



Side-By-Side:
A Comparison of Fortune Hi-Tech Marketing
and Herbalife

March 14, 2013



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Introduction

- ▶ **The following comparison of Fortune Hi-Tech Marketing (“FHTM”) and Herbalife (“HLF”) is based upon our review of the following source documents from the FTC’s recent legal action against FHTM:**
 - The transcript of the press conference announcing the legal action
 - Complaint, filed Jan. 24, 2013
 - The memorandum in support of plaintiffs’ *ex parte* motion for a TRO
 - The FTC’s press release
 - The Declarations of Dr. Peter J. Vander Nat, Roberto C. Menjivar, and Kaitlin A. Dohse
 - The report of temporary receiver’s activities

- ▶ **All quotations applicable to FHTM in the following pages come from one of the source documents listed above**

Mission Statements



“The mission of FHTM is to enable and transform the lives of many by offering outstanding products and services through the best opportunity in direct selling”



“Herbalife’s mission is to change people’s lives by providing the best business opportunity in direct selling and the best nutrition and weight-management products in the world”

Source: http://www.relylocal.com/ashville-north-carolina/business_listings/fortune-hi-tech-marketing-fhtm-ashville-business-opportunity.

Source: <http://company.herbalife.com>

Overview



FHTM bills itself as “the business model of the 21st century” and promises its recruits vast sums of money, but it really distinguishes itself in only one important way: the overwhelming majority of recruits make nothing at all

Herbalife bills itself as “the best business opportunity on the face of the earth” and promises its recruits vast sums of money, but it really distinguishes itself in only one important way: 88% of distributors receive \$0 in “gross compensation” (before expenses)

In its decade of operation, FHTM has caused hundreds of thousands of consumers to suffer harm of hundreds of millions of dollars

In its decades of operation, HLF has caused millions of consumers to suffer harm of billions of dollars

Operation of a Pyramid Scheme



“FHTM is an organization in which the participants obtain their monetary rewards primarily from recruiting new participants into the business venture and not from selling goods and services to the public”

“Upon applying the critical consideration of the *Koscot* test, there is only an incidental and *de minimis* relationship between recruitment rewards paid to participants and product sales to non-participants”

“FHTM does not enforce, nor have in place, procedures that would ensure any meaningful amount of retail sales made to people outside the organization”

“FHTM needs to continually recruit new participants in an effort to survive”

“It is foreseeable from the terms of the plan that the vast majority of the participants are destined to fail at their ostensible business venture and are thus harmed”



HLF is an organization in which distributors earn more than 10 times as much from Recruiting Rewards as they do by selling the company’s overpriced products to *bona fide* retail customers (1)

“Herbalife’s entire business model appears to incentivize primarily the payment of compensation that is ‘facially unrelated to the sale of the product to the ultimate users because it is paid based on the suggested retail price of the amount ordered from [Herbalife], rather than based on actual sales to consumers” (2)

The deposition of Jacqueline Miller in *Herbalife v. Ford*, No. CV 07-2529 (C.D. Cal. 2009), shows that, between 2006 and 2009, Herbalife disciplined fewer than 25 distributors for violating the 70 percent rule (fewer than 1 out of every 100,000 distributors)

“For the latest twelve month re-qualification period ending January 2005, approximately 60% of our supervisors did not re-qualify and more than 90% of our distributors turned over” (3)

We estimate that in the 2006 – 2012 period ~1.1mm Sales Leaders failed and left the business, a ~90% failure rate (4)

Source: Declaration of Vander Nat (pg. 5).

1. “Who wants to be a Millionaire?” (pg. 148).
2. *Herbalife v. Ford*, No. 07-2529 (C.D. Cal.) Dkt. # 374 at 16 (quoting *Omnitrition*, 79 F.3d at 782).
3. HLF 2005 Annual Report. The company has stopped providing this disclosure.
4. “Who wants to be a Millionaire?” (pg. 320).

