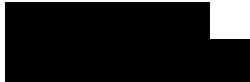




September 10, 2018

**VIA EMAIL AND OVERNIGHT MAIL**

Andrew Smith, Director, Bureau of Consumer Protection  
Lois Greisman, Associate Director, Division of Marketing Practices  
Federal Trade Commission  
600 Pennsylvania Ave. N.W.  
Washington, DC 20580



Re: Illegal Income Claims by Multi-level Marketing Company Stream Gas & Electric

Dear Mr. Smith and Ms. Greisman:

I write to inform you of the findings of an ongoing Truth in Advertising, Inc. (“TINA.org”) investigation of Stream Gas & Electric, Ltd. (“Stream”), a Texas-based multi-level marketing company that resells electricity and gas to customers, as well as wireless phone and personal protective services.

TINA.org’s investigation has revealed that Stream and its distributors are using a plethora of deceptive, atypical, and unsubstantiated income claims to market the Stream business opportunity. Such marketing materials include claims of participants quitting their jobs, becoming stay-at-home parents, paying for their kids’ college tuitions without incurring debt, traveling the world, and driving luxury vehicles, among other things. These claims are especially egregious given that Stream’s 2017 Income Disclosure Statement states that the average distributor lost money last year by enrolling in Stream’s business opportunity.<sup>1</sup>

Based on this information, TINA.org notified the company on December 18, 2017 of its findings of inappropriate income claims, and asked that the company remedy the deceptive marketing immediately.<sup>2</sup> At that time, TINA.org provided more than 20 examples of exaggerated income claims, some of which were posted on company-owned websites, including <https://mystream.com/en/opportunity>, as well as on the company’s official Instagram and YouTube pages.<sup>3</sup>

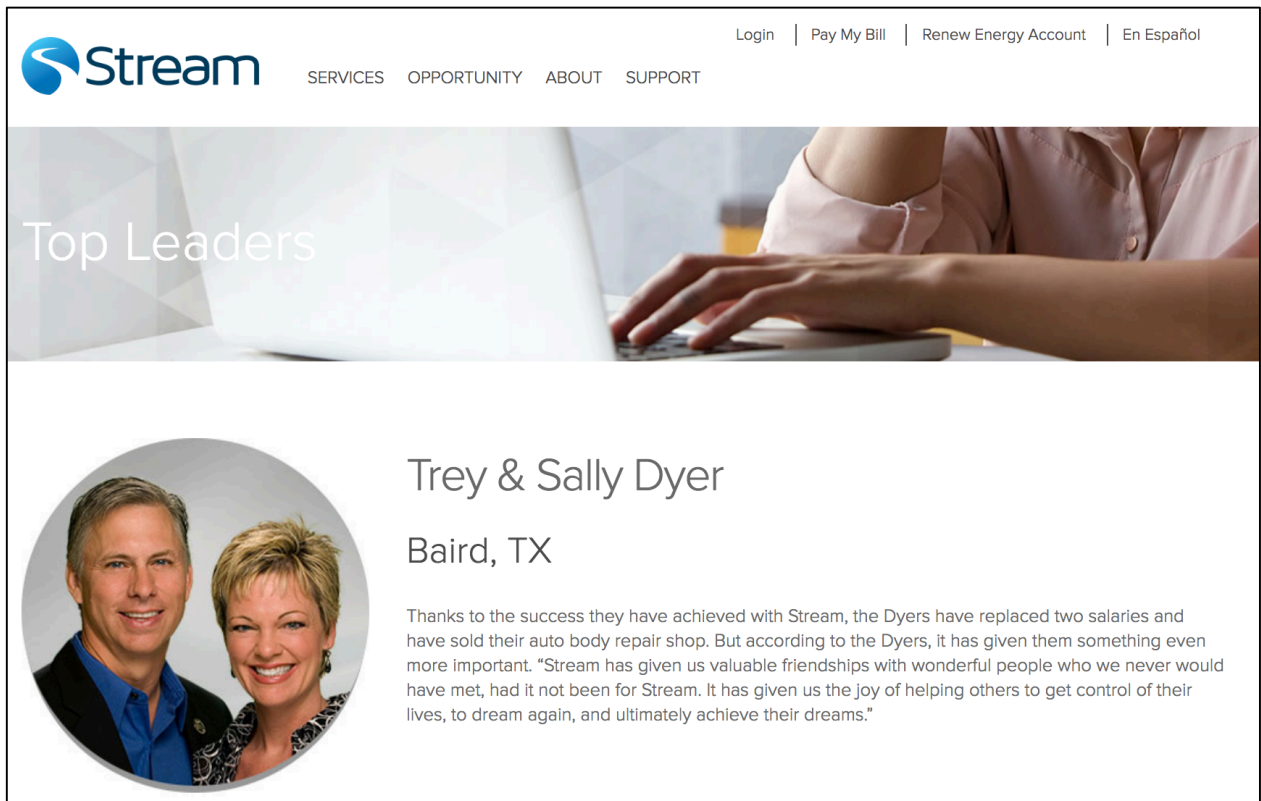
The company responded on December 21, 2017 stating, in part, that “Stream’s compliance team...is dedicated to teaching our Independent Associates (IAs) how to

accurately and transparently represent the Stream brand....When someone misrepresents Stream in any way, we take it seriously.”<sup>4</sup>

