

Orion Research, LLC

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Master de Clubes Program, as Presented by President’s Team Member Andres Gutierrez in Online Webinar, Generates Nutrition Club Visitors but Sales to these Visitors Are Inappropriately Recorded as Documented Sales, a Violation of the FTC Order

The Master de Clubes de Nutricion program created by top Herbalife distributors imposes a detailed set of certification requirements on distributors hoping to open their own Nutrition Clubs. Among those requirements is one that aspiring club operators take prospects on tours of Nutrition Clubs, where they consume shakes, according to an October 30, 2017 online webinar conducted by Herbalife President’s Team Member Andres Gutierrez.¹

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. Under the Order, Herbalife generally may not pay commissions on volume purchased by distributors unless the products are sold on to retail customers and receipts for these sales are submitted to the company. Such sales, referred to as “Documented Sales,” are used by Herbalife to determine a distributor’s advancement in the marketing plan and to calculate commissions to upline distributors.

Under the Master de Clubes program, however, business opportunity seekers are required to bring prospects to clubs and to pay for these visitors to consume Herbalife products. These sales are between Club operators (Herbalife business opportunity seekers) and tour hosts (also Herbalife business opportunity seekers).

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.”

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.”

¹ Video: Andres Gutierrez Rondas.10.30.1 and English Language Transcript (translated from Spanish): Andres Gutierrez Online Webinar

Sales generated by tours appear to be counted as “Documented Sales” as they become part of a system in which club operators grow their projected Herbalife incomes by becoming a club that services 25 consumers and then receives additional business as touring distributors and prospects are brought through the clubs. The addition of touring distributors allows a club to advance to 50, 75 and 100 regular consumers, growing the distributor’s income at each step.

Herbalife President’s Team member Andres Gutierrez explained the club touring requirements during the webinar:

“Once we've started to show you the business, this person has to start the rounds. This means that you have to take prospects to other nutrition clubs so they can see how it operates, watching in action an unknown distributor managing a nutrition club, then they can watch their similarities and differences.”

“We must do rounds at attractive clubs, that means 25+. Everyone sets their own requirements and this is one of the main ones for us; we must look for clubs with at least 25+ consumptions per day during a week and a host with an updated testimony who is in the training system. When we bring a new person, this person needs to meet an associate that knows exactly how it works, so that person can give a testimony and can show the account book full of consumptions.”

"In the round, you must consume. If you come with less than 3 persons try to invite them all, but they are not committed to consume or to pay. In this business sometimes you must invest, and there is nothing better than to do this with these persons that could become your associates, and, in the future, they will also invite others that will be on your team and reward the associate who is inspiring your prospects..."

The Master de Clubes touring requirement appears to record sales made by distributors (club operators) to other distributors (those conducting tours) as Retail Sales, resulting in the payment of commissions. Such payments are banned under the FTC Order.

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.”