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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Federal Trade Commission,)	No. 2:15-cv-01578-JJT
)	
Plaintiff,)	DEFENDANTS VEMMA
)	NUTRITION COMPANY AND
v.)	VEMMA INTERNATIONAL
Vemma Nutrition Company, <i>et al.</i> ,)	HOLDINGS, INC.’S FIRST
)	AMENDED ANSWER TO
Defendants.)	PLAINTIFF FEDERAL TRADE
)	COMMISSION’S COMPLAINT FOR
)	PERMANENT INJUNCTION AND
)	OTHER EQUITABLE RELIEF

Defendants Vemma Nutrition Company and Vemma International Holdings, Inc. (the “Corporate Defendants”) hereby submit their First Amended Answer to the Federal Trade Commission’s Complaint for Injunctive and other Equitable Relief.

1. Paragraph 1 contains no allegations that require a response. The Corporate Defendants nonetheless deny any allegation in Paragraph 1 that they violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and further deny that the FTC is entitled to the relief it seeks.

JURISDICTION AND VENUE

2. The Corporate Defendants admit the allegations in Paragraph 2.

1 primarily interested in purchasing Vemma products for his or her own consumption. The
2 Corporate Defendants deny the remaining allegations in Paragraph 14.

3 15. The Corporate Defendants deny the allegations in Paragraph 15.

4 16. Responding to the allegations in Paragraph 16, the Corporate Defendants
5 admit only that Vemma Nutrition Company earned more than \$200 million in annual
6 revenues in 2013 and 2014. The Corporate Defendants deny the allegation that Vemma
7 Nutrition Company earned this money using a business model that “depends upon
8 recruiting individuals to participate in Vemma as Affiliates and encouraging them to
9 purchase Vemma Products in connection with such participation, rather than selling
10 products to ultimate-user consumers.” The Corporate Defendants affirmatively allege
11 that virtually all revenues came from the sale of Vemma products to “ultimate users” –
12 both Customers and Affiliates who purchased product for their personal consumption or
13 resale.

14 **Defendants’ Sales and Marketing Activities**

15 17. Responding to the allegations in Paragraph 17, the Corporate Defendants
16 admit only that they promote the Vemma program through a variety of channels and that
17 Defendant Boreyko has spoken at events promoting Vemma’s products and
18 opportunities. The Corporate Defendants deny the allegation that “[o]ppportunity events
19 are meetings designed to motivate and train Affiliates and to recruit new Affiliates.” The
20 Corporate Defendants affirmatively allege that opportunity events are also designed to
21 promote the sale of Vemma’s products. The allegations regarding Defendant Alkazin are
22 not directed at the Corporate Defendants, and therefore require no response. However, if
23 deemed to contain allegations against the Corporate Defendants, the Corporate
24 Defendants deny the remaining allegations.

25 18. The Corporate Defendants deny the allegations in Paragraph 18.

26 19. Responding to the allegations in Paragraph 19, the Corporate Defendants
27 admit only that there was a campaign known as “YPR.” The Corporate Defendants deny
28 the remaining allegations in Paragraph 19. The Corporate Defendants affirmatively

1 allege that the YPR campaign was no longer an active campaign as of the time of the
2 filing of the Complaint.

3 20. The Corporate Defendants deny the allegations in Paragraph 20.

4 21. The Corporate Defendants deny the allegations in Paragraph 21.

5 22. The Corporate Defendants deny the allegations in Paragraph 22.

6 23. The Corporate Defendants deny the allegations in Paragraph 23.

7 24. The Corporate Defendants deny the allegations in Paragraph 24.

8 25. The Corporate Defendants deny the allegations in Paragraph 25.

9 26. The Corporate Defendants deny the allegations in Paragraph 26.

10 27. The Corporate Defendants deny the allegations in Paragraph 27.

11 28. The Corporate Defendants deny the allegations in Paragraph 28.

12 29. The Corporate Defendants deny the allegations in Paragraph 29.

13 30. Responding to the allegations in Paragraph 30, the Corporate Defendants
14 admit that Vemma Nutrition Company provides tools and training materials for
15 Affiliates. The Corporate Defendants deny the remaining allegations in Paragraph 30 and
16 affirmatively allege that Plaintiff has not accurately and completely summarized those
17 materials.

18 31. Responding to the allegations in Paragraph 31, the Corporate Defendants
19 admit that each Affiliate is provided a personal website. The Corporate Defendants deny
20 the remaining allegations in Paragraph 31.

21 32. Responding to the allegations in Paragraph 32, the Corporate Defendants
22 admit that Affiliates may create training and promotional materials related to Vemma and
23 that company approval is required prior to the distribution of materials created by
24 Affiliates. The Corporate Defendants deny the remaining allegations in Paragraph 32.

25 **Defendants' Income Claims**

26 33. The Corporate Defendants deny the allegations in Paragraph 33 that are
27 directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has
28

1 not accurately and completely summarized the statements described in Paragraph 33, and
2 has taken them out of context.