However, TINA.org recently audited its original sampling of deceptive Stream income claims that it provided to the company back in December, and found that, almost nine months later, over a third of the claims are still up on the internet.

And to add insult to injury, since putting Stream on notice, TINA.org has collected an additional sampling of more than 100 deceptive income claims made by the company and its distributors (all available at <https://www.truthinadvertising.org/stream-energy-income-claims-database/>), making it clear that Stream is not taking this deceptive marketing issue seriously and that enforcement action is now necessary.

For example, Stream’s website currently features several testimonials boasting great financial successes as a result of becoming Stream distributors:



The screenshot shows the Stream website's 'Top Leaders' section. At the top left is the Stream logo. To its right are navigation links: 'SERVICES', 'OPPORTUNITY', 'ABOUT', and 'SUPPORT'. Further right are links for 'Login', 'Pay My Bill', 'Renew Energy Account', and 'En Español'. Below the navigation is a banner image of a person's hands typing on a laptop with the text 'Top Leaders' overlaid. Underneath the banner is a circular portrait of a man and a woman, identified as Trey & Sally Dyer from Baird, TX. To the right of the portrait is their name and location. Below that is a testimonial quote: 'Thanks to the success they have achieved with Stream, the Dyers have replaced two salaries and have sold their auto body repair shop. But according to the Dyers, it has given them something even more important. "Stream has given us valuable friendships with wonderful people who we never would have met, had it not been for Stream. It has given us the joy of helping others to get control of their lives, to dream again, and ultimately achieve their dreams."'

<https://mystream.com/leader/national/dyer-trey-sally>

It is important to note that TINA.org’s database also includes statements made directly by Stream’s Executive Vice President and Chief Sales Officer Steve Fisher. For example, in one Stream video, Steve Fisher proudly tells consumers:

“The results speak for themselves. Billions of dollars in lifetime company revenue. Hundreds of millions in commissions paid out to Independent Associates. ... Each time your customers pay their bill, you get paid. ... The earning potential here can be huge as

these bonuses can add up and are paid to unlimited levels in your leadership organization. While you grow your business, you'll find that Stream believes strongly in rewarding performance, offering one of the best incentive programs in the industry today. Qualifying leaders who meet certain requirements can earn exclusive trips to exotic locations, participate in our Mercedes Benz car program, event perks, a travel stipend, and additional bonuses...<sup>5</sup>



Screenshots taken from *Stream Business Presentation with CSO Steve Fisher* video<sup>6</sup>

Though some of the company's marketing materials include language to indicate that the results depicted are not guaranteed and that results and earnings vary,<sup>7</sup> Stream's disclaimers are legally insufficient as none of them clearly or conspicuously disclose what typical participants earn and none of them are placed in a conspicuous location.<sup>8</sup>

In short, Stream was put on notice of this serious deceptive marketing issue months ago, has done nothing to address the issue, continues to deceive consumers, and is trying to cover its tracks with disclaimers that are legally and practically ineffective.

It is also worth noting that private lawsuits have thus far been ineffective at remedying this company's unscrupulous practices. For example, in 2009, a class-action lawsuit was filed against the company (including its marketing arm, Ignite) in the Southern District of Texas for allegedly operating a pyramid scheme.<sup>9</sup> Despite successes at the Fifth Circuit Court of Appeals, which, after *en banc* review, determined that the case could proceed as a RICO class action,<sup>10</sup> the parties recently reached a settlement that – if approved by the Court – would not change the corporate structure of the company or prohibit it from

deceptively marketing its business opportunity.<sup>11</sup> Instead, the settlement agreement would actually encourage class members to continue working as distributors and pursue more business for the company by awarding the vast majority of the class rewards for each new sale they make.<sup>12</sup> Thus, it seems clear that regulatory action is the only way to effectively address the company's illegal tactics.

For all these reasons, TINA.org strongly urges the FTC to commence an investigation of the compensation claims being made by Stream and its distributors, and take appropriate enforcement action against those found to be violating the law.<sup>13</sup>

If you have any questions, please do not hesitate to contact us.

Sincerely,



Laura Smith, Esq.  
Legal Director  
Truth in Advertising, Inc.



