



Legal Department

January 20, 2017

VIA FIRST CLASS MAIL AND EMAIL

Laura Smith, Esq.
Legal Director
Truth In Advertising, Inc.
P.O. Box 927
Madison, CT 06443

Dear Ms. Smith:

Thank you for your letter dated November 22, 2016, identifying several claims related to Melaleuca products that you believe are potentially unsubstantiated or otherwise improper. Although Melaleuca never received a copy of your letter directly, the Direct Selling Association forwarded a copy of your letter to us on December 11, 2016. Melaleuca appreciates you bringing these instances to our attention. As you know, Melaleuca is committed to ensuring that its marketing efforts, and the marketing efforts of its independent third-party Marketing Executives, are accurate, truthful, and fully compliant with all state and federal laws, rules, and regulations. We value input and assistance from any source, including and especially from your organization.

As you may know, Melaleuca holds itself totally accountable for what our Independent Marketing Executives say about our products. Therefore, Melaleuca regularly monitors product claims made by its Marketing Executives. We have several full-time employees that are engaged on a daily basis in this monitoring process. Furthermore, we regularly train our Marketing Executives about appropriate claims that can be made about our products.

By contract and policy, we prohibit any Marketing Executive from making product claims that are not approved by the company for any Melaleuca product. And we regularly police these efforts and have removed more than 1,000 posts from the Internet in the last year that violate our policies, including policies related to product claims.

Moreover, we regularly take other corrective action, including issuing fines or terminating the Independent Marketing Executive Agreements (IMEA), for those Marketing Executives who violate our policies in this regard. We recently fined a senior Marketing Executive \$50,000 for improper claims being made online. So we take these issues seriously and are fully committed to preventing and prohibiting any improper product claims being made about our products by our Marketing Executives. Given the increasing difficulty on policing the entire Internet, especially

with more than 150,000 current Marketing Executives in the United States, we sincerely appreciate receiving your input in this ongoing process.

Even before we had received a copy of your letter, Melaleuca had already addressed and removed 24 of the 79 instances listed on your website, as noted on the chart included at pages 3-8 of this letter.

As of today, 60 instances have been removed or edited and two more are in the process of being removed—including several not affiliated with Melaleuca. We have already taken remedial action, including terminations and fines, for some of these Marketing Executives whose posts have been removed or edited. For the two Marketing Executives who are working on making necessary changes, we will follow up to ensure that the changes are timely made. If they are not, we will terminate their IMEAs.

Seventeen other instances have not been removed but are either not affiliated with Melaleuca or, in two cases, are deceased Marketing Executives. That includes one individual who is not and never has been a Marketing Executive who is involved in eight of the instances you have identified.

It also includes seven instances posted on an anonymous site called sitejabber. We have attempted to identify the authors of those posts through various means, without success. We have private messaged each of the authors of those posts, with no response. And we have contacted sitejabber.com directly and asked them to remove those posts. To date, we have not had a response from any of the authors or sitejabber.com, and we are unable to contact the authors any other way.

In two other instances, the authors are deceased. We have contacted the website at issue, including Facebook in one instance, to try to get those posts removed. We anticipate that many of these instances will ultimately be removed, and will continue to pursue all avenues for removal.

We note that several of the instances you identify are old and date back to as early as 2003. Of the 79 instances that you listed, only four contain content controlled by current independent third-party Melaleuca Marketing Executives. The majority of the instances you cite are claims that appear on websites owned or controlled by third parties completely unrelated to Melaleuca. Nevertheless, we have strived to remove all contested content where possible, as described above.

We further note that at the recent Direct Selling Legal and Compliance Summit, Bonnie Patten, the Executive Director for TINA.org, indicated publicly that TINA intended to identify only those claims made by Melaleuca business builders and that any claims made by customers were improperly included on the TINA database list. Ms. Patten agreed that TINA would modify its website database of alleged claims violations to remove any claims that were not made by business builders affiliated with Melaleuca.

With that commitment in mind, we have identified 24 of the 79 postings that were not made by independent Melaleuca Marketing Executives. Those 24 instances are indicated in the chart below, with an “N” marked in the “Marketing Executive” column. In an effort of good faith, we have still removed or attempted to remove those unaffiliated listings from the internet where they could be identified and where removal or editing was possible. We ask that TINA also take the good faith step, consistent with Ms. Patten’s commitment, to amend its database list of purported claims violations on its website to remove the following 24 postings that were not posted by Melaleuca Marketing Executives.

Melaleuca has made every effort possible to identify all authors of the posts, including whether those authors are Marketing Executives or not. We have engaged in extensive research efforts in this regard, involving our policy and legal team, as well as computer research specialists. We have tracked and contacted as many of these individuals as possible. For the majority of those 24 individuals marked as non-Marketing Executives, Melaleuca has been able to identify the individual and determine they are not, in fact, Marketing Executives. For some of those 24 instances (sitejabber postings being the primary example), Melaleuca has been unable to definitively identify the author despite its best efforts. But based on the information we have obtained, we do not believe that these individuals are Marketing Executives.

