

# STETSON BUSINESS LAW REVIEW

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## THE GLOBAL REGULATION OF MULTI-LEVEL MARKETING

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## I. INTRODUCTION

In a small town in the United States, a struggling single mother is convinced to join a multi-level marketing company selling beauty products. She invests her savings into starter kits, hoping that the promised financial freedom is within reach. As she recruits friends and family, the pressure to maintain sales mounts. But despite her efforts, the profits remain elusive, and she finds herself caught in a cycle of purchasing more products to stay in the game. The products begin to pile up in her garage, and she wonders how much longer she can continue to buy them each month without any real sales on the horizon. At her annual meetings, she listens to stories of others supposedly turning high profits and wonders why she is struggling to get rid of her current stock. Those flashy advertisements promising financial freedom and an escape from the rat race were convincing, but she's beginning to realize maybe it was all too good to be true. This story is not unique or even uncommon, and it is not confined to the United States. This is the story of someone promised financial freedom, only to be left with little more than a garage full of unsold products. It is symbolic of the deceptive allure of multi-level marketing, a global phenomenon that preys on ambition and crosses borders.

In an era where multi-level marketing schemes traverse borders and blur legal boundaries, the time has come to reevaluate the United States' approach to regulation and champion a new global framework promoting accountability and transparency. A multi-level marketing company is a business model that involves recruiting individuals to become independent distributors or representatives of a company's products or services and incentivizes them to both sell the products and recruit others to do the same.<sup>1</sup> Distributors are typically compensated based on their sales as well as the sales of those they have recruited, creating a "downline" or "network" of individuals at different levels within

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1. Evan Tarver, *What Is an MLM? How Multilevel Marketing Works*, INVESTOPEDIA (Oct. 9, 2023), <https://www.investopedia.com/terms/m/multi-level-marketing.asp>.

the organization.<sup>2</sup> Multi-level marketing is also known by several other names such as network marketing, direct selling, and pyramid selling.<sup>3</sup> These terms may be used interchangeably, although there are some nuances in how they are practiced and perceived.<sup>4</sup>

One characteristic of multi-level marketing is the focus on building a network of distributors extending beyond direct recruits.<sup>5</sup> Distributors are encouraged to help their recruits enlist others, creating a cascading effect which expands the network exponentially.<sup>6</sup> This structure often includes multiple levels or tiers, where distributors earn commissions or bonuses not only from their immediate recruits but also from those further down their network.<sup>7</sup> The potential for passive income through downline efforts is one of the key attractions of multi-level marketing, as it offers the possibility of building a profitable business with residual earnings over time.<sup>8</sup>

This business model is often confused with the term “pyramid scheme.” A pyramid scheme is a fraudulent and illegal business model that does not involve selling a product or service but instead relies solely upon recruiting members for compensation.<sup>9</sup> The lines between an MLM (multi-level marketing) structure and a pyramid scheme are very thin, meaning an MLM structure can cross the boundaries into an illegal business very easily.<sup>10</sup> Both are structured in a pyramid format because both industries stress the need for recruiting others into their downline.<sup>11</sup> It is for this very reason some countries around the world have treated MLM structures the same way they treat pyramid schemes.<sup>12</sup> While

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2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. See Peter Gratton, *25 Best Passive Income Ideas To Make Money in 2024*, INVESTOPEDIA (Aug. 9, 2024), <https://www.investopedia.com/terms/p/passiveincome.asp> (discussing various opportunities with passive income potential); See Tarver, *supra* note 1 (overviewing how multi-level marketing models operate).

9. E. Napoletano, *Understanding Pyramid Schemes*, FORBES ADVISOR (last updated May 23, 2023, 1:18 PM), <https://www.forbes.com/advisor/investing/pyramid-scheme/>.

10. See *id.*

11. *Id.*

12. Stephen O'Regan, *Multi-Level Marketing: China Isn't Buying It*, CHINA BRIEFING (Sept. 12, 2017), <https://www.china-briefing.com/news/multi-level-marketing-china-isnt-buying>.

some countries have found a way to differentiate the two, others have found the MLM structure itself is too predatory toward the consumer to operate legally.<sup>13</sup> At first glance, it might appear that a business model should not influence an entire country's regulatory framework. However, the MLM business model operates across various markets worldwide, influencing industries in numerous countries.

Regulating multi-level marketing companies can be a daunting task for government agencies and consumer protection organizations. One of the reasons for this is multi-level marketing companies often operate within a legal gray area, with certain aspects of their business model resembling legitimate direct selling, while other aspects resemble illegal pyramid schemes.<sup>14</sup> This can make it challenging for regulators to differentiate between a lawful multi-level marketing company and a fraudulent one, particularly when such companies employ complex compensation plans, ambiguous product descriptions, and misleading income claims to attract and retain distributors.<sup>15</sup>

Another obstacle in regulating multi-level marketing companies is their ability to leverage lobbying and political influence to shape laws and regulations in their favor.<sup>16</sup> Many multi-level marketing companies have powerful industry associations working to safeguard their interests and undermining any efforts to increase transparency or accountability.<sup>17</sup> A clear example of lobbying efforts can be found in the Direct Sales Association, a trade association within the United States that represents multi-level marketing companies.<sup>18</sup> This group played a large part in exempting multi-level marketing companies from consumer protection regulations in the 2006 Federal Trade

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13. *Id.*

14. Denise Sutherland, *Multi-Level Menace*, SKEPTICAL INQUIRER, (Sept.–Oct. 2018), at 44, <http://sutherland-studios.com.au/pdfs/SkepticalInquirer-SUTHERLAND.pdf>.

15. *Id.* at 44-47.

16. Casey Bond, *Hardly Anyone Makes Money Selling Multi-Level Marketing Merchandise. So Why Is It Still Legal?*, MONEY (May 18, 2021), <https://money.com/mlm-vs-pyramid-scheme/>.

17. Bibi Imre-Millei, *Atop The Pyramid Of The American Dream: The Politics Multi-Level Marketing*, OBSERVER (Nov. 30, 2020), <https://theobserver-qiaa.org/atop-the-pyramid-of-the-american-dream-the-politics-multi-level-marketing>.

18. *Who We Are*, DIRECT SELLING ASS'N, <https://www.dsa.org/about/association> (last visited Oct. 10, 2024).

Commission (FTC) Business Opportunity Rule.<sup>19</sup> To go even further, this group features what is known as the “Direct Selling Caucus.”<sup>20</sup> This is a caucus comprised of forty U.S. Representatives, all of whom show their support for the multi-level marketing business model directly through the Direct Sales Association.<sup>21</sup> Conversely, companies such as Avon and Tupperware, very well-known multi-level marketing companies, decided to leave this association because they felt being a member made them look more like a pyramid scheme.<sup>22</sup> It is quite perplexing to think about why a company such as Avon, which frequently faces allegations of operating as a scam or pyramid scheme, chose to depart from the Direct Sales Association. Meanwhile, we observe the Direct Sales Association enjoying support from U.S. Congressional Representatives.<sup>23</sup>

There is undoubtedly a worry that these companies have firmly ingrained themselves into our perception of standard business practices, growing to a point where managing them adequately becomes a challenge. However, as this Comment continues, it will dive into a thorough exploration of the multi-level marketing regulations around the world. This will help to shed light on how different countries have tackled the complex issues tied to multi-level marketing. Digging into the details of these various regulations will help to gain a richer understanding of the intricate nature of this business practice. Upon this Comment’s conclusion, a well-considered solution will be proposed to address these very concerns.

This Comment begins by delving into the background of multi-level marketing, tracing its historical development, and explaining the intricacies of the business model that has fueled its growth. It then shifts focus to the legal framework of MLMs in the United States, where the roles of federal agencies, such as the FTC and

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19. *DSA Analysis of the FTC Revised Proposed Business Opportunity Rule and What It Means for Direct Sellers*, DIRECT SELLING ASS’N (Mar. 26, 2008), <https://www.dsa.org/dsa-resources/advocacy-resources/government-legal-library/advisory-memoranda/dsa-analysis-of-the-ftc-revised-proposed-business-opportunity-rule-and-what-it-means-for-direct-sellers>.

20. *Direct Selling Caucus*, DIRECT SELLING ASS’N (Apr. 19, 2024), <https://www.dsa.org/advocacy/caucus>.

21. *Id.*

22. Max Ehrenfreund, *Avon Splits with Trade Group, Citing Risk of Pyramid Schemes*, THE WASH. POST (Sept. 16, 2014, 12:28 PM), <https://www.washingtonpost.com/news/wonk/wp/2014/09/16/avon-splits-with-trade-group-citing-risk-of-pyramid-schemes/>.

23. *Direct Selling Caucus*, *supra* note 20.

SEC, are explored alongside key state regulations and landmark cases that have shaped the current regulatory landscape. The discussion then broadens to a comparative analysis of MLM regulations internationally, offering an overview of the laws governing MLM companies in selected countries, including the European Union, China, Bangladesh, India, Australia, Canada, and the United Arab Emirates (UAE), before contrasting these frameworks with those of the United States. Lastly, this Comment considers potential reforms and the future of MLM regulations, offering insights into how the legal landscape may evolve and proposing reforms aimed at addressing the ongoing challenges posed by MLMs.

## II. BACKGROUND OF MLM

Multi-level marketing first emerged in the 1940s with the introduction of Nutrilite, followed by the creation of Amway in 1959, which solidified the model's structure.<sup>24</sup> The 1970s and 1980s marked a period of rapid growth of MLMs, but this era also saw increased scrutiny from regulators as concerns about the legitimacy of these business practices grew in parallel.<sup>25</sup> This section also explains the MLM business model, detailing how recruitment and sales incentives are structured and discussing the fine line between legitimate MLMs and illegal pyramid schemes.