Compensation Plan



Complexity

"The plan is difficult to comprehend. I believe that for a general participant it would take many hours of scrutiny to identify and understand the relevant terms of the plan and how they interrelate..." (1)

Herbalife's Distributor Agreement is extremely difficult to comprehend. It has 124 pages, 48,000 words and 215 rules

Multiple Levels

FHTM's distributor structure comprises seven primary levels:
Independent Representative → Regional Sales Manager → Executive Sales Manager → National Sales Manager → Platinum Sales Manager → Presidential Ambassador

HLF's distributor structure comprises eight primary levels:
Non-Sales Leaders → Supervisor → World Team → GET Team → Millionaire Team → President's Team → Chairman's Club → Founder's Circle"

Iceberg Shape

"The bottom 3 levels [not entitled to CAB] continually comprise more than 96% of participants" (2)

The bottom 2 levels, Non-Sales Leaders and Inactive Supervisors (who do not receive royalties) continually comprise ~90%+ of distributors (1)

Commissions based Predominantly on Recruitment

"CGU rewards are presented as an array of percentage commissions and overrides on the purchase/sale of products, where the commissions & overrides are related to the level of downline sponsorships" (3)

"Royalty Overrides and Production Bonus rewards are presented as an array of percentage commissions and overrides on the purchase of products (based on SRP). Production Bonus percentages increase as distributors recruit more participants into their downline organizations" (2)

"Participants at the rank of ESM and NSM comprise ~0.5% of all Representatives; yet, for Dish, they... received [29%] of the CGU" (4)

Participants at the rank of GET/MT/PT comprise ~0.6% of all distributors; yet they received ~84% of Royalty Overrides (3)

Special Bonuses

"Upon attaining the rank of QPSM... there are special bonuses... such as... sharing company revenue" (5)

Upon attaining the rank of President's Team there are special bonuses such as the Mark Hughes Bonus (1% of company "Retail Sales") (2)

1. Declaration of Vander Nat (pg. 9).
2. Declaration of Vander Nat (pg. 24).
3. Declaration of Vander Nat (pg. 11).
4. Declaration of Vander Nat (pg. 36).
5. Declaration of Vander Nat (pg. 20).

1. "Who wants to be a Millionaire?" (pg. 180).
2. "Who wants to be a Millionaire?" (pgs. 81-82).
3. See appendix for details.

Compensation Plan (Cont'd)



Volume Quotas

"Those who hope to make it to the top likely spend more than \$1,500 per year to be an FHTM representative" (1)

"To qualify for sales commissions and recruiting bonuses, they had to pay an extra \$130 to \$400 per month" (2)

Product Purchase is Driven by Compensation Plan

"The sales data further reveal that new recruits are likely not buying products and services from FHTM for the sake of those products and services, but, rather, new recruits are purchasing the products or services in order to become eligible to receive rewards" (3)

"Further, virtually no participants choose the FHTM compensation option that would maximize their product commissions... More than 95% of these transactions indicate a choice for the 2% commission and the customer points" (3)

Lack of Genuine Retail Sales

"In fact, few of FHTM's products and services are ever sold to anyone other than the Reps themselves. Furthermore, Reps receive minimal financial rewards from FHTM for selling the products and services to outside consumers."

"The real question, as [Attorney] General Conway said, is whether the emphasis is on selling products to independent third parties[.]"

Sales Leaders must generate ~\$2,600 of Personal Volume per year to maintain their downlines and Sales Leader status (1)

To qualify for maximum commissions and bonuses, Sales Leaders must generate ~\$1,600 to ~\$3,200 of Personal Volume each month (1)

Senior distributors purchase product to "pay-for-their-paycheck;" (2)
Mid-level distributors purchase product to requalify; (3)
Junior distributors purchase product to advance in the marketing plan and achieve Supervisor status (4)

25%-discount distributors could buy product cheaper and forego Herbalife's exorbitant shipping & handling charges by purchasing product online, but they opt to purchase "direct" from the company in order to obtain Volume Points (5)

"We don't track this number and do not believe it is relevant to the business of investors."(6)

1. Declaration of Vander Nat (pg. 20).
2. Memorandum re TRO (pg. 9).
3. Declaration of Vander Nat (pg. 3).
4. Complaint in FTC v. Fortune Hi-Tech Marketing (par. 36)
5. Fortune Hi-Tech Press Conference, Jan 28, 2013

