



OFFICE OF THE
CHAIRWOMAN

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

February 27, 2014

The Honorable Edward J. Markey
United States Senate
Washington, DC 20510

Dear Senator Markey:

Thank you for your January 23, 2014 letter regarding your concerns about Herbalife, Ltd.'s business practices. I appreciate your thoughts about this matter and your commitment to protecting consumers.

As you know, the Commission has been directed by Congress to protect consumers from deceptive or unfair acts or practices, pursuant to the Federal Trade Commission Act (FTC Act), 15 U.S.C. §§ 41-58. In interpreting Section 5 of the FTC Act, 15 U.S.C. § 45, the Commission has determined that a representation, omission, or practice is deceptive if (1) it is likely to mislead consumers acting reasonably under the circumstances; and (2) it is material; that is, likely to affect consumers' conduct or decisions with respect to the product at issue.

The Commission works actively to curb deceptive health claims and, in the last decade alone, it has brought 77 law enforcement actions challenging deceptive weight loss advertising. As you noted in your letter, the Commission just announced its most recent initiative in this area, Operation Failed Resolution, in January 2014.¹ In addition to the law enforcement actions, Operation Failed Resolution included the release of *Gut Check*, an updated business guidance publication on screening ads for false weight loss claims directed at publishers and other media outlets.² It also included "FatFoe," an educational teaser website to help consumers identify and avoid such claims.³

The Commission also takes seriously the harm illegal pyramid schemes have on consumers and has used its authority under Section 5 of the FTC Act in appropriate cases. For

¹ A press release detailing the initiative, which included four law enforcement actions, can be found on the Commission website at <http://www.ftc.gov/news-events/press-releases/2014/01/sensa-three-other-marketers-fad-weight-loss-products-settle-ftc>.

² This publication is available on the Commission website at <http://www.business.ftc.gov/documents/gut-check-reference-guide-media-spotting-false-weight-loss-claims>.

³ Another consumer education publication, *Weighing the Claims in Diet Ads*, along with other weight loss and fitness related materials, is available on the Commission website at <https://www.consumer.ftc.gov/articles/0061-weighing-claims-diet-ads>.

example, since 1996, the FTC has brought 15 cases alleging that purportedly legitimate multi-level marketing companies were in fact pyramid schemes in masquerade. Most recently, last year the FTC filed a case against Fortune Hi-Tech Marketing, Inc. and related entities.⁴ The FTC alleged, among other things, that the defendants operated an illegal pyramid scheme and falsely claimed consumers would earn significant income for selling various products and services. In reality, the FTC charged that nearly all consumers who signed up with the scheme lost more money than they ever made. The FTC further alleged that to the extent consumers could make any income, it was mainly for recruiting other consumers. This case is in litigation.

In addition, the FTC also recently won a victory in a similar case against BurnLounge, Inc. and several of its top promoters.⁵ The FTC sued these defendants for operating a pyramid scheme, making deceptive earnings claims, and failing to disclose that most consumers who participated would not receive substantial income, but instead would lose money. More than 56,000 consumers fell victim to this operation. In March 2012, a court in the Central District of California entered a final judgment and order against BurnLounge, Inc. and several of the other defendants. The final order requires the defendants to pay close to \$17 million for consumer redress. It also prohibits them from engaging in pyramid, Ponzi, or chain letter schemes or any schemes in which compensation for recruitment is unrelated to the sale of products to customers who are not participants. Additionally, the order bars misrepresentations about multi-level marketing operations or business ventures. The case is currently on appeal to the United States Court of Appeals for the Ninth Circuit.

With respect to the allegations against Herbalife, Ltd., a number of statutory provisions and the Commission Rules of Practice prevent me from discussing what action, if any, the Commission may take in any particular situation. I can assure you, however, that the information you provided and the concerns you expressed are being carefully considered. In general, in determining whether to take enforcement or other action, the Commission may consider a number of factors, including the nature of the practices at issue; the type of violation alleged; the likelihood of preventing future unlawful conduct and securing redress or other relief; the nature and amount of consumer injury at issue; and the number of consumers affected.

Complaints from consumers can provide valuable information that we frequently use to identify deceptive and unfair practices in the marketplace. Therefore, please encourage your constituents to file their complaints with the FTC, in English or in Spanish, by visiting the FTC's online Complaint Assistant at <https://www.ftc.gov/complaint> or by calling 1-877-FTC-HELP (1-877-382-4357).

⁴ See *FTC v. Fortune Hi-Tech Marketing, Inc. et al.*, 13-CV-578 (N.D. Ill. Jan. 24, 2013); Press Release, FTC Action Leads Court to Halt Alleged Pyramid Scheme (Jan. 28, 2013), available at <http://www.ftc.gov/news-events/press-releases/2013/01/ftc-action-leads-court-halt-alleged-pyramid-scheme>.

⁵ See *FTC v. BurnLounge, Inc. et al.*, No. 2:07-CV-03654 (C.D. Cal. June 6, 2007); Press Release, FTC Action Leads to Court Order Shutting Down Pyramid Scam (Mar. 14, 2012), available at <http://www.ftc.gov/news-events/press-releases/2012/03/ftc-action-leads-court-order-shutting-down-pyramid-scamthousands>.

The Honorable Edward J. Markey
Page 3 of 3

Thank you again for your letter. If you or your staff has additional questions or comments, please feel free to contact me or have your staff contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,



Edith Ramirez
Chairwoman