

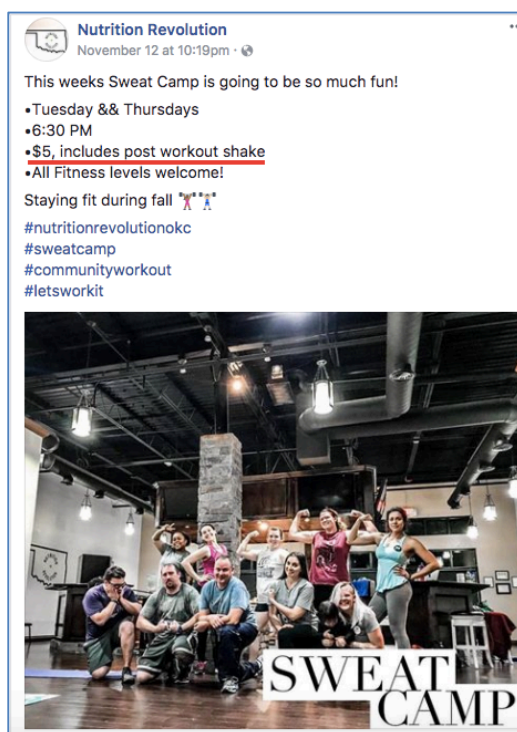
# Orion Research, LLC

November 20, 2017

## **Herbalife Distributors Are Offering Shakes With A Paid Workout, Raising Questions About Whether “Profitable Retail Sales” Are Being Inflated Under the FTC Consent Order**

Herbalife distributors are charging for exercise classes and including a shake in the cost of the class or making the shake complimentary for those taking the class. This has the potential to inflate “Profitable Retail Sales,” a violation of a Federal Trade Commission (FTC) Order imposed on Herbalife’s business in July 2016.

In the social media posting by Nutrition Revolution, an Oklahoma City Nutrition Club, distributors offer a “Sweat Camp” for \$5, noting that the class includes a “post workout shake.”



This is a common practice and raises questions about how “Profitable Retail Sales” are being documented by Nutrition Club operators and used by Herbalife to calculate commissions when product distribution is combined with paid services. Under the FTC Order, Herbalife must collect from Business Opportunity Participants details regarding every retail sale, including “the price paid by the purchaser.” (Subsection I.C)

Did distributors running the Sweat Camp at Nutrition Revolution submit retail receipts to Herbalife indicating that participants each paid \$5 for a shake? Is any value attributed to the Sweat Camp, given that the class is the primary focus of the advertisement? If the entire \$5 was attributed to a shake sale, then distributors would appear to be inflating the price of the retail sale. Would distributors have attended and paid for the Sweat Camp without receiving a shake? If so, then distributors would appear to be fabricating a \$5 retail sale.

Additional problems with this practice arise when Herbalife distributors are the ones attending these paid classes. In Oklahoma, we found that Nutrition Club operators target local Herbalife Business Opportunity Participants with pitches to visit, consume in and participate in exercise classes at Nutrition Clubs.<sup>1</sup>

The FTC Order states that a Profitable Retail Sale is “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 twelve (12) months for the items sold (including tax and the actual or approximate cost of shipping, handling, and any similar fees) 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.”

Herbalife is expected to enforce the appropriate documentation of retail sales by its distributors in order to comply with rules regarding payment of 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.”

---

<sup>1</sup> See: 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 – 6.2.ORN.HLF.Offers for Distributors in Clubs.11.20.17