

# Orion Research, LLC

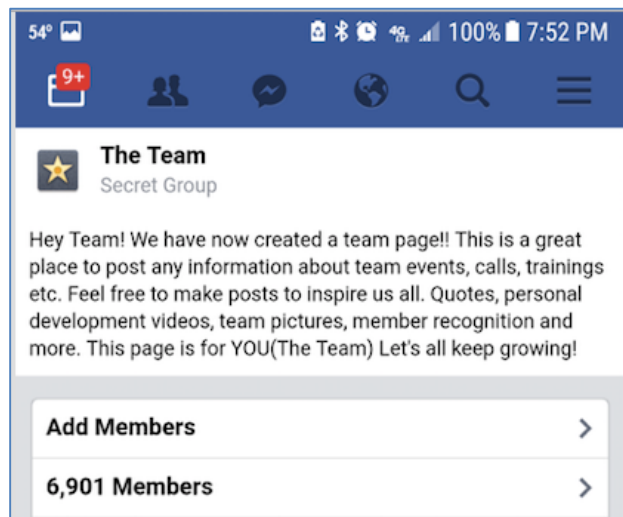
November 20, 2017

## **Herbalife Nutrition Club Operators Are Encouraging Business Opportunity Seekers To Consume In Clubs, Causing Personal Consumption by Distributors To Be Misidentified As Retail Sales, A Violation Of The FTC Order**

In recent weeks, Herbalife distributors in Oklahoma have been posting messages on a private Facebook page - advertising and talking up the benefits of local Nutrition Clubs.

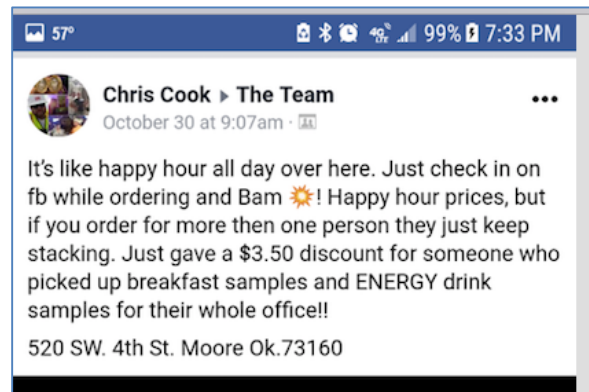
The presence of distributors regularly consuming in Nutrition Clubs suggests that Business Opportunity Seekers are diverting their purchases of Herbalife products for personal consumption into purchases in clubs. These purchases are then being recorded as “Profitable Retail Sales” for Business Opportunity Participants working in clubs, a prohibited practice under a Federal Trade Commission (FTC) Order imposed on Herbalife’s business in July 2016.

There are 6,700 members in this “secret” Facebook group, which was created for Herbalife Business Opportunity Seekers.



The group, referred to as “The Team,” receives frequent pitches to visit and consume at Nutrition Clubs.

In the posting below, a Nutrition Club operator offers the group “happy hour prices” to come into his club to purchase shakes.



Encouraging distributors to purchase and consume Herbalife products in Nutrition Clubs is problematic as it generates sales for club operators that are being documented as “Profitable Retail Sales,” according to an Oklahoma distributor we interviewed. (See Memo: “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”: 6.1.ORN.HLF.Sales in clubs to distributors.11.20.17)


“Everything that happens in the club is documented volume,” he told us.

The FTC Order limits Herbalife’s ability to pay commissions on distributors’ purchases from the company unless distributors can document 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.”

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.”

Yet, social media postings by distributors show they are consuming in Nutrition Clubs. In fact, they are seeking out opportunities to attend clubs. Below, a distributor mentions having made a purchase in a club because he was working nearby, while another distributor looks for a club near a mall she is visiting:


57°
100%
7:42 PM



**RJ Rossman** ▶ The Team
May 9, 2016 at 3:52pm · 🌐


Have any club owners been audited by Herbalife and told specifically that they need to charge \$7 minimum for walking in the door regardless if you get a shake and tea?


Like
Comment

1



**Josh Morgan**  
No.  
May 9, 2016 · Like · Reply · More


**Kristina Pauls**  
No  
May 9, 2016 · Like · Reply · More


**Josh Morgan**  
They're saying you need a baseline membership. Regardless if they take both.  
May 9, 2016 · Like · 1 · Reply · More



**RJ Rossman**  
I walked into a club here; got a tea, meal bar, lift off, and protein bar because i was working nearby, and was told it was \$10.50 (no problem i guess) later that night i see that i was charged \$15.50 instead.  
May 9, 2016 · 1 like · Reply · More


57°
100%
7:49 PM



**Seth-Magan Kilgore** ▶ The Team
June 12 at 12:49pm · 🌐


Needing to know what club in Shawnee is closest to the mall?

Like
Comment



**Rachell Hill-Macom**  
Pure Nutrition  
34 west macarthur  
Jun 12 · Like · Reply · More


**Kristina Pauls**  
It would be Alina Carter-Groth pure Nutrition  
Jun 12 · Like · Reply · More


**Kristina Pauls**  
Pure Nutrition Shawnee  
Jun 12 · Like · Reply · More



**Seth-Magan Kilgore**  
Ok that's the closest one to the mall?  
Jun 12 · Like · Reply · More

Seth-Magan Kilgore replied · 2 replies


**Seth-Magan Kilgore**  
I went there last week just wanted to make sure there wasn't one closer.  
Jun 12 · Like · Reply · More

Consuming in clubs also comes with perks. This posting to “The Team,” offers group members the opportunity to attend a free boot camp and mentions that “metabolic drinks” and “rebuilt” are available through the club before and after these workouts.


57°
98%
7:28 PM





**Chris Cook** ▶ The Team
October 24 at 11:30am · 🌐

Moore friends,

FREE fitcamps at RPM Nutrition for the holidays!!! We know these are the toughest times to keep weight off so we are here to help. Camps are Monday and Thursday at 7pm and Saturday at 8am. All levels are welcome and we do offer modified exercises for old injuries and beginners. Club is generally open prior for metabolic drinks and post for Rebuilds. These are 100% optional. We look forward to seeing some new faces and as always we love our regulars!

520 sw 4th st. Moore ok, 73160



On Herbalife's August 1, 2017 2<sup>nd</sup> 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 in order to pay commissions under 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."