; (c) otherwise increase the Participant's amount of Multi-Level Compensation; or (d) obtain, maintain, increase, or qualify for a discount or rebate on Product purchased for resale; such threshold or **target shall be met exclusively through Profitable Retail Sales and Sales to Preferred Customers.**” (Subsection I.F.2)

Qualify for Everything

According to the complaint, Herbalife ceded much of the operation of the STS system to top distributors in 2009. Yet, it continues to control the events behind the scenes – by providing a standardized itinerary, approving speaker comments in advance and receiving summaries of every event. Yet, Herbalife is clearly a beneficiary of the constant pressure on distributors to qualify for everything.

The complaint suggests Herbalife knows or should have known that its distributors were being bombarded with messages about the importance of event attendance. It is easy enough to find distributors pushing the "never miss an event" creed and the "qualify for everything" mantra across the Internet. It seems unlikely that Herbalife's compliance department has missed this message.

To summarize: Herbalife's events system, as presented in Rodgers v. Herbalife, raises questions about Herbalife's and its top distributors' compliance under the FTC Order. These include:

- Are Herbalife and its top distributors failing to disclose upfront that regular event attendance is treated as a "non-negotiable" part of the business by its top recruiters? Is it then failing to disclose an estimate of the cost of attending these events?
- Is Herbalife allowing its top recruiters to impose minimum purchase requirements as a condition of obtaining training?
- Are these minimum purchase requirements resulting in the payment of commissions on ineligible volume?

If the answer to these questions is "yes," then Herbalife's "Circle of Success" may be violating FTC Order in at least three ways – and it doing so before distributors even walk through the door.

This article was published on Seeking Alpha on September 26, 2017 and can also be viewed here:

https://seekingalpha.com/article/4109470-herbalifes-events-system-might-violate-ftc-consent-order