### A. Historical Development Of MLM

The MLM structure has its roots in the direct selling model, which has been a part of commerce for centuries.<sup>26</sup> However, the modern form of MLM, characterized by the incorporation of recruitment and the establishment of multi-tiered sales networks, emerged in the United States in the mid-20th century.<sup>27</sup> The evolution of MLM practices brought with it both unprecedented

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24. Kevin Martin, *What Is an MLM (Multi-Level-Marketing Company)?*, WEALTH PURSUITS (Nov. 16, 2021), <https://wealthpursuits.com/what-is-an-mlm/>; Jeffrey A. Babener, *MLM: A Brief History of Network Marketing*, MLM LEGAL, <https://mlmlegal.com/MLM%20articles/mlm-9-cycles-5.htm> (last visited Oct. 10, 2024).

25. *The History and Evolution of Network Marketing*, PRB ACCOUNTANTS (Jan. 9, 2019), <https://www.prbmp.com/news/blog/the-history-and-evolution-of-network-marketing/>.

26. *Id.*

27. Kevin Martin, *What Is an MLM (Multi-Level-Marketing Company)?*, WEALTH PURSUITS (Nov. 16, 2021), <https://wealthpursuits.com/what-is-an-mlm/>.

financial success for a select few and significant controversies.<sup>28</sup> It has led to debates about the legitimacy of MLM, allegations of pyramid schemes, and concerns regarding their impact on a participant's well-being.<sup>29</sup> Even though the business model has not existed for a significant period of time, some may argue that irreversible damage is already done.

One of the first companies to adopt this model was Nutrilite, a dietary supplement company that introduced the MLM structure in the 1940s.<sup>30</sup> It was closely followed by Amway, founded in 1959 by former Nutrilite distributors, which became one of the most prominent MLM companies worldwide.<sup>31</sup> Amway's success paved the way for numerous other companies to adopt the MLM model, such as Mary Kay and Herbalife, spanning industries from health and beauty to home goods.<sup>32</sup>

The 1970s and 1980s marked a period of rapid growth for MLM companies, but this era was also known for its controversies regarding the business model. During this time, regulatory authorities scrutinized the MLM industry more closely, culminating in a landmark case, *Amway Corp.*, in 1979.<sup>33</sup> This case resulted in specific guidelines for legitimate MLM operations in the United States, distinguishing them from pyramid schemes.<sup>34</sup>

Despite the regulatory challenges and controversies, the MLM model has continued to thrive, not only in the United States but globally. With the advent of the Internet and social media, MLM companies have found new platforms for recruitment and sales, leading to a resurgence in the 21st century.<sup>35</sup> Today, MLM companies remain a significant part of the global economy, even as they continue to elicit divergent views on their business practices and impact individuals and communities. A discussion of how the

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28. *Id.*

29. *Id.*

30. *Id.*

31. Jeffrey A. Babener, *MLM: A Brief History of Network Marketing*, MLM LEGAL, <https://mlmlegal.com/MLM%20articles/mlm-9-cycles-5.htm> (last visited Oct. 10, 2024).

32. *Id.*

33. *Amway Corp.*, 93 F.T.C. 618 (1979). See discussion *infra* Section II.C.1.

34. *Id.* at 618-19. Many of internal rules Amway developed were used as evidence that the plan was not a pyramid scheme, since then these rules have been viewed guidelines in developing a legitimate MLM model.

35. Kaitlyn Tiffany, *The Internet Is Starting to Turn on MLMs*, ATLANTIC (Dec. 17, 2020), <https://www.theatlantic.com/technology/archive/2020/12/tiktok-bans-multilevel-marketing-mlm/617422/>.

MLM business model works is necessary to better understand how these companies have shaped worldwide legal frameworks.

### B. Explanation Of The MLM Business Model

The MLM business model is characterized by a multi-tiered system where salespeople earn income through direct sales of products or services and from the sales of individuals they recruit into their sales network.<sup>36</sup> At its core, MLM involves two primary activities: (1) selling a company's product or services and (2) recruiting new members or distributors into the company's distribution chain.<sup>37</sup>

An individual in an MLM company is both a distributor of products and a recruiter of other distributors.<sup>38</sup> When they sell products, they earn a portion of the revenue as commission.<sup>39</sup> Furthermore, they earn a percentage of the sales made by the distributors they recruit.<sup>40</sup> Becoming known as their "downline,"<sup>41</sup> a distributor's income in an MLM company is influenced directly by both his or hers personal sales and the sales generated by his or her downline.<sup>42</sup> As a result, the focus on both sales and recruitment often blurs the line between selling the product and promoting the business; a characteristic of the MLM model.<sup>43</sup> The multi-tiered nature of MLM leads to complex pay structures and scrutiny from regulatory bodies due to concerns about potential similarities with illegal pyramid schemes.<sup>44</sup> The main concern with the MLM industry is the highly predatory nature of these pay structures on those recruited to participate. They are typically seen as get-rich-quick schemes, which are targeted at those who are financially vulnerable.<sup>45</sup> Typically, a sales pitch from one of these companies revolves around the concept that if you manage to recruit five individuals, and each of those five individuals also recruits five more people, and this pattern continues, it will result

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36. Tarver, *supra* note 1.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. Tiffany, *supra* note 35.



in building an extensive network of salespeople beneath them.<sup>46</sup> However, this shows its true colors when basic math is employed. This recruitment plan can only go on for fifteen iterations, at which point the planet's entire population will be exceeded.

### C. Notable MLM Companies And Their Impact On The Market

One of the most recognized names in the MLM industry is Amway. Established in 1959, Amway's business model relies on independent business owners (IBOs) to sell a wide range of products, primarily in the health, beauty, and home-care markets.<sup>47</sup> Amway pioneered the MLM industry and has significantly shaped its evolution. The company's size and influence have brought increased scrutiny and led to a landmark case with the FTC in 1979.<sup>48</sup> The case set crucial legal precedents, defining the line between legitimate MLM operations and illegal pyramid schemes in the United States.<sup>49</sup> Today, Amway operates in over 100 countries and territories, and its operations have influenced MLM regulations globally.<sup>50</sup>

Herbalife, another very influential MLM company, primarily operates in the nutrition and weight loss industry.<sup>51</sup> The company was founded in 1980 and has faced its fair share of controversy, particularly around its MLM structure.<sup>52</sup> In 2016, the FTC ordered Herbalife to restructure its U.S. operations and pay a \$200 million settlement to compensate consumers to resolve claims that the company deceived consumers into believing they could earn substantial money selling their products.<sup>53</sup> Again in 2021, the company was indicted by prosecutors in the Southern District of New York for falsifying records and providing corrupt payments

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46. Tarver, *supra* note 1.

47. *Id.*

48. Bond, *supra* note 16.

49. *Id.*; Amway Corp., 93 F.T.C. 618 (1979).

50. *Our Story*, AMWAY GLOBAL, <https://www.amwayglobal.com/our-story/> (last visited Oct. 10, 2024).

51. Eric V. Copage, *Mark R. Hughes, 44; Founded Nutrition Supplement Concern*, N.Y. TIMES (May 23, 2000), <https://www.nytimes.com/2000/05/23/business/mark-r-hughes-44-founded-nutrition-supplement-concern.html>.

52. *Id.*

53. *Herbalife Refunds*, FED. TRADE COMM'N (Mar. 2023), <https://www.ftc.gov/enforcement/refunds/herbalife-refunds>.

and benefits to Chinese government officials.<sup>54</sup> These cases brought to light the potential abuses in the MLM industry and pushed for further regulation and transparency.

Finally, LuLaRoe, a fashion MLM company known for its patterned leggings, has also been a significant player in recent years. Founded in 2012, the company quickly grew in popularity due to its unique designs and the entrepreneurial opportunities it offered its consultants.<sup>55</sup> However, the company faced a series of lawsuits alleging its business model is a pyramid scheme, leading to a large discussion about the potential pitfalls of the MLM structure.<sup>56</sup> Despite these controversies, these companies and others have significantly impacted the global market, providing opportunities for entrepreneurship and shaping consumer habits.<sup>57</sup> Their influence extends beyond their respective industries and has played a crucial role in the ongoing discourse around MLM regulations.<sup>58</sup>

### III. THE LEGAL FRAMEWORK OF MLM IN THE UNITED STATES

This section explores the legal framework governing multi-level marketing in the United States. It begins with an overview of the federal regulations, highlighting the roles of the FTC and SEC. The discussion then moves to state regulations, focusing on key statutes and enforcement mechanisms. Finally, it reviews landmark cases, such as Amway Corp. and Herbalife, which have helped shape the legal landscape for MLMs.

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54. Michael Hiltzik, *Column: Why Does the Government Let a Company like Herbalife Stay in Business?*, L.A. TIMES (Aug. 28, 2020, 1:28 PM), <https://finance.yahoo.com/news/column-why-does-government-let-202850566.html>.

55. Megan Johnson, *Today's Tupperware Party Is Held on Facebook*, BOSTON GLOBE (July 7, 2016, 10:00 PM), <https://www.bostonglobe.com/lifestyle/2016/07/07/today-tupperware-party-held-facebook/vcryqSeb0GKls6LGcFieGL/story.html>.

56. Christina Spicer, *LuLaRoe to Pay \$4.75M to Resolve Pyramid Scheme Claims in Washington*, TOP CLASS ACTIONS (Feb. 2, 2021), <https://topclassactions.com/lawsuit-settlements/consumer-products/apparel/state-ag-inks-4-75m-settlement-over-lularoe-pyramid-scheme-claims/>.

57. E. Napoletano, *Understanding Multi-Level Marketing*, FORBES ADVISOR (Apr. 26, 2023, 12:54 PM), <https://www.forbes.com/advisor/investing/multi-level-marketing-mlm/>.

