

Interview with Expert MLM Attorney – How to Handle Compliance Discussions with your Distributors

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Expert MLM Attorney, Jeff Babener, discusses how companies should handle discussions about compliance with their distributors. It is important for direct selling companies to be clear about what claims/statements distributors, consultants, members, representatives, etc. can and cannot claim about their earnings and products.

Interviewer: What I want to do now, Jeff, I want to turn our attention to compliance. Because this is an important key issue for any company, for any business owner, for any consultant or distributor, to know that their business is compliant. What would you say are, in your mind, the top issues regarding compliance that someone needs to be adhering to in order to make sure that they themselves are being compliant in the marketplace?

Jeff Babener: Okay. Well, maybe we ought to talk about this issue from the perspective of the company and from the perspective of the distributor. But in fact they're one and the same. We have two goals: one is to help make them successful, and secondly, to help keep them in business. We've represented a lot of the leading direct selling companies. We've helped to start a lot of MLM companies.

You can't have one without the other and ultimately be a successful company. So, when we talk about compliance, we often have to remember that a company has basically asked a lot of people to join as its partners. The company is managing a volunteer army.

An army that can go anywhere anytime they want, and therefore, the company shouldn't talk down to people when it explains issues of compliance. It needs to have a conversation with them explain why compliance is important. And generally, the issue of compliance for direct selling in MLM, network marketing companies comes up in two areas. One is in the product or service being sold. And the other is the sort of earnings claims made about the opportunity.

Many times there are unique aspects of a product that have other regulatory issues involved. For instance, somebody involved in real estate may have overriding issues involving real estate.

A company that is involved selling health products has over-riding issues that come from our Food and Drug Administration about claims that can be made. And so, it is very important that the company pay attention to any regulations regarding the type of product or service that is being sold. And, make sure that it adheres to those regulations. That's why we are a specialist in representing direct selling companies in the network marketing area. We frequently are part of a team that includes security attorneys, real estate attorneys, or other attorneys who are specialists in their areas. We work together as a team.

In regards to what is said about the product, we need to make sure that if a company has a problem in terms of a regulated product or service that it address it. Otherwise, it could be out of business altogether. And, the opportunity for the family of distributors will be gone. The company needs to know what needs to be done and what needs to be said to regulators. If it's selling products that are health-related then the company will need expert guidance. For instance, we have an attorney in our office who does nothing but advises on FDA issues and claims.

It becomes very important. Then, the company has to explain carefully, in writing its rationale to distributors. Companies should provide good training through meetings and video. There is no substitute for great training but everyone has to understand the importance of compliance. If you call it "compliance" then it can sometimes come across as if you are shoving information down their throats. But if you clarify to your team that you are "in this together" in order to preserve the opportunity then they will definitely understand.

So that's an issue with respect to product. In addition, the onus is on the company to be able to substantiate the claims that it makes about its product(s). If it sells a product and claims 'This is going to put hair on your head,' it better have evidence that it can do that. And, it owes that duty to its distributors, because the distributors are going to repeat what it says.

Now, if a company says, 'we have a great product, but for regulatory reasons or otherwise, we have to ask you not to be making claims other than the ones we've provided to you.' Distributors need to understand and buy into the idea that they need to respect what the company is saying. Substantiation cases are often the demise of many direct selling companies. Such as, when companies can't demonstrate that their claim that their oil supplement is going to get you a thousand miles a gallon. We've seen many companies go out of business because they can't substantiate their claims. So again, this is a matter of educating distributors. It is a matter of putting the importance of what their saying it in writing, videos, and training.

And, one last thing: it is a matter for the company to monitor the web as distributors are blogging, to monitor what they are saying in advertising, and also to give distributors what used to be referenced as 'camera-ready advertising.' Of course, with the web today we might be talking about replicated websites where the proper claims are being made. That's really significant.

The other area that is significant in compliance is earnings claims. We've talked about this a little bit. The rationale with respect to companies and distributors not making earnings claims without having disclosure of substantiation is one that is well tested. And companies may provide distributors with earnings calculators so that they can make their own assumptions. But, until they're in a position to provide average earning statements, and track records distributors, they should not be making potential earnings claims on the web. A company should be very clear about what distributors can do, and the distributors should try to put this into effect, and then the company should monitor what is being claimed as the company grows.

Interviewer: So Jeff, the theme that I'm seeing here is that it's the company's responsibility, corporate's responsibility, to give tools to the field for distributors to use. Tools that demonstrate what distributors can say, what they can't say, making sure that they are compliant and that they

have gone through their legal review. So, that if a claim is being made in a brochure or on a website then the consultant or distributor can feel comfortable sharing the information. It's the company's job to make sure that that information being passed on is correct and that they're properly representing their product?

Jeff Babener: You are right, and frequently we hear companies complain, saying that their distributors are going crazy on them, they're taking out ads everywhere, and that they're saying things everywhere that aren't appropriate. And you know what? There's a vacuum. Because a company that doesn't provide its distributors with materials creates a vacuum in which the distributors feel the need to do this themselves. And so, a responsible company will turn out quality training, quality materials, quality brochures... The sort of things that give its distributors the good tools so they don't have to go out and create it themselves.

And a company should do one more thing. Companies should listen to their distributors. Sometimes distributors have the very best ideas.

Interviewer: Well, they are the boots on the ground. They are experiencing first hand what's happening in those meetings and conversations.

Jeff Babener: Yes. And when distributors come to companies and offer an idea for a presentation, or advertisement, or the like, companies should listen. I'm not saying that it's always going to be the best idea, but I'll tell you, companies should be listening to their representatives. Again, a company that is going to be successful in the long run is one in which the distributors feel that they are partners in the process.

Interviewer: I like that word 'partners' because it seems like the company has their job and the distributors have their job, and they really need to work together as a team to ensure that they are protecting each other, watching each others' back, and helping each other win and succeed together. You can't have one without the other.

Jeff Babener: That's a key to success.

Interviewer: I appreciate that. Thank you.

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On any given day you can catch [Jeffrey Babener](#) 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, Melaleuca, Discovery Toys, NuSkin, and he has provided counsel to the most successful telecom network marketing companies...Excel, ACN, World Connect, ITI, 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.

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