1. "Who wants to be a Millionaire?" (pgs. 72, 166).
2. "Who wants to be a Millionaire?" (pgs. 159-171).
3. "Who wants to be a Millionaire?" (pg. 172).
4. "Who wants to be a Millionaire?" (pg. 173).
5. "Who wants to be a Millionaire?" (pgs. 106-108).
6. HLF 8-K, May 1, 2012

Focus on Recruitment



Incentives Favor Recruiting

"The scheme provided much larger rewards for recruiting people than for selling products, and more than 85 percent of the money consumers made was for recruitment" (1)

"Under add-on bonuses, it is evident that the compensation plan offers overwhelmingly greater rewards for recruitment than for selling/buying products or services" (2)

"Virtually all incentives in the compensation plan encourage more recruitment" (3)

Presentations to Prospects Encourage Recruiting

"FHTM preaches recruitment. Defendants stress recruitment, not product sales, during their presentations to prospective representatives" (4)

"The business has to be built every day. You wanted some practical advice. Recruit, recruit. You got to build a team" (5)

Escalating Bonuses

"Recruitment bonuses... increase as the representative rises through the ranks of the FHTM compensation plan" (6)

Measure of Success

"Paul Orbeson defines success and failure in the business as a function of how well it recruits new members" (4)

Herbalife provides much larger rewards for recruiting people than for selling products, and more than 90% of the money distributors make is from Recruiting Rewards (1)

Because of the Production Bonus, Herbalife's top earners "are not really retailers... They're recruiters" (2)

It is impossible to get to Active World Team (median gross compensation: ~\$6,000/yr) without recruiting other Sales Leaders (3)

"If you want some money today: Retail. If you want Lifestyle money: Recruit" (4)

"It's easier to get rich fast in Herbalife than it is to go slow... To Build Fast you need to Power Recruit" (5)

Bonus percentages increase as distributors rise through the ranks of the Herbalife compensation plan (6)

Michael Johnson defines success by lead generation.
Q: "How do you measure success?"

A: "There's two ways to measure. One is by lead generation... For the tour of California... One distributor had over 1000 leads generated at that event alone. That is success measurement in its most." (7)

1. FTC press release.
2. Declaration of Vander Nat (pg. 20).
3. Declaration of Vander Nat (pg. 23)
4. Memorandum re TRO (pg. 31).

5. Declaration of Menjivar (pg. 38).
6. Memorandum re TRO (pg. 12)

1. "Who wants to be a Millionaire?" (pg. 150).
2. "Who wants to be a Millionaire?" (pg. 76).
3. "Who wants to be a Millionaire?" (pgs. 74-75).
4. "Who wants to be a Millionaire?" (pg. 77).

5. OBS distributor presentation (Nov. 22, 2010).
6. "Who wants to be a Millionaire?" (pg. 81).
7. HLF Q1'07 earnings transcript.

Concentration of Rewards at the Top

“And what you expect to see in a pyramid scheme is a heavy concentration of the rewards at the top of the enrollment structure and the data exactly verifies that expectation that, for example, these data show that the top six percent of all of the [BurnLounge] moguls earned something like 85 percent of all the rewards... that’s the kind of concentration, progressive concentration toward the top that you would expect to see in a pyramid scheme.”

– Dr. Peter J. Vander Nat



“The top six percent of all moguls earned something like 85 percent of all the rewards”

Source: FTC v. BurnLounge transcript. Cross-examination of Dr. Peter J. Vander Nat. (12-15-2008).



The top six percent of all Sales Leaders earned approximately 89 percent of all the rewards

Source: See appendix for details. Refers to U.S. Sales Leaders for 2011. Includes inactive Sales Leaders. Rewards includes royalty overrides, production bonuses and the Mark Hughes Bonus (but excludes wholesale commissions as these were not included in Herbalife’s 2011 statement of gross compensation).