58. *Id.*

## A. Overview Of U.S. Federal Regulations Pertaining To MLM

i. *FTC Guidelines*

The FTC regulates MLM companies and pyramid schemes primarily through the Federal Trade Commission Act, with Section 5 of the Act prohibiting “unfair or deceptive acts or practices in or affecting commerce.”<sup>59</sup> This provision, known as the Unfair or Deceptive Acts or Practices (UDAP) rule, is a central tool the FTC utilizes to regulate MLM companies.<sup>60</sup> This is essentially a catchall that can apply to any business opportunity that may seem deceptive on its face or in practice. Although the FTC has not established a specific rule targeting MLM companies, the UDAP stands as a potent instrument in the agency’s toolkit.

For the FTC to deem something as deceptive or unfair, three elements must be met. To be considered deceptive, (1) the representation or practice has to either mislead or would be likely to mislead the consumer,<sup>61</sup> (2) the consumer’s interpretation of the representation must be reasonable under the circumstances,<sup>62</sup> and (3) the misleading representation is material.<sup>63</sup> Taking notice of the first prong, the business practice does not have to actually mislead anyone, it is simply enough if the FTC determines it would be likely to mislead the consumer.<sup>64</sup> The FTC then has to step inside the consumer’s shoes and determine whether a reasonable consumer acting under the circumstances would be misled.<sup>65</sup> As for materiality, if the consumer goes through with the purchase, or in the case of MLM, if they choose to participate as a distributor, materiality is presumed.<sup>66</sup> As for unfairness, the FTC must

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59. 15 U.S.C. § 45(a)(1) (2023).

60. *Id.*

61. Letter from James C. Miller III, Chairman, Fed. Trade. Comm’n, to John D. Dingell, Chairman, Comm. on Energy & Com., *FTC Policy Statement on Deception*, FTC (Oct. 14, 1983), [https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf).

62. *Id.*

63. *Id.*

64. *Id.*

65. The typical example highlighting this phenomenon is a cancer patient watching a highly deceptive advertisement on cancer medication. Someone who currently does not have stage IV cancer will most likely view a television commercial about a cure for cancer with skepticism. However, a cancer patient would be acting reasonably under the circumstances if they believed a television commercial for the cure to cancer could be accurate.

66. Miller, *supra* note 61.

determine that the practice (1) causes or is likely to cause substantial injury to consumers, (2) the injury is not reasonably avoidable by consumers, and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.<sup>67</sup> When the FTC sues MLM companies, it is almost always going to happen after numerous consumers are harmed financially.

The FTC also uses other rules and guidelines to oversee MLM companies. The FTC's Business Opportunity Rule requires companies to disclose specific information to potential participants to help them evaluate a business opportunity.<sup>68</sup> This rule often applies to MLM companies, especially those requiring significant upfront fees from participants.<sup>69</sup> MLM companies are not explicitly exempt from coverage under the rule, but the definition of business opportunity was tailored to exclude certain types of business assistance common to MLM models.<sup>70</sup> This means the determination of whether an MLM company would be a business opportunity where the rule would apply needs to be decided on a case-by-case basis.

*ii. Securities And Exchange Commission (SEC) Regulations*

The SEC primarily focuses on regulating securities and investment-related activities.<sup>71</sup> While MLM companies may have elements of investment or securities, the SEC's authority is fairly limited regarding them.<sup>72</sup> However, if an MLM company offers an investment opportunity or operates in a way that violates securities law, the SEC can step in to enforce those laws.<sup>73</sup> The SEC will regulate MLM companies if they are involved in the sale of securities, such as investment contracts or stock in the company.<sup>74</sup> When it comes to these cases, the MLM company must

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67. Letter from Michael Pertschuk, Chairman, et al. to Wendell H. Ford, Chairman, & John C. Danforth, Ranking Minority Member, Comm. on Com., Sci., & Transp. Dugan, *FTC Policy Statement on Unfairness*, FTC (Dec. 17, 1980), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>.

68. FTC Business Opportunity Rule, 16 C.F.R. Part § 437 (2024).

69. *Id.*

70. *Id.*

71. *About*, U.S. SEC. AND EXCH. COMM'N (last updated June 29, 2024), <https://www.sec.gov/about>.

72. *Id.*

73. *Private Companies and the SEC*, U.S. SEC. AND EXCH. COMM'N (last updated Aug. 30, 2024), <https://www.sec.gov/resources-small-businesses/capital-raising-building-blocks/private-companies-sec>.

74. *Id.*

comply with securities regulations and disclosure requirements.<sup>75</sup> This means they must provide accurate and complete information to investors, including information about the company's financial condition, business operations, compensation plans, and risks involved.<sup>76</sup> If an MLM company fails to meet these requirements, the SEC can take enforcement actions against them.<sup>77</sup>

The SEC must first show the MLM company offering is captured by the securities regulations.<sup>78</sup> In order to do this, the courts can use either the Howey Test or the Reves Test. The Howey Test is reserved for equity-type offerings,<sup>79</sup> while the Reves Test is used for fixed-income type investment schemes.<sup>80</sup> The Howey test is a four-part list, and if the offering meets all four criteria, it will be considered an investment contract.<sup>81</sup> The four parts are (1) an investment of money (2) in a common enterprise (3) with the expectation of profit (4) which is derived from the efforts of others.<sup>82</sup> The Reves test starts with the "family resemblance" test, where we presume that a note is a security unless it bears resemblance to a list, which judicially has been determined to fall outside the definition of a security.<sup>83</sup> In order to determine whether a note bears a resemblance to one of those exceptions, the courts typically consider: (1) the motivation of the seller and buyer, (2) the plan of distribution of the instrument, (3) the reasonable expectations of the investing public, and (4) the presence of an alternative regulatory regime.<sup>84</sup>

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75. *Id.*

76. EVA SU, CONG. RSCH. SERV., IF11256, SEC SECURITIES DISCLOSURE: BACKGROUND AND POLICY ISSUES (2024).

77. *Enforcement and Litigation*, U.S. SEC. AND EXCH. COMM'N, (last updated June 29, 2024), <https://www.sec.gov/enforcement-litigation>.

78. Laura Anthony, *What Is a Security? The Howey Test and Reves Test*, SECURITIES LAW BLOG (Nov. 25, 2014), <https://securities-law-blog.com/2014/11/25/what-is-a-security-the-howey-test-and-reves-test/>.

79. Nathan Reiff, *Howey Test Definition: What it Means and Implications for Cryptocurrency*, INVESTOPEDIA (last updated July 31, 2023), <https://www.investopedia.com/terms/h/howey-test.asp>.

80. Anthony, *supra* note 78.

81. Reiff, *supra* note 79.

82. *Id.*

83. Anthony, *supra* note 78.

84. *Id.*

## B. Key State Regulations On MLM

Every state has adopted some form of law relating to the regulation of MLM companies.<sup>85</sup> For this section, I will include a few variations from across the states instead of a full fifty-state survey.<sup>86</sup>

California uses an endless chain statute which is punishable as a misdemeanor.<sup>87</sup> Endless chain is defined as

any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant.<sup>88</sup>

Oregon uses an anti-pyramid statute that defines what is commonly known as a pyramid scheme as a “pyramid club.”<sup>89</sup> A pyramid club means

a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for economic gain one or more additional persons who are also granted such license or right upon condition of making an investment and who may further perpetuate the chain of persons who are granted such license or right upon such condition.<sup>90</sup>

While these two statutes use different vocabulary and different nuances in how they define what a pyramid scheme is, the common denominator involves a payment to recruit others for economic gain where that compensation is unrelated to the sale of

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85. CAL. PENAL CODE § 327 (West 2024); OR. REV. STAT. ANN. § 646.609 (West 2024); GA. CODE ANN. § 16-12-38 (West 2024); N.Y. GEN. BUS. LAW § 359-fff (McKinney 2024); TEX. BUS. & COM. CODE ANN. § 17.461 (West 2024).

86. *Id.*

87. CAL. PENAL CODE § 327 (West 2024).

88. *Id.*

89. OR. REV. STAT. ANN. § 646.609 (West 2024)

90. *Id.*

a product or service.<sup>91</sup> The only concerning issue that comes up with state enforcement is the ambiguity of the statutes. Most of these statutes are fairly similar in the way they operate, targeting typical MLM behaviors such as company buyback clauses.<sup>92</sup>

### C. The Role of Case Law in Shaping MLM Regulation

This section highlights pivotal legal battles that have shaped the multi-level marketing industry. It begins with a discussion of the landmark case, *In re Amway Corp.*, which established key legal distinctions between legitimate MLMs and illegal pyramid schemes. Following that, the section delves into *In re Koscot*, a case that defined unlawful MLM structures and set a precedent for future regulatory actions. The analysis concludes with a review of the Herbalife settlement, where the company restructured its compensation plan in response to allegations of operating as a pyramid scheme.

#### i. *In re Amway Corp.*

The most well-known and most frequently cited case is the 1979 case *Amway Corp.* because it establishes the legal distinction between legitimate multi-level marketing companies and illegal pyramid schemes in the United States.<sup>93</sup> This case has become somewhat of a safe harbor for MLM companies because the court eventually found that Amway was not operating as an illegal pyramid scheme.<sup>94</sup> When the FTC filed their complaint, they had alleged five counts of violating Section 5 of the FTC Act.<sup>95</sup> They alleged that Amway engaged in resale price maintenance,<sup>96</sup>

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91. CAL. PENAL CODE § 327 (West 2024); OR. REV. STAT. ANN. § 646.609 (West 2024). Drawing a comparison from the two statutes.

92. *Amway Corp.*, 93 F.T.C. 618, 657 (1979) (explaining buyback clauses as requiring the company to repurchase unsold inventory from distributors who wanted to exit the business, helping protect distributors from being left with unsellable products).

93. *A Significant Page in the History of Direct Sales: FTC vs Amway (1975-1979)*, WORLD OF DIRECT SELLING (Feb. 22, 2021), <https://worldofdirectselling.com/ftc-vs-amway-1975-1979/>.

94. *Id.*

95. *Amway Corp.*, 93 F.T.C. 618, 629 (1979).

