

BBB NATIONAL PROGRAMS

THE DIRECT SELLING SELF-REGULATORY COUNCIL

Arbonne International, LLC

Case No. XXX
Filed:12/13/24

MONITORING INQUIRY

Arbonne International, LLC (“Arbonne,” or the “Company”) is a multi-level direct selling company founded in 1980 and headquartered in Irvine, CA. The Company’s product lines include vegan skincare, cosmetics, and nutrition.

I. BASIS OF INQUIRY

The Direct Selling Self-Regulatory Council (“DSSRC”) is a national advertising self-regulation program administered by BBB National Programs. Pursuant to section V(A) of DSSRC’s Policies & Procedures, any person or legal entity may provide to DSSRC a written submission regarding any earning claims or product claims disseminated by or on behalf of a direct selling company which such person or legal entity believes should be modified or discontinued.

In this instance, a non-governmental consumer advocacy group (“NGO”)¹ identified to DSSRC certain earnings claims that the NGO believes overstated the amount of income that can be generally expected by Independent Consultants participating in Arbonne’s business opportunity and that its disclosure of generally expected results does not adequately qualify the atypical income claims.

The NGO also maintained that Arbonne’s income disclosure statement (IDS) is misleading because it does not account for the mandatory annual fee of \$99, nor the various other business expenses that distributors incur, such as event registration fees, travel, office supplies, and product purchases.

A. Online Income Claims

The NGO asserted that Arbonne gives advice to its Independent Consultants on how to make income and lifestyle claims and instructs them that it is permissible to make earnings representations that do not match the reality of the typical salesforce member.

¹ Truthinadvertising.org.

The NGO provided DSSRC with examples of salesforce members who follow Arbonne's lead and advice, and make deceptive income claims in their own marketing materials to lure potential recruits into the Arbonne business opportunity.² More specifically, the NGO referenced Arbonne's opportunity brochure, recruitment video, website, and Independent Consultant testimonials as sources of misleading income representations, including claims such as "earn a little extra money", "earn supplemental money", "create a future of your own design", and "change your life and the lives of others."

A selection of representative claims identified by the NGO was set forth in DSSRC's Notice of Inquiry to Arbonne. Specifically, in its Notice of Inquiry, DSSRC identified the following claims to the Company as representative of the types of claims that are being disseminated by the Company and its Independent Consultants in connection with the Arbonne business opportunity.

- "We know you are interested in the bottom line: How much can an Arbonne Independent Consultant earn? ... [W]hen building an Arbonne Business, your time, skill, sales, and efforts determine your success. You are your own boss. Create a future of your own design! And when you encourage others to realize their own dreams, your potential to earn more grows even more..."
- "Arbonne is the most fun you'll have while selling and earning commissions! Change your life and the lives of others by sharing extraordinary products and an exciting business opportunity with them..."
- "What if you could have a bit extra? What difference would that make in your life?"
- "Your efforts, the time you put in, the commitment, your willingness to learn, that is reflected back to you directly in dollars and cents..."
- "And so at the age of 21, when I decided that you could make an income from this business on my phone, I jumped in straight away..."
- "...My commitment to my Arbonne business helped me be able to provide [my daughter] services to help her thrive..."
- "...Through my Arbonne business, I've been able to not only successfully contribute to my family, but I have pursued happiness through building my own network marketing business..."

² In total, the NGO called DSSRC's attention to 56 different online claims in which it alleged that Arbonne Independent Consultants were inaccurately communicating income claims.

- **“COMPETITIVE EARNINGS** – Our unique business model offers the opportunity to earn weekly commissions through your personal sales, override commissions on your team members’ sales and earn cash awards at every level.”
- “What could you do with an extra \$200 a month?”
- “Earn a little extra money”; “Earn supplemental money”; “My business allowed my spouse/partner to pursue other business ventures.”
- “I decided to start it because it is a fun and flexible business that I can...work part time and earn an additional income stream...”
- “If u like health, wellbeing friendship & connection, & want income too-this is the month to chat.”
- “Looking for girls 18+ wanting to make income from your phone...”.
- “.. one thing you’ll never regret is making an income from your phone”.

