

THE NEW FTC BUSINESS OPPORTUNITY RULE MIM/Direct Selling Exemption Recognized

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The Direct Selling Industry Scores a Win

In March 2012, the direct selling industry has occasion to celebrate what a united industry, companies and distributors, can achieve if everyone pulls oars together in the same direction. The fruits of their labor are apparent in a newly-forged, positive relationship with the primary federal agency that regulates a channel distribution, alternately referred to as direct selling, network marketing and multilevel marketing. In its final FTC Business Opportunity Rule, the FTC stated its clear intention to relieve companies and distributors from what might have been very onerous conditions of recruitment that would have dramatically impaired the ability of distributors to build their businesses.

A Potential Big Brake on Recruitment

In April 2006, the FTC released a sweeping proposed change in its FTC Business Opportunity Rule. The proposal was immediately and strongly criticized by representatives of and experts in the MLM, Direct Sales, Direct Selling, Network Marketing and Party Plan industry.

Among some of the proposed requirements that would have seriously damaged the ability of distributors to build their sales organization, the proposed Rule:

1. Required extensive disclosures to recruits and required a seven-day waiting period before a prospective recruit could sign up with an MLM company;
2. Required the company to notify the prospect of ten purchasers of the opportunity closest to the prospect's home, or in the alternative, a list of all new distributors in the last three years;
3. Required that the seller of a business opportunity provide a "disclosure statement" which would include information outlining legal action involving the company, such as previous lawsuits, the number of direct sellers who canceled within two years and a list of "references," i.e. purchases of the opportunity in the previous three years;
4. Required the maintenance of onerous detailed records of the company, including a 10-year record of legal actions against the company and any of its officers, directors, etc.

Virtually every knowledgeable observer of the direct selling industry noted that the proposed "jumping through hoops" would have a severe impact on the recruitment and success of the 15 plus million distributors in the direct selling industry.

Networkers Speak Up with "One Voice"... the FTC Listens ...

To their credit, companies and distributors and professionals and trade associations came together to speak with one voice to the FTC, explaining the potential damaging impact to an industry that contributes to the support of millions of households.

And, the FTC listened to the "united" voice of the thousands of network marketing distributors and their companies, issuing the Final Business Opportunity Rule to be effective March 1, 2012. In its 200 page release, the FTC clearly indicated its intent to exempt the MLM industry from broad sweeping coverage of the new Rule:

Accordingly, while the Commission recognizes that problems may exist within the MLM industry, it continues to find that the Business Opportunity Rule is not the appropriate vehicle through which to address them. Rather, the Commission will continue to challenge unfair or deceptive practices in the MLM industry through Section 5 of the FTC Act. Thus, the final Rule has been crafted to avoid broadly sweeping in MLMs. (page 33)

The end result was a dramatic validation of what the network marketing industry can do when it "unites." It also represented a new era of "good relationship" between the FTC and the network marketing industry.

A Good Environment ... But Still Some Work to Do ...

Does the new rule accomplish everything that the industry would want? Almost, but not entirely. The FTC specifically rejected requests by the industry to extend the exemption to otherwise typical assistance provided by almost all leading MLM/Direct Selling/Network Marketing Companies, including replicated websites, referral of customers, lead generation, etc.

But the new Rule, even with ambiguity, created a good environment for long-term dialogue between the FTC and the Network Marketing industry. And it signaled further cooperation on other issues that may arise between the FTC and the Industry.

Nevertheless, since FTC staffs come and go...and administrations come and go, there is still work to do. Stay tuned.

For an in-depth list of recommendations that should be considered for fine tuning the FTC Business Opportunity Rule, visit www.mlmlegal.com and read the article: [**The FTC Final Business Opportunity Rule: Still Work to Do.**](#)

For more information on this subject and other important issues in the area of MLM, Direct Selling and Network Marketing, please visit www.mlmlegal.com.