

# Orion Research, LLC

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## **Distributor Income Testimonials at Herbalife Events Misrepresent Profit Potential of the Business Opportunity, a Violation of the FTC Order**

- In a previous article, we looked at how Herbalife’s “Circle of Success” event system violates the FTC Consent Order by imposing undisclosed costs and minimum purchase requirements on distributors
- Step inside these events and the violations continue
- Distributors take to the stage, making income claims that are far from representative of the business – a violation of Sections II and IV of the Order
- Herbalife corporate facilitates these events and yet fails to take reasonable steps to monitor its distributors, violating Section V of the Order
- We compare the false impression of the business created by testimonials at a typical event with reality

In July 2016, the Federal Trade Commission imposed conditions on Herbalife Ltd. ([HLF](#)) and its distributors to assure that the earnings potential of the company’s business opportunity was accurately described. Promoters are now prohibited from “misrepresenting or assisting others in misrepresenting, including by providing others with the means and instrumentalities with which to misrepresent, expressly or by implication **that participants will or are likely to earn substantial income**” and “**the amount of revenue, income, or profit a participant earned or can likely earn.**” (Section II)

Yet, that’s exactly what happens at Herbalife “Circle of Success” training events, which are organized by top distributors in close coordination with Herbalife corporate.

At Success Training Seminars (STSs), monthly events held on Saturdays in hotel ballrooms and convention centers, the audience is packed with distributors and their guests. As part of every STS, organizers ask distributors to come up on stage and tell the group how much they earn. These individuals, who parade, one after the other, across the stage, have a few seconds to give their testimonial. These are not the star distributors, whose appearance is promoted to far in advance of the meeting, and who appear on stage as part of the event’s grand finale with its thumping music and crush of distributors rushing the stage to get the speaker’s autograph. For the most part, the group providing testimonials is presented as the rank-and-file Herbalife distributors.

The testimonial section of the event is included in the segment known as the Herbalife Opportunity Meeting (HOM), which is intended to provide information for the guests that distributors bring to these meeting in hopes of recruiting them into the business.

We now know, thanks to an exhibit provided in *Rodgers v. Herbalife*, the Florida racketeering case filed against Herbalife corporate and more than 40 of its top US distributors, which you can see [here](#), that Herbalife sets the agenda for STSs, approves slide presentations by speakers and collects information regarding attendance. According to Herbalife's suggested itinerary, income claims should be given between 10:05 am and 11:05 am during a typical Saturday event.

There is little doubt that distributors feel pressured to go up on stage and to exaggerate their income. Top distributors frequently tell their downline members that the way to succeed in the Herbalife business is to maintain a positive attitude. Why bring down this part of the meeting – which is, after all, a sales pitch for potential recruits – with a less than inspiring story?

Also, even if distributors tell the truth about the size of their checks, the income claims they make are always based on gross income; testimonials don't include information about the offsetting costs of operating an Herbalife distributorship.

Because this parade of testimonials is a part of every STS, it's important, in the wake of the FTC Order, to ask if the claims – even when taken at face value – realistically represent the business opportunity.

### **Arizona Event**

We sent a researcher to an STS in Arizona to document testimonials. In our experience, this was a typical event, one that followed a predictable pattern of income claims ranging from a few hundred dollars a month up to “more than I ever imagined possible.”


Here's how the income claims began at that event, according to the researcher's notes:

*"New distributors were asked to come on stage and share how much money they've made selling Herbalife products. **Most people said they made about \$200-\$500 in the month of November.** Many shared how they saw this as supplemental income. Some stay-at-home moms said they started selling Herbalife because they wanted to stay home with their children and still be able to make money."*

Herbalife's US Statement of Average Gross Compensation for 2016 states that a distributor needs to sell 10 canisters of Formula One to make \$95. This assumes that all sales are made at full retail price, the seller is able to pass along shipping and taxes to customers and the seller has no expenses beyond the cost of the product.

**How much could I earn if I sell Herbalife products?**

- Members are eligible to buy Herbalife® products at a discount. Starting out, your discount is approximately 25%. The more you sell, the higher your discount, up to a maximum of 50%. For example the initial discount on Formula 1, Herbalife's best-selling product is shown below:



Suggested Retail price	\$39.90
Member price (with 25% discount and before shipping and tax)	-\$30.40
<b>Potential profit</b>	<b>\$9.50</b>

- If you buy at this 25% discount and sell 10 canisters at the Suggested Retail Price, passing along shipping and taxes as most Members do, you would make **\$95** before expenses.