B. Arbonne’s Independent Consultant Earnings Statement (ICES)

According to the NGO, Arbonne's 2023 independent consultant earnings statement (“ICES”)³, which shows that the typical distributor earned \$265 in gross commissions and overrides, is misleading because it does not account for the mandatory annual fee of \$99, nor the various other business expenses that distributors incur, such as event registration fees, travel, office supplies, and product purchases.

The NGO also contended that Arbonne inflates the median earnings of its Independent Consultants by excluding distributors who did not earn any commissions or overrides from its calculation.

II. COMPANY’S POSITION

Arbonne stated that it is dedicated to compliance and promptly addresses any concerns brought to its attention and explained that these opportunities allow the Company to improve

³ DSSRC notes that direct selling companies employ various terms for the public document that provides information about the payments received by salesforce members participating in their business opportunities. These terms include, but are not limited to, Earnings Disclosure Statements, Income Earnings Reports, and Distributor Earnings Reports. Both the Federal Trade Commission (FTC) and DSSRC refer to these documents as "Income Disclosure Statements." Alternatively, Arbonne characterizes it document as its Independent Consultant Earnings Statement (ICES).

its published statements, social media posts, and other communications about Arbonne, its products, and the Arbonne earning opportunity.

A. Online Income Claims

With respect to the 56 web links referenced by the NGO, the Company informed DSSRC that 53 of the links were social media posts by Arbonne Independent Consultants, and three were website content or other content published by Arbonne.

Arbonne provided DSSRC with a comprehensive summary of each online claim identified by the NGO, the Company's conclusions on the appropriateness of the claim, and the actions taken by the Company to address DSSRC's concerns.

According to Arbonne, 38 of the cited links necessitated a disclosure to qualify any reference to earning income from the Company business opportunity. The Company stated that these posts were edited or deleted accordingly. More specifically, where appropriate, Arbonne has requested that certain Independent Consultants add a disclaimer such as the following:

85% of business building Consultants in the US earned a median of \$77 in 2023. For typical earnings, see Earnings.arbonne.com.⁴

It was Arbonne's position that this disclaimer is not necessarily appropriate in every situation, and Arbonne disagreed that every reference to the word "income" necessarily requires the above disclaimer as a blanket rule. The Company stated that in assessing each claim on a case-by-case basis and evaluating the net impression to the consumer that such a claim may convey, it determined that in many situations a link/reference to the typical results found in Arbonne's ICES provides a sufficient disclaimer. Notwithstanding, Arbonne agreed that the generally expected results disclaimer can provide helpful context in certain circumstances, and the Company will use this disclaimer when it is necessary considering the overall context and net impression of the claim.

Arbonne noted that two of the social media posts were questionable in terms of compliance with current regulations and Arbonne Policies & Procedures. Out of caution, these posts were edited or removed. In addition, the Company informed DSSRC that 13 posts were non-compliant with current regulations and Arbonne's Policies & Procedures and were edited or removed.

Regarding the three citations to Arbonne's own published content, the Company found the content to be outdated or irrelevant. Irrelevant content was removed, and other content was updated to meet current guidelines and regulations.

⁴ The specific dollar amount in the disclaimer applies only to posts made by Arbonne salesforce members in the United States, as aggregate salesforce earnings vary depending on the country in which the Company's salesforce member operates.

Arbonne acknowledged the objection to the word “income” cited by the NGO, which implies regular earnings exceeding business expenses. However, Arbonne retained the word “income” where it accurately refers to money derived from capital or labor, or money earned from work, as these are common definitions.

Arbonne stated that it strives to provide relevant information to current and prospective Independent Consultants before they join the Company and that it rigorously adheres to ethical standards and regulatory guidelines, ensuring that every consumer experience with its products and the Arbonne earning opportunity is positive.

B. *Arbonne’s Independent Consultants Earnings Statement (ICES)*

The Company stated that it reviewed the NGO’s position regarding Arbonne’s ICES and, upon reviewing the ICES in light of the claims, the Company determined it would be important to re-review the methodology relied upon to calculate the ICES.

