

## FTC Proposes New Business Opportunity Rule

### FTC to wipe out MLM industry in July

*From the TransformingMLM.com/Weblog posting April 30, 2006, and MarketWave ALERT #60 April 29, 2006.*

Len Clements

2356 words | 9 pages

---

Len Clements is the 'thinking Network Marketers' best friend... or, one of them. And although my *watchdog* pun may be a stretch... for over 15 years now, 'old' Len (don't let his Dick Clark looks fool ya') has been a leading 'authentic, intelligent, sensible' voice for what's right (and what's not) in our industry. Hence, his place as a contributor to It's time... At times Lenny does drop down into the realm of the sensationalistic (unlike the rest of us). Hence his 'wipe out' headline above.

To be fair, Len's just echoing (and playing off of) the 'Chicken Little' fears of a frantic few MLMers and their hipNOTic hysteric mouthpieces for whom 'clear as mud' is par for the course. WTH am I talking about?

Two things below: First, the FTC's proposed New Business Opportunity Rule from MarketWave Alert #60, sent and received yesterday (April 29, 2006). The FTC's own appears first. Len's Commentary after.

— John Fogg

### **FTC Proposes New Business Opportunity Rule**

The Federal Trade Commission is proposing a rule to protect consumers from bogus business opportunities and further enhance law enforcement efforts in this area. The rule would cover business opportunities commonly touted by fraudsters,

while minimizing compliance costs for legitimate businesses. Currently, the FTC brings law enforcement actions against fraudulent business opportunities under two laws, the Franchise Rule and the FTC Act. Neither is specifically designed for the unique scams that occur frequently with business opportunities.

The FTC has brought more than 200 enforcement actions against business opportunities using the Franchise Rule since it took effect in the 1970s, and numerous cases against work-at-home and multilevel marketing companies under Section 5 of the FTC Act. Since 1995, the Commission has conducted 12 sweeps on business opportunities.

The proposed rule would eliminate the \$500 minimum investment requirement from the Franchise Rule, meaning it would apply to all business opportunities, even if they have a smaller start-up cost. The proposed rule also would eliminate many of the 20 disclosures that are required for franchises (trademarks, for example), but do not apply to business opportunities. Instead, the proposed rule would require a one-page disclosure addressing five items: whether or not sellers make earnings claims; a list of any criminal or civil legal actions against the seller or its representatives that involve fraud, misrepresentations, securities, or deceptive or unfair trade practices; whether the seller has cancellation or refund policies and such policies' terms; the total number of purchasers in the past two years and the number of those purchasers seeking a refund or to cancel in that time period; and a list of references.

The proposed rule would not require any business opportunity seller to make an earnings claim. However, if they did make an earnings claim, they would be required to provide additional substantiation in the form of an "Earnings Claims Statement."

The proposed rule also would prohibit unfair or deceptive practices that are common among fraudulent business opportunity sellers, including:

- misrepresentations about the material terms of the business relationship;
- the use of skills;

- misrepresentations of endorsements or testimonials;
- failure to honor territorial protection guarantees; and
- failure to honor refunds.

The proposed rule takes into consideration the comments from the Advance Notice of Proposed Rulemaking issued by the Commission in 1997. The Commission is seeking comment on the proposed rule for 60 days after the Notice of Public Rulemaking is published in the Federal Register, followed by a 20-day period for rebuttals. The comment period will close on June 16, 2006, and the period for rebuttal comments on July 7, 2006. Comments should be addressed to the FTC, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Commission vote to approve a notice of proposed rulemaking was 5-0.

