

UNFAIR AND DECEPTIVE TRADE PRACTICES LAWS

Every state has a law or several laws dealing with the topics of unfair and deceptive trade practices. In addition to the states, the Federal government has also enacted statutes that prevent unfair and deceptive trade practices. Recently, it appears to be the statute of choice for the Federal Trade Commission, as evidenced by the numerous newspaper articles about FTC investigations and lawsuits, including everything from exercise equipment, to office supplies, cigarettes, airline manufacturers, and travel agencies. And all of this has been within the last 90 days. So what are unfair and deceptive trade practices, and how do you avoid them?

A typical statute regarding unfair and deceptive trade practices is very broad, and can be invoked in numerous ways. Most of these statutes relate to unfair competition, price fixing, monopolies, and fraud. The most typical issue with regard to an MLM is concerning misrepresentations of earnings or potential earnings, or misrepresentations of what a product can do for the purchaser. The position of the FTC, which is reinforced by the states, is that random disclaimers of potential to make no income or very little income as a result of the venture is not sufficient to justify claims of large earnings. Additionally, disclaimers of products performance variances, in the opinion of the FTC and the states are not sufficient to justify claims of miracle product potential.

Since the basic tenet of an MLM is independent sales people, and not total company control of its sales organization, this is one issue that seems to arise often. Salesman will be salesman, it has been this way since the beginning of man, people will do what it takes to make the sale, especially when that means money in their pocket. So what can the company do to protect itself?

First, to provide adequate protection both from the purchaser and from government scrutiny, I would suggest setting up some type of verification process. What I mean by that is a program, in writing, where the company contacts purchasers and asks them very simple direct questions about what they were told when they purchased the opportunity or the product. If the answers that come back are not acceptable to the company, contact the person and explain to them that they may have been given improper or inadequate information and correct the information.

This action actually serves several purposes. It serves the purpose of avoiding individual lawsuits by purchasers that claim they were misrepresented to, by obtaining a signed document from the purchaser that states that there were no misrepresentations made to them. Obviously this is extremely helpful in avoiding regulatory scrutiny, in that the company has evidence that it did not misrepresent to purchasers and that anybody that felt misrepresented or may have later felt misrepresented was given correct information and given a chance to raise any concerns they may have had. It also can prove extremely helpful in marketing and increasing sales. It shows purchasers and distributors that the company truly cares about them and the products that it sells. All too often in MLM's the perception of potential purchasers is that the company will get my money, ignore me, eventually take all the money and run. This type of hands on, caring to do things right mentality, if approached properly can work wonders in ensuring that people will be

pleased with their purchase, tell others of the company's loyalty and concern and increase sales both directly and indirectly. After all isn't the aim of any company to increase profits and avoid lawsuits, why would you chose not to put some safeguard such as this into your policy.

Second, if the company discovers that a distributor is making incorrect claims regarding the company's products or services, take immediate action. The action does not necessarily mean discontinuance of their distributorship, merely a counseling on how to properly represent the company's products and services. If the misrepresentations continue, remember this motto; the good of the many outweigh the good of the few. In order to protect the company, action must be taken to stop the individual distributors from making misrepresentations.

Third, from the company standpoint, it is important to let the distributors know what they can and can not say about the products and services. Standardized overheads for presentations is one suggestion, or outlines for presentations is another. Stay away from scripts! If a distributor is forced to use a prepared script for presentations of the company's products or services, you may find that you have worked yourself into a trap, which I will call the "employee trap", which will be discussed in the next section on Independent Contractors.

The safest way to avoid claims of misrepresentations of earnings or earnings potential, albeit not the most lucrative in terms of generating sales volume, is simply to not make any claims. If people think they can make money, they do not need to be told how much, if they don't see potential from the presentation of the product or service they probably won't join anyway. If you feel that you must make claims of earnings potential through testimonials, be aware that taking "heavy hitters" or top earners as a representation of what all people may earn is considered a violation of deceptive trade practices statutes. The reason for this is simple, those distributors who are top earners are not a fair representation of what others can be expected to earn. In a typical MLM, there are exponentially more people at the bottom of the earnings scale than at the top. This fact must be disclosed to potential members with some detail. I recently watched a television infomercial in which claims were being made by top performers in this guys program about how much money they made and how incredibly fast they were able to do it. It changed all their lives, now they are driving the nicest cars, owning yachts, and living in mansions; some as rapidly as 3 weeks. Does it sound incredible to you, well that's because it is, incredibly untrue, and an incredible misrepresentation. At the end of the show there was a disclaimer in small print, that said that the claims made in the program are not to be construed as typical, most people will never achieve these levels of earnings and in fact many of the people who gave testimonials were paid actors and not even participants in the program being offered.

Even considering that all of the people who gave testimonials on that show were actual members of the program and had made the earnings claimed, in my opinion that small disclaimer at the end of the show would not have been adequate to avoid either state or federal lawsuits. The rule is quite easy to follow: If you make earnings or

performance claims they must be representative of the majority of participants in your program. Follow this rule and you should be able to stay out of trouble.

Likewise the safest way to avoid claims of misrepresentations of product potential is to not make any, merely demonstrate the product and let it stand on its own merits. Sure claims of miracle potential will generate more sales, but it may also result in civil penalties, refunds and legal fees. Ask yourself it is really worth the risk. The same rules apply as above, and I have seen these types of misrepresentations on infomercials too. You know the ones; I lost 30 pounds in 3 days using this miracle product, or I got in the best shape of my life using this easy exercise product for 7 days.

This brings up an interesting question, how do these infomercials get away with it, since the same ones are on week after week. I can only answer this question by saying that I do not know. I can only speculate that enough people see through them that very few ever buy, or rather that those that do either expect it not to work or are so embarrassed that they bought into the hype that they do not complain. Or still yet, the regulatory agencies just do not have the manpower to go after everyone they feel is making misrepresentations and eventually if the companies stick around, they will be investigated.

The safest way for you to avoid claims of misrepresentations of earnings potential or product performance is to tell the truth. You could probably get away with misrepresentations for quite some time before getting caught, but it just does not make sense to knowingly break the law with the idea that "I won't get caught". Be smart, be honest, build a lasting venture with a loyal distributor base, you will be surprised with the incredible benefits you will derive from this type of quality operation.