It was explained to DSSRC that Arbonne underwent a reclassification in April 2023, which identified numerous Arbonne Independent Consultants that were not engaging in business building activities. Those individuals were reclassified to customers throughout 2023 and into 2024 and the Company wanted to ensure this fact was captured in the ICES methodology.

Arbonne noted that the Federal Trade Commission (FTC) released new guidance in April 2024, some of which related to income disclosure statements produced by direct sellers and more pertinently, in September, the FTC published its *Multi-Level Marketing Income Disclosure Statements: An FTC Staff Report* (the “FTC IDS Report”) regarding its review of 70 Income Disclosure Statements published by direct selling companies.⁵ As a result, Arbonne reviewed its 2023 ICES in light of the NGO’s allegations, its 2023 reclassification, and the FTC’s updated guidance and new staff report.

Arbonne recognized the importance of maintaining compliance with applicable laws and regulations surrounding its ICES and stated that in consideration of this recent regulatory guidance, the Company updated the methodology by which it calculates the earnings reflected in the ICES and the manner in which the earning data is presented where it was deemed appropriate.

III. ANALYSIS

A. *Online Income Claims*

According to section 255.2(b) of the FTC’s Guides Concerning Use of Endorsements and Testimonials in Advertising (the “FTC Testimonial Guides”):

⁵ See Federal Trade Commission. (2024). *Multi-Level Marketing Income Disclosure Statements: An FTC Staff Report* <https://www.ftc.gov/reports/multi-level-marketing-income-disclosure-statements>.

An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation. The disclosure of the generally expected performance should be presented in a manner that does not itself misrepresent what consumers can expect. To be effective, such disclosure must alter the net impression of the advertisement so that it is not misleading.⁶

Arbonne voluntarily facilitated the removal of 40 of the 53 social media posts that were identified in the inquiry. In addition, with respect to the three claims that originated from Company created content (i.e., website claims and claims appearing in a Company brochure) which Arbonne maintained was either outdated, no longer relevant, or both, the Company updated otherwise stale content to ensure it satisfies current guidelines and regulations with regard to earnings claims and the earning opportunity offered by Arbonne, including clear disclosures and references to the Arbonne ICES.

Accordingly, DSSRC focused its review on the 13 social media posts which remain publicly available. It is important to highlight that none of these posts contain explicit, quantified earnings claims. Instead, they generally refer to "providing an income," "making money," "earning an income," "the opportunity to earn additional income," "extra income," and other similar phrases.⁷

With respect to one of the remaining posts,⁸ the Company had indicated that the Independent Consultant deleted the post. However, upon its review, DSSRC was still able to access the post in its original, unqualified context (i.e., "... providing an income for my family.") As such, DSSRC recommended that Arbonne either modify the post to provide results that could be generally expected by the typical Company Independent Consultant or delete the post in its entirety.

⁶ See 16 CFR Part 255, Federal Trade Commission *Guides Concerning the Use of Endorsements and Testimonials in Advertising* (2023).

⁷ The remaining posts include the terms "a second stream of income," "making an income," "a little extra income," "supplemental income," "looking for a way to contribute to their family's income" and "contribute to our family's finances."

⁸ Arbonne case# 86820.

In another post that remains publicly accessible⁹, DSSRC determined that the disclosure that was added to qualify the “second stream of income” claim (“IN 2023, A TYPICAL ARBONNE INDEPENDENT CONSULTANT IN AUSTRALIA EARNED A MEDIAN OF \$206 IN COMMISSIONS AND OVERRIDES”) was adequate and clear and conspicuous. Nevertheless, DSSRC remained troubled by the reference in the post that an Arbonne Independent Consultant can “earn as little or as much as you want,” which DSSRC interpreted as an unlimited income claim and one that is suggesting results that are so extraordinary that even an appropriately worded disclosure would only serve to contradict (i.e., and not qualify) the main message of the claim. As such, DSSRC recommended that Arbonne either modify or facilitate the removal of the post.

