



Office of the Director  
Bureau of Consumer Protection

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**FEDERAL TRADE COMMISSION**  
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## **Direct Selling Association Legal & Regulatory Seminar**

*Remarks of Samuel Levine  
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I am happy to be here and appreciate the opportunity to engage in a dialogue with you.<sup>1</sup> Part of having a healthy dialogue is candor and I intend to be candid today. I'll be answering questions after my remarks, and I would encourage you all to be candid as well.

As many of you know, in February 2022, the FTC issued an Advanced Notice of Proposed Rulemaking concerning deceptive earnings claims made by many companies in a wide variety of industries, including multi-level marketing companies (MLMs). We received over 1,600 comments in response – which is tremendous. All comments are public. The Commission's review of these comments is ongoing, and I cannot speak about the rulemaking itself.

Today, I want to address some comments that were submitted by consumers regarding their experiences with multi-level marketing companies. The quantity and nature of comments regarding the MLM industry is striking, and frankly, not flattering. Many of them provide very detailed accounts of personal experiences, and a number of issues come up repeatedly.

By now and for some time, MLMs should know what the law requires and how to comply with it. My remarks will use the comments we received to touch on certain key consumer protection topics that affect your industry. I have no illusion that these comments represent every consumer's experience with MLMs. Indeed, some MLM participants report they are happy with their experiences. Let me also be clear that I am not suggesting that any particular company is violating the FTC Act or that an investigation into a company is ongoing. In addition, as I have said before, there are many different industries where we have seen evidence of deceptive earnings claims, and we are taking all of these allegations seriously. Rather, my goal today is to use these comments as a lens to shed light on topics that are of interest to DSA members and also to the FTC, such as earnings claims, product claims, and compensation structure.

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<sup>1</sup> I wish to thank Melissa Dickey, Kathleen Daffan, and Alejandro Rosenberg for their substantial assistance in preparing these remarks. The views expressed here are my own and do not necessarily represent the views of the Federal Trade Commission or any Commissioner.

## Steer Clear of Deceptive Earnings Claims

First, let's talk about earnings claims. You've heard a lot from the FTC about this topic recently. The simple reason why is that false and unsubstantiated earnings claims cause immense harm to consumers and to honest businesses competing for talent. We've seen this in the comments. Consumers alleged they joined an MLM because they were promised a better lifestyle and opportunity to earn income but ended up losing their time and money. Some explained they worked around the clock and were left earning less than they would have made at a full-time job. Others told us they were left in significant debt. We also received comments from consumers who said they lost their homes, their cars, or their retirement savings. All of this is consistent with our law enforcement experience – tremendous harm results from deceptive earnings claims, which harm is only exacerbated in times of economic insecurity. I'm hopeful that my comments here today will help draw businesses' attention to what they can do to prevent this harm.

## Earnings Claims Must Be Substantiated and Not Misleading

First, under the FTC Act, any MLMs and MLM participants that make earnings claims must accurately represent their business opportunity and what a prospective participant is likely to earn.<sup>2</sup> The representations must be truthful, non-misleading, and substantiated. With those principles in mind, I'll turn to some illustrative comments.

One commenter said, "I was promised **6 figure income**. I was promised **yearly trips**. I really believed everything they fed us." (Comment No. 20-285) (emphasis added). "I am in over 50,000 in debt from thinking all the money I spent on my business with [MLM A] was a good investment. It was the worst decision by listening to my upline/leaders. I put my blood sweat and tears into this MLM." (Id.)

The commenter alleges he or she was promised a 6-figure income and yearly trips. These alleged claims are probably not reflective of what a typical MLM participant earns. Indeed, the DSA itself recently filed a brief noting that MLMs offer the opportunity to earn a "modest supplemental income," and DSA's CEO has written in the past that "[m]ost distributors will not realize replacement income, let alone a lavish lifestyle."<sup>3</sup>

This is consistent with information we've seen from various industry members, and in fact, I'm not aware of any MLM where a majority of participants – or even a substantial number of participants – make significant income. On the contrary, what's typical is that most MLM participants make little to no money. If the promises of a six-figure income and yearly trips are not true or substantiated, these claims

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<sup>2</sup> See Staff Guidance, *Business Guidance Concerning Multi-Level Marketing*, at pp. 2-3 (2018), available at <https://www.ftc.gov/business-guidance/resources/business-guidance-concerning-multi-level-marketing>.