Bonnie Patten, Esq.  
Executive Director  
Truth in Advertising, Inc.

Cc: Daniel Terrell, Chief Legal Officer, Stream  
Jared Blum, Esq., DSA Code of Ethics Administrator

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<sup>1</sup> Stream's 2017 Income Disclosure Statement, [https://mystream.com/~media/Files/PDFs\\_PowerPoints/Marketing/Opportunity/IA%20Enrollment/Income%20Disclosure.pdf](https://mystream.com/~media/Files/PDFs_PowerPoints/Marketing/Opportunity/IA%20Enrollment/Income%20Disclosure.pdf), stating that the average income of all Stream distributors in 2017 was \$178.07, which is \$20.93 less than the \$199 enrollment fee.

<sup>2</sup> December 18, 2017 letter from TINA.org to Stream, [https://www.truthinadvertising.org/wp-content/uploads/2018/08/12\\_18\\_17-Stream-Notification-Letter.pdf](https://www.truthinadvertising.org/wp-content/uploads/2018/08/12_18_17-Stream-Notification-Letter.pdf).

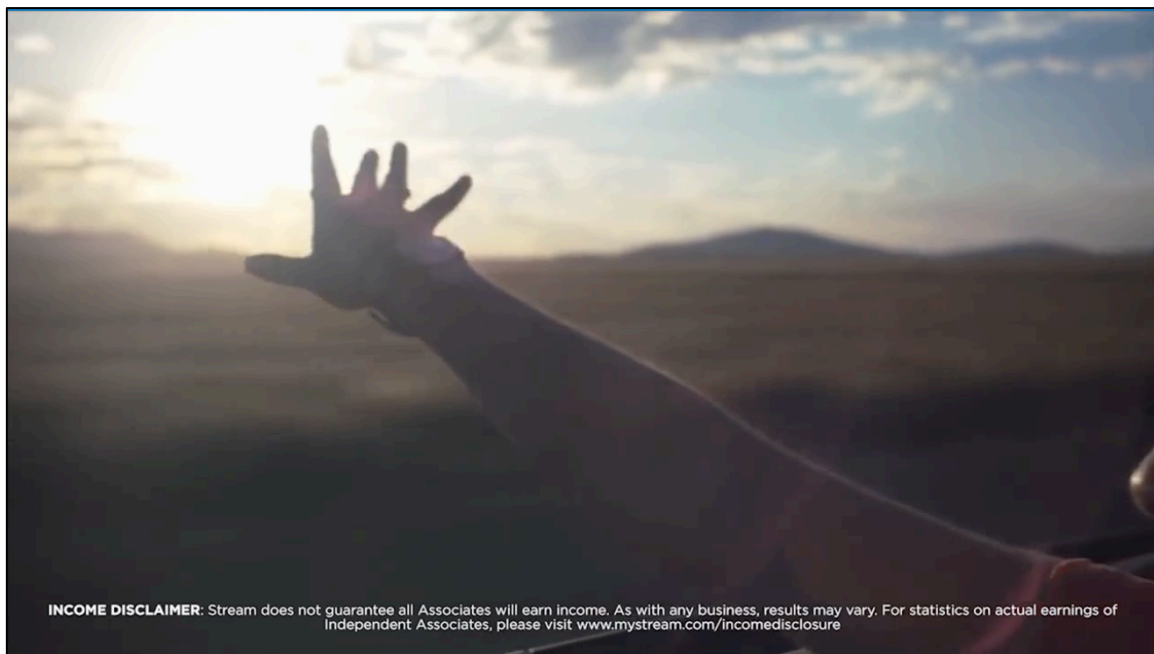
<sup>3</sup> Stream Instagram page, <https://www.instagram.com/mystreamsocial/>, and Stream YouTube page, [https://www.youtube.com/channel/UCjvqykpb\\_rQQs6nWq\\_3WO-A](https://www.youtube.com/channel/UCjvqykpb_rQQs6nWq_3WO-A).

<sup>4</sup> Stream's December 21, 2017 letter to TINA.org, <https://www.truthinadvertising.org/wp-content/uploads/2018/01/Stream-DSAi-response-12-21-17.pdf>.

<sup>5</sup> *Stream Business Presentation with CSO Steve Fisher* video, <https://mystream.com/en/opportunity>.

<sup>6</sup> <https://mystream.com/en/opportunity>.

<sup>7</sup> Examples of disclaimers included in some Stream videos:





Both videos available at <https://mystream.com/en/opportunity>.