Stratification of Commissions Paid



Top 1% Earn Majority of Rewards

"Over half of all product bonuses actually go to a very small set of representatives at the top of the structure" (1)

The top 1% of Herbalife U.S. distributors earned ~88% of Royalty Overrides (1)

Few Participants Earn Meaningful Incomes

"Approximately 98% of the Independent Representatives received less than \$1,000 of commissions per year" (2)

Approximately 98% of distributors received less than \$1,000 of commissions in 2011 (1)

"Less than 0.1%... received more than \$100,000 in net commissions per year" (2)

Approximately 0.1% received more than \$100,000 in commissions in 2011 (1)

"Only a miniscule number of participants – probably less than 1% -- are making even a five-figure annual income" (3)

Only a miniscule number of participants – probably less than 0.7% -- are making even a five-figure annual income (1)

Typical Earnings are *De Minimis*

"More than 50% of regional sales managers also received fewer than \$15" (4)

More than 50% of Sales Leaders received \$0 of commissions in 2011 (1)

"FHTM's Income Disclosure shows that the average Manager earned... an 'annualized income' of \$440" (5)

Herbalife's Income Disclosure shows that the typical active Supervisor earned an annualized income of \$475 (1)
[N.B. this excludes Retail Profit, which we estimate to be \$61/yr per average distributor before taxes/expenses] (2)

1. Memorandum for TRO (pgs. 30-31).
2. Report of temporary receiver (pg. 1).
3. Memorandum for TRO (pg. 3)
4. Declaration of Vander Nat (pgs. 4-5).
5. Memorandum for TRO (pg. 18).

1. See appendix for details.
2. "Who wants to be a Millionaire?" (pg. 147).

Harm



Empirical Failure Rate

"Considering two consecutive years of operation – I calculate that approximately 90.5% of participants had accrued earnings of less than \$15 a year. These individuals undertook payments for their business venture that, in any event, were significantly greater than \$15. Thus, as a low-side estimate, the data show a business failure rate that is at least 90.5%" (1)

Dollar Harm

"Based upon the data provided by FHTM covering 2006 through June 2011... the related consumer injury over the stated period comes to approximately \$169.3 million" (1)

We estimate that in the 2006-2012 period, approximately 90% of new Sales Leaders exited the business. The vast majority of these individuals received annual commissions of less than \$475 (and many received \$0). These individuals undertook payments for their business venture that were, most likely, significantly greater than \$475. Thus, we estimate the data show a business failure rate that is approximately 90% (excluding Non-Sales Leaders) (1)

Based on our assumptions and Herbalife's publicly disclosed data covering 1980 through 2012, we estimate conservatively, the related consumer injury over the stated period comes to approximately \$3.8 billion; This estimate does not include the harm done to the ~10mm former Non-Sales Leader distributors. As such, we think the true financial damage Herbalife has inflicted is materially higher than \$3.8 billion (1)

1. Declaration of Vander Nat (pgs. 5-6).

1. "Who wants to be a Millionaire?" (pgs. 320-327).

Deceptive Income Claims



Exaggerated Earnings Claims

"The recruiting system is rife with testimonials of top earners talking about incredible sums they've made" (1)

We analyzed 393 testimonials and earnings claims from Herbalife Today magazines from 1997-2004. Annual earnings claims average \$178,000/yr, which only roughly 1 in 5,000 new distributors achieves (1)

"At a Chicago-area recruiting event, one representative told an undercover FTC investigator that she made \$10,000 in one month and a friend made \$60,000 in one month" (2)

At a New York-area recruiting event, one representative told an undercover reporter (Herb Greenberg) that he made \$20,000 in one month and a friend made \$65,000 in one month (2)

Anybody Can Do It

"Top FHTM officials attempt to motivate representatives with promises of great financial success if they just do not give up" (3)

"Everything is really easy. If I can do it, you can do it as well"
– Mark Hughes (1)

Change Your Lifestyle

"FHTM lures new recruits in with promises of large paychecks and extravagant lifestyles;" e.g., "[FHTM has] allowed us to live out our dreams. And you know what? It can for you too if you'll just put your effort in the right vehicle, in the right place" (3)

Doran Andry, Chairman's Club, lures new recruits with a YouTube video featuring his mansion, his Ferrari, and his lavish lifestyle: "You know, just imagine. It started with a little dream to want to have a better life... And all of you, if you just dream, you can have everything we have and much more" (3)

Who wants to be a Millionaire?

