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FOR NAME AND IDENTIFYING DETAILS OF DISTRIBUTOR

Orion Research, LLC

November 20, 2017

According To An Oklahoma Distributor, Herbalife Nutrition Club Operators Are Reporting “Profitable Retail Sales” When They Sell Shakes To Distributors, Leading to Violations of the FTC Consent Order

Herbalife distributors are being encouraged to purchase single serving shakes and teas in Nutrition Clubs in the Oklahoma City area, and those purchases are being reported to Herbalife as “Profitable Retail Sales,” according to distributor [REDACTED]. Attributing sales to Business Opportunity Seekers as retail sales is a violation of a Federal Trade Commission (FTC) Consent Order imposed on Herbalife’s business in July 2016.

[REDACTED], who has been with Herbalife [REDACTED] and is a member of the company’s [REDACTED], said in a phone interview:

“Everything that happens in the club is documented volume.”

“Eighty-five percent of the volume in Nutrition Clubs is to distributors and Preferred Members.”

“If it wasn’t for other distributors, the clubs wouldn’t survive.”

The FTC Order limits Herbalife’s ability to pay commissions on distributors’ purchases from the company unless distributors can show that the volume was subsequently sold in a “Profitable Retail Sale.” The FTC Order defines a “Profitable Retail Sale” as: “a sale of Product by a Business Opportunity Participant to a **Retail Customer or a Preferred Customer** that is a genuine sale made at a price above the Business Opportunity Participant’s average wholesale cost over the preceding 12 months for the items sold and for which retail sale information is collected and maintained by Defendants.”

Therefore, it would appear to be a violation of the FTC Order to record a retail sale to a Business Opportunity Participant – even if the distributor selling the shakes and teas did not recruit the distributor to whom he or she is selling. [REDACTED] said this is often the case; club operators are considering other distributors’ downline recruits to be their retail customers.

A Retail Customer is defined as: “a purchaser of Products sold through a Multi-Level Marketing Program **who is not a Business Opportunity Participant or a**

Preferred Customer, is not registered with the Program and is not otherwise participating in the Program.”

It does not appear to be a violation of the FTC Order for a Nutrition Club operator to record a Profitable Retail Sale to a Preferred Member, regardless of who recruited the Preferred Member. It is, however, creating animosity between distributors as club operators are effectively stealing other distributors’ customers when they sell to Preferred Members in clubs, according to [REDACTED].

[REDACTED] explained that by drawing both Preferred Members and distributors into clubs to consume, club operators are generating documented volume to submit to Herbalife but are costing [REDACTED] his business.

“As a Nutrition Club owner, you’re allowed to sell to other distributors. I worked to get these people in the business. Then the club owners, because they choose to open a business, they are allowed to sell to my customers and distributors. Ninety percent of my downline has stopped ordering from me.”

Management has spoken on recent conference calls about the millions of receipts the company is collecting. On the company’s August 1, 2017 2nd quarter conference call, CEO Rich Goudis stated: “Over the past three months, we’ve captured approximately nine million receipts in the U.S., which has provided us insight into customer behavior that we’ve never had before.”

Herbalife is expected to enforce the appropriate documentation of these retail sales to comply with the FTC Order. Subsection V.C and V.D of the Order permanently enjoins and restrains Herbalife from:

- “Providing any monetary compensation to any Business Opportunity Participant when Defendants know or should know that such monetary compensation is or would be based on claimed transactions that are not in accordance with the requirements of Section I” and
- “Failing to claw back any monetary compensation to any Business Opportunity Participant when Defendants learn or should have learned that such monetary compensation was based on claimed transactions that were not in accordance with the requirements of Section I.”

Nutrition Clubs were created to introduce Herbalife’s products and its business opportunity to potential retail customers and recruits. [REDACTED] said that when [REDACTED] previously operated a Nutrition Club, [REDACTED] might make eight shakes a day as part of the sales and recruitment process. Now, clubs are making 100-plus shakes a day – and most of those shakes are purchased by existing distributors and Preferred Members.

