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FEDERAL TRADE COMMISSION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Federal Trade Commission;

Plaintiff,

v.

Vemma Nutrition Company, et al

Defendants.

No. CV-15-01578-PHX-JJT

**PLAINTIFF FEDERAL
TRADE COMMISSION'S
RESPONSE TO CORPORATE
DEFENDANTS' QUARTERLY
REPORT**

On September 18, 2015, this Court entered a preliminary injunction that included a provision requiring Defendants Vemma Nutrition Company and Vemma International Holdings, Inc. ("Corporate Defendants" or "Vemma") to file quarterly reports describing their business operations, sales, and revenue. (Doc. 118, p. 25). On December 18, 2015, Corporate Defendants filed the first of such reports. ("Quarterly Report," Doc. 180). The

Quarterly Report goes beyond the requirements of the PI by advancing litigation arguments and making inflammatory mischaracterizations of the FTC and the Receiver's¹ conduct. The FTC files this Response to address mischaracterizations and misstatements contained in the Quarterly Report.

I. THE HANDLING OF THE FTC'S INVESTIGATION WAS PROPER

Corporate Defendants assert that, instead of filing this action and seeking immediate *ex parte* injunctive relief, the FTC should have investigated Vemma's sales and marketing tactics pursuant to authority granted by a 1999 administrative consent order with Vemma's predecessor company, New Vision International, Inc. (Doc. 180, p. 3). This assertion is wrong for at least three reasons. First, the New Vision order addressed only deceptive health claims. It included no provisions entitling the FTC to obtain records or information from Corporate Defendants to investigate the unlawful pyramid or deceptive income claims at issue in this case. (*See* Doc. 13, App. 1781-1788) ("New Vision Order").

Second, the FTC did not need to obtain records or information directly from Corporate Defendants to demonstrate that Vemma was operating an unlawful pyramid and using deceptive income claims to promote its program. Defendants had widely disseminated materials—including the company's compensation plan, income disclosure

¹ Corporate Defendants' criticisms of the Receiver and the Receiver's response are well known to the Court, having been discussed in various contexts in this litigation. The Receiver was tasked with determining whether Corporate Defendants could continue operations legally and profitably. (Doc. 25, p. 16). The Receiver determined that they could not and made a decision to suspend operations temporarily pending the preliminary injunction hearing (*see* Doc. 50-1), which was delayed at Defendants' request. (Docs. 36, 40).

statements, and a wide range of videos and marketing materials—to Affiliates and the general public that document Defendants’ deceptive conduct. (*See, e.g.*, Docs. 10-14, App. 525-1840).

Third, and most importantly, the FTC’s objective in commencing this action was to immediately stop Defendants’ ongoing law violations and resulting consumer injury. The FTC properly initiated its action *ex parte* to achieve that goal, as well as to prevent the dissipation of assets or destruction of records. Moreover, since *ex parte* relief was ordered only after the Court determined that the FTC was likely to succeed on the merits of its complaint and that a balancing of equities favored entry of the order (Doc. 25, pp. 1-3), any suggestion that the FTC’s actions were improper must be rejected.

Corporate Defendants also contend that the FTC did not begin investigating whether Defendants made misleading health claims until after the Court entered a preliminary injunction that was less stringent than the FTC requested. (Doc. 180, p. 3). However, Corporate Defendants have no knowledge concerning when the FTC began investigating Corporate Defendants’ potential violation of the New Vision Order, and their contention is false.

II. THE EVIDENCE DOES NOT SHOW THAT VEMMA VOLUNTARILY SUSPENDED ITS “YPR” CAMPAIGN BY THE SPRING OF 2015

Corporate Defendants attempt to distance themselves from their highly polished, enormously deceptive “YPR” or “Young People’s Revolution” campaign, representing to the Court that “as of late 2014 Vemma had materially reduced its marketing efforts that appealed to a younger audience, including eliminating the term ‘YPR – Young People’s

Revolution’ from Vemma’s advertising materials.” (Doc. 180, at 3). Corporate Defendants also claim to have been “concerned by some of the young Affiliates’ aggressive marketing on social media” and to have made “many changes to address the young affiliate’s marketing practices.” *Id.* Corporate Defendants contend that “[b]y the spring of 2015, the Vemma youth movement was over and the lead Affiliate involved in YPR (and his team) had left Vemma to join several competing companies.” *Id.* The implication is that Vemma took voluntary actions to terminate the YPR campaign and root out deception by the spring of 2015. However, the facts do not support these contentions.