In another public post, DSSRC determined that the disclosure language added to the post was appropriate (i.e., “85% of business building Consultants earned a median of \$77 in 2023. For typical earnings, see Earnings.arbonne.com”) but also concluded that a viewer of the post was required to scroll down to find the disclosure and, as such, it would not be considered clear and conspicuous and unavoidable to the viewer. As noted in the FTC’s Dot.Com Disclosure Guide, “scroll bars along the edges of a screen are not a sufficiently effective visual cue. Although the scroll bars may indicate to some consumers that they have not reached the bottom or sides of a page, many consumers may not look at the scroll bar and some consumers access the Internet with devices that don’t display a scroll bar.”¹⁰

DSSRC recommended that the Company request the Independent Consultant modify the post to put consumers on notice of the additional qualifying information at the end of the post or move the disclosure in closer proximity to the triggering “... Arbonne provides the opportunity for me to contribute to our family’s finances” claim.¹¹

In addition, several of the remaining posts similarly required the viewer to scroll down to the end of the post before being directed to the Arbonne ICES which DSSRC concluded was not in close proximity to the triggering claim and not clear and conspicuous. As noted above, a disclosure that requires viewers to scroll down away from the triggering claim to find the qualifying information is not considered to be clear and conspicuous particularly here where there is no visual cue (e.g., asterisk) provided to alert consumers to the availability of more information.

Several other of the remaining social media posts make general, non-quantified income references and include a hyperlink to the Arbonne ICES. DSSRC determined that the ICES link in several of the posts was presented clearly and conspicuously, in bold text that would be readily noticeable to the reasonable consumer and in close proximity to the triggering claim. Conversely, DSSRC concluded that in some of the other publicly accessible posts, the reference

⁹ Arbonne case# 86795.

¹⁰ See Federal Trade Commission. (2013). Dot Com Disclosures: How to Make Effective Disclosures in Digital Advertising, page 9.

¹¹ DSSRC also notes that the reference to the Arbonne ICES which accompanies the generally expected result disclosure is not an active hyperlink.

to the Arbonne ICES was either not presented in a hyperlink that could be activated by the viewer or was embedded in text that was not distinguishable from the rest of the post.¹²

Accordingly, DSSRC recommended that the Company reconcile the presentation of the necessary disclosure of the earnings results that can be generally expected in such posts.

Hyperlinking to Arbonne's Independent Consultant Earnings Statement (ICES)

As DSSRC notes in its Guidance on Earnings Claims for the Direct Selling Industry, for purposes of a DSSRC inquiry, when evaluating express and implied messages communicated by an earnings claim, DSSRC will review the totality of the claim including its words, images, and context (e.g., hashtags, emojis, etc.), which may include other social media posts from the company or salesforce member disseminating the claims, to determine the “net impression” or takeaway message conveyed to the audience. The relevant audience to consider is that of a reasonable consumer when the claim is made to a general audience, such as by posting the claim on public social media or the internet.¹³

In the subject inquiry, there has been no consumer perception data provided to DSSRC by either Arbonne or the NGO to ascertain the effectiveness of the hyperlink to the Company's ICES to qualify the general references to earnings or income in the social media posts at issue. In past BBB National Programs' self-regulatory inquiries, in the omission of consumer perception data, self-regulation programs have used their own expertise to determine the express and implied messages reasonably conveyed in an advertisement.¹⁴ Accordingly, here, DSSRC used its own expertise to evaluate the adequacy of the hyperlinks to the Company's ICES that were provided in the social media posts to qualify general (i.e., non-quantified) references to the opportunity to earn money from the direct selling business opportunity.

As noted in the FTC's Dot.com Disclosure Guides, “Disclosures that are an integral part of a claim or inseparable from it should not be communicated through a hyperlink. Instead, they should be placed on the same page and immediately next to the claim, and be sufficiently prominent so that the claim and the disclosure are read at the same time, without referring the consumer somewhere else to obtain this important information.”¹⁵ It is further noted in the Dot.com Disclosures Guides that “... if the details about the additional fees are too complex to describe adjacent to the price claim, those details may be provided by using a hyperlink.”¹⁶

DSSRC recognizes the challenge for direct selling companies to appropriately qualify an unquantified earnings reference communicated to the general public in a social media post encapsulating the earnings for all salesforce members in a direct selling company within the

¹² Arbonne case# 86750, 86749 and 86810(a).