96. Carole Hemingway, *What is Resale Price Maintenance?*, LEGALVISION (last updated Sept. 29, 2016), <https://legalvision.com.au/what-is-resale-price-maintenance/>. Resale price maintenance is where a supplier will set a price floor (minimum price) or price ceiling (maximum price) at which a business can sell the supplier's goods. *Id.* At the time of *Amway*,

allocated customers among its distributors, restricted the distributors' advertising, misrepresented the substantial income that may be obtained from increasing the number of distributors, and misrepresented the profitability potential of the business itself.<sup>97</sup> Essentially, this was the FTC's attempt at stopping Amway from operating as an illegal pyramid scheme, while also bringing other charges just in case.

This case presented a long, drawn-out adjudication with charges being initially filed on March 25, 1975 to a final ruling in 1979.<sup>98</sup> The final order stated that Amway was not an illegal pyramid scheme, mainly pointing out the system Amway operated on was based on retail sales to consumers, and not wholly based on recruitment of distributors.<sup>99</sup> Specifically, they avoided being defined as a pyramid scheme because they did not have an entry fee, afforded bonuses only on a performance basis, had mandatory inventory buy-back clauses, and required products to be sold to retail consumers.<sup>100</sup> These are the very programs that became known as the Amway Safeguards, with FTC Commissioner, Robert Pitofsky, directly pointing to two of Amway's own rules as proof they were not a pyramid scheme.<sup>101</sup> These safeguards have been used as an example for other MLM companies to follow ever since, with many believing that if they simply operate in the same regard as Amway, they will be shielded from an FTC action.

ii. *In re Koscot*

The *Koscot* decision is a well-known example of an agency adjudication and is the most cited example of what an unlawful MLM structure is.<sup>102</sup> The case itself highlights that these enterprises

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this was a per se (automatic) violation under the Sherman Antitrust Act. *See* Amway Corp., 93 F.T.C. 618, 687 (1979) (citing *Dr. Miles Med. Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1911)). However, the U.S. Supreme Court has overturned its decision and instead opted to use the rule of reason, meaning courts will only strike this arrangement as illegal if the anticompetitive detriments outweigh the procompetitive justifications. *See* Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 551 U.S. 877 (2007).

97. Amway Corp., 93 F.T.C. 618, 630 (1979).

98. *Id.* at 618.

99. *Id.* at 706.

100. *Id.* at 646 and 716.

101. *Id.* at 716.

102. *Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1181 (1975).



are characterized by the payment by participants of money to the company in return for which they receive (1) the right to sell a product and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users.<sup>103</sup>

Before the FTC had filed their case, Glenn Turner (the owner of Koscot) was the target of more than 30 state prosecutors around the country.<sup>104</sup> Not only did the FTC file suit, but the SEC also filed a suit, alleging that Koscot's program should be considered a security and should comply with the various securities laws and regulations.<sup>105</sup> This case ultimately made it to the 5th U.S. Circuit, which ruled in favor of the SEC.<sup>106</sup> The court identified that the Glenn Turner marketing plan was considered a security under the Securities Act of 1933 and the Securities Exchange Act of 1934 because it involved an investment of money in a common enterprise with an expectation of profits solely derived from the efforts of others.<sup>107</sup>

The FTC lawsuit's decision went against Koscot, with the company ultimately being found to be an illegal pyramid scheme.<sup>108</sup> The FTC applied a two-prong test to decide whether their compensation plan was a pyramid scheme.<sup>109</sup> The first prong requires participants pay money for the right to sell a product, while the second prong requires participants receive compensation for recruiting new participants rather than ultimately selling a product.<sup>110</sup> The FTC concluded that Koscot's compensation plan violated both prongs of the test and deemed the company an illegal pyramid scheme.<sup>111</sup>

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103. *Id.* at 1180.

104. *Glenn Turner – Out of Luck Fraud Sentencing May Be His Day of Reckoning*, ORLANDO SENTINEL (Aug. 17, 1987) <https://www.orlandosentinel.com/1987/08/17/glenn-turner-out-of-luck-fraud-sentencing-may-be-his-day-of-reckoning/>.

105. *S.E.C. v. Koscot Interplanetary, Inc.*, 497 F.2d 473, 474-475 (5th Cir. 1974) (applying the Howey test and concluding that money is obviously invested in a common enterprise for which profits of the investors are reliant on the acts and accomplishments of those pursuing the investment).

106. *Id.* at 475.

107. *Id.* at 485.

108. *Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1178 (1975).

109. *Id.* at 1180.

110. *Id.*

111. *Id.* at 1181.

*iii. Herbalife*

In 2016, Herbalife was sued by the FTC for operating more like an illegal pyramid scheme rather than a legal MLM model.<sup>112</sup> The FTC alleged that their compensation plan relied too much on recruitment to actively generate revenue instead of focusing on selling products.<sup>113</sup> Herbalife ended up settling this dispute and was forced to pay a sum of \$200 million to redress distributors who were harmed.<sup>114</sup> However, the settlement also forced Herbalife to completely restructure its compensation plan.<sup>115</sup> Herbalife is now required to verify that its business is driven by retail sales and that at least 80 percent of its sales are made to legitimate end users for a period of seven years, beginning in mid-2016.<sup>116</sup> On top of that, they are barred from misleading distributors regarding their earnings potential, including any guarantees or assurances of significant or consistent revenue generation.<sup>117</sup>

It is important to note that the FTC filed a complaint accusing Herbalife of deceiving consumers about the potential for revenue generation, but they fell short of explicitly calling them an illegal pyramid scheme.<sup>118</sup> As far as Wall Street was concerned, this was a big win for the company, especially since they had become the target of a short-selling campaign by well-known investor William Ackman.<sup>119</sup> The company would have faced significant repercussions had it been deemed an illegal pyramid scheme. As a testament to Ackman's confidence in the FTC deeming the company to be an illegal pyramid scheme, he shorted their stock by a billion dollars.<sup>120</sup> However, the FTC reached a settlement with

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112. Jim Zarroli, *Herbalife Agrees To Pay \$200 Million To Settle Complaints It Deceived Consumers* (July 15, 2016), <https://www.npr.org/sections/thetwo-way/2016/07/15/486174340/herbalife-agrees-to-pay-200-million-to-settle-complaints-it-deceived-consumers>.

113. *Id.*

114. *Id.*

115. *Herbalife Will Restructure Its Multi-level Marketing Operations and Pay \$200 Million For Consumer Redress to Settle FTC Charges*, FED. TRADE COMM'N (July 15, 2016), <https://www.ftc.gov/news-events/news/press-releases/2016/07/herbalife-will-restructure-its-multi-level-marketing-operations-pay-200-million-consumer-redress>.

116. *Id.*

117. *Id.*

118. Zarroli, *supra* note 112.

119. *Id.*

120. *Id.*; Samatha Chang, *Billionaire Bill Ackman Dumps Herbalife, Ending 5-Year War Betting Against It*, INVESTOPEDIA (last updated June 25, 2019),

the company including a restructuring as well as financial compensation.<sup>121</sup> Part of the agreement with the FTC included that at least two-thirds of a salesperson's compensation has to be based on actual sales that can be both tracked and verified.<sup>122</sup> The FTC did note, however, that a majority of the Herbalife distributors earn little to no income at all, specifically citing "the majority of distributors stop ordering products within the first year, and nearly half of [all the distributors] quit in any given year."<sup>123</sup>

#### D. Analysis of Effectiveness of Regulations

The effectiveness of current MLM regulations in the United States has been a subject of ongoing debate. A central concern lies with the *Amway* case, which effectively created a safe harbor for MLM companies. While this decision did provide a legal framework for differentiating between legitimate MLMs and pyramid schemes, it also opened the door for potential misuse. The "Amway Safeguards" require that MLMs have policies to buy back unsold inventory, enforce retail sales, and ensure income is primarily based on sales rather than recruitment.<sup>124</sup> However, critics argue that MLM companies have manipulated these guidelines to give the impression of authenticity while maintaining problematic business practices.<sup>125</sup>

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<https://www.investopedia.com/news/billionaire-bill-ackman-dumps-herbalife-ending-5year-war-betting-against-it/>. Ackman eventually ended up losing nearly \$1 billion dollars on this trade, with the stock remaining nearly unaffected by the FTC lawsuit. Ackman was confident that the FTC would deem Herbalife a pyramid scheme, with this poor publicity causing the stock to tank. The FTC settlement agreement hinged on the FTC not declaring Herbalife to be an illegal pyramid scheme, which was likely a factor in keeping their stock prices strong during this short attempt; Diane Bartz and Michael Flaherty, *FTC Determines Herbalife Is Not a Pyramid Scheme but Settles for \$200 million*, YAHOO NEWS, (July 15, 2016), <https://www.yahoo.com/news/ftc-determines-herbalife-not-pyramid-120901499.html>. It should be noted, however, that there has been a strong decline in Herbalife's stock, with it currently trading at below \$8 dollars a share, while it was trading around \$55 dollars a share in 2021. Ackman may have had the timing wrong, but his ultimate guess in the stock price declining was clearly correct.

121. Zarroli, *supra* note 112.

122. *Id.*

123. *Id.*

124. Jeffery A. Babener, *FTC vs. AdvoCare: A Teachable Moment for Direct Selling*, THE WORLD OF DIRECT SELLING (Oct. 28, 2019), <https://worldofdirectselling.com/ftc-advocare-teachable-moment/>.

125. Kevin Thompson, *Historical Perspective on the Seventy Percent Rule*, THE MLM ATTORNEY (May 1, 2016), <https://thompsonburton.com/mlmattorney/2016/05/01/historical-perspective-on-the-seventy-percent-rule/>.

