



DIRECT SELLING ASSOCIATION

Advisory Memorandum

TO: DSA General Counsel Committee & Government Relations Committee

FROM: Jeff Hanscom, Attorney & Manager, Government Relations
Joseph Mariano, President

DATE: January 31, 2014

RE: Congresswoman Sanchez Pyramid Briefing

On Wednesday, January 29th, Congresswoman Linda Sanchez (D-CA, 38) held a briefing for Congressional staff regarding pyramid schemes; the meeting was open only to Congressional staff and invited guests. You will recall that Representative Sanchez called for a Federal Trade Commission (FTC) investigation of Herbalife last year. The purported purpose of Wednesday's briefing was to alert Congressional staff on how to detect pyramid schemes in their Members' districts. We have received reports on the substance of the briefing and wanted to share those reports with you. (An outline of the day's discussions as prepared by a meeting participant is attached.)

As reported to DSA, the comments and discussion appear to have largely been of a repetition of many of the arguments posited by William Ackman of Pershing Square Capital as part of his short selling attack on Herbalife.

Representatives from approximately thirteen Congressional offices attended; a number of those offices were represented only by Congressional interns. In addition to Congresswoman Sanchez and various Congressional staff, participants included:

- Peter Vander Nat, Senior Economist at the Federal Trade Commission, whose paper, co-authored with William Keep (below) on pyramid schemes, has been conspicuously cited by Mr. Ackman, as the basis for his attack on Herbalife.
- William Keep, Dean of the New Jersey School of Business, and frequent Herbalife critic and Pershing Square supporter.
- Sally Greenberg, President of the National Consumers League (NCL) who, in response to a meeting with Mr. Ackman, last year requested the Federal Trade Commission (FTC) review Herbalife's marketing plan.
- Brent Wilkes of the League of United Latin American Citizens (LULAC) which has also requested the FTC to review Herbalife's marketing plan. LULAC purports to be the largest and oldest Hispanic organization in the country with a mission of advancing the economic condition, educational attainment, political influence, health and civil rights of Hispanic Americans.

- A NY Post reporter – the Post has been a frequent correspondent on the attack on Herbalife by Mr. Ackman and is widely assumed to reflect Mr. Ackman’s views on the matter.
- Via Skype, a purported former Herbalife distributor. The former distributor, whose report was limited by technical difficulties, was presented as being a victim of a pyramid scheme.

Brent Wilkes of League of United Latin American Citizens (LULAC) discussed how in his view pyramid schemes target vulnerable communities and disguise themselves as legitimate work-from-home opportunities and multi-level-marketing companies. Mr. Wilkes stated his belief that pyramid schemes target marginalized and vulnerable communities, especially Hispanics. He believes these schemes prey on low-income, undocumented persons, and those of low socio-economic status in the belief that they are unsophisticated; he believes that these predatory practices are a significant part of the continuation of this income inequality in the United States. He concluded by asserting Congress needs to protect the vulnerable communities from these kinds of companies and suggested that:

- Multi-level marketers should not have more than 3 levels down from the top level in order to reduce incentive to deceive people on lower levels.
- Retail sales should be made public. (He suggested that only two direct selling publish retail sales.)
- Product exaggeration should cease and that Independent distributors engage in exaggeration while trying to sell their products without any consequences. (He suggested that Herbalife or its distributors make unsubstantiated health related product claims.)

William Keep discussed “multi-level marketing” companies and how individuals obtain rewards on fees and/or purchases, and suggested that the majority of the investors losing the vast majority of their investment. He noted his belief that pyramid schemes do not have significant retail sales and that only a handful of multilevel marketing companies report their retail sales.

Sally Greenberg of the National Consumers League (NCL) described her request that the FTC review Herbalife.

Peter Vander Nat, Senior Economist at the Federal Trade Commission did not offer any testimony or comment.

Conclusion

No specific Congressional action is anticipated as a part of this briefing. Nonetheless, we remain concerned that last week’s event represents another effort by Mr. Ackman and other industry critics to perpetuate certain misrepresentations, myths and misunderstandings about direct selling as part of their short selling motivated attack on one company. Subject to the approval of the DSA Government Relations Committee, we anticipate continuing follow-up to these matters — including meetings with Congressional office represented at the briefing, discussions with the FTC, broad outreach to the entire Congress, our continuing dialogue with members of the Hispanic Congress of Congress, and distribution of specific research and analysis refuting some of the specific assertions made at the briefing relating to the industry as a whole. We will report as more information becomes available. If you have any question please do not hesitate to contact us here at DSA.