¹³ See [dssrc_guidanceonearningsclaimsforthedirectsellingindustry.pdf](#), section 9.

¹⁴ Smile Prep, LLC (Smileprep.com), Report #7131, NAD/CARU Case Reports (Dec. 2022), NARB #310 (03.27.23).

¹⁵ *Supra* at 10. Page 10.

¹⁶ *Id.*

limited space of a social media post due to the extensive variability and multitude of factors that influence individual earnings. These factors include, but are not limited to, the wide array of salesforce ranks and levels within the company – each with various levels of income thresholds, different compensation structures, the diverse range of salesforce members' efforts, varying levels of customer engagement and numerous expenses incurred by salesforce members. Importantly, the data required to accurately represent the earnings of all salesforce members is extensive and difficult to be succinctly summarized in a manner that would be clear and comprehensible to consumers within the limited space of a social media post. Therefore, DSSRC determined that in the context of qualifying general references to “earnings” (or other general terms relating to income) it may be appropriate to provide this detailed information through a clear and conspicuous hyperlink to a company’s IDS in the post to ensure transparency and clarity.

In the absence of consumer perception data indicated otherwise, DSSRC does not agree that every passing reference to “income” or “earnings” in a direct selling social media post may automatically necessitate a disclosure of generally expected results that can never be placed behind a properly labeled hyperlink. Rather, the context and nature of the income reference should be carefully considered.¹⁷

For instance, in a social media post, it may be of more utility to consumers for a direct selling salesforce member to qualify a general statement about the potential to earn income with a hyperlink to an IDS rather than simply providing a broad disclosure regarding the average income of all company salesforce members.¹⁸ Conversely, DSSRC determined, that when a social media post makes reference to a specific, atypical earnings amount (e.g., “earn \$500 a month”) it creates a clear and quantifiable expectation for the viewer and a clear and conspicuous disclosure of the generally expected earnings of the typical salesforce member in the body of the post would be essential to ensure transparency and avoid a misleading representation, as the recipient of the message is likely to interpret this specific figure as a realistic and achievable income that they can reasonably expect to earn.

B. Arbonne’s Independent Consultant Earnings Statement (ICES)

Although not required by law, an income disclosure statement is a document that many direct selling companies use to “convey information to participants and prospective participants about income—that is, monetary payments that participants could or do receive.”¹⁹

¹⁷ DSSRC notes that the NGO postulated that “the word ‘income’ implies that money is being received on a regular basis and that one is earning more than they are spending on their business,” although it did not provide a source for its definition. Conversely, Arbonne referred to colloquial definitions of “income” provided by both the Merium-Webster Dictionary (“A gain or recurrent benefit usually measured in money that derives from capital or labor”) and the Cambridge English Dictionary (“Money that is earned from doing work or received from investment”).

¹⁸ DSSRC notes that the appropriateness of such a disclosure is predicated on the hyperlink being clear and conspicuous and properly labeled.

¹⁹ *Supra* at 5.

According to the NGO, Arbonne's ICES was flawed for two reasons: First, the median earnings figure used in the ICES did not take into consideration any business expenses; and second, the median earnings appear to exclude those distributors that did not achieve any earnings.

Preliminarily, DSSRC notes that direct selling companies should present an IDS in a simplified accessible manner that can be easily understood by a wide range of individuals. It is vital that both salesforce members and prospective recruits understand the income expectations associated with the business opportunity accurately, with an understanding of the material expenses that might be incurred in reaching a level of income as well as those salesforce members who did not earn income. Consequently, an IDS should be presented in a user-friendly format, using simple language to assist readers in locating and comprehending material information, allowing them to make well-informed decisions regarding the direct selling opportunity.