There is a large ongoing debate concerning the actual meaning of the many Amway Safeguards. Kevin Thompson, an MLM attorney with extensive experience representing MLM companies, argues that the 70% rule is highly misinterpreted, even by judges.<sup>126</sup> The 70% rule has commonly been interpreted to mean that a distributor has to show that they are selling 70% of the product, either to end users or through their downline.<sup>127</sup> Thompson argues that the rule itself is completely irrelevant by today's standards because the rule is only applying to those distributors who order excessive quantities.<sup>128</sup> In Thompson's eyes, the 70% rule is just one of the many safeguards, and courts are not looking for companies to copy the structure that Amway had, they are instead required to do something meaningful to prevent any type of inventory loading.<sup>129</sup> The fact that there is enough room for debate on something widely considered a guideline should demonstrate the weaknesses in the guidelines. If the Amway Safeguards are one of the only ways to differentiate a legal MLM and a pyramid scheme, then the line between them should be solid, and the guidelines should not have any room for argument. It should be noted that Thompson is a well-known attorney who frequently represents MLM companies, so his views may reflect the interests of his clients. However, the point he does make is one I agree with: the Amway Safeguards are outdated and should be rethought.

The financial penalties imposed on MLM companies by regulatory bodies have been criticized for their relative insignificance compared to the substantial profits generated by these companies.<sup>130</sup> For instance, the \$200 million that Herbalife was forced to pay by the FTC may seem substantial, but it only represents a small fraction of the company's global sales revenue,

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126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*; *Inventory Loading: When Does a Company Cross the Line?*, THOMPSON BURTON, <https://www.thompsonburton.com/insights/mlmattorney-2010-03-20-inventory-loading-when-does-a-company-cross-the-line> (last visited Sept. 29, 2024). Inventory loading refers to the phenomenon of distributors having periodic purchasing requirements, even though they are not making adequate sales to keep up with the new inventory being purchased.

130. *Herbalife to Pay \$200m, but Avoids More Serious Charge*, CBS NEWS (July 15, 2016, 9:43 AM), <https://www.cbsnews.com/news/herbalife-to-pay-200m-but-avoids-more-serious-charge/>.

with the company's net sales in 2016 being \$4.5 billion dollars.<sup>131</sup> Critics suggest that such settlements can be viewed by MLM companies merely as a cost of doing business, rather than a deterrent for deceptive or unfair practices.<sup>132</sup> Since Herbalife is now a publicly traded company, their finances are publicly disclosed as well.<sup>133</sup> From 2013 to 2021, Herbalife's annual gross profit was nearly \$3.92 billion dollars.<sup>134</sup> From Herbalife's point of view, it is very feasible that an FTC settlement for \$200 million dollars would simply be a cost to be considered. It is very plausible that the FTC felt that it did not have the resources to fully fight such a large enterprise, especially since there were numerous other companies in the Direct Selling Association riding on the FTC's decision. If this scenario holds true and the FTC believed that securing a settlement agreement involving Herbalife's commitment to restructure and reimburse consumers was the most favorable outcome attainable, it raises genuine concerns.

#### IV. COMPARATIVE ANALYSIS OF MLM REGULATIONS INTERNATIONALLY

To better understand the global outlook of MLM regulations, this comment will target multiple countries around the globe. The various countries selected were chosen either due to their distinct regulatory code or to show an example of possible enforcement issues. The European Union was chosen to show a collective approach to regulation by multiple member countries, which is fairly unique around the globe. Many of the individual member nations of the European Union have their own specific laws and regulations concerning MLM companies.<sup>135</sup> However, the directives of the European Union are better documented and typically have more implications on the market itself, where

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131. *Id.*; *Herbalife Reports Record Full-Year 2016 Worldwide Volume*, HERBALIFE (Feb. 23, 2017, 4:12 PM), <https://ir.herbalife.com/news-events/press-releases/detail/189/herbalife-reports-record-full-year-2016-worldwide-volume>.

132. Thompson, *supra* note 125.

133. Nils Gerrit Wunsch, *Herbalife's Gross Profit Worldwide from 2013 to 2023*, STATISTA (June 7, 2024), <https://www.statista.com/statistics/917679/herbalife-gross-profit-worldwide/>.

134. *Id.*

135. Tibor Tajti, *Multi-Level Marketing and Pyramid Schemes*, 56 (Katarina Ivančević, ed. Union Univ. L. Sch. 2021), SOCIAL SCIENCE RESEARCH NETWORK, (Serb.) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3888627](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3888627).

individual courts in each member nation typically do not hold weight in other countries.<sup>136</sup>

China was specifically studied due to its unique law that completely outlaws the MLM business structure.<sup>137</sup> This serves as a case study of what happens when a country completely bans MLMs and what would most likely happen if other countries pursued similar regulations. It also shows the geographical issues with proper enforcement, demonstrating how Hong Kong operates nearly independently from the rest of the country.<sup>138</sup> Overall, the countries selected are all unique examples of some form of regulation or enforcement issue that can be used as a good comparison to the United States' form of regulation. Through a comparison of the countries' regulations, cultures, and geographic locations, a more whole picture of the global outlook of MLM law will be further discussed.

#### A. European Union

The European Union's (EU) approach to MLM regulation is a combination of EU-wide directives along with the national laws of the member nations themselves.<sup>139</sup> The EU's key directives include the Unfair Commercial Practices Directive, which prohibits unfair business-to-consumer commercial practices, as well as the Misleading and Comparative Advertising Directive, which forbids advertising that would mislead traders.<sup>140</sup>

The EU is a particularly interesting example for MLM as we see a surge in their popularity as European countries transition toward market economies.<sup>141</sup> Although there have been numerous losses by consumers, the regulations are largely unchanged.<sup>142</sup> The EU currently uses what is called the "4Finance UAB" test to differentiate a legitimate MLM venture from a pyramid scheme.<sup>143</sup>

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136. *Id.*

137. Ryan McMorro and Steven Lee Myers, *Amway Made China a Billion-Dollar Market. Now It Faces a Crackdown*, N.Y. TIMES (Jan. 8, 2018), <https://www.nytimes.com/2018/01/08/business/amway-china.html>.

138. O'Regan, *supra* note 12.

139. Tajti, *supra* note 135, at 56.

140. *See generally* Council Directive 2005/29, 2005 O.J. (L 149) 22; Council Directive 2006/114, 2006 O.J. (L 376) 21.

141. *Id.* at 47 (highlighting how MLMs had begun to appear in countries like the former Yugoslavia when they began making the step toward capitalism).

142. *Id.*

143. *Id.* at 52.

However, this test is incredibly similar to the Amway Test used in the United States.<sup>144</sup> In a law review article published in Vienna, Austria, Tibor Tajti makes a substantial point that the individual European countries themselves need to be the ones to properly combat the MLM companies.<sup>145</sup> Tajti points out that the United States “undoubtedly possess[es] the richest toolbox of legal remedies exploitable to combat pyramid schemes and a panoply of related cases and experiences . . . .”<sup>146</sup> Yet he emphasizes that even the United States has not properly combatted them at the federal level, leaving the enforcement largely to the states.<sup>147</sup>

## B. China

China implemented an outright ban on any type of direct selling or multi-level marketing business model in 1998 due to social, economic, and taxation issues.<sup>148</sup> Instead of considering pyramid schemes as an illegal variation of multi-level marketing, the Chinese government views multi-level marketing as a variation of a pyramid scheme.<sup>149</sup> In 2005, the Chinese government partially lifted the ban by passing the Regulations on Direct Selling Administration and the Regulation on Prohibition of Pyramid Selling.<sup>150</sup> These laws legalized particular forms of direct sales and created requirements for legally operating such businesses.<sup>151</sup>

Some of these requirements include prohibiting certain individuals from being recruited such as full-time students or teachers.<sup>152</sup> Requiring that a direct selling company to have a sales agreement with any door-to door salesman.<sup>153</sup> Any person who fails to make such an agreement with a direct selling company or any

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144. *Id.*

145. *Id.*

146. *Id.* at 60.

147. *Id.*

148. McMorrow & Myers, *supra* note 137; Circular of the State Council Concerning the Banning of Operational Activities of Pyramid Sales (1998).

149. O'Regan, *supra* note 12; Regulation on Prohibition of Pyramid Selling, 2005, No. 444 (China).

150. Charlotte Bruckermann, *Network Marketing and State Legitimacy in China: Regulating Trust from Physical Workplace to Virtual Space*, *ECONOMIC ANTHROPOLOGY*, 86, 90 (2021); Regulations on Direct Selling Administration, 2005, No.443 (China); Regulation on Prohibition of Pyramid Selling, 2005, No. 444 (China).

151. Bruckermann, *supra* note 150.

152. Regulations on Direct Selling Administration, 2005, No.443, Art. 15 (China)

153. Regulations on Direct Selling Administration, 2005, No.443, Art. 16 (China).

of its branches is prohibited from doing any direct selling.<sup>154</sup> A direct selling company is required to organize vocational training and examinations of its recruited salesman.<sup>155</sup> When a recruit finished the training and passed the examination, the company must then provide him or her with a certificate, anyone who fails to obtain a certificate is prohibited from engaging in any direct selling activity.<sup>156</sup> Further, when engaging in door to door sales a salesman is required to follow four provisions.<sup>157</sup> (1) The salesman must show his or her certificate of door-to-door salesman and sales contract.<sup>158</sup> (2) A salesman is prohibited from entering a consumers home without consent, and must leave a consumers home if requested.<sup>159</sup> (3) A salesman must give a consumer a detailed account of the company's system of returning goods before selling a product.<sup>160</sup> (4) When a sale is made, a salesman must provide a consumer with an invoice and sales voucher, which provides the system for returning the goods, the address of the direct selling companies local office and its telephone number.<sup>161</sup>

These regulations place significant restrictions on employment practices that inhibit the MLM business model. The employment agreements mentioned earlier must be formalized with written contracts, guaranteeing a base salary at least equal to the minimum wage, preventing reliance solely on commissions.<sup>162</sup> The commissions themselves are permitted, but they can only be tied to product sales and cannot be connected to recruiting others, a key barrier for MLM companies.<sup>163</sup> Moreover, the payment of taxes and social benefits for the salespeople discourage MLM behavior, as their typical commission-based structure would struggle to meet those financial obligations.<sup>164</sup> The MLM business model depends on more people being part of the downline.<sup>165</sup> However, if the company incurred fees based on an

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154. *Id.*

155. Regulations on Direct Selling Administration, 2005, No.443, Art. 18 (China).

156. *Id.*

157. Regulations on Direct Selling Administration, 2005, No.443, Art. 22 (China).

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. O'Regan, *supra* note 12.

