

The FTC and Advertising

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Every business must communicate the worth of its product to the buying public, and a multilevel marketing business is no exception. The nature of multilevel marketing is such that rarely will there be a need for a comprehensive multi-media ad campaign. Most advertising is by face-to-face communication between sellers and potential customers. However, sales kits usually contain brochures and other promotional materials, labels contain representations, and these are subject to regulation the same as is the million dollar Madison Avenue barrage.

The most important, but not the only regulator of advertising is the Federal Trade Commission. The FTC has the power to order a business to cease and desist using an advertisement found to be deceptive, and violation of an FTC order can result in penalties of up to \$5,000.00 a day.

The FTC regulates advertising under Section 5(A), which declares that deceptive acts are unlawful. Practices that have been found to be deceptive include false representations, misleading price claims, sales of hazardous or defective products without warnings, bait and switch, failure to disclose information regarding pyramid sales and failing to live up to warranties.

A marketer should review not only promotional material for possible deception, but also the sales force's entire course of conduct, from initial contact to sale, as the FTC evaluates an entire sales transaction or course of conduct of a seller www.mlmlegal.com when searching for deceptive practices. In a case involving Encyclopedia Britannica Inc., the FTC found that Britannica was engaged in deceptive practices by misrepresenting the nature or purpose of the initial contact with customers by stating that the representatives were conducting research surveys, when in fact the purpose was door-to-door solicitation. In addition, Britannica was engaged in a deceptive practice in its recruitment of door-to-door salespersons through "blind" recruiting ads falsely promising management positions.

If a claim in promotional materials is directed to a particular group of consumers, the FTC will determine the effect of the claim on a reasonable number of that group. For example, if a claim is contained in an advertisement directed toward terminally ill consumers, more far-fetched claims as to cures etc., may be "reasonable" because these consumers are desperate and susceptible. Similarly, outlandish claims regarding weight loss without dieting are evaluated from the perspective of how they affect obese consumers, and as stated by the FTC:

"To these corpulent consumers the promises of weight loss without dieting are the sirens all, and advertising that heralds unrestrained consumption while muting the inevitable need for temperance, if not abstinence, simply does not pass muster."

The FTC will evaluate the entire product, transaction or course of dealing in deciding whether reasonable consumers are likely to be misled by misrepresentations. A misrepresentation in an ad headline may or may not be corrected by qualifying information in the text of the ad, as a reasonable consumer may read only the headline and not the text. Therefore, if a disclaimer is used, it should be prominently displayed. Nor are money-back guarantees a defense in a case of deceptive advertising.

The final factor in evaluating and deciding whether a deceptive practice has occurred is that the act or practice must be "material." A material misrepresentation is one that is likely to affect a consumer's choice regarding a product or service. Express claims are presumed to be material. Information that the seller omits when the seller knows that the consumer needs the information to make a decision is presumed to be material. Other www.mlmlegal.com claims the FTC generally considers material include claims dealing with health, safety, efficiency, cost, durability, quality, warranties or the purpose of the product.

A direct selling company would be wise to review all advertising and promotional materials for claims that it is able to support and to be sure that the message will pass the watchful eyes of the Federal Trade Commission. Be sure and check with your company before running any advertising on your own.

Advertising

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On any given day you can catch Jeffrey Babener, editor of www.mlmlegal.com, lecturing on Network Marketing at the University of Texas or the University of Illinois, addressing thousands of distributors in Los Angeles, Bangkok, Tokyo and Russia, or writing a new book on Network Marketing, an article for Entrepreneur Magazine or a chapter for a University textbook. Over two decades he has served as marketing and legal advisor to some of the world's largest direct selling companies, the likes of Avon, Nikken, Shaklee, Tupperware, Prepaid Legal, Longaberger, Melaleuca, Discovery Toys, Usana, Amazon Herb, NuSkin, Cell Tech, Sunrider.... and he has provided counsel to the most successful telecom network marketing companies...Excel, ACN, World Connect, ITI, Acceris, AOL Select and Network 2000. An active spokesperson for the industry, he has assisted in new legislation and served on the Lawyer's Council, Government Relations Committee and Internet Task Force of the Direct Selling Association (DSA) as well as serving as General Counsel for the Multilevel Marketing International Association. He is an MLM attorney supplier member of the DSA and has served as legal counsel and MLM consultant on MLM law issues for many DSA companies. He is author of multiple books, including,

Network Marketing: What You Should Know, Network Marketer's Guide To Success, Tax Guide for MLM/Direct Sellers, Starting and Running the Successful MLM Company, The MLM Corporate Handbook and Window of Opportunity. He is author of countless articles on network marketing, many of which can be found at www.mlmlegal.com where he is the editor. You will see his articles and interviews in such publications as Money, Atlantic Monthly, Success, Entrepreneur, Business Startups, Home Office Computing, Inc., Money Makers Monthly, etc. He has been chairman of numerous industry conference series, including, Starting and Running the Successful MLM Company, The MLM Entrepreneur Series and The MLM Masters series. He has served as the close advisor to scores of MLM Companies and their distributors, comprising millions of distributors and billions of dollars in sales. Mr. Babener is a graduate of the University of Southern California Law School, where he served as editor of the USC Law Review. After an appointment to be an advisor law clerk to a U.S. Federal Judge, he went on to become a member of the California and Oregon State Bar, where he has also served as chairman of the Oregon State Bar Committee on Judicial Administration. He has exclusively practiced in the area of direct selling for over 20 years. A Regulatory Update for MLM, Direct Selling, Network Marketing, Direct Sales, Party Plan Independent Distributors and Companies.