The distributors at the STS in Arizona claimed profits that equate to selling between 20 to 50 canisters of Formula One in one month. Herbalife does not provide an income distribution for business opportunity seekers whose only potential profits come from retail sales, so we have no way of knowing what's typical. But, it's hard to believe that most distributors are moving this much product in their first – or any – month of business. Yet, that's what potential recruits were told at the Arizona meeting.

**Supervisor Income Distribution**

Herbalife does provide information on how much it pays a select group of distributors called “Supervisors.” These distributors have purchased enough product to be eligible to earn commissions on the purchases of people in their downline. Before providing this income disclosure, however, Herbalife eliminates anyone who has not created a downline and it eliminates those who have a downline but haven't earned commissions on purchases by those recruits.

As a result, Herbalife provides income distribution information for a group made up of just 14% of all Herbalife members.

**In addition to retail earnings, how much could I earn from sales by members I sponsor?**

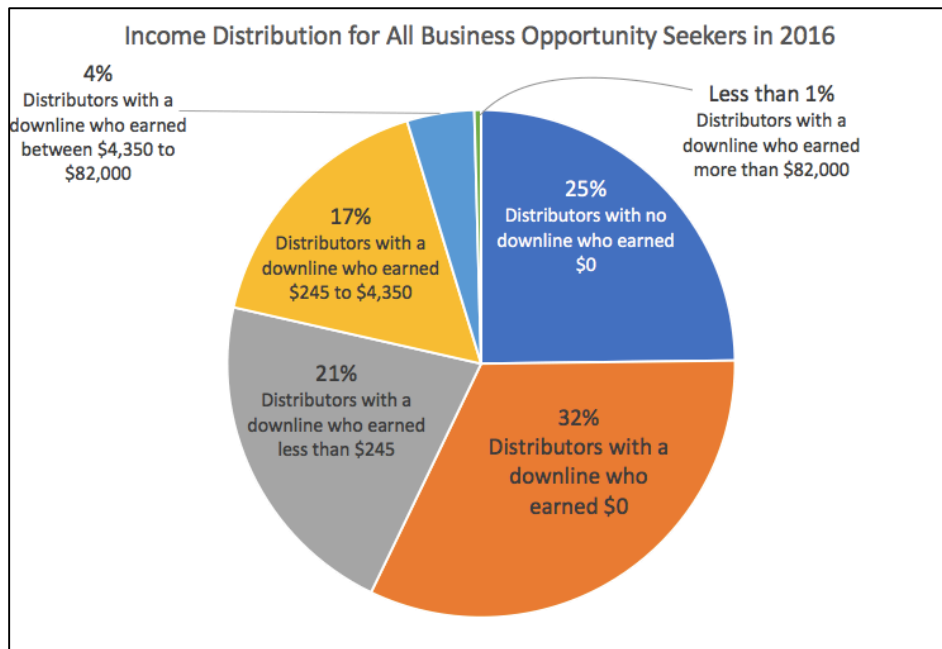
- The majority of Members join simply to receive a discount on Herbalife® products.
- Last year, 14% of U.S. Herbalife Members (about 78,000) sponsored at least one person and earned from the sales of the Members they sponsored.
- In addition to any retail profit, of those who received earnings from Herbalife, approximately:
  - 50% (about 39,000) made more than \$245 in earnings – and the other half made less.
  - 10% (about 7,800) made more than \$4,350 in earnings.
  - 1% (about 780) made more than \$82,000 in earnings. Last year, the people who moved into the top 1% spent between 3 to 35 years in the business, averaging 13 years.

In order to make this group more representative of all business opportunity participants, we added back distributors who have recruited a downline but haven't received any commissions and distributors with no downline. We were able to estimate these numbers by combining information from Herbalife's 2014 disclosure document, which provided

more detail, with the company’s 2016 disclosure.<sup>1</sup> We determined Herbalife’s Members break down as follows:

Total US Members in 2016	621,963
US Members with no downline	547,327
Preferred Members (not pursuing the business)	440,000
Members pursuing the business	181,963
Members pursuing the business with no downline	45,131
Members pursuing the business with a downline	136,832
Members with downline who earn commissions	78,000
Members with downline but earn no commissions	136,832

We then put all these business opportunity seekers into a pie chart showing their annual income distribution for 2016.