"A Platinum Manager told listeners on a team call: '[I]f you're not aware of what you have your hands on, this is a multi-million-dollar business. Darla has made millions of dollars. Scott has made millions of dollars, millions and millions of dollars. So, understand, this is a multi-million dollar organization" (2)

"Herbalife are {sic} on the way to become a USD10 billion company and thanks to that many normal people like you and I will become Millionaires;" (4)
"Great product, great brand, incredible business opportunity, unlike anything that exists out there, because people can become millionaires at Herbalife" (5)

For Your Grandchildren...

"[Top representatives] promise that FHTM will provide consumers with financial security for themselves and their children and grandchildren" (4)

"[I]f you want to lock in that security for life, you need to recruit. And the other thing you need to do, be prepared to roll that cash flow for straight 9 to 12 months. Because you know what, in that short space of time, by making that commitment, you are going to create a foundation for life. Absolutely. Not just for yourself, but a legacy, a legacy for your family, for your children, and their children's children." (6)

1. Press conference transcript.
2. Memorandum for TRO (pg. 16).
3. Memorandum for TRO (pgs. 13-14).
4. Memorandum for TRO (pg. 17).

1. "Who wants to be a Millionaire?" (pg. 197).
2. http://www.cnbc.com/id/100359541?_source=vtv|sellingthedream!&par=vtv.
3. <http://www.pscmhllibrary.com/profile-of-an-herbalife-chairmans-club-member/>
4. <http://factsaboutherbalfelife.com/wp-content/uploads/2012/12/Online-Recruiting-Training.pdf>
5. Michael Johnson, CEO, December 16, 2008 investor day transcript.
6. "Who wants to be a Millionaire?" (pg. 77).

The Retail Opportunity



Inflated Prices

"A price comparison of FHTM's True Essentials and Envy Organics lines shows that equivalent products can typically be purchased for substantially less" (1)

For a 200-calorie serving, Formula 1 (~30% of HLF's volume) costs nearly three times as much as Ensure or Slim-Fast, and nearly twice as much as Lean Shake. Herbalife's other products are similarly expensive. A multivitamin tablet from Herbalife supposedly retails for 26 cents, whereas Centrum (Pfizer) can be purchased for 6 cents per tablet (1)

Commodity Products

"[FHTM representatives] are selling things of dubious value. These include their own line of organic shampoos and pills" (2)

Herbalife's top-selling products are commodities that should have little to no pricing power. These include nutrition powder, herbal tea, protein powder, and its own line of organic shampoos and pills. The company says it spends "*de minimis*" amounts to advertise its products, and its GAAP R&D spending is "not material" (2)

Restrictions Placed on Retail Activity

"[Representatives] are prohibited from selling products or services on commerce sites such as Amazon, eBay, or Craigslist without obtaining prior written approval from FHTM" (3)

"Distributors may not (directly or indirectly through any intermediary or instrumentality) offer or facilitate the offering of Herbalife products for sale by soliciting or receiving open bids. This prohibition includes, but is not limited to, soliciting or receiving bids for Herbalife products on the Internet, through a commercial auction Web site such as eBay, or otherwise" (3)

Herbalife Nutrition Clubs are required to abide by an onerous set of restrictions and rules, including: (i) no exterior signage at residential locations, (ii) no mention of Herbalife on the Club exterior, (iii) windows and doors must be covered, (iv) no advertising or promotion, (v) no attracting walk-in customers, and (vi) Club Operators may charge membership fee only to cover operating costs – prohibited from earning retail profit (4)

1. Memorandum for TRO (pg. 10).
2. Press conference transcript.
3. Memorandum for TRO (pg. 11).

1. "Who wants to be a Millionaire?" (pgs. 16, 18, 19).
2. "Who wants to be a Millionaire?" (pgs. 21, 24, 30).
3. Herbalife distributor memo, "Prohibitions of Auction Sales and Sales on Auction Sites and Sales to Non-Distributors for Resale," (May 4, 2005).
4. "Who wants to be a Millionaire?" (pgs. 284-287).

