

MEMORANDUM

TO:                 Executive Committee

                        Board of Directors

General Counsel Committee

                        Government Relations Committee

                        Ethics and Self-Regulation Committee

SUBJECT:      August 4 Meeting with FTC Bureau of Consumer Protection

DATE:            August 5, 2021

Yesterday, Joe Mariano, Adolfo Franco, Brian Bennett and John Webb met with senior staff from the Federal Trade Commission Bureau of Consumer Protection: Acting Director Sam Levine, Acting Deputy Director Monica Vaca, Associate Director Lois Greisman, Assistant Director Kati Daffan, and staff attorneys Claire Wack and Melissa Dickey. The conversation was initiated by DSA as part of our ongoing engagement with the FTC to gain clarity for direct selling businesses.

**Legitimacy of Multi-Level Marketing**

DSA had asked if they view multi-level marketing as a legitimate business. Mr. Levine said he does not think of businesses as legitimate or illegitimate. The main concern for the FTC is stopping harmful and illegal practices. He said the Commission does believe that egregious income and earnings claims, specifically related to COVID-19 are not legitimate business practices. He indicated that the FTC has seen some of these issues by direct sellers. While they have seen some of these claims taken down by the company themselves and the Direct Selling Self-Regulatory Council, there still needs to be enforcement by the FTC to ensure these claims are removed.

**Rulemaking Process and Business Opportunity Rule**

We then asked FTC staff if they could elaborate on the process, timeline, and projected substance of the updated Business Opportunity Rule currently under review.

Mr. Levine indicated whatever rulemaking path they take will not ban certain businesses. They are required to follow Magnuson-Moss Rulemaking procedure, which requires soliciting public comment on if there is a need to revisit the rule and how the rule is currently being applied as written. He said they welcome and encourage participation at each state in the process including by consumers, companies and industry trade associations. Although there have been recent efforts at the FTC to streamline the rulemaking process, there are still ample opportunities for extensive stakeholder engagement and input during the process.

Mr. Levine said he did not want to pre-judge the substance of the proposed rule, but believes it will follow the model closely of an updated business opportunity rule which will not apply exclusively to MLM companies. He indicated the main goal will be to focus will be on these claims, going on to say “false and unsubstantiated earnings claims do not have a monopoly over any industry.”

**Income and Earnings Claims**

DSA requested that any further guidance on income or earnings claims be formulated in conjunction with the industry and closely follow the recently released Direct Selling Self Regulatory Council Earnings Claims Guidance released last year. Mr. Levine said he believes any earnings claims made should provide people accurate information and educated choices when engaging in business opportunities. He said there should be consequences for having false and deceptive earnings claims. Ms. Greisman then indicated she has never seen claims in the marketplace claiming that participants can make supplemental income and would appreciate examples.

**Direct Selling Self-Regulatory Council and Company Compliance**

Mr. Levine was extremely aware of industry self-regulation efforts and the Direct Selling Self-Regulatory Council.  He said they want to rely on the entity and companies to assist in overseeing the millions of sellers. DSA also educated him and staff about increased company compliance efforts and monitoring to prevent inappropriate claims. He said that direct selling is a great business model because of the use of independent contractors to sell products for companies but underscored the downside of potential abuse precisely because they aren’t employees.

**Economic Analysis**

Since the economic analysis is a large part of FTC investigations, DSA said there are academics that have done extensive research in this area from the industry perspective, particularly DSEF fellows. Mr. Levine said the Bureau of Consumer Protection and Bureau of Economics would be happy to look at that research to have additional information on these subjects.

**Continued Engagement with the FTC**

Mr. Levine seemed inclined to shift most of the conversation back to income and earnings claims. DSA believes this will continue being a point of emphasis at the FTC in the coming months and will only increase as review of the business opportunity rule continues. Companies should continue robust compliance practices and engagement with the DSSRC to ensure companies and distributors are accurately presenting the income and earning potential of our businesses.

We will continue to report on any other relevant meetings or communications with the FTC. Please let us know if you have any questions.