<sup>1</sup> The Statement of Average Gross Compensation Paid by Herbalife to U.S. Members in 2014 shows that approximately 43% of them received no reward payments from Herbalife. We assumed that in 2016, the percentages remained the same so the 78,000 distributors with a downline who earned commissions – cited in the 2016 income disclosure – made up 57% of all distributors with a downline, or 136,832 individuals, leaving 43%, or 58,842, who had a downline but received no commissions. We also used the 2014 disclosure to determine that only 22% of Members have a downline. That leaves 88% who don’t have a downline. We eliminate the 440,000 Preferred Members Herbalife claims to have in the US, which should account for the balance that don’t have a downline.

Fifty-seven percent of this group earned nothing in 2016. Twenty-one percentage earned less than \$245. Seventeen percentage earned between \$245 to \$4,350. Just four percent of distributors earned between \$4,350 to \$82,000 – a very wide range of incomes. Less than 1% of distributors earned more than \$82,000.

### **Testimonials by Top 4%**

Does a person attending an Herbalife Opportunity Meeting come away with a reasonable overview of the income potential? Back to the notes from the Arizona event:

*"Next, the Active World Team members were invited on stage. This is the first step to a leadership position in Herbalife. There was more variation in how much money they made in one month versus the first group. **The lowest was \$600 and the highest was \$4,100.** Some people said they were selling Herbalife products part-time while working in full-time jobs. Among the group were dental assistants, bankers, cashiers, people with government jobs, and personal trainers."*

Note that distributors typically describe their income in monthly terms during testimonials while Herbalife's income disclosure statement provides annual incomes. On an annualized basis, this group reported earnings of \$7,200 to \$49,200, placing them in the top 4% of all distributors.

The income testimonials continued with the distributors in the next level of the marketing plan called on stage:

*"Next, the Global Expansion Team members were invited on stage. **These people claimed they made anywhere from \$2,500 to \$7,500 last month.**"*

*"One woman said she used to have a corporate job, making a six-figure salary. But she left that job and began selling Herbalife products because she 'needed a purpose in life' and Herbalife provided that for her. **She said she made \$6,488 last month.**"*

*"Another lady said she became motivated to sell Herbalife products after learning she could work from home and not have to drop off her kids at a daycare. **She claimed to have made about \$3,800 last month.**"*

*"One guy said he was homeless when he started selling Herbalife. He talked about having trouble finding a job because employers would turn him down after doing a background check on him. He said he was encouraged when he found out he didn't have to go through a background check to sell products for Herbalife. All he needs is a distributor ID number. **He shared that with the money he has earned through Herbalife, he was able to pay for an apartment, a car and for nursing school.**"*

We assume an income that covers rent, a car payment, and tuition would exceed \$4,350 annually. As a result, all the testimonials by this group also fall with in the top 4%.

The testimonials continued:

*"Next was the Millionaire Team. One man said he was laid off from his corporate job shortly after he started using Herbalife products. He began selling them as a way to make money. He made \$1,700 in his first month. **Last month he made \$9,234.**"*

*"One lady said she made \$64 her first month. After she lost her full-time job, she started selling Herbalife products full time. In eight months, she was able to make as much money as she was making in her old job. **Last month, she made \$5,034.**"*

*"Another woman, who said she used to play volleyball in college, said she started selling Herbalife to the people closest to her. She eventually quit her full-time job and dedicated herself to selling Herbalife products. **She said she's projected to make \$120,000 this year.**"*

All three testimonials put the distributors in the top 4% of all distributors, while the projected income testimonial puts that distributor into the highest earning category, which includes less than 1% of all business opportunity seekers.