<sup>3</sup> See, e.g., *FTC v. Neora*, Amicus Brief of Direct Selling Association, Dkt. No. 260 at 4 (N.D. Tex. filed Sept. 16, 2022) (multi-level marketing companies "offer[ ] those same independent contractor salespeople the opportunity to earn modest supplemental income to help their families or to otherwise engage in a personally satisfying activity"); see also Joseph Mariano, *Learning and Building on Collective Experience*, DSA News (Sept. 1, 2016), <https://www.directsellingnews.com/learning-and-building-on-collective-experience/>) (MLMs "must increase [their] efforts to ensure prospective distributors are fully aware . . . that for most, direct selling can [only] provide supplemental income. Most distributors will not realize replacement income, let alone a lavish lifestyle"); Casey Bond, *Women And Everyone They Know*, Huffington Post (June 27, 2019), [https://www.huffpost.com/entry/mlm-pyramid-scheme-target-women-financial-freedom\\_1\\_5d0bfd60e4b07ae90d9a6a9e](https://www.huffpost.com/entry/mlm-pyramid-scheme-target-women-financial-freedom_1_5d0bfd60e4b07ae90d9a6a9e) (quoting Joseph Mariano as saying "Anyone who's saying that you're going to make a lot of money [from an MLM] is not telling the truth. . . . You can make a lot of money, but most people don't").

are illegal under the FTC Act. And as you surely know, an MLM is liable for any such misleading earnings claims that it makes, including claims by its participants. Moreover, as many of you are aware from the Notices of Penalty Offenses Concerning Money-Making Opportunities, which the Commission issued in October 2021, because the Commission has already determined in a final administrative action that such claims are unfair or deceptive under the FTC Act, companies that make such promises risk facing civil penalties.

### **Qualified Earnings Claims That Are Not Substantiated Violate the FTC Act**

Another commenter said:

I joined [MLM B] in 2016 when my current boss (at the time) pressured me into joining and said they would loan me the money for a \$1,000.00 product pack and take the money from my paychecks because I couldn't afford it all at once. . . . My boss at the time told me the company was how she became wealthy and paid for her home, horses, other business, and family's expenses and made her a millionaire, and said I should join so I could support my family. . . . **My boss (and now my direct up line) said I could drive a Mercedes Benz like her and afford any trips I wanted if I worked hard enough like she did.** I didn't make any money through the company.

(Comment No. 20-347) (emphasis added). In this example, I would like to address the qualified claims that were allegedly made by the “boss,” or MLM participant. The participant allegedly said the commenter could earn atypical amounts – including driving a Mercedes-Benz and going on as many trips as he wanted - **if** “he worked hard enough.”

I think you should be well aware that this type of qualified claim is almost certainly not okay. As mentioned previously, most MLM participants make little to no money, and I am skeptical that a company can gather reliable evidence that shows that the very few who make significant money worked harder than a typical participant. Based on what I've observed, being good at sales and recruiting involves a combination of skills, finding customers with money and interest to buy the product, and hard work. Some people can work exceptionally hard at sales and recruiting and not make any money. Unless a company can gather reliable evidence showing that results at the company are different, companies will violate the FTC Act if they imply or state – or allow their representatives to imply or state – recruits will earn money if they work hard enough.

### **Earnings Claims Must Take Into Account Participants' Expenses**

One other point I want to cover quickly is expenses. For earnings claims to be truthful and substantiated, you will need to know and be able to show that after taking into account expenses, the outcome you or your participant is claiming is the generally expected achievement of participants. That means that in order to comfortably make earnings claims to prospective participants, you need to know what your participants earn, but also what they spend.

This is an important point: participants, unlike a salaried employee, typically have to spend

money on their business. For example, commenters said that they had to pay sign-up fees, website fees, costs for marketing materials (such as catalogs), costs for new product releases, costs for samples for parties, fees to attend conventions and weekly training calls, and travel expenses. If participants in your MLM incur similar costs, any earnings claims you or your participants make should reflect that. I'm not talking about expenses to the dime. But a sound and reasonable basis is required, and I think by and large you have access to such information.

### **Extravagant Lifestyle Claims and Testimonials Are Deceptive If the Net Impression Is Misleading**

Let's turn next to a comment about atypical testimonials. A commenter said:

[E]veryone is always **renovating their home** or **moving into a bigger home**. They post about **buying Gucci and all sorts of expensive items** and say they are blessed they can buy it to "gift" it to their downlines (as an incentive) to make others join so they can experience this too.

(Comment No. 20-206) (emphasis added). As we all know, such extravagant earnings are extremely rare in the MLM industry. And they create an extremely misleading impression: consumers take away from atypical testimonials and lifestyle claims the message that "I can achieve that" or "that's typical; that's going to be me." Let me make clear what the FTC has stated many times before: It is illegal to create such a misimpression.

If you or your participants use lifestyle claims or testimonials that are atypical or unsubstantiated, you are violating Section 5, unless the advertising or presentation also clearly and conspicuously describes the amount earned or lost by a typical participant, resulting in a net impression that is not misleading.