<sup>8</sup> If Stream fails to advertise results that are typical or representative of what consumers will generally achieve with the company, as Stream has done and is doing, then it must make clear the amount earned or lost by most participants. See FTC Business Guidance Concerning Multi-Level Marketing, available at <https://www.ftc.gov/tips-advice/business-center/guidance/business-guidance-concerning-multi-level-marketing>; FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising, available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revised-endorsementguides.pdf>. See also FTC “Redress checks and compliance checks: Lessons from the FTC’s Herbalife and Vemma cases,” available at <https://www.ftc.gov/news-events/blogs/business-blog/2017/01/redress-checks-compliance-checks-lessons-ftcs-herbalife> (“[I]t’s unwise for MLMs to make earnings claims – expressly or by implication – that don’t reflect what typical participants achieve.”).

The disclaimers that accompany some of the Stream marketing materials do not meet this legal requirement, for a number of reasons. First, simply telling consumers that the results are not typical or indicating that the represented experience is not indicative of what consumers may generally expect to achieve has, as the Commission has noted, not been effective and is therefore insufficient. See FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising. See also *FTC v. Vemma Nutrition Co.*, Order on FTC’s Motion for Preliminary Injunction, dated Sept. 18, 2015, 15-cv-01578 (D. Ariz.) (“a material omission as to income potential, such as a failure to disclose that the structure of a program ensures that the vast majority of consumers cannot achieve substantial income, is deceptive under the FTC Act. The ‘common-sense net impression’ of representations controls. Thus, representations may be misleading despite the use of a disclaimer such as ‘results may vary’ if the consumer may reasonably believe that a statement of unusual earning potential represents typical earnings.”) (internal citations omitted).

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Second, simply including a link to Stream’s Income Disclosure Statement in an inconspicuous location, as is the case in some of the company’s marketing materials, is not sufficient. *See* FTC’s .com Disclosures, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

Third, Stream cannot suggest, as it has done in places, that financial failure is due to participants’ failure to devote enough effort. *See, e.g., FTC v. Vemma Nutrition Co., Stipulated Order for Permanent Injunction and Monetary Judgment*, dated Dec. 15, 2016, 15-cv-01578 (D. Ariz.) (“In connection with the advertising, marketing, promoting, or offering of any Business Venture, [Defendants] are permanently restrained and enjoined from...[m]isrepresenting...[t]hat participants who do not earn significant income fail to Devote substantial or sufficient effort.”); *FTC v. Herbalife Internat’l of Am., Inc., Stipulation to Entry of Order for Permanent Injunction and Monetary Judgment*, dated July 14, 2016, 16-cv-0 (C.D. Cal.) (“It is further ordered that Defendants..., in connection with the advertising, marketing, promoting, or offering of any Business Venture, are permanently restrained and enjoined from misrepresenting...[t]he reasons participants do not earn significant income, including but not limited to representations that participants fail to devote substantial or sufficient effort...”).

Finally, not only are the disclaimers legally ineffective, but their placement – e.g., at the very bottom of a video screen in miniscule font – is such that the vast majority of consumers will never see them. *See* .com Disclosures: How to Make Effective Disclosures in Digital Advertising.

<sup>9</sup> *See Torres v. SGE Mgmt., LLC*, Case No. 09-cv-2056 (S.D. Tex.).

<sup>10</sup> *See Torres v. SGE Mgmt., LLC*, 838 F.3d 629 (5th Cir. 2016) (*en banc*).

<sup>11</sup> *See Torres v. SGE Mgmt., LLC*, Motion and Memorandum in Support of Plaintiffs’ Unopposed Motion for Prelim. Approval of Class Action Settlement, dated June 22, 2018, Docket No. 289. *See also Torres v. SGE Mgmt., LLC*, Memorandum and Order granting Motion for Class Certification under Rule 23(b)(3), dated Jan. 13, 2014, Docket No. 169 (“[P]laintiffs do not have standing to seek an injunction.”).

This settlement comes after the Fifth Circuit Court of Appeals – even when it initially issued a decision *in favor* of Stream in this case – recited ample evidence that the company does indeed operate such a scheme. *See Torres v. SGE Mgmt., LLC*, 805 F.3d 145 (2015) (*rev’d en banc*) (“[T]he record in this case suggests that investors were told that it was a pyramid scheme;” “Ignite’s Presidential Directors . . . implied that Ignite was a pyramid scheme;” “Although these Presidential Directors did not use the term ‘pyramid scheme’ to describe Ignite, a reasonable prospective [distributor] could reasonably construe these representations as the hallmarks of a pyramid scheme: Ignite predominately pushes recruiting over selling, and thus expanding the number of [distributor] participants, over customer acquisition.”)

<sup>12</sup> *Id.* Pursuant to the settlement terms, the only way for class members to obtain any cash to reimburse them for their losses would be to file “Valid Election Forms,” while this in-kind benefit is awarded automatically.

<sup>13</sup> TINA.org has also filed a complaint regarding Stream’s marketing with the Texas Attorney General’s Office.