3 34. The Corporate Defendants deny the allegations in Paragraph 34 that are
4 directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has
5 not accurately and completely summarized the statements described in Paragraph 34, and
6 has taken them out of context.

7 35. The allegations in Paragraph 35 are not directed at the Corporate
8 Defendants, and therefore require no response. However, if deemed to contain
9 allegations against the Corporate Defendants, the Corporate Defendants deny the
10 allegations.

11 36. The allegations in Paragraph 36 are not directed at the Corporate
12 Defendants, and therefore require no response. However, if deemed to contain
13 allegations against the Corporate Defendants, the Corporate Defendants deny the
14 allegations.

15 37. The Corporate Defendants deny the allegations in Paragraph 37 that are
16 directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has
17 not accurately and completely summarized the statements described in Paragraph 37, and
18 has taken them out of context.

19 38. The Corporate Defendants deny the allegations in Paragraph 38.

20 39. The Corporate Defendants deny the allegations in Paragraph 39.

21 40. The Corporate Defendants deny the allegations in Paragraph 40 that are
22 directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has
23 not accurately and completely summarized the statements described in Paragraph 40, and
24 has taken them out of context.

25 41. The Corporate Defendants deny the allegations in Paragraph 41 that are
26 directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has
27 not accurately and completely summarized the statements described in Paragraph 41, and
28 has taken them out of context.

1 “active” customers or Affiliates must have 60 personal volume points in a month by
2 personally purchasing products worth 60 QV that month for personal consumption or
3 resale, having double that purchased by their personally enrolled customers, or some
4 combination of both. The Corporate Defendants deny the remaining allegations
5 contained in Paragraph 50.

6 51. The Corporate Defendants deny the allegations in Paragraph 51.

7 52. The Corporate Defendants deny the allegations in Paragraph 52.

8 53. Responding to the allegations in Paragraph 53, the Corporate Defendants
9 allege that Plaintiff has not accurately and completely summarized the compensation
10 plan. The Corporate Defendants deny all remaining allegations in Paragraph 53.

11 54. Responding to the allegations in Paragraph 54, the Corporate Defendants
12 refer to Vemma’s compensation plan for its true and complete contents and deny that
13 Plaintiff has accurately and completely summarized them. The Corporate Defendants
14 deny all remaining allegations in Paragraph 54.

15 55. Responding to the allegations in Paragraph 55, the Corporate Defendants
16 refer to Vemma’s compensation plan for its true and complete contents and deny that
17 Plaintiff has accurately and completely summarized them. The Corporate Defendants
18 deny all remaining allegations in Paragraph 55.

19 56. The Corporate Defendants deny the allegations in Paragraph 56. The
20 Corporate Defendants allege that Plaintiff has not accurately and completely summarized
21 the statements described in Paragraph 56, and has taken them out of context.

22 57. Responding to the allegations in Paragraph 57, the Corporate Defendants
23 refer to Vemma’s compensation plan for its true and complete contents and deny that
24 Plaintiff has accurately and completely summarized them. The Corporate Defendants
25 deny all remaining allegations in Paragraph 57.

26 58. Responding to the allegations in Paragraph 58, the Corporate Defendants
27 refer to Vemma’s compensation plan for its true and complete contents and deny that
28

1 Plaintiff has accurately and completely summarized them. The Corporate Defendants
2 deny all remaining allegations in Paragraph 58.

3 59. Responding to the allegations in Paragraph 59, the Corporate Defendants
4 refer to Vemma's compensation plan for its true and complete contents and deny that
5 Plaintiff has accurately and completely summarized them. The Corporate Defendants
6 deny all remaining allegations in Paragraph 59.

7 60. Responding to the allegations in Paragraph 60, the Corporate Defendants
8 refer to Vemma's compensation plan for its true and complete contents and deny that
9 Plaintiff has accurately and completely summarized them. The Corporate Defendants
10 deny all remaining allegations in Paragraph 60.

11 61. The Corporate Defendants deny the allegations in Paragraph 61.

12 62. The Corporate Defendants deny the allegations in Paragraph 62.

13 63. The Corporate Defendants deny the allegations in Paragraph 63.

14 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

15 64. The allegations in Paragraph 64 set forth conclusions of law as to which no
16 response is required. However, if deemed to contain allegations of fact, the Corporate
17 Defendants deny the allegations.

18 65. The allegations in Paragraph 65 set forth conclusions of law as to which no
19 response is required. However, if deemed to contain allegations of fact, the Corporate
20 Defendants deny the allegations.

21 **COUNT I**

22 **Illegal Pyramid**

23 66. The Corporate Defendants deny the allegations in Paragraph 66.

24 67. The allegations in Paragraph 67 set forth conclusions of law as to which no
25 response is required. However, if deemed to contain allegations of fact, the Corporate
26 Defendants deny the allegations.