For extreme lifestyle and earnings claims, I am skeptical that such a disclaimer exists. If you give potential recruits a dream of becoming a millionaire or owning a fancy car, what can you say to that recruit that will allow them to understand that there is virtually no chance to achieve that? To date, I have not seen such a disclaimer.

The easiest and simplest way to comply with the FTC Act is to make earnings claims that focus on what a typical recruit is likely to earn. If what's typical is supplemental income, that's what you should say. Or, if you don't think that's a great selling point, don't make earnings claims. If you decide to take a different path and make lifestyle claims or testimonials that require a disclosure to dispel typicality, it is imperative that you know, through copy-testing or otherwise, that these disclaimers are effective and are not being undermined by other claims. I suspect that will be a real challenge.

### **MLMs Are Liable for Deceptive Claims Made by Their Participants**

Next, I want to turn to a series of comments concerning directions MLM participants said they received from their upline. One commenter said:

When I was involved in [MLM D], we were trained to attribute anything positive in our lives to our [MLM D] business, even when it wasn't true. At

trainings, we were told to fake it until we made it because faking the great lifestyle will attract people to the business.

(Comment No. 20-326). A similar comment said:

I was regularly encouraged to share how [MLM E] had helped me to pay off credit card debts, car notes, or bills - to encourage people to join my team. The problem was, I was told to share this even if it was not true. I was frequently bullied and ostracized or insulted if I did not agree to push the narrative that the company was financially taking care of me - when it was in fact, not.

(Comment No. 20-1314).

I find allegations like these – and there were similar ones – disturbing, as they assert that some MLM participants are not only purposefully lying about their income and lifestyle, but are training their downline to do the same, while punishing and ostracizing those who fail to follow their instructions. This alleged conduct clearly violates the FTC Act. But remember: it is not just MLM participants who will be liable for these deceptive earnings claims. You are your participants’ keepers. Most MLMs have structured their business so their existing participants are responsible for recruiting new participants. The nature of most MLM compensation means that participants have an incentive to recruit, and a powerful way to do that is through earnings claims. This is not to say every participant makes misleading or unsubstantiated earnings claims, of course, but I have found that when firms are structured in such a way that incentivizes misconduct, misconduct is the entirely foreseeable outcome.

To sum up, it’s up to you to make sure your participants know what the law requires and that they follow the law. Please take this seriously, because we are paying attention.

### **Claims About Products, Including Claims That a Product Can Treat a Disease, Must Be Substantiated**

Let’s switch gears and briefly talk about product claims. We received several comments in response to the ANPR that described alleged unsubstantiated health claims by an MLM. For example, one very troubling comment said “I m a physician. . . . and I have had multiple patients’ health harmed by deceptive health claims from MLM representatives, including that a very overpriced juice (of all things!) could cure diabetes and be a great income.” (Comment No. 20-423). Another said: “Another training. . . said to send private messages about how [MLM G’s] products fixed heart disease, diabetes, mental illness and a bunch of other diseases. They said to send these privately because it was not compliant to put them on our public Facebook or Instagram.” (Comment No. 20-42).

Let me be clear: Any claims MLMs or their participants make about their products, regardless of whether they are made privately or publicly or on social media or in public, must be truthful, not misleading, and substantiated. And it is unlawful under the FTC Act to advertise health claims, such as that a product can prevent, treat, or cure human disease, unless you possess competent and reliable scientific evidence substantiating that the claims are true at the time they are made. And remember: MLMs are liable not only for the claims companies themselves make – they are also liable for and

responsible for deceptive claims made by their participants.

In addition, for the duration of the coronavirus public health crisis, it is a violation of the law to engage in a deceptive act or practice that is associated with “the treatment, cure, prevention, mitigation, or diagnosis of COVID-19” or “a government benefit related to COVID–19.” Making such claims could make an MLM liable for civil penalties.

## **MLMs And Illegal Pyramid Schemes**

Finally, since my time is limited, I will touch briefly on the law of pyramid schemes. Our focus on earnings claims across the economy does not distract from our interest in ensuring MLMs are lawfully structured and not operating as illegal pyramid schemes. One thing we have noticed in the comments is that a lot of consumers said that their uplines told them they had to buy products or that their uplines, trainers, or the companies put pressure on them to buy products – even if the compensation plan did not require them to make these purchases.

For example, one commenter said:

I was told I just needed to buy the \$160 starter pack and pay a \$16 a month fee. They said there were no quotas & no inventory purchasing requirements. It turned out there WAS a personal volume requirement of somewhere around \$75 or \$100 a month. You had to purchase that much in products each month in order to remain “active,” which allowed you to sale, recruit, and potentially earn commissions. If you failed to meet that requirement, you would become inactive, which usually cause those above you to fall down to a lower rank and you ended up with a bunch of angry “teammates” because everyone’s income depends on everyone else. I even had uplines offer to buy products through my account when I couldn’t afford it so I would not go inactive.

