

June 2, 2016

The Honorable Fred Upton, Chairman
The Honorable Frank Pallone, Ranking Member
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

RE: H.R. 5230, the “Anti-Pyramid Promotional Scheme Act of 2016”

Dear Chairman Upton and Ranking Member Pallone,

The undersigned consumer organizations wish to express our opposition to H.R. 5230, the “Anti-Pyramid Promotional Scheme Act of 2016,” which is currently pending before the House Energy and Commerce Committee. Although multi-level marketing (MLM) organizations may provide a legitimate business opportunity to some consumers, many MLMs are in reality illegal pyramid schemes.

The FTC has consistently stated that a critical difference between a legitimate MLM business and a pyramid scheme is that an MLM succeeds primarily by retailing products and services. Yet, H.R. 5230 makes numerous changes designed to make it harder for the FTC to challenge illegal pyramid schemes, placing consumers seeking small business opportunities at grave risk of being taken for a ride.

- Specifically, H.R. 5230 eliminates the purpose of direct selling as a form of retailing by relieving MLMs of the need to have **actual** customers -- external of the recruitment process. This would allow MLM operators to simply sell the idea of joining a business opportunity, instead of operating their own retail business.
- Second, the bill allows the MLM parent company to profit off a churning base of recruits who, in an effort to qualify for rewards, are incentivized to purchase product directly from the parent company.
- Third, the bill eliminates anti-pyramiding safeguards that were put in place after the FTC’s landmark 1979 *Amway* decision. Those important consumer protections require companies to ensure that sales by distributors are made primarily to customers outside of the distribution network.
- Finally, the bill also gives MLMs permission to engage in purchase and recruiting behaviors the courts have already identified as endemic to illegal pyramid schemes.

According to research conducted by the National Consumers League, one third of consumers have difficulty spotting the difference between a legitimate MLM opportunity and a pyramid scheme.¹ Given this fact, the ability of the Federal Trade Commission (FTC) to identify and prosecute pyramid scheme operators is essential to maintaining consumer trust in the marketplace. H.R. 5230 purports to strengthen consumer protections from fraudulent pyramid schemes. In reality, however, it would undo decades of legal precedent and rob the FTC of its ability to protect Americans from all but the most egregious forms of pyramid schemes.

Again, the FTC has consistently stated that a critical difference between a legitimate MLM business and a pyramid scheme is that an MLM succeeds primarily by retailing products and services. By comparison, a pyramid scheme incentivizes recruitment over retail sales and induces participants to focus on the recruitment side of the business at the expense of their retail marketing efforts. This characterization has been developed and embraced by over 40 years of case law.² Unfortunately, H.R. 5230 would remove this core tenet and instead provide numerous carve outs and exemptions for all but the most blatant pyramid schemes.

In just the past two years, the FTC has used its enforcement authority to successfully prosecute pyramid schemes like BurnLounge,³ Fortune Hi-Tech Marketing⁴ and Vemma⁵ that purported to be legitimate MLMs. In fact, those companies defrauded thousands of consumers with promises of easy riches. Were H.R. 5230 law today, it would likely have prevented the FTC from bringing such actions. The undersigned groups strongly urge you to oppose H.R. 5230 and instead support legislation that would clearly define what a pyramid scheme is and in the process protect consumers' confidence in the marketplace.

¹ National Consumers League. "Economic misery increases vulnerability to pyramid schemes," February 2009. Online: http://www.nclnet.org/economic_misery_increases_vulnerability_to_pyramid_schemes

² Vander Nat, Peter. "Why this anti-pyramid scheme bill is outrageously wrong for consumers," TruthinAdvertising.com. May 23, 2016. Online: <https://www.truthinadvertising.org/why-hr-5230-is-wrong/>

³ Federal Trade Commission. "FTC returns almost \$1.9 million to consumers in BurnLounge pyramid scheme," Press release. June 15, 2015. Online: <https://www.ftc.gov/news-events/press-releases/2015/06/ftc-returns-almost-19-million-consumers-burnlounge-pyramid-scheme>

⁴ Federal Trade Commission. "FTC Settlement Bans Pyramid Scheme Operators From Multi-Level Marketing," Press release. May 13, 2014. Online: <https://www.ftc.gov/news-events/press-releases/2014/05/ftc-settlement-bans-pyramid-scheme-operators-multi-level>

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

Sincerely,

/S/

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/S/

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cc: Members of the Committee on Energy and Commerce