Finally, we note that in several of these instances, we do not agree with TINA’s substantive blanket assessment that all of these claims are not proper. Even where the claims were in a grey area, however, we have requested that they be edited to remove any doubt of inappropriate claims. For instance, it is permissible to make a blood pressure or cholesterol support claim for maintaining cholesterol or blood pressure “already in the normal range.” *See* Guidance for Industry: Structure/Function Claims, Small Entity Compliance Guide, Criterion 2 (Jan. 9, 2002). Some of the claims listed in your database are, we believe, permissible under the FDA’s Guidance or for other reasons. Nevertheless, out of an abundance of caution, we have asked that these claims be changed or removed.

<u>TINA’s Assigned Name for Instance</u>	<u>Date of Post</u>	<u>Action Taken by Melaleuca - Response</u>	<u>Marketing Executive</u>
ADD – ADHD-add-adhd blogspot dot com	1/25/2007	Contacted 11/18/16 Content Removed	Y
ADD and ADHD in Adults & Children	6/19/2013	Contacted 12/7/16 Content Removed	Y
ADD, ADHD_circle of moms	4/6/2010	Contacted 12/8/16 Content Removed	N
ADD/ADHD melaattention dot blogspot dot com	9/23/2004	Contacted 12/6/16 Corrective Action In Process	Y
ADHD	Unknown	Contacted 12/14/16 Content Edited	N

Arthritis, Blood Pressure, Stroke	Unknown	Content Edited 12/14/16	Y
Anemia Postpartum Depression and more	Unknown	Content Edited 12/14/16	Y
Antidepressants	Unknown	Content Edited 12/14/16	Y
Anxiety Depression	Unknown	Content Edited 12/14/16	Y
Anxiety	Unknown	Content Edited 12/14/16	Y
Arthritis and Carpal Tunnel	Unknown	Contacted 12/14/16 Content Edited	Y
Asthma	Unknown	Contacted 12/14/16 Content Edited	N
Autism-Go Green	11/21/2011	Contacted 11/16/16 Content removed	Y
Autism, ADHD Facebook	6/15/2013	Contacted 11/14/16 Content Removed	Y
Blood Pressure Blood Sugar	Unknown	Content Edited 12/14/16	Y
Blood Pressure Fibromyalgia Joint Pain Oligo	Unknown	Content Edited 12/14/16	Y
Blood Pressure, Yeast Infections- Facebook	10/31/2014	Contacted 12/6/16 Content Owner Deceased	Y
Blood Sugar, Diabetes	4/10/2010	Contacted 11/18/16 Content Removed	Y
BloodPressure, Arteries Oligo Testimonial	Unknown	Video Removed	Y
Cancer Benzinga Press Release	9/27/2012	Contacted 12/8/16 Content Removed	N
Cancer, Crohn's Disease, Heart Disease and more	2/2/2010	Contacted 11/15/16 Content Removed	Y
Cancer, Crohn's, Blood Sugar, Bronchitis and More at Daily For Life	2003-2004	Contacted 12/6/16 Content Removed	Y
CellWise® Research Report	Unknown	3 rd Party - Unrelated	N

Cervical Disc Injury	Unknown	Contacted 12/14/16 Content Removed	Y
Cholesterol 1	Unknown	Content Edited 12/14/16	Y
Cholesterol 3	Unknown	Content Edited 12/14/16	Y
Cholesterol 4	Unknown	Content Edited 12/14/16	Y
Cholesterol Blood pressure_Oligo	Unknown	Content Edited 12/14/16	Y
Cholesterol	Unknown	Contacted 12/14/16 Content Edited	Y
Cholesterol 2	Unknown	Contacted 12/14/16 Content Edited	Y
CranBarrier by Melaleuca – Urinary Tract Health Report	3/31/2004	3 rd Party - Unrelated	N
Crohns Disease Fibromyalgia and More	4/12/2012	Contacted 11/14/16 Content Removed	Y
Crohns Disease High blood Pressure_Oligo	Unknown	Content Edited 12/14/16	Y
Depression PTSD_onlinemlmcommunity	4/17/2013	Contacted 12/7/16 Content Edited	N
DHA and Pregnancy	Unknown	3 rd Party – Unrelated	N
Diabetes – Attain GC Control	4/23/2015	Contacted 12/6/16 Content Owner Deceased	Y
Diabetes, Infection at diabates 321	10/13/2015	Contacted 11/18/16 Corrective Action in Process	Y
Diabetes	Unknown	Contacted 11/14/16 Content Removed	Y
Diabetes1	4/2/2013	Contacted 11/18/16 Content Edited	Y
Eczema 4	Unknown	Contacted 12/14/16 Content Edited	N