Arbonne's ICES was presented in the form of a one and a half page document entitled **"What You Need to Know About Joining"** and categorized in five distinct sections: 1) **"HOW CAN I EARN?"**; 2) **"WHAT'S TYPICAL"**; 3) **"WHAT IF I CHANGE MY MIND"**; 4) **"ARBONNE TRAINING EVENTS,"**; and 5) **"AVERAGE TIME TO TITLE."**²⁰

In the **"WHAT'S TYPICAL?"** section of its ICES, the Company provided the **"2023 ANNUAL EARNINGS OF ARBONNE INDEPENDENT CONSULTANTS,"** followed directly below, with a chart of the five titles of Arbonne Independent Consultants (i.e., **Consultants; District Managers; Area Managers; Regional Vice Presidents; and National Vice Presidents**) accompanied by five data points for each title ("Median Annual Earnings"; "Average Annual Earnings"; earnings for the "10th Percentile"; earnings for the "90th Percentile"; and the "% of Independent Consultants at Title").

The introductory sentence below the **"WHAT'S TYPICAL?"** section in the ICES included a concise description of the Independent Consultants that are included in the chart stating: "Independent Consultants represented below are those engaged in business building activity during the twelve months prior to their renewal, including enrolling or renewing an Independent Consultant or Preferred Client, earning commissions through sales to their Clients or Preferred Clients, or purchasing a sales aid or business tool."

DSSRC agreed with the NGO about the importance of providing prospective salesforce members with business expenses, but does not agree that it is incumbent (or practical) for a direct selling company to include each and every business expense in its calculation of the earnings data presented in its earnings chart, so long as it clearly and conspicuously provides

²⁰ Arbonne publishes an ICES for 6 different countries in which it does business: the United States (in both English and Spanish); Canada (in both English and Spanish); Australia; United Kingdom; Poland and New Zealand. The published annual earnings for Arbonne salesforce members vary depending on the country in which a salesforce member conducts business, but the categories presented in the ICES for each locale are generally the same.

mandatory, de facto mandatory, or recommended costs of participation in the Company's business opportunity (e.g., starter kits, registration, travel, and accommodation costs incurred when attending highly recommended or required company events) in close proximity to the earnings data.

Accordingly, in the Arbonne ICES, immediately below the earnings data, the Company states in bold-face capital letters "**THESE EARNINGS DO NOT REPRESENT INDEPENDENT CONSULTANT EXPENSES** incurred in the operation of their business like the Registration Fee (2023: \$99), the Renewal Fee (2023: \$99), event registration fees, travel, office supplies, insurance premiums, products purchased for business purposes, etc."²¹ Moreover, shortly thereafter, the Arbonne ICES includes a separate section providing material details about "**ARBONNE 2023 TRAINING EVENTS.**" More specifically:

"In addition to the Registration Fee and annual Renewal Fee, Arbonne encourages Independent Consultants to participate in the following event(s). The Registration Fee for each event is set forth below.

- 2023 Arbonne Global Training Conference in Las Vegas, NV: In 2023, 4,594 (7.6%) US Independent Consultants registered to attend the conference. The registration fee for the three-day conference was \$359.
- Path To Empower in Anaheim, CA: In 2023, 3,941 (6.6%) US Independent Consultants registered to attend this one-day training event. Registration for the event was \$55.

Note: *Independent Consultants that attended these events were responsible for their own flight, hotel, meals, and other costs associated with attending the event. Such costs are not reflected above because they are unique to each individual's own circumstances."*

During the pendency of the inquiry, to alleviate the concern that consumers may misinterpret the income data as representing earnings after expenses have been deducted, in the spirit of voluntary self regulation the Company modified the headline above the earnings data to clearly indicate that the stated earnings are "**2023 ANNUAL GROSS EARNINGS OF ARBONNE INDEPENDENT CONSULTANTS.**"

Lastly, DSSRC noted that according to the FTC IDS Report "Most of the income disclosure statements reviewed do not depict the distribution of income across all participants, but instead present a distribution that excludes certain groups of participants..." including a number