163. *Id.*

164. Traver, *supra* note 1.

165. *Id.*



increase in the number of people in their downline, this would discourage any recruiting efforts.<sup>166</sup>

### C. Bangladesh

Bangladesh has made it very difficult for MLM companies to operate within the country, at least on the books. Pyramid schemes are prohibited in Bangladesh, similar to almost all other countries.<sup>167</sup> However, MLM companies are legally allowed to conduct business if they follow through with the proper registration requirements.<sup>168</sup> The MLM Activities Act of 2013 was enacted with provisions that created a licensing system for MLM companies.<sup>169</sup> The law provided for a maximum sentence of ten years imprisonment and up to \$67,500 dollars in fines.<sup>170</sup> In 2014, only four companies acquired licenses, after which the government did not issue any more of these licenses.<sup>171</sup> However, the licenses are required to be renewed every year, and none of the four were ever renewed.<sup>172</sup> As a result, not a single MLM company is legally registered in the country.<sup>173</sup> Even more peculiar is the increase in MLM companies following the implementation of this law.<sup>174</sup> In 2002, the commerce ministry reported that there were only 16 MLM companies in Bangladesh.<sup>175</sup> This number increased to twenty-four in 2006.<sup>176</sup> As of 2022, the same commerce ministry claims there are hundreds of MLM companies operating in Bangladesh.<sup>177</sup>

The reason for this is most likely corruption. Many of the companies run their MLM business through collecting joint stock approval and company name clearances where they simply do not

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166. *Id.*

167. Multi-Level Marketing Activities Act, 2013, No. 44, Ch. III (Bangl.); Ehsaul Haque Jasim, *No Legal MLM business in Bangladesh*, BANGLADESH POST (May 14, 2022, 10:06 PM), (Bangladesh), <https://www.bangladeshpost.net/posts/no-legal-mlm-business-in-bangladesh-85656>.

168. Multi-Level Marketing Activities Act, 2013, No. 44, Ch. II (Bangl.).

169. *Id.*

170. Multi-Level Marketing Activities Act, 2013, No. 44, Ch. V (Bangl.).

171. Jasim, *supra* note 167.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

mention the MLM business model.<sup>178</sup> On top of that, companies based in neighboring countries like Sri Lanka are entering Bangladesh with trade licenses, most likely signed by corrupt government officials.<sup>179</sup> There has been continuous pushback in the country, advocating to simply ban the business model itself.<sup>180</sup>

#### D. India

India's approach to MLM regulations is principally governed by the Direct Selling Guidelines, which was introduced by the Ministry of Consumer Affairs in 2016.<sup>181</sup> At the time they were written, they were only temporary and were not legally binding.<sup>182</sup> This is because if they are not notified in the Official Gazette, they will not acquire the status of a law due to statutory errors.<sup>183</sup> However, these rules were modified in 2019 and now carry the full force of law throughout all of India.<sup>184</sup>

Essentially, the guidelines only go as far as banning pyramid schemes and giving registration guidelines for MLM companies to follow. The MLM company has to register with the country and have a local office within the country where they can receive complaints.<sup>185</sup> They are not allowed to make misleading claims, but the definition of misleading is fairly ambiguous, and only time will tell how this will pan out. When it comes to the Indian regulatory scheme, it appears to be less stringent than the United States regulations. The only requirement for an MLM company to start up in India is to register with the government and not engage in fraudulent practices.<sup>186</sup> The biggest issue here is the use of incredibly vague language to regulate a business model that exclusively operates in legal gray areas; this will not be enough. Simply saying that they cannot engage in fraudulent or unfair consumer practices will not properly regulate an industry that has

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178. *Id.*

179. *Id.*

180. *Id.*

181. Arush Singh, *Direct selling guidelines in India: Network marketing rules*, SUPERTHIRTY (Dec. 20, 2023), (India), <https://www.superthirty.com/direct-selling-guidelines-in-india>.

182. *Id.*

183. *Id.*

184. *Id.*

185. Direct Selling Guidelines, 2016, Cl. 2 (India); *Id.*

186. Direct Selling Guidelines, 2016, Cl. 2 (India); Singh, *supra* note 189.

evaded broad and vague terms in other countries for nearly a century.

### E. Australia

Australia operates very similarly to the United States; it feels as if they have essentially mirrored the United States in their approach to defining pyramid schemes and MLM companies. An MLM company is completely legal in Australia so long as most of the money comes from selling a product, instead of signing up new people.<sup>187</sup> If this is not the case, it is considered an illegal pyramid scheme.<sup>188</sup> The regulatory agency in charge of consumer protection in Australia is the Australian Competition and Consumer Commission (ACCC).<sup>189</sup> In order to prosecute an MLM company as a pyramid scheme, they use the Competition and Consumer Act of 2010, which is published in the Federal Register of Legislation in Australia.<sup>190</sup> Something unique from other countries is that it is not only illegal to induce someone into joining a pyramid scheme, but it is also a crime to even participate in one.<sup>191</sup>

In determining whether a company is classified as an illegal pyramid scheme, the court must look at a couple of factors. First, they will look at whether the participation payments are reasonably related to the value of the goods or services they are selling.<sup>192</sup> Second, they will look at the emphasis given in the promotion of the scheme, to the entitlement of participants, and to the supply of goods or services, comparing that with the emphasis given to the recruitment payments.<sup>193</sup>

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187. Competition and Consumer Act, 2010, (Austl.); Justin Pasqualino, *What's a Multi-Level Marketing (MLM) Company?*, LAWPATH, (Jan. 16, 2024), <https://lawpath.com.au/blog/whats-multi-level-marketing-mlm-company>.

188. Tajti, *supra* note 135, at 56.

189. Competition and Consumer Act, 2010, vol. 1 pt. 2 (Austl.).

190. Laura Newton, *In Pursuit Of The Impossible Dream: An Analysis Of Multilevel Marketing (Mlm) Schemes And The Consumer Harm Caused By Selling A Lie*, 10 UNSW L. J. STU. S. (2021) (Austl.), <https://classic.austlii.edu.au/au/journals/UNSWLawJlStuS/2021/10.html#fnB10>; FEDERAL REGISTER OF LEGISLATION, <https://www.legislation.gov.au/C2004A00109/latest/text> (last visited Oct. 4, 2024).

191. Competition and Consumer Act, 2010, vol 1. pt. 2 (Austl.).

192. *Id.*

193. *Id.*

## F. Canada

Canada regulates MLM companies through the use of The Competition Act, a federal law governing competition throughout Canada.<sup>194</sup> The Act is enforced and administered by the Competition Bureau, which is similar to the United States' FTC, and the cases are adjudicated in the Competition Tribunal.<sup>195</sup> These statutes are incredibly specific and give numerous definitions. They read similar to a statute in the United States.

They define an MLM plan as “a plan for the supply of a product whereby a participant in the plan receives compensation for the supply of the product to another participant in the plan who, in turn, receives compensation for the supply of the same or another product to other participants in the plan.”<sup>196</sup> When it comes to the representations that are allowed to be made by the company or recruiters, there are also specific rules.<sup>197</sup> They must disclose to an interested individual the compensation actually received by a typical participant or the compensation that is likely to be received by an average participant.<sup>198</sup> If an individual is found to have not followed the above rule, they could either receive a fine completely at the discretion of the court or imprisonment up to five years or both.<sup>199</sup> If they are not convicted, but summarily convicted, they can be forced to pay a fine not exceeding \$200,000 or be imprisoned for up to one year or both.<sup>200</sup>

Canada also classifies a pyramid scheme as a type of MLM where a participant is giving consideration for the right to receive compensation for recruiting others, when “a person knowingly supplies the product to a participant in the plan in an amount that is commercially unreasonable,” or if a participant is not given a buyback guarantee, or is not informed about one to the point where they are not aware it exists.<sup>201</sup> The punishment for being found to

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194. Competition Act, 1985, R.S.C., C-34, § 55 (Can.).

195. COMPETITION BUREAU CANADA, <https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/our-organization> (last visited Oct. 4, 2024); Competition Tribunal Act, R.S.C. 1985, C-19 (Can.).

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. Competition Tribunal Act, R.S.C. 1985, C-19 (Can.). If someone is summarily convicted, it means they were convicted of a less serious violation through a quicker or less formal procedure.

201. *Id.*

have engaged in pyramid selling is the same punishment as violating the rules for running an illegitimate MLM.<sup>202</sup>

#### G. The United Arab Emirates (UAE)

Instead of banning direct sales, the country offers membership under the Direct Selling Association UAE (DSA).<sup>203</sup> To be eligible for membership and do business within the country, companies must disclose all legal documents, compensation plans, and registered products they will sell.<sup>204</sup> It is important to note that the UAE does not have any specific regulations or legislation dealing with MLM companies; however, the broader laws on commercial practices may apply.<sup>205</sup> The UAE does not consider direct selling a full-time activity and only classifies it as a part-time activity.<sup>206</sup> Most direct selling contracts state that a seller is not an employee, the position is not a full time job and the company is not responsible for the business matters the seller take on.<sup>207</sup> The DSA works to “shield, serve and uphold efficacy of direct selling and network marketing companies.”<sup>208</sup> Any company that passes the test and becomes a member of the DSA is granted access to legally conduct business within the country.<sup>209</sup> The DSA lists some characteristics of what a legitimate direct sales company is, and if the company lacks those characteristics.<sup>210</sup>

The company as part of their membership are required to adhere to a Code of Practice.<sup>211</sup> Under this code, companies are obligated to not use false, misleading, deceptive or unfair sales practices when it comes to the product they are selling.<sup>212</sup> Companies are also prohibited from using misleading, deceptive or

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202. *Id.*

203. *Foundations of DSA UAE*, DIRECT SELLING ASS'N OF UAE, <https://www.dsauae.ae/dsa-uae.html> (last visited Oct. 23, 2024).