Anti-Pyramid Rules



Buyback Policy

"Unlike Amway, FHTM charges a 10% restocking fee on the products it will also allow a representative to return, [and] requires the representative to return any compensation they earned as a result of buying the products" (1)

70% Rule / Majority Rule

"From all of these considerations, it is evident that the majority rule and the 70% rule have no effective meaning and certainly do not secure any *bona fide* customer sales" (2)

"Importantly, any products that an IR could give away as samples while also using these products for oneself – such as True Essentials and Envy Organics – may be designated as *customer orders*" (3)

Until May 2012, HLF charged a 10% restocking fee on the products returned by distributors. In some countries, HLF has/had no repurchase policy. In others, it has/had an escalating restocking fee. HLF does not reimburse Shipping & Handling fees, which can be as high as ~20% of purchase price; HLF requires distributors and upline distributors to return any compensation they earned (as well as forego promotions) as a result of product returns – this has the effect of encouraging distributors to eat the cost of product returns (1)

"I know that Herbalife has created the Ten Retail Sales Rule and the 70 Percent Rule, but looking at the record I have serious questions as to whether or not those are not exalting form over substance and aren't just there for the purpose of creating the impression that the second element of the Koscot test has been met" (2)

Distributors are able to count sales to first line Distributors with up to 200 personally purchased Volume Points as sales per the Ten Retail Customer Rule; in addition, products given away as samples at Nutrition Clubs may be counted toward the Ten Retail Customer Rule (3)

Distributors can include sales to other distributors toward their 70% Rule requirement, which does nothing to ensure sales to *bona fide* retail customers

Sales Leaders do not receive their paychecks unless they certify that they have abided by the 70% Rule and Ten Retail Customer Rule

1. Memorandum for TRO (pg. 34).
2. Declaration of Vander Nat (pg. 43).
3. Declaration of Vander Nat (pg. 42).

1. "Who wants to be a Millionaire?" (pgs. 310-316) & factsabouterherbalife.com
2. *Herbalife v. Ford* (June 1, 2009 Hr'g Tr., Dkt., # 300, at 6.).
3. "Who wants to be a Millionaire?" (pg. 126).

Miscellaneous



Management

Simon Davies spent the last six years at FHTM as CFO and then Chief Analytics Officer (1)

Simon Davies was the Director of Internal Audit at Herbalife from 1994 through 2005 (1)

Third-Party Credibility

"FHTM does everything it can to capitalize on the names of the third-party businesses with which it has agreements" (2)

Herbalife has cited its UCLA affiliation 440 times in SEC filings since its IPO in 2004. Including distributor presentation references to UCLA the number would likely be in the thousands;

Herbalife has paid its Nobel Laureate spokesman, Dr. Louis Ignarro, and his affiliated consulting firm more than \$15 million to help Herbalife promote its business opportunity to its distributors (2)

Targeting Specific Ethnic Groups

"FHTM targets its recruitment efforts at consumers who are struggling to make ends meet but have an entrepreneurial bent. Increasingly, FHTM has been targeting non-native English-speaking recruits, particularly Spanish-speakers" (3)

Herbalife targets Latinos, African-Americans, ethnic minorities, the young, and stay-at-home moms – focusing on those in financial need (3)

Responding to Pyramid Scheme Allegations

"In response to DiGrandi's question about whether FHTM is a pyramid, [FHTM's General Counsel] responds, in part, by saying, 'I could go on for this – you know, on this topic for a long – for a long time, obviously. But the bottom line is, are people compensated by FHTM solely for recruiting new people to join the business? And the answer to that question is no. Therefore, it's not a pyramid.'" (emphasis added) (4)

HLF's investor relations website has a link to a white paper, commissioned by the Company, and published by Professor Anne T. Coughlan entitled, "FAQs on MLM Companies." The paper states "an illegal pyramid scheme awards payments to participants for mere recruitment." (emphasis added); the paper also states, "A true pyramid scheme causes **all** later participants to lose money" (4)

1. <http://www.sequenceinc.com/fraudfiles/2013/01/are-herbalife-and-fhtm-similar/>
2. Memorandum for TRO (pg. 9).
3. Memorandum for TRO (pg. 6).
4. Declaration of Menjivar (pgs. 33-34).

