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authority, Jeffrey Babener

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Herbalife: What Short Sellers Missed on the Way to the Press Conference...

The Personal Use Issue in Pyramid Analysis; Who is an Ultimate User?

An excerpt from the article and link to the full article at www.mlmlegal.com.

Déjà vu, all over again ... Yogi Berra

History repeats itself.



The 2012 billion dollar short seller attack on Herbalife, a 32 year old NYSE listed direct seller of nutritional products in 80 plus countries with annual sales in excess of \$3 billion, is akin to a replay of seminal challenge to the MLM/Direct Selling model, won by Amway in 1979. In the Matter of Amway, 93 F.T.C. 618 (1979).

In the 1970's FTC challenge, the criticism went to whether or not the core of the MLM referral selling model was a "deceptive" way to market. In the 2012 short seller attack, along with other criticisms, a principal complaint is that evidence of "substantial personal use and consumption" of company products by distributors themselves, renders an MLM/Direct

Selling model inherently deceptive and an illegal pyramid scheme.

Memo to short sellers and algorithmic financial bloggers:

It may be time to reassess.

Some very salient facts and cases may well have been missed in the rush to challenge direct sellers.

1. A survey of FTC, SEC and Justice Department leading pyramid cases during the last two decades is instructive. Interestingly, in massive releases of the Herbalife short seller and the prolific financial blogging "call to action" that Herbalife is a pyramid that should and will be prosecuted by the FTC, NO ONE has bothered to actually examine the facts of leading FTC, SEC and Justice Department pyramid prosecutions of the last two decades... if they had done so, they might observe a significant chasm that exists between inherently deceptive and egregiously abusive pyramid schemes and the practices of leading direct selling companies.
2. They also may have missed the FTC's own statements on personal use, as well as the trending legislation **in more than a dozen states**, recognizing the validity of personal use as a legitimate end destination of product.

For the full and detailed article "[HERBALIFE: WHAT SHORT SELLERS MISSED ON THE WAY TO THE PRESS CONFERENCE...The Personal Use Issue in Pyramid Analysis Who is an Ultimate User?](#)"

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This article is also available online at: <http://mlmlegal.com/herbalife%20Personal%20Use.html> and <http://mlmlegal.com/MLMBlog/?p=410#more-410>

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Jeffrey Babener
On Assignment

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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