²¹ In the FTC's 2024 *Multi-Level Marketing Income Disclosure Statements: An FTC Staff Report*, the Commission notes that of the 70 IDS that it reviewed "Twenty of the disclosures have no express statements about whether their figures take into account all expenses. Of the remaining 50 disclosures, most convey information about the omission of expenses in a manner that is less prominent than the display of dollar amounts that MLMs pay to participants, such as in fine print or dense blocks of text." *Supra at 4.* Conversely in the Arbonne ICES, the disclosure that "**THESE EARNINGS DO NOT REPRESENT INDEPENDENT CONSULTANT EXPENSES**" is featured in upper-case print that is more prominent than the earnings data and the more detailed information provided below that bold-faced statement regarding the registration fee and renewal fee, etc., is in the same size print as the earnings data.

of IDS which “... exclude from their income distribution all participants who did not earn commissions or similar income.” The FTC also observed that “The nature of this exclusion varies, but in at least some cases it excludes all participants who received no income as well as potentially others.”²²

Alternatively, here, the Arbonne ICES addresses business opportunity participants who did not earn any gross income in 2023 by not only including these participants in the presented earnings data, but also by providing a clear and conspicuous box that stands out in the ICES and in close proximity to the earnings data which states in bold print (and in larger print than the print used for the earnings data): **“Earnings are not Guaranteed. 18% of the Consultants represented above had no earnings in 2023.”** DSSRC concluded that the presentation of this data regarding business opportunity participants who did not earn any income in 2023 was “difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers” as required by the FTC Testimonial Guides²³ and determined that the key information for readers of this document – i.e., the average and median earnings for individuals who have genuinely and actively pursued the business opportunity – is adequately presented by Arbonne in its modified ICES in a context that is easily comprehensible for the reasonable consumer.²⁴ Notwithstanding this disclosure, to ensure the reader is clearly and consistently informed that the earnings data in the document refers to gross earnings rather than net earnings, DSSRC recommended that Arbonne modify the language in the highlighted box to indicate that **“18% of the Consultants represented above had no gross earnings...”**.

C. CONCLUSION

Arbonne voluntarily facilitated the removal of 40 of the 53 social media posts that were identified in the inquiry. DSSRC concluded that while several of the remaining social media posts were adequately disseminated, other posts required the viewer to scroll down to the end of the post before being directed to the Arbonne “generally expected results” disclosure and, as such, was not in close proximity to the triggering claim and not clear and conspicuous, including one post that included no disclosure at all and others that included non-active links to the Company ICES. DSSRC recommended that Arbonne modify such posts. With respect to the Arbonne’s updated ICES, DSSRC determined that the modified document was presented in a format that was clear and concise and that the earnings data was provided in a context that was straightforward and would not be misinterpreted by the reasonable consumer but nevertheless recommended that Arbonne modify the language in its disclosure pertaining to business opportunity participants who did not earn any income to reinforce that the depicted income data in its ICES pertained to gross earnings.

²² *Supra* at 5, pages 10 and 11.

²³ See 16 CFR Part 255.0(f).

²⁴ DSSRC also notes that the Arbonne ICES may, in fact, have underestimated the gross earnings of its Independent Consultants as the earnings stated in the Arbonne ICES “do not include cash sales or e-transfers made directly between Arbonne Independent Consultants and their customers.”

D. COMPANY STATEMENT

“Arbonne is fully committed to its compliance efforts and abiding by the DSA Code of Ethics, DSSRC’s Earnings Claims Guidance, and legally enforceable and reasonable guidance from the Federal Trade Commission. As previously noted, Arbonne takes its adherence to the ethical standards and legal and regulatory guidelines of the direct selling industry seriously and strives to comply with such guidelines and rules, including in the current regulatory environment of constantly evolving and fluctuating changes to applicable guidance and rules.

Arbonne is a strong supporter of self-regulation and appreciates the DSSRC’s conclusion that it is not “incumbent (or practical) for a direct selling company to include each and every business expense in its calculation of the earnings data presented in its earnings chart, so long as it clearly and conspicuously provides mandatory, de facto mandatory, or recommended costs of participation. . . in close proximity to the earnings data.”

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