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint in English or Spanish (bilingual counselors are available to take complaints), or to get free information on any of 150 consumer topics, call toll-free, 1-877-FTC-HELP (1-877-382-4357), or use the complaint form at <http://www.ftc.gov/ftc/complaint.htm>. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

---

## **Len Clements 's Commentary:**

There are a few Chicken Littles within the MLM coup who not only claim such rules will destroy the MLM industry, and have been "fast tracked" to do so, but that the motivation for changing the existing Franchise Rule to this rule is sinister and based on greed. Allegedly the FTC is doing this so they can cast a larger net to scoop up more revenue in fines from cash rich MLM companies and successful distributors. It's not, as the FTC has explained, to "protect consumers from bogus business opportunities and further enhance law enforcement efforts in this area." While these alarmist conspiracy theories may be sensationalistic, they are not based on reason, logic, common sense, or the facts related to what's actually happening in the real world. The sky above the MLM industry is going to stay right where it is. Here's why:

## **1. The DSA is already actively lobbying against this proposed rule in an effort to have direct sales and MLM companies excluded.**

I have received information directly from the person leading that effort (a member of the DSA Lawyers Council & Govt. Relations Committee) who is involved in recent and ongoing discussions with the FTC. I was informed that the FTC has not "fast tracked" this new rule and that it will likely be under review for another year or more. Also, it's very rare for such proposed rule changes to not undergo significant alterations over time. Furthermore, the FTC has allegedly expressed a willingness to work with the direct selling industry (including MLMs) to completely avoid or significantly reduce any detrimental impact the rule may have on legitimate companies. The DSA lobbyists seem to have little concern that this rule would wipe out the MLM industry. Considering 85% of the DSA member companies are MLM, and if the MLM industry gets wiped out the DSA would get wiped out, I would expect them to be more concerned.

## **2. The MLM industry adds about five billion dollars annually to the U.S. economy, and it's 2,000+ companies and over 7.5 million distributors...**

... not to mention the dozens of vendors, suppliers, legal and consulting firms, publishers and trade organizations that service the MLM industry exclusively, all contribute hundreds of millions of tax dollars to the federal government, as well as to all local and state treasuries year after year after year. It's unlikely the FTC is going to enact a rule that would wipe out this huge revenue stream. What's more, it's absurd to think that they are going to effectively end this ongoing annual influx of hundreds of millions of dollars just to get a few one time hits of a few hundred thousand dollars in fines and penalties.

## **3. There is, in fact, a lot of wealth within the MLM industry, on a corporate level and within the ranks of its member distributors.**

If it were ever true that their livelihoods, indeed their company's very existence, were in jeopardy can you imagine the millions of dollars, nay billions of dollars, this industry would bring to bear to combat such a rule? Amway alone (aka Alticor, aka Quixtar) would, I would think, spend millions on the best legal minds in the country, not to mention the kind of resources Herbalife, Nu Skin, Mary Kay and Avon would bring to the battle.

And speaking of Amway, guess who is consistently among the top soft money corporate contributors (millions of dollars) to the Republican party the last few elections cycles? Guess who was among the top private individuals who donated millions to the Republican party? (hint: He's an Amway distributor).

**4. Several current and retired members of the Congress, House and Senate, as well as various high-ranking positions within state governments are MLM distributors.**

**5. Such a rule that supposedly could cause so much harm to so many good, innocent people and companies, would likely be bound up in litigation for many years.**

Yes, it's true that this rule, or any contested law, could still be allowed to remain in effect while it's fought over in the courts. But this is up to the judgment and discretion of a federal judge, which tend not to be insane morons ^ which is what I'd think one would have to be to allow such a rule to kill a multibillion dollar industry which employs tens-of-thousands of tax payers and millions of registered voters (which, by the way, is also respected and thriving in numerous foreign countries). In fact, Federal Judges tend to be, for the most part, reasonable, rational folks ^ and surely they would recognize the irony and illogic of allowing legitimate MLM companies to die while they consider the evidence that such a rule would cause legitimate MLM companies to die. It would be as absurd as them allowing a potentially innocent person to be executed while they consider the case against executing them.

