



March 12, 2013

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

Re: Petition for FTC Investigation of Recent Allegations Against Herbalife Ltd.

Dear Chairman Ramirez:

On behalf of the National Consumers League¹ (NCL), I am writing to urge the Federal Trade Commission (FTC) to open an investigation into allegations by Pershing Square Capital Management, L.P. (“Pershing Square”) and others that the multi-level marketing company Herbalife Ltd. (“Herbalife”) is in fact a complex pyramid scheme. Specifically, in December 2012, after an eighteen-month investigation, Pershing Square published a report² alleging a range of potential violations of federal and state consumer protection and anti-pyramiding laws, including Section 5 of the FTC Act.³

Since the publication of the Pershing Square report, numerous charges and counter-charges have been publicly leveled against Pershing Square and Herbalife by supporters of both companies. Lost in the media frenzy has been one central concern: Are consumers being harmed?

Given these allegations and their implications for America’s consumers, NCL recently met separately with representatives of Pershing Square, the Direct Selling Association and Herbalife. Having heard the arguments presented on both sides of this issue, we believe that only the Federal Trade Commission has the resources and expertise to investigate these claims and determine whether Herbalife is, in fact, an illegal pyramid scheme rather than a legitimate multi-level marketing business.

¹ The National Consumers League, founded in 1899, is the nation’s pioneering consumer organization. Our non-profit mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. For more information, visit <http://www.nclnet.org>.

² Pershing Square Capital Management, L.P. “Who wants to be a Millionaire?” December 20, 2012. Online: <http://factsabouterherbalife.com/wp-content/uploads/2013/01/Who-wants-to-be-a-Millionaire.pdf>.

³ 15 U.S.C. § 45.

Background on NCL's Anti-Pyramid Scheme Advocacy

The National Consumers League has partnered with the direct-selling industry to educate consumers about the threat from fraudulent pyramid schemes. In 2009, with a grant from the Direct Selling Education Foundation, NCL launched a consumer education campaign to help consumers spot the differences between legitimate multi-level marketing (MLM) plans and fraudulent pyramid schemes.⁴

As part of this campaign, NCL conducted a survey into consumer vulnerability to pyramid schemes. This survey revealed a significant lack of consumer awareness about pyramid schemes. Fully a third (33%) of consumers surveyed were unable to identify a pyramid scheme when it was described to them. Low-income consumers, as well as African-Americans and Hispanics, were found to be especially vulnerable to pyramid schemes masquerading as legitimate home-based business opportunities.⁵

Pershing Square's Allegations and NCL's Pyramid Scheme "Red Flags"

In addition to surveying consumers, NCL also published a consumer guide, checklists and side-by-side comparisons to help consumers spot the warning signs of pyramid schemes posing as legitimate MLMs.⁶ Pershing Square's research suggests that Herbalife's business practices may run afoul of many of the "red flags" of pyramid scheme activity in NCL's guide.

For example, NCL's anti-pyramiding checklist informs consumers that the central difference between a legitimate MLM business and a pyramid scheme is that an MLM succeeds largely by selling products and services, whereas a pyramid scheme makes profits primarily by recruiting new distributors.⁷ Legitimate MLMs sell household goods or services that consumers typically use in everyday life, and price those products competitively with comparable products sold at retail. In addition, NCL has warned consumers that legitimate MLMs offer no promise of easy riches and do not use high-pressure tactics, whereas a pyramid scheme involves the promise of guaranteed profits with minimal work.

⁴ National Consumers League. "More bad economic news: Recession putting consumers at increased risk of being duped by pyramid schemes," Press release. February 26, 2009. Online: <http://nclnet.org/newsroom/press-releases/260-more-bad-economic-news-recession-putting-%20consumers-at-increased-risk-of-being-duped-by-pyramid-schemes>

⁵ National Consumers League. "National Consumers League's 2009 Pyramid Scheme Survey: Key Findings," February 2009. Online: http://nclnet.org/images/PDF/pyramid_survey_022009.pdf

⁶ See e.g. National Consumers League. "Pyramid Schemes: Don't Let One Collapse on You,," February 26, 2009. Online: http://www.nclnet.org/images/PDF/pyramidschemes_brochure.pdf.

⁷ National Consumers League. "MLM's and Pyramid Schemes: What the difference?" February 2009. Online: http://fraud.org/pyramids/pyramid_mlm.htm

For its part, Herbalife has stated that is a global nutrition company with a strong balance sheet and millions of consumers in and out of its distribution network.⁸ Specifically in response to Pershing Square’s allegations, Herbalife has stated that:

- Its products are priced competitively with other supplements;⁹
- 92% of the retail customers of its products are not distributors;¹⁰
- It meets or exceeds the industry standard on buybacks and has minimal buyback restrictions;¹¹ and
- 80% of the top 100 earners in the company in 2011 earned more than their sponsors.¹²

However, Pershing Square’s report alleges that Herbalife’s business practices raise the very “red flags” that NCL’s checklist would deem indicative of an illegal pyramid scheme, including:

- Overstating the amount of income distributors are likely to earn;
- Requiring distributors to recruit new members into the business opportunity in order to realize significant returns on investment;
- Failing to accurately disclose the true profits earned by the distributors at the very top of the business; and
- Making the “buyback” of unsold merchandise extremely difficult.¹³

As these conflicting statements from Pershing Square and Herbalife suggest, it is difficult for the typical consumer, and even for the National Consumers League – which has expertise in this area – to weigh these conflicting claims. We believe this necessitates an investigation of the kind that the FTC is well equipped to conduct. Indeed, the FTC is the federal agency with the greatest experience in investigating fraud and exposing pyramid schemes, as the Commission’s recent enforcement action against Fortune Hi-Tech Marketing illustrates.¹⁴

We therefore ask that the FTC launch an investigation to determine whether Herbalife is a legitimate MLM, as the company claims, or a pyramid scheme, as its detractors claim. We would welcome the opportunity to speak with officials at the

⁸ Herbalife. “Herbalife Investor Day Presentation.” Pgs. 3, 5. January 10, 2013. Online: http://files.shareholder.com/downloads/ABEA-48ZAJ9/2277344498x0x627448/e3de3984-4dff-4ca3-90a1-a1c1cafecb4e/Herbalife_Investor_Day_Presentation_-_01.10.13.pdf

⁹ *Ibid.* Pg. 26

¹⁰ *Ibid.* Pg. 42.

¹¹ *Ibid.* Pg. 100.

¹² *Ibid.* Pg. 62.

¹³ Pershing Square Capital Management, L.P. “Executive Summary of Pershing Square Capital Management, L.P.’s Presentation of ‘Who Wants to be a Millionaire?’” Pgs. 1-2. December 20, 2012. Online: <http://factsabouth Herbalife.com/wp-content/uploads/2012/12/Final-Exec-Summary-1.pdf>

¹⁴ Federal Trade Commission. “FTC Action Leads Court to Halt Alleged Pyramid Scheme,” Press Release. January 28, 2013. Online: <http://www.ftc.gov/opa/2013/01/fhtm.shtml>

Commission about this matter and our interest in getting at the truth on behalf of U.S. consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "Sally Greenberg". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Sally Greenberg
Executive Director
National Consumers League
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Washington, DC 20006
Tel: (202) 835-3323 x830

cc: The Honorable Julie Brill
The Honorable Maureen K. Ohlhausen
The Honorable Joshua D. Wright