



May 13, 2016

The Honorable Edith Ramirez  
Chairwoman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: Potential settlement of FTC investigation of Herbalife Ltd.**

Dear Chairwoman Ramirez:

The National Consumers League<sup>1</sup> shares the Federal Trade Commission's commitment to protecting consumers from fraud. Far too many Americans lose billions of dollars every year to fraudulent business opportunities or other scams offering promises of easy riches, but whose real aims are to drain consumers of their money. We applaud the FTC's century-old role as a champion for America's consumers.

In March 2013, NCL was the first national consumer group to urge the Commission to investigate allegations of pyramid scheme behavior against Herbalife.<sup>2</sup> We were encouraged to learn in March 2014 that the Commission would open an investigation of the company.<sup>3</sup> We appreciate the considerable resources that the Commission has devoted to pursuing this investigation over the past two years.

Last week, news reports based on Herbalife's quarterly results suggested that the Commission and Herbalife might be nearing a settlement of the ongoing

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<sup>1</sup> The National Consumers League, founded in 1899, is the nation's pioneering consumer

<sup>2</sup> National Consumers League. "National Consumers League calls on FTC to investigate allegations against Herbalife," Press Release. March 12, 2013. Online:  
[http://www.nclnet.org/national\\_consumers\\_league\\_calls\\_on\\_ftc\\_to\\_investigate\\_allegations\\_against\\_herbalife](http://www.nclnet.org/national_consumers_league_calls_on_ftc_to_investigate_allegations_against_herbalife)

<sup>3</sup> National Consumers League. "NCL statement on FTC investigation of Herbalife," Press release. March 12, 2014. Online:  
[http://www.nclnet.org/national\\_consumers\\_league\\_statement\\_on\\_ftc\\_investigation\\_of\\_herbalife](http://www.nclnet.org/national_consumers_league_statement_on_ftc_investigation_of_herbalife)

investigation.<sup>4</sup> If this is indeed the case, we want to encourage the Commission to ensure that if wrongdoing is found, any settlement leads to serious penalties and real reform. We believe this is an opportunity for the Commission to put a stop to illegal business practices if those activities are uncovered at Herbalife or elsewhere in the multi-level marketing (MLM) industry.

As the Commission has found time and again in enforcement actions against MLM companies such as Vemma,<sup>5</sup> Fortune Hi-Tech Marketing,<sup>6</sup> BurnLounge,<sup>7</sup> and others, the threat of pyramid scheme behavior in the MLM industry is significant and persistent. Any potential settlement of the FTC's investigation will be critical to ensuring that legitimate MLMs are readily distinguishable from illegal pyramid schemes.

Specifically, any meaningful settlement must include injunctive relief that addresses any persistent structural concerns the FTC has uncovered about Herbalife's business model by, at the very least:

- requiring that at least 51% of total product sales by a distributor's organization be made to customers outside the organization before Herbalife provides bonuses or other compensation to a distributor, as proposed in the FTC's enforcement actions against Vemma;<sup>8</sup>
- eliminating any personal or group inventory-purchasing qualification requirements that reward inventory loading;
- requiring the tracking and public disclosure of all costs associated with starting and maintaining a distributorship or Nutrition Club;
- providing up front and in large font the actual churn rates at all levels of the business and the percentage of distributors that actually make money, less

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<sup>4</sup> See, e.g., Weise, Elizabeth and McCoy, Kevin. "Herbalife shares up on potential FTC deal," *USA TODAY*. May 6, 2016. Online: <http://www.usatoday.com/story/money/2016/05/06/herbalife-shares-up-after-signals-potential-ftc-deal/84015872/>

<sup>5</sup> Federal Trade Commission. "FTC Acts to Halt Vemma as Alleged Pyramid Scheme," Press Release. August 26, 2015. Online: <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-acts-halt-vemmas-alleged-pyramid-scheme>

<sup>6</sup> Federal Trade Commission. "FTC Action Leads Court to Halt Alleged Pyramid Scheme," Press Release. January 28, 2013. Online: <https://www.ftc.gov/news-events/press-releases/2013/01/ftc-action-leads-court-halt-alleged-pyramid-scheme>

<sup>7</sup> Federal Trade Commission. "FTC Action Leads to Court Order Shutting Down Pyramid Scam Thousands of Consumers Burned by BurnLounge," Press Release. March 14, 2012. Online: <https://www.ftc.gov/news-events/press-releases/2012/03/ftc-action-leads-court-order-shutting-down-pyramid-scamthousands>

<sup>8</sup> "Judge Rejects Vemma's Proposed Compensation Plan over Inventory-Loading Concerns," *Direct Selling News*. October 30, 2015. Online: [http://directsellingnews.com/index.php/view/judge\\_rejects\\_venmas\\_proposed\\_compensation\\_plan\\_over\\_inventory\\_loading\\_conc](http://directsellingnews.com/index.php/view/judge_rejects_venmas_proposed_compensation_plan_over_inventory_loading_conc)

expenses, in a given year and for the past five years to enable potential distributors to ascertain the cumulative likelihood of making money over a longer period of investment;

- requiring Herbalife to verifiably document and publicly disclose the percentage of sales of their product to distributors inside its network versus consumers outside its network;
- prohibiting testimonials from distributors claiming they have had great success unless those testimonials can be documented through a tax return or other valid evidence and made available to the distributor being recruited;
- requiring Herbalife to abide by both the spirit and letter of the Commission's Business Opportunity Rule, notwithstanding any exemptions from compliance that MLMs are provided; and
- requiring public, prominent and ongoing disclosure of the names and addresses of all existing distributors and Nutrition Clubs to prospective distributors in specific markets.

In addition, if wrongdoing is found, any potential settlement must include substantial consumer redress that provides meaningful compensation to all of the company's distributors who may have been defrauded; which reflects the egregiousness of the company's conduct; is likely to result in significant and lasting change at a company with a \$5.8 billion market capitalization; and is consistent with past FTC precedent for enforcement actions against companies of Herbalife's size.

We recognize the Commission's long-standing practice of avoiding comment on pending law enforcement investigations. Nonetheless, we urge the Commission to consider our concerns -- which are shared by a diverse coalition of voices in the consumer, civil rights<sup>9</sup> and low-income advocacy communities.<sup>10</sup> If a settlement is indeed likely, the Commission must ensure that it provides real and meaningful relief from any illegal business practices that are uncovered, imposes appropriate consumer redress commensurate with the size of the company, and delivers real relief for consumers.

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<sup>9</sup> League of United Latin American Citizens. "Senator Markey on the Mark for Calling Investigation on Herbalife," Press release. January 24, 2014. Online: <http://lulac.org/news/pr/senator-markey-on-the-mark-for-calling-investigation-on-herbalife/>

<sup>10</sup> New York State Senator Jeffrey D. Klein. "Senator Jeff Klein, Public Advocate Letitia James & Make the Road New York Release Bombshell Investigative Report "The American Scheme: Herbalife's Pyramid 'Shake' down,"" Press release. October 27, 2015. Online: <https://www.nysenate.gov/newsroom/press-releases/jeffrey-d-klein/senator-jeff-klein-public-advocate-letitia-james-make-road>

Sincerely,

A handwritten signature in black ink, reading "Sally Greenberg". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Sally Greenberg  
Executive Director  
National Consumers League

cc: The Honorable Terrell McSweeney, Commissioner  
cc: The Honorable Maureen Ohlhausen, Commissioner  
cc: Lois C. Greisman, Associate Director, Division of Marketing Practices