**6. The rule would be virtually useless in combating the fraudulent scams the FTC is trying catch.**

After all, if someone is already intending to lie to you and cheat you out of your money, how likely is it they are going to be truthful on the disclosure statement they hand you? This rule would do little to expose crooks and only cause good people to have to do more work.

## **7. Some of the required disclosures either wouldn't apply to MLM, or already apply to MLM.**

We're already forbidden from making earnings claims sans numerous disclosures, and to avoid having to disclose these disclosures you only have to not make earnings claims. So #1 shouldn't be a problem. Same with #3. MLM companies are already disclosing inarguably the fairest, safest, most liberal and generous cancellation and refund policies among all types of business ventures!

**Worst case, even if this rule were to take effect verbatim, it won't kill the MLM industry! In fact, I believe it may even make it stronger!**

Sure, it will be an administrative burden on the company, and it will likely hasten the demise of the weaker, financially unstable companies ^ or those with lousy products and/or unethical management. Consider what would happen if this rule were to eliminate only the bottom third of all MLM companies (leaving the best, strongest 67%). Not only would the overall industry become much more stable, but as the same number of distributors are condensed beneath this smaller pool of opportunities the average downline would grow by 50%! Besides that, it would be tougher to start up an MLM company

so even that group would be fewer and have to be better funded and managed.

Let's also consider exactly what is so ominous about having to disclose the criminal or legal actions specifically involving fraud or deceit against the company management or the guy trying to sponsor me? Or having to give a few references. I can think of a couple of companies I've been involved with where I would have loved to have had that information (would have saved me from a lot of heartache)! As long as you haven't lied or cheated anyone #2 shouldn't concern you, nor should #5. And as a prospect I'd absolutely love for every MLM company to have to tell me "The total number of purchasers in the past two years and the number of those purchasers seeking a refund" or how many distributorships have been cancelled. Imagine having an apples-to-apples way of comparing attrition rates and percentage of product returns between all MLM companies. I can't imagine distributors or prospects would have a challenge with this, and the only companies that could get burned by these disclosures are the one's with the ugliest numbers.

**On the surface the 5-7 day delay between disclosures and enrollment might seem damaging to our recruiting efforts, but it's rare that a prospect signs up upon the very first contact with their sponsor.**

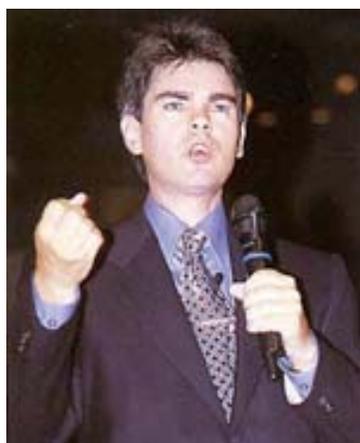
In most cases there's at least a seven-day gap between the initial introduction and the decision to join anyway, so just get them the disclosures very early in the process. Also, having the disclosures published online may very well be acceptable. And, of course, there will likely be a line on the application where the prospect states when they first viewed the disclosures, which they can always say was seven days before their application date.

Imagine what an incredibly powerful incentive these disclosures would create for MLM companies to provide realistic earnings expectations, hire honest, ethical leaders, produce great products and keep their distributors happy!

Not only am I not worried about this new rule destroying MLM, I'm a little disappointed it won't take effect!

— Len Clements

---



**Leonard Clements** has concentrated his full-time efforts over the last 15 years on researching and analyzing all aspects of Network Marketing. He is a professional speaker and trainer, and a court certified expert in the field of network marketing. Len is the author of the controversial book *Inside Network Marketing* and the best selling audios *Case Closed! The Whole Truth About Network Marketing* and *The Coming Network Marketing Boom*.

To learn more about Len and his company MarketWave, receive his free MarketWave Alerts and explore the rest of his resources and products, visit: [MarketWaveInc.com](http://MarketWaveInc.com) or call, toll free: 1-800-688-4766.