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COUNT II

Income Claims

68. The Corporate Defendants deny the allegations in Paragraph 68.

69. The Corporate Defendants deny the allegations in Paragraph 69.

70. The allegations in Paragraph 70 set forth conclusions of law as to which no response is required. However, if deemed to contain allegations of fact, the Corporate Defendants deny the allegations.

COUNT III

Failure to Disclose

71. The Corporate Defendants deny the allegations in Paragraph 71.

72. The Corporate Defendants deny the allegations in Paragraph 72.

73. The allegations in Paragraph 73 set forth conclusions of law as to which no response is required. However, if deemed to contain allegations of fact, the Corporate Defendants deny the allegations.

74. The allegations in Paragraph 74 set forth conclusions of law as to which no response is required. However, if deemed to contain allegations of fact, the Corporate Defendants deny the allegations.

COUNT IV

Means and Instrumentalities

75. The Corporate Defendants deny the allegations in Paragraph 75.

76. The allegations in Paragraph 76 set forth conclusions of law as to which no response is required. However, if deemed to contain allegations of fact, the Corporate Defendants deny the allegations.

COUNT V

Relief Defendant

77. The allegations in Paragraph 77 are not directed at the Corporate Defendants, and therefore require no response. However, if deemed to contain

1 allegations against the Corporate Defendants, the Corporate Defendants deny the
2 allegations.

3 78. The allegations in Paragraph 78 are not directed at the Corporate
4 Defendants, and therefore require no response. However, if deemed to contain
5 allegations against the Corporate Defendants, the Corporate Defendants deny the
6 allegations.

7 79. The allegations in Paragraph 79 are not directed at the Corporate
8 Defendants, and therefore require no response. However, if deemed to contain
9 allegations against the Corporate Defendants, the Corporate Defendants deny the
10 allegations.

11 **CONSUMER INJURY**

12 80. The Corporate Defendants deny the allegations in Paragraph 80.
13

14 **THIS COURT'S POWER TO GRANT RELIEF**

15 81. The allegations in Paragraph 81 set forth conclusions of law as to which no
16 response is required. However, if deemed to contain allegations of fact, the Corporate
17 Defendants deny the allegations.

18 82. The Corporate Defendants deny all allegations of the Complaint, either
19 express or implied, not specifically admitted to or otherwise pled to herein.

20 **AFFIRMATIVE DEFENSES**

21 1. The FTC's Claims for injunctive relief, as sought here, may be
22 unconstitutional. The FTC seeks a "permanent injunction to prevent future violations of
23 the FTC Act." Compl. at 26. It is unclear what this sought for restriction might entail,
24 what harms it seeks to remedy, or whom it might encompass. Consequently, the FTC's
25 sought for relief, including potential restrictions on the content, or manner and method, of
26 the Corporate Defendants' advertising or communications with third parties, may violate
27 the First Amendment to the United States Constitution as a prior restraint on protected
28 speech and may impermissibly chill protected speech. The FTC's requested relief may

1 be more restrictive than is necessary to accomplish the remedial objective of preventing
2 any purported violations of the FTC Act, and therefore, violate the First Amendment and
3 exceed the scope of the FTC's authority under the law. Further, the FTC's attempt to
4 hold the Defendants responsible for unspecified conduct, actions, or statements of other
5 Defendants and third parties may violate the First Amendment, and exceed the scope of
6 the FTC's authority. Further, the FTC's attempt to hold the Defendants responsible for
7 purported harm suffered by residents of countries other than the United States
8 unconstitutionally and improperly exceeds the scope of the FTC's authority under the
9 law. Defendants reserve the right to further amend this affirmative defense as discovery
10 progresses, and as the FTC's allegations, and the nature and form of the requested
11 remedies, become more concrete.

12 2. The FTC's claims for injunctive relief are not authorized or available at law
13 or equity. In support of this defense, the Corporate Defendants incorporate herein the
14 statements set forth in Affirmative Defense #1 above. Corporate Defendants reserve the
15 right to further amend this affirmative defense as discovery progresses, and as the FTC's
16 allegations, and the nature and form of the requested remedies, become more concrete.

17 3. The Corporate Defendants acted reasonably, in good faith, and in
18 accordance with any applicable standards and duties.

19 4. The Corporate Defendants maintain and enforce policies to prevent
20 "inventory loading", such as their policy that at least 70% of an Affiliate's purchased
21 product must be consumed or sold to an end user, in addition to their liberal return and
22 buyback policies. *See Amway*, 93 F.T.C. 618.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, having fully responded to the Complaint, the Corporate
25 Defendants respectfully request that the FTC's requests for a permanent injunction and
26 other equitable relief be denied in their entirety, and that the Court award the Corporate
27 Defendants their attorneys' fees and costs, and any further relief the Court deems
28 appropriate.

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RESPECTFULLY SUBMITTED this 15th day of July, 2016.

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By /s/ Edward A. Salanga
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Edward A. Salanga

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2016, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and a copy was electronically submitted to counsel at the e-mail addresses below:

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/s/ Monica Kish