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Herbalife Fitness Transformations are Used to Impose Minimum Purchases, Violating and Interfering with the FTC Order

Fitness “transformations” or “challenges” are events organized by Herbalife distributors to introduce Herbalife products to potential customers and to enroll Herbalife business opportunity participants. These events are also being used to impose minimum purchase requirements on both consumers and distributors, in violation of a Federal Trade Commission (FTC) Consent Order announced in July 2016.

A transformation typically begins with an Herbalife distributor advertising for people who are seeking to lose weight or otherwise improve their health. During a transformation, which typically lasts about three months, distributors provide support to participants that can take the form of running exercise and nutrition classes, providing online or in-person encouragement, organizing weigh-ins, and setting up “before” and “after” photo sessions to capture the transformation.

While distributors are expected to promote Herbalife products during these transformations, problems arise when some transformation organizers impose minimum purchases in the following ways:

- 1) Organizers tell those interested in participating in a transformation that buying a nutrition program from Herbalife is required for participation. Participants also may be directed to sign up with Herbalife as Preferred Members in order to make these required purchases directly from the company. Individuals are not given the opportunity to purchase products as retail customers and/or to decide what amounts of products, if any, they are interested in purchasing.
- 2) Transformation organizers also use transformations as a mandatory starting point for those seeking to pursue the Herbalife business opportunity, particularly as Wellness Coaches. Potential business opportunity seekers are told that the first step in pursuing the business is participation in a transformation, which, in turn, carries minimum purchase requirements.

The imposition of minimum product purchases both violates and interferes with the FTC Order.

Requiring Preferred Members to Make Minimum Purchases

Herbalife directly violates the Order if it pays commissions on product purchases that are effectively required as part of the enrollment process.¹ Under “Limits on Multi-Level Compensation,” the Order states: “No compensation shall be paid solely for enrolling or recruiting a Participant or a *Preferred Customer* into the Program.” (**Subsection I.A.5**)

Second, these mandatory transformation-linked purchases by Preferred Members will eventually inflate the company’s determination of what is a reasonable amount of personal product consumption per month, resulting in inflated commissions across Herbalife’s business. Under the FTC Order, Herbalife is required to determine a level of reasonable personal consumption per month and then to pay commissions only on this amount when purchases are made by business opportunity participants. This reasonable amount of product is referred to in the Order as “Rewardable Personal Consumption.” (**Subsection 1.E**)

Herbalife determines Rewardable Personal Consumption by taking an average of monthly purchases by Preferred Members. Such purchases are seen as a good proxy for a reasonable amount of personal consumption, as these individuals have stated, when signing up with Herbalife, that they are becoming members in order to receive a discount on the products for personal consumption and have no intention of pursuing the business. In other words, Preferred Members should have no motivation to engage in inventory loading.

By requiring those signing up for transformations to become Preferred Members – who then must buy a minimum amount of product – transformation organizers create demand for Herbalife products by Preferred Members that likely exceeds what they would otherwise choose to purchase. As a result, Rewardable Personal Consumption and commissions on Rewardable Personal Consumption are inflated and interfere with the implementation of the Order.

Business Opportunity Seekers Who Start Out as Preferred Members

Problems also arise when business opportunity seekers initially sign up as Preferred Members, with an understanding that the first step toward making money with Herbalife is a mandatory period of “transformation.”²

The FTC Order specifically sought to break any connection between a Preferred Member’s purchases and advancement in the business: “A Preferred Customer who becomes a Business Opportunity Participant may not receive any benefit or status that

¹ See: 4.2.ORN.HLF.Team Beauty Minimum Purchase Requirements.8.16
4.3.ORN.HLF.Team Beauty Puerto Rico.12.15.16
4.4.ORN.HLF.Mexico Team Beauty Operator Cites Minimum Purchases.2.1.17
4.5.ORN.HLF.Team Beauty Peru.2.4.17

² See: 4.6.ORN.HLF.Coaches Must Undergo Transformations.6.9.17

depends in any way on that individual's activity as a Preferred Customer, except that any discount that the individual obtained as a Preferred Customer may continue to be used to purchase Product that is designated, at the time of purchase, as being for the individual's own or household use." (**Subsection I.B.3**)

Yet, by making participation in a transformation, along with mandatory purchases through a Preferred Membership, a condition of entering into the business, transformation organizers violate this section of the order.

Business Opportunity Seekers and Transformations

The imposition of minimum product purchases during transformations also creates problems under the FTC Order when these purchases are imposed on business opportunity seekers.

If a person signs up with Herbalife to participate in the business and is then told about the requirement to participate in a transformation with minimum purchase requirements, that person is subject to both undisclosed costs and prohibited enrollment requirements.

The FTC Consent Order 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**)

The FTC specifically sought to assure that those signing up with Herbalife to pursue the business were not forced to engage in inventory loading.

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**)

Herbalife again directly violates the Order by paying commissions on product purchases that are required as part of the enrollment process. Under "Limits on Multi-Level Compensation," the Order states: "No compensation shall be paid solely for enrolling or recruiting a *Participant* or a Preferred Customer into the Program." (**Subsection I.A.5**)

As Herbalife fails to halt the minimum purchases requirements imposed on both Preferred Members and business opportunity seekers, the company is in violation of **Sections V.A – V.D**: It is failing to monitor compliance with the Order by distributors and Preferred Members; it is providing compensation on transactions that are not in compliance with the Order; and it is failing to claw back compensation on transactions that were not in compliance with the Order.

In series of upcoming memos, we provide specific examples of how transformations impose these minimum purchase requirements on participants and distributors. We also look at how these programs violate other aspects of the FTC Order, including through misrepresentations regarding the business opportunity.³

³ See: 4.7.ORN.HLF.Team Beauty Income Claims.10.25.17