Whatever the origins of YPR, Corporate Defendants adopted it as a promotional campaign, incorporated it into their core promotional materials, and were still promoting it in the spring of 2015. In March 2015, FTC Investigator Matthew Thacker enrolled as an Affiliate and gained access to and imaged Vemma’s “back office” material. (Doc. 10, App. 0019-0021). The back office material—which was used to train and motivate Affiliates to promote the Vemma opportunity—still contained extensive references to YPR and the Young People’s Revolution. *Id.* In fact, one of the Affiliates prominently featured in Vemma’s back office material was Alex Morton, the lead Affiliate that Corporate Defendants claimed in their Quarterly Report had left Vemma. (See Doc. 180, p.4; Doc. 10, App. 0021; Doc. 12, App. 1224-1229). In Vemma’s own back office videos, Morton spoke about earning \$25,000 a month as a “normal, average 23-year old kid” (Doc. 12, App. 1228), and promised to share “exactly what to do to take your [Vemma] business from zero to a thousand a month, zero to a quarter of a million dollars,

very, very fast.” (Doc. 12, App. 1225).

The back office materials provided by Vemma also featured “YPR Radio” segments, which portrayed YPR as an active, burgeoning movement:

“We’re still in here. We’re still doing it. Some people talk about it; other people, they make it happen. And here Verve, man, we’re making it happen. This is about to be explosive.” (YPR Radio Host E. Thomas, Doc. 12, App. 1163).

“I see, you know, big things with – with Verve, with the YPR, because it’s – it’s really right now being fueled by success stories. I mean, we’re having so many young people that are getting onboard and becoming successful . . . [.]” (Affiliate Brad Alkazin, Doc. 12, App. 1210).

Regardless of any purported steps Corporate Defendants took to police social media use by its young Affiliates, Corporate Defendants maintained and promoted deceptive YPR material on their own website and in the back office materials that they provided to Affiliates. (Doc. 10, App. 0019-0021).

Finally, as it relates to YPR, it is worth noting that the YPR campaign was only one example of the many deceptive marketing tactics employed by Corporate Defendants. Defendants’ misleading income claims and statements encouraging or directing pyramidal activity were not limited to YPR materials. (*See generally* Docs. 10-14, App. 525-1840). For example, the “Two & Go” material, implemented in mid-June 2015, did not specifically reference YPR or young people, but was also deceptive. (*See* Doc. 10, App. 936-51).

III. VEMMA’S PROPOSED NEW COMPENSATION PLAN

Page 11 of the Quarterly Report discusses Vemma’s new compensation plan,

which was presented to the FTC on December 8, 2015. Since Defendants disclosed the proposed plan to the public and the Court before the FTC's review of the plan was complete, the FTC believes it is appropriate to clarify its position concerning the new plan. The FTC is concerned that the plan: 1) still provides inadequate incentives for retail sales; 2) is possibly even more complex than previous iterations; and 3) is likely to provide little opportunity for Affiliates to earn any compensation. Nevertheless, because the plan helps prevent pyramidal conduct by prohibiting Affiliates from qualifying for rewards through their own purchases and prohibiting the payment of commissions unless at least 51% of sales are made to non-Affiliate customers, the FTC does not object to use of the plan on an interim basis. The FTC has reserved its right to reinstitute objections should the plan lead to pyramid behavior in practice. In addition, the FTC will examine the plan in practice to determine whether it affords Affiliates a realistic opportunity to earn compensation to warrant being marketed as a business opportunity.

Dated: January 7, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 7, 2016, Plaintiff Federal Trade Commission electronically transmitted the attached Document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Filing to all CM/ECF registrants including:

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