

Orion Research, LLC

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“Active Supervisor” Designation Forces Monthly Minimum Purchases on Struggling Distributors Seeking Training, which Violates and Interferes with FTC Order

Herbalife Ltd.’s top distributors organize monthly training events known as Success Training Seminars (STSs) in various cities across the US. Distributors pay approximately \$30 to attend these events, which are described by top distributors as essential to succeeding in the Herbalife business.¹

As part of these events, there are frequently special sessions for “Active Supervisors.” These are distributors who have achieved Total Volume of 2,500 a month for three consecutive months.²

Here’s an example of an “Active Supervisor School” being offered at the upcoming STS in Charlotte, North Carolina. It is limited to Supervisors who have completed 2,500 volume points for three consecutive months within the last 6 months.³

Agenda	
8:45 – 9:30am	<u>Active Supervisor School (see qualification at right)</u>
10:00 – 12:00pm	HOM
12:00-12:30pm	Lunch break
12:30 – 3:30pm	STS Training

In order to qualify for the Active Supervisor School, you must have completed 2,500 VPs for 3 consecutive months sometime within the last 6 months.

charlottests.com

By limiting attendance to Active Supervisors at training events, top distributors force struggling recruits to make continual and substantial monthly purchases in hopes of obtaining the tools and information necessary to succeed. This requirement also interferes

¹ To see how top distributors promote the importance of attendance at STS events, see: 8.7.17.Amplify Business.pdf; 8.7.17.Attendance Nonnegotiable.pdf; 8.7.17.STS Buy Tickets.pdf; and 8.7.17.Way to Grow.pdf.

² According to Herbalife marketing plan materials, a distributor’s Total Volume is volume purchased by that distributor and volume purchased by distributors he or she has recruited who have not yet reached Supervisor status. Any purchases by this group will count toward the original distributor’s Total Volume. However, a struggling distributor could purchase an outsized share or even all the volume needed to be credited with Total Volume of 2,500 points if he lacked retail customers but wanted access to training.

³ Information downloaded on August 6, 2017 from charlottests.com.

in numerous ways with the effective implementation of a July 2016 Consent Order imposed on Herbalife's business by the Federal Trade Commission.

The FTC Order specifically bans Herbalife from allowing the imposition of minimum purchase requirements. Under "Limitations on Thresholds, Targets and Requirements," the Order states: "Business Opportunity participants shall not be required to purchase a minimum quantity of products, except that Defendants may require Business Opportunity Participants to purchase an initial start-up package or its equivalent, provided that no Multi-Level Compensation is generated or paid on the Purchase."

Yet, training is described by top distributors as essential, and that training requires both regular ticket purchases and ongoing qualification volume.

The Order also states that Herbalife must disclose upfront all information material to participants concerning the business opportunity, such as "the total costs to participate, including trainings, brochures, and sales aids."

Not only does Herbalife fail to disclose the regular costs of purchasing STS tickets and qualifying for training sessions, but the company states that such costs do not exist and may not be imposed. According to Herbalife's contract with its distributors: "To become an Herbalife distributor, succeed in the business, advance in the Sales and Marketing Plan, or receive upline training or support, you are NOT required to buy any amount of materials, products, or services, either those produced by Herbalife or by a party other than Herbalife, or to attend any seminars, meetings, or events."

Third, qualification-linked training events effectively force distributors, including those with limited or no underlying retail demand, to purchase products simply in order to obtain access to "success" training. When this happens, it results in upline distributors (who set the rules and qualifications for attendance at these events and trainings) advancing in the marketing plan, becoming eligible for increased discounts and receiving commissions based on volume that is ineligible for those purposes.

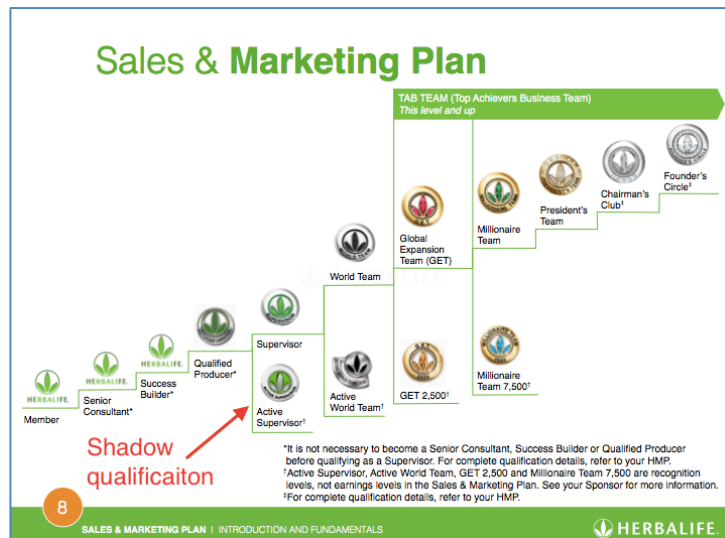
The FTC Consent Order states that: "To the extent the [marketing] Program requires that a Participant meet a threshold or target in order to (a) obtain or maintain a level or designation necessary to receive any particular type or amount of Multi-Level Compensation; (b) qualify or become eligible to receive Multi-Level Compensation; (c) otherwise increase the Participant's amount of Multi-Level Compensation; or (d) obtain, maintain, increase, or qualify for a discount or rebate on Product purchased for resale; **such threshold or target shall be met exclusively through Profitable Retail Sales and Sales to Preferred Customers.**" [emphasis added]

The Active Supervisor qualification is not just a creation of Herbalife's top distributors, but the designation has been incorporated into Herbalife's official marketing plan materials.

Former Chief Executive Officer Michael Johnson personally signed certificates recognizing and congratulating Active Supervisors.



The company now includes in its marketing plan materials a description of Active Supervisor, and a number of other levels such as “Active World Team” and “GET 2,500,” which are not official levels, but are described by the company as “recognition levels.”⁴ These levels, which we label below as “Shadow Qualification,” entitle the distributor to the same benefits as the levels below which they are placed, but unlike those levels, which require occasional qualification, these shadow levels require constant and substantial minimum purchases.



⁴ The attainment of official levels (pictured in the top row of the diagram) triggers increased discounts and commissions.

The company lists two benefits of becoming an Active Supervisor: the receipt of a pin and a certificate. Herbalife makes no mention that Active Supervisor status opens the door to increased training opportunities.

Active Supervisor

Qualification

- Achieve 2,500 Total Volume Points (TVP) in 3 consecutive months.

Stone-Pin Qualification

PLUS

- 3, 5, 7 or 10 Fully Qualified Supervisors in your first line also achieve 2,500 TVP in the same 3 consecutive months.

Benefits

Qualifiers Receive:*

- Active Supervisor pin
- Certificate of Achievement

Stone-Pin Qualifiers Receive:

- Corresponding 3-, 5-, 7- or 10-stone pin
- Certificate of Achievement

Note: Active Supervisor is a recognition level, not an earnings level in the Sales & Marketing Plan. See your Sponsor for more information.

*A Supervisor will only be recognized the first time they complete the qualifications.

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Credit: Myherbalife.com

Yet, it is impossible to believe that Herbalife is unaware that Active Supervisor status is being used to restrict training, given the widespread use of this qualification. See: 8.7.17. Qualification Linked Training.pdf for numerous examples of how the 2,500 volume point requirement is used to restrict access to trainings.