1. <http://www.sequenceinc.com/fraudfiles/wp-content/uploads/2013/01/simon-davies-linkedin-herbalife-fhtm.pdf>
2. "Who wants to be a Millionaire?" (pgs. 39-49). See also: "Herbalife Cozies Up With UCLA," LA Times (Feb. 22, 2013). <http://www.latimes.com/business/la-fi-hiltzik-20130224.0,1163343.column>
3. "Who wants to be a Millionaire?" (pgs. 232 – 238).
4. Source: ir.herbalife.com. For an analysis of Anne Coughlan's paper, see: "Analysis Of Anne T. Coughlan's Herbalife Articles," <http://seekingalpha.com/article/1103871-analysis-of-anne-t-coughlan-s-herbalife-articles>

**Appendix:
Stratification of Herbalife Commissions**

Herbalife Statement of Average Gross Compensation of U.S. Supervisors – 2011 (Abridged)



STATEMENT OF AVERAGE GROSS COMPENSATION OF U.S. SUPERVISORS – 2011

Over 25% of Distributors reach the rank of Supervisor and above (“Leader”), qualifying them for additional compensation which is paid by Herbalife based upon their activities and those they have sponsored directly and indirectly. The annual gross compensation paid by Herbalife to all Leaders during 2011 averaged \$2,900 (with a median level of \$741). Over 39% of Supervisors are “Active” (defined as those who generated at least 2,500 points of volume in 2011 after becoming Supervisor). The annual gross compensation paid by Herbalife to Active Leaders during 2011 averaged \$7,354 (with a median level of \$637).

ACTIVE LEADERS				
Earning Level	% of Total Leaders	% of Active Leaders	Average Earnings Compensation (USD)	Median Compensation (USD)
President’s Team	0.2 %	0.6 %	\$ 514,638	\$ 336,901
Millionaire Team	0.7 %	1.7 %	\$ 100,195	\$ 97,303
Get Team	2.6 %	6.5 %	\$ 22,766	\$ 19,417
World Team	2.9 %	7.3 %	\$ 6,224	\$ 5,659
Supervisor	33.1 %	83.9 %	\$ 901	\$ 475
Total	39.4 %	100 %	\$ 7,354	\$ 637

Stratification of U.S. Herbalife Commissions Backup

<i>(USD in millions)</i>	Total Distributions		Pct. of Total	Compensation		
	Amt.	Pct.	Leaders	Average	Median	Total
President's Team	207	0.04%	0.2%	\$514,638	\$336,901	\$106.5
Millionaire Team	621	0.1%	0.7%	100,195	97,303	62.2
GET Team	2,355	0.5%	2.6%	22,766	19,417	53.6
World Team	2,639	0.5%	2.9%	6,224	5,659	16.4
Supervisor	30,255	5.9%	33.1%	901	475	27.3
Active Leaders	36,076	7.0%	39.4%	\$7,354	\$637	\$266.0
Inactive Leaders	55,414	10.7%	60.6%	-	-	-
Total Leaders (1)	91,490	17.7%	100.0%	\$2,900	\$0	\$266.0
Non-Sales Leaders (2)	424,106	82.3%		-	-	-
Total Distributors	515,596	100.0%		\$516	\$0	\$266.0 ⁽³⁾

Source: Herbalife Statement of Average Gross Compensation of U.S. Supervisors – 2011. (Revised: 7/25/12). Available on factsabouterherbalife.com.

Note: The table above includes Inactive Sales Leaders and Non-Sales Leaders in Total Distributors (they are excluded from the Company's Gross Compensation statement).

1. Average North America Sales Leaders were 94,423 in 2011 (Q4'10: 100,619; Q1'11: 76,150; Q2'11: 88,214; Q3'11: 98,919; Q4'11: 108,211). Source: Herbalife Regional Key Metrics supplement (unaudited).
USA was 97% of North America Net Sales in 2011 (Source: HLF 10-K). Assumes USA Total Leaders were 97% of average North America Total Leaders in 2011.
2. North America Sales Leaders were 21.6% of total Sales Leaders (ex China) as of Q4'11. Assumes North America Non-Sales Leader distributors were 21.6% of total Non-Sales Leader distributors (ex China) as of Q4'11. Source: HLF 10-K and Herbalife Regional Key Metrics supplement (unaudited). Assumes USA was 97% of North America.
3. USA Royalty Overrides were ~\$257mm in 2011 (Source: HLF 10-Qs and 10-K). Assumes USA gross margin = Herbalife consolidated gross margin. This foots roughly to the \$266mm implied from the table above, which is derived from Herbalife statement of gross compensation and its distributor disclosures.