204. *DSA UAE Membership Application: Required Document*, DIRECT SELLING ASS'N OF UAE, <https://www.dsauae.ae/required-documents.html> (last visited Oct. 23, 2024).

205. *DSA UAE Code of Practice*, DIRECT SELLING ASS'N OF UAE, <https://www.dsauae.ae/code-of-practice.html> (last visited Oct. 23, 2024).

206. Suzanne Locke, *Direct Selling in the UAE: How Much Money Can You Make?*, NATIONAL (Aug. 18, 2016), <https://www.thenationalnews.com/business/direct-selling-in-the-uae-how-much-money-can-you-make-1.153790>.

207. *Id.* (speaking with Poorya Montaseri, the executive director of the DSA UAE).

208. *Foundations of DSA UAE*, *supra* note 211.

209. *Id.*

210. *DSA UAE Code of Practice*, *supra* note 213.

211. *Id.*

212. *Id.*

unfair recruiting practices when interacting with prospective or existing sellers.<sup>213</sup> Further, companies are required to provide sellers with periodic accounts of “sales, purchases, details of earnings, commissions, bonuses, discounts, deliveries, cancellations and other relevant data.”<sup>214</sup> As well as ensure that sellers “who are receiving compensation for downline sales volume are either consuming or reselling the products they purchase in order to qualify to receive compensation.”<sup>215</sup>

#### H. Comparison And Contrast With U.S. Regulations

Varying regulations among countries affect the ability of MLMs to enter and operate in different markets. Countries with stricter regulations may be less accessible, thereby limiting the potential for global expansion of these companies. Countries with the highest success in curbing fraud by MLM companies are generally those with the greatest restrictions on the business model. However, the greatest restrictions do not mean anything if the enforcement of these restrictions is not solid as well. What I have observed across many countries is that enforcing these rules and restrictions is incredibly difficult due to various loopholes in the laws or simply a misunderstanding of the business model itself.

In Bangladesh, MLMs operate entirely illegally due to enforcement issues.<sup>216</sup> Meanwhile, neighboring countries allow nearly unrestricted access.<sup>217</sup> It is clear that Bangladesh has realized the predatory nature of MLMs, and they really have tried to put a stop to them. However, neighboring countries, such as India, as well as a lack of true enforcement have caused Bangladesh’s ban to do almost nothing.<sup>218</sup> In the European Union, unified regulations have not yet been achieved and the task of regulating MLMs has fallen to local governments.<sup>219</sup> This arrangement presents challenges related to translation and court jurisdiction.<sup>220</sup> If MLMs lose a case at the local level in one of the member nations, this precedent does not necessarily extend to

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213. *Id.*

214. *Id.*

215. *Id.*

216. Jasim, *supra* note 167.

217. *Id.*

218. *Id.*

219. Tajti, *supra* note 135 at 56.

220. *Id.* at 57.

other countries due to language barriers and variations in legal authority.<sup>221</sup> It is easy to think of the European Union as the federal government in the United States, with each member country being compared to the states. However, in the United States, it is much easier for one state's precedent to transfer, even persuasively, to other jurisdictions in other states.<sup>222</sup> In the European Union, many member nations have different court procedures, rules, constitutions, and most importantly: they speak different languages.<sup>223</sup> If an MLM was to be prosecuted in a smaller member nation in the European Union at the local level, it would almost never mean anything for the other member nations.<sup>224</sup>

The UAE has relied primarily on lobbyist organizations to help regulate the industry.<sup>225</sup> The Direct Selling Association (DSA), present in the United States, has largely been responsible for lobbying for fewer restrictions on direct selling companies.<sup>226</sup> It is difficult to believe that these same member companies would advocate for stricter requirements in the UAE. While the United States does see various lobbying efforts from the DSA, they are not the main entity in charge of regulating the businesses. However, in the UAE, it is largely the DSA that is responsible for creating the restrictions and allowing MLMs to do business.<sup>227</sup>

Canada, on the other hand, has specific regulations aimed at providing the necessary definitions to properly enforce laws.<sup>228</sup> Interestingly, it is also a punishable crime in Canada to join an illegal pyramid scheme.<sup>229</sup> This rule forces potential participants to scrutinize an MLM company before joining, reducing the likelihood of individuals participating in an illegal pyramid scheme.<sup>230</sup> It is important to bring to public attention the potential for these companies to engage in predatory practices, even while operating within the bounds of the law. While many countries, such as the United States, focus their efforts on prosecuting those

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221. *Id.*

222. *Id.* at 58.

223. *Id.* at 57.

224. *Id.*

225. *DSA UAE Code of Practice*, *supra* note 218.

226. Jon M. Taylor, *Direct Selling Association (DSA) vs. Consumers*, Consumers Awareness Institute, <https://web.archive.org/web/20120613215210/http://mlm-thetruth.com/legal/legal/dsa-vs-cons>, (archived June 13, 2012, retrieved Sept. 17, 2024).

227. *DSA UAE Code of Practice*, *supra* note 218.

228. Competition Act, R.S.C. 1985, C-34 s. 55 (Can.).

229. *Id.*

230. *Id.*

in leadership positions within pyramid schemes, Canada, in contrast, takes a different route by prosecuting participants too.<sup>231</sup> This distinctive approach actually prompts individuals, even at lower levels, to question the legality of their actions.

China has taken the most drastic measures of all these countries, strictly banning the MLM business model altogether.<sup>232</sup> Consequently, companies like Amway have had to change their business models, shifting from direct sales to selling directly to consumers through websites.<sup>233</sup> This change demonstrates that stringent restrictions can prompt companies to adapt their business models to comply with a country's standards, rather than simply going out of business. This is an indication that the direct sales or MLM method are not the only way that these companies are able to operate. It is possible for the companies to react to the new laws and regulations, and still make a profit. However, it is also true that enforcement is a major problem in China.<sup>234</sup> Of the countries that have outright banned MLMs, enforcing that ban becomes increasingly difficult, showing that there are fraudulent companies that will continue to operate, even after their conduct is deemed illegal.

The United States has numerous options at its disposal, given that enforcement issues would likely be less prevalent than in other countries. Although the state court system in the United States is more unified than the local court systems in the member countries of the European Union, there is a clear call for more centralized regulations within the United States.

## V. *POTENTIAL REFORMS AND THE FUTURE OF MLM REGULATIONS*

This section explores potential reforms aimed at addressing the issues surrounding multi-level marketing practices. It begins by examining proposals for increased regulatory oversight, including the suggestion of creating a specialized regulatory agency to monitor MLM operations. The section also discusses possible changes to the tax code and other legal reforms that could

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231. *Id.*

232. McMorrow & Myers, *supra* note 137.

233. *Amway ramps up campaign to increase influence in China*, SHINE (Oct. 21, 2021), <https://www.shine.cn/biz/company/2110216723/>.

234. McMorrow & Myers, *supra* note 137.



curb the exploitative practices often associated with MLMs. Finally, it considers future developments in the legal landscape, focusing on the evolving role of technology and global regulation.

A. Suggestions For Improvement And Potential Reforms

It is clear from my current research that countries with the most restrictions and prohibitions on the MLM business model have the least amount of fraudulent behavior from these companies. The first thing the United States, as well as many other nations around the world, will have to do is provide very clear, centralized regulations relating specifically to MLM companies. One of the first things I have realized is that most companies are relying on general consumer protection laws and regulations. However, this is an industry that has been thriving in legal gray areas for nearly a century. The only real way to combat fraud related to the MLM structure is by bringing the business model into the light of specific legal regulations.

i. *A New Agency*

A new agency may be crucial to properly regulating the field. The FTC has jurisdiction over a wide range of consumer protection matters and business practices in the United States.<sup>235</sup> The FTC's wide-ranging responsibilities can, at times, make it difficult for them to effectively enforce certain specific aspects of their job. It may very well be the case in their settlement agreement with Herbalife that they felt the best they could have done was a fine and a simple restructuring. While this may seem like justice to some, to others, myself included, this was not enough to properly regulate an industry that has gone almost unchecked since its inception.

The idea of "taking away power" from the FTC is not exactly unprecedented, with something like this having happened before. The Consumer Financial Protection Bureau (CFPB) was created under the Dodd-Frank Wall Street Reform and Consumer

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235. *About the FTC*, FED. TRADE COMM'N, <https://www.ftc.gov/about-ftc> (last visited Oct. 4, 2024).

Protection Act of 2010.<sup>236</sup> The entire reason the agency was created was to provide a single agency with the authority and responsibility for enforcement of federal consumer financial laws and to protect consumers in the financial marketplace.<sup>237</sup> Beforehand, there were numerous agencies responsible for this, however, the CFPB was created so that an agency could employ individuals with specialized knowledge in the field.<sup>238</sup>

It may be outlandish to consider creating a government agency for the sole purpose of regulating just multi-level marketing companies. However, multi-level marketing and franchise law are two facets that are fairly similar in the way the regulations tend to work. Franchise law requires disclosures to ensure a potential franchisee receives as much information about a possible business deal as can be provided.<sup>239</sup> This helps to keep people informed enough to be able to weigh the risks and benefits of an investment opportunity.<sup>240</sup> Since it would not seem feasible to create an agency dedicated just to MLM models and pyramid schemes, it may be possible to have one that is in charge of these types of potentially predatory business deals that feature asymmetric information.