(Comment No. 20-570). Similarly, another commenter said:

The only investment I was told I had to make was the initial kit. Of course I was told to buy the biggest one to have the best shot of success. And I was told I wasn’t required to purchase anything else. But that was not true. I couldn’t earn commission if I didn’t spend at least 100 per month. And then there were conventions, conferences, biz ops, all that cost money.

(Comment No. 20-353). These are just a couple of examples of these types of comments.

So how exactly does this relate to pyramid scheme law? It is nothing new to hear that the most widely cited description of a pyramid scheme is from the *Koscot* case,<sup>4</sup> or that pyramid schemes:

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<sup>4</sup> *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1181 (1975), *aff’d mem. sub nom., Turner v. FTC*, 580 F.2d 701 (D.C. Cir. 1978); *see also Webster v. Omnitrition*, 79 F.3d 776, 781 (9th Cir. 1996); *United States v. Gold*, 177 F.3d 472, 481-2 (6th Cir. 1999); *FTC v. BurnLounge, Inc.*, 753 F.3d 878, 883 (9th Cir. 2014).

are characterized by the payment by [participants] of money to the company in return for which they receive (1) the right to sell a product *and* (2) the right to receive in return for recruiting others into the program rewards which are unrelated to sale of the product to ultimate users.<sup>5</sup>

The determination of whether a particular company is operating as a pyramid scheme is very fact specific. At the end of the day, however, if participant compensation is driven by recruitment rather than real sales to real customers, consumer injury is inevitable, even when the MLM offers actual products or a real retail opportunity.

FTC law enforcement actions against pyramid schemes are multi-faceted and fact-specific, and the FTC does not take a one-size fits all approach in its cases. Bearing this in mind, past FTC cases show that one hallmark of many pyramid schemes is a reward system in which the more goods participants personally buy from the scheme – and the more goods that the participants’ recruits personally buy – the more compensation the participant may be able to earn, even if the participant makes little effort to sell to bona fide end users outside the MLM. Such a reward system encourages participants to buy goods not to satisfy their own needs or as inventory to resell, but to earn bonuses, commissions, or other rewards from the scheme.

These problematic reward systems do not have to be explicit – practical requirements that participants can or have to purchase products to satisfy plan requirements are just as problematic. The FTC’s law enforcement experience has shown that MLM participants may buy product – and recruit or pressure other participants to buy product – for reasons other than their own or other consumers’ actual demand.<sup>6</sup> And this is consistent with many comments received in response to the Earnings Claim Rule ANPR.

All purchases made by MLM participants to stay active in the program, or so that they or their upline can be at a certain rank or obtain additional compensation, are – as a matter of law – facially unrelated to the sale of the product to ultimate users.<sup>7</sup> Simply put, these purchases run afoul of pyramid law. We would encourage any MLM whose participants earn rewards for these types of purchases to take a look at their compensation plan and make any needed changes to bring their compensation plan in line with federal law.

I want to reiterate that the FTC conducts a detailed fact-specific analysis before alleging that any multi-level marketing company is an illegal pyramid scheme. This generally involves a comprehensive analysis of a variety of factors, including a close examination of the incentives created by the MLM’s compensation structure, and whether companies have explicit or de facto requirements in place that compel participants to purchase products. By the time we bring a case, we have already gathered substantial evidence that an MLM is operating unlawfully.

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<sup>5</sup> *Koscot*, 86 F.T.C. at 1181.

<sup>6</sup> See, e.g., *BurnLounge, Inc.*, 753 F.3d at 887; *FTC v. Vemma Nutrition Co.*, 2015 WL 11118111, at \*4 (D. Ariz. Sept. 18, 2015); see also *FTC v. Advocare*, Complaint, ¶¶ 45-71 (E.D. Tex. filed Oct. 12, 2019).

<sup>7</sup> *Omnitrition*, 79 F.3d at 784.

## **Conclusion**

Let me conclude with this: we want MLMs to follow the law, and we want your participants to succeed – we wouldn't be here otherwise. And in fact, MLMs that play fast and loose not only harm their participants but also cheat those who are playing by the rules. That is why it's long been the case that the FTC does not hesitate to bring law enforcement actions against companies violating the FTC Act. But as you know, we are currently considering going a step forward – promulgating rules to protect consumers from false earnings claims, and ensure accountability for violators. This effort reflects the unfortunate fact that, despite decades of active law enforcement and business education around earnings claims, compliance has remained a persistent problem in many industries. I hope that my being here today will serve as another reminder that we take these issues seriously and expect stronger compliance going forward.

I'm happy to answer any questions you have.