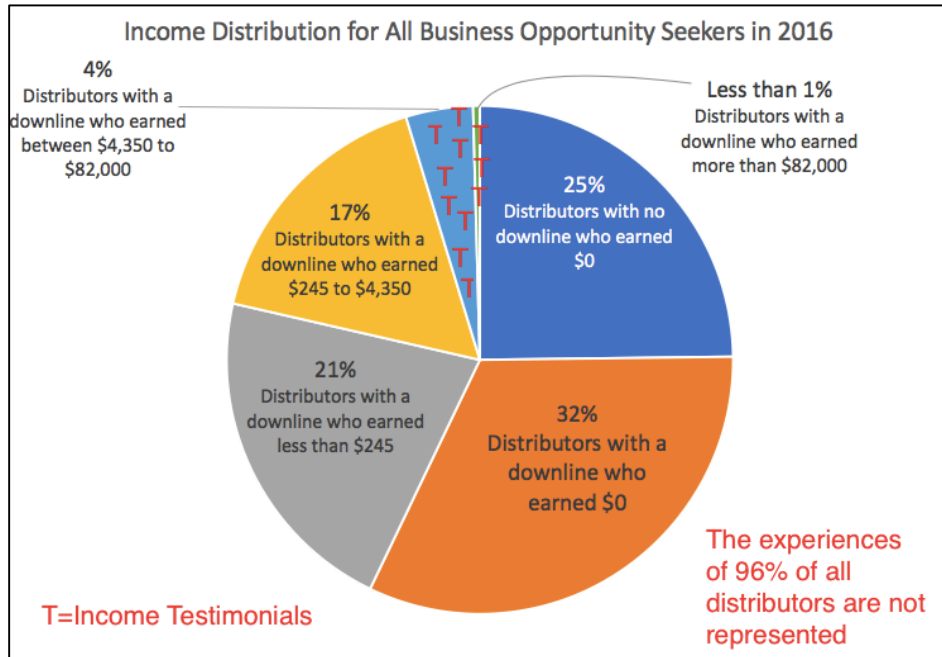
### **Misrepresenting the Income Potential**

The final group called on stage at the Arizona event were President's Team members:

*"A woman was the only person to go on stage for this group. She said that when she first started selling and using Herbalife products 23 years ago, she was a teacher and her husband was a photographer. They were just starting their family and were struggling to make ends meet. So, they started selling Herbalife products as a way to bring in extra income. They made \$1,400 in their first month, more than what she was making at the time as a full-time teacher. Eight months after selling Herbalife products, she and her husband became Global Expansion Team members, making about \$3,000 a month. They slowly started making more money. Fast forward to today, she said Herbalife 'transformed our entire lives' and that it has **brought in more money than they could've ever imagined.** She was given a standing ovation at the end of her speech, though she never shared how much money she and her husband currently make."*

Her position in the testimonial parade, and her comments, indicated that she made more than the other distributors, likely putting her in the \$82,000-plus category.

When the testimonial section of the event was over, not a single person had admitted to earning an income that matches the experience of 96% of all business opportunity seekers. Everyone was – or pretended to be – a distributor in the top 4-5% of all earners.



The FTC Order states that those promoting the business may not make “any representation, expressly or by implication, regarding the amount or level of income, including full-time or part-time income, that a participant can reasonably expect to earn **unless the representation is non-misleading.**” (Section IV)

What is the purpose of this parade of testimonials if not to provide an overall picture of what’s possible or even likely for those considering the business opportunity?

Surely the organizers of these events understand (and likely orchestrate) this misrepresentation of the business opportunity. Meanwhile, Herbalife must also be aware of how these testimonials – all concentrated at the high-end of actual earnings and presented without regard for business expenses – have no chance of creating a “non-misleading” picture of a recruit’s income potential. Under Section V of the FTC Consent Order, Herbalife is required to “take all reasonable steps necessary to monitor and ensure that Business Opportunity Participants and Preferred Customers act in compliance with the requirements of Sections II - IV of this Order.” They certainly weren’t policing the Arizona event.

It’s impossible to offer an accurate representation of the business opportunity by limiting those who speak about the business to individuals who earn more than 96% of business opportunity seekers.

No one testified that they have yet to receive a check from Herbalife – though that’s the situation 57% of all business opportunity seekers find themselves in. No one described what it was like to earn just a few dollars after spending hundreds of dollars on products, flyers, and event tickets. No one talked about earning an Herbalife income that falls short of the minimum wage – though that’s the experience of more than 96% of business opportunity seekers.

If distributors offered these types of testimonials, it would make for a pretty depressing “Herbalife Opportunity Meeting,” but it would reflect the reality.