There would be numerous advantages to having a dedicated government agency in charge of MLM regulations. By dedicating an agency specifically to MLM law, there would be a concentrated focus on that industry, which would lead to specialized expertise not normally available in a broader regulatory agency such as the FTC. There would also be some uniformity and standardizing of practices. A dedicated agency could set forth the best practices and guidelines for MLMs to follow, leading to a level of predictability and concrete, foundational rules.

It is also important to note that the current partnership between the FTC and the CFPB could also operate between this agency as well. The two agencies have a Memorandum of Understanding (MOU), which is designed to coordinate efforts to further protect consumers while avoiding duplication of federal

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236. *A Short History of the CFPB*, CBIZ, INC., <https://www.cbiz.com/insights/articles/article-details/a-short-history-of-the-cfpb-article> (last visited Oct. 4, 2024).

237. *Id.*

238. *Id.*

239. FTC Franchise Rule, 16 C.F.R. § 436.2, at 503-504 (2024).

240. *Franchise Rule*, FED. TRADE COMM'N, <https://www.ftc.gov/legal-library/browse/rules/franchise-rule> (last visited Oct. 4, 2024).

law enforcement.<sup>241</sup> There would always be the possibility of something similar to this between all three of the agencies. The primary objective behind establishing the CFPB was to ease some of the burdens on the FTC, while also enabling someone with specialized expertise in the field to effectively oversee and regulate it.<sup>242</sup> It is because of this main objective that these two agencies are not seen as stepping on each other's toes. They are in full cooperation with each other in order to better protect the consumer.

ii. *Different Taxation Method*

There is a possibility to update and use the tax code to properly regulate the MLM business model. Generally speaking, most MLM companies do not classify their network of salespeople as employees, instead classifying them as independent contractors.<sup>243</sup> This means that they would not receive a salary or a wage and instead they only earn income depending on their own revenues and expenses.<sup>244</sup> It is, after all, the goal of any MLM company to recruit more salespeople to their business, as this will increase the total revenue generated and will increase the total amount of the MLM's customer base.<sup>245</sup> It is exactly in this regard that an updated tax regulation could properly target MLM companies specifically, while still allowing other forms of business to grow and thrive without being effected.

It would be possible for the Internal Revenue Service (IRS) to properly regulate this space and force MLM businesses to classify their salesforce as employees. When an individual becomes classified as an employee, they automatically gain certain legal rights and remedies that would otherwise not be available to

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241. *Memorandum of Understanding*, FED. TRADE COMM'N & CONSUMER FIN. PROT. BUREAU, at 1 (2019), [https://www.ftc.gov/system/files/documents/cooperation\\_agreements/ftc-cfpb\\_mou\\_225\\_0.pdf](https://www.ftc.gov/system/files/documents/cooperation_agreements/ftc-cfpb_mou_225_0.pdf).

242. *Id.* at 3.

243. *Business Guidance Concerning Multi-Level Marketing*, FED. TRADE COMM'N (2024), <https://www.ftc.gov/business-guidance/resources/business-guidance-concerning-multi-level-marketing>.

244. *Id.*

245. *End Independent Contractor Misclassification*, NAT'L EMP. L. PROJECT, <https://www.nelp.org/explore-the-issues/contracted-workers/misclassified-workers/> (last visited Oct. 4, 2024).

independent contractors.<sup>246</sup> Some of these rights include a minimum wage guarantee, paid sick leave, and retirement plans.<sup>247</sup> It would also mean that the MLM company itself must withhold payroll taxes to ensure it complies with tax laws.<sup>248</sup> These employee benefits would be incurred directly by the company itself.<sup>249</sup> This would serve as a way to unravel one of the prime objectives of the MLM business model: recruitment.

It is the entire purpose of an MLM to try and recruit more individuals into the business. However, as has been demonstrated by nearly every MLM company, it becomes more so that the company stresses the recruiting aspect over the sale of actual goods. However, if the MLM was to internalize certain costs that would be associated with extra recruiting efforts, the business model itself would essentially collapse. If it really is true that MLM companies become more successful with more members because they have an increased amount in their sales force, then the benefits should widely outweigh the costs of each additional salesperson. However, if it no longer makes sense for the business to continue recruiting others, then the business model would clearly be prioritizing recruiting members instead of selling products.

#### B. Predictions For The Future Legal Landscape Of MLM

There seems to be a lot of pushback from consumers as MLM companies are becoming more and more transparent. The age of the computer and social media has increased awareness of the fraudulent behavior that these companies tend to be involved in.<sup>250</sup> However, this also means that MLMs themselves are going to increase their online and digital presence. There could be a much stronger focus on e-commerce, social media marketing, and the use of mobile apps for sales and recruitment. Regulations and laws tend to lag, but it is imperative to stay on top of the curve when it

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246. *Id.*

247. *Id.*

248. Sarah Leberstein and Catherine Ruckelshaus, *Independent Contractor vs. Employee: Why Independent Contractor Misclassification Matters and What We Can Do to Stop It*, NAT'L EMP. L. PROJECT, at 3, (May 2016), <https://www.nelp.org/app/uploads/2016/05/Policy-Brief-Independent-Contractor-vs-Employee.pdf>.

249. *Id.*

250. Tiffany, *supra* note 35.

comes to technological advances in this industry, because it is very easy to get left behind. With the surge of technology, this also means that regulatory agencies will also have access to better technology. Agencies like the FTC or SEC may try the use of artificial intelligence and data analytics in order to better detect potentially fraudulent activities.

In today's technologically advanced world, where access to information is instantaneous, transparency is essential in fostering fair and informed decision-making. Imagine if the FTC required MLM companies to provide potential distributors with transparent and detailed disclosures about actual sales figures and the true earning potential of their sales force before any recruit took place. Such disclosures would ensure that prospective distributors are fully informed, allowing them to make decisions based on real data rather than the often-inflated success stories promoted by current MLM participants.

Currently, MLMs use social media as a tool to promote success stories that may not reflect the reality of the broader distributor experience. Members post about their financial achievements and express gratitude for the MLMs "life changing" opportunities. However, if the true sales figures were disclosed transparently, showing that most distributors earn little to no profit, it would empower potential recruits with critical knowledge about the real prospects of MLM participation. This knowledge could shift the narrative on social media.

Once these facts are exposed, people might use social media not to promote the MLM but to warn others about the inherent risks. Posts could reveal the company as a potential scam, cautioning others to steer clear of that business. This shift would create a marketplace where information is symmetrically distributed, allowing the first rule of free market regulation, symmetric information, to be met. With both sides of the story available, the market would then be better equipped to regulate itself. Individuals would make informed decisions, and unsustainable business models would lose the ability to thrive on misinformation.

There is a clear indication that other countries have followed the United States' decision in the *Amway* case. There has been and most likely will continue to be a type of harmonizing of regulations internationally. Mostly every country discussed identifies pyramid schemes the exact same way. Any country that has some type of

new or different regulation or law for MLM companies will immediately become a case study for the rest of the world. China is going to be the clearest indication of what would happen and what has already happened when an MLM is outright banned.<sup>251</sup> It is also hard to compare the Chinese regulatory scheme to the United States, however, because of the way that Hong Kong operates independently of the rest of the country.<sup>252</sup> Countries like Bangladesh are a clear indicator that enforcement policies are necessary to ensure that the companies abide by the law.<sup>253</sup>

What is truly important to remember and to stay focused on is the fact that the future outlook for the MLM industry does remain uncertain but tends to look toward increased scrutiny. Global awareness about potentially predatory practices within certain MLMs has grown, leading to calls for tighter regulations from consumers globally. I anticipate that authorities will ramp up efforts to distinguish legitimate MLMs from pyramid schemes, with an emphasis on transparency and protection for participants at the bottom tiers. With the rise of social media as a recruitment tool for many MLMs, there will most likely result in new rules specific to online marketing and disclosures. Overall, I feel there is a trend toward a more stringent regulatory environment.

## VI. CONCLUSION

In conclusion, this Comment has delved into the intricate world of Multi-Level Marketing and its legal implications. Throughout the analysis, several critical aspects have emerged that shed light on the complex nature of MLM businesses and the regulatory challenges they pose.

First and foremost, it is evidenced that MLM structures tend to blur the lines between legitimate business practices and illegal pyramid schemes, leading to many ambiguities in practice.<sup>254</sup> This Comment has explored the defining characteristics of both legitimate MLM companies and fraudulent pyramid schemes, highlighting the importance and necessity of creating clear legal distinctions to protect unknowing consumers.

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251. McMorrow & Myers, *supra* note 137.

252. *Hong Kong: How Is It Run, and What Is the Basic Law?*, BBC NEWS (July 1, 2022), <https://www.bbc.com/news/world-asia-china-49633862>.

253. Jasim, *supra* note 167.

254. Tarver, *supra* note 1.

Furthermore, the regulatory landscape surrounding MLMs tends to vary significantly from one jurisdiction to another, creating a need for harmonization and enhanced transparency. The legal frameworks governing MLMs must evolve to address the unique challenges posed by these business models. It is clear that the United States sets the example for the rest of the world and needs to continue doing so. As MLMs continue to switch to a more modern world including the internet and social media, it is vital that regulations do not fall behind. Numerous countries from around the world have continued to evolve their regulations around these companies, with some doing little and others doing an incredible amount.

The regulation of MLMs is an ongoing challenge that requires careful consideration of legal, ethical, and consumer protection concerns. As MLM companies continue to evolve and adapt, lawmakers and regulators need to remain vigilant to ensure that this business model operates in a manner that is both fair and transparent. With the United States being one of the largest markets for MLM companies, it holds the best opportunity to lead the way in establishing rigorous standards. By implementing clear guidelines, such as mandatory transparency in sales figures and earnings potential, the U.S. can set a precedent for other nations and encourage a global shift toward more ethical business practices. This approach would not only protect consumers, but also help to foster a marketplace built on trust and accountability.