Eczema Psoriasis	Unknown	Contacted 12/14/16 Content Edited	Y
Eczema, Cholesterol	Unknown	Contacted 11/8/16 Content Edited	Y
Eyesight, Psoriasis	Unknown	Contacted 12/14/16 Content Edited	N
Eyesight	Unknown	Content Edited 12/14/16	Y
Fibromyalgia 2	6/1/2013	Contacted 12/7/16 Content Removed	Y
Fibromyalgia	Unknown	Contacted 12/14/16 Content Edited	Y
Fibromyalgia, Arthritis	Unknown	Contacted 12/9/16 Content Removed	Y
Florify by Melaleuca — Intestinal Health Research Report	Unknown	3 rd Party – Unrelated	N
Grape Seed Extract_Cancer and More	Unknown	3 rd Party – Unrelated	N
Heart Disease_RMBarry	Unknown	3 rd Party – Unrelated	N
Heartburn	Unknown	Contacted 12/14/16 Content Edited	Y
Hemorrhoids-Go Green	3/5/2011	Contacted 12/7/16 Content Removed	Y
High Blood Pressure-Go Green	3/4/2011	Contacted 12/7/16 Content Removed	Y
Ideal Referral	Unknown	Contacted 12/6/16 Content Removed	Y
Insomnia	Unknown	Content Edited 12/14/16	Y
Kidney Infections, Insomnia, and more-facebook	6/18/2012	Contacted 11/24/16 No Response	Y
Lupus, Blood Pressure	Unknown	Contacted 12/14/16 Content Edited	N

Macular Degeneration-Go Green	2/13/2011	Contacted 12/7/16 Content Removed	Y
Macular degeneration	Unknown	Content Edited 12/14/16	Y
Melaleuca Reviews Page 2	Unknown	Contacted 12/8/16 No Response	N
Melaleuca Reviews Page 3	Unknown	Contacted 12/8/16 No Response	N
Melaleuca Reviews Page 4	Unknown	Contacted 12/8/16 No Response	N
Melaleuca Reviews Page 5	Unknown	Contacted 12/8/16 No Response	N
Melaleuca Reviews Page 6	Unknown	Contacted 12/8/16 No Response	N
Melaleuca Reviews Pg 1	Unknown	Contacted 12/8/16 No Response	N
Melaleuca's FiberWise Bar and FiberWise Drinks	Unknown	3 rd Party – Unrelated	N
Diabetes	Unknown	Content Edited 12/14/16	Y
Migraines, Diabetes, Pneumonia and more	10/3/2010	Contacted 11/19/16 Content Removed	Y
MRSA, Chicken Pox, Dermatitis and More	2010	Contacted 11/18/16 Content Removed	Y
Off of Medication	Unknown	Contacted 12/14/16 Content Edited	Y
Phytomega by Melaleuca – Cardio Health Research Report	Unknown	3 rd Party – Unrelated	N
Psoriasis	Unknown	Contacted 12/14/16 Content Edited	N
Rashes, Eczema, and More	Unknown	Contacted 12/7/16 Content Removed	Y
Reduced risk of Heart Disease	2/26/2009	Video Removed	Y
Rosacea2	Unknown	Contacted 12/14/16 Content Edited	N
Sinus infection requiring surgery	Unknown	Content Edited 12/14/16	Y

Skin Eating Disease	Unknown	Contacted 12/14/16 Content Edited	Y
Thyroid	Unknown	Content Edited 12/14/16	Y
Touch Sensitivity	Unknown	Content Edited 12/14/16	Y

Melaleuca remains committed to fully complying with all law and regulations regarding product claims, as well as the DSA Code of Ethics. We have a long history of compliance with these regulatory bodies.

Melaleuca appreciates your vigilance in identifying potentially improper claims and always welcomes constructive and productive feedback to help Melaleuca continually improve in its marketing efforts. Should you have any additional questions or wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,



Ryan D. Nelson
General Counsel

cc: Jared Blum, DSA Code Administrator (dsacode@usa.com)



Melaleuca response to TINA letter

Laura Smith <lsmith@truthinadvertising.org>

Tue, Jan 24, 2017 at 12:31 PM

To: [REDACTED]

Cc: [REDACTED], Jared Blum [REDACTED]

Dear Mr. Nelson:

Thank you for reaching out and for making us aware of the steps Melaleuca is taking to remove the inappropriate health claims being made to market the company and its products. You represented that 24 posts in our Melaleuca health claims database were not published by Melaleuca and/or its business builders and have asked that we remove such claims from our database, consistent with Bonnie Patten's representation that TINA.org's focus is on marketing claims/commercial speech.

We have reviewed each of the 24 posts at issue and have determined that:

- Seven of the 24 posts are published on www.whyilovemelaleuca.com, a Melaleuca website as evidenced by the copyright designation found on each of these posts.
 - [ADHD](#)
 - [Asthma](#)
 - [Eczema 4](#)
 - [Eyesight, Psoriasis](#)
 - [Lupus, Blood Pressure](#)
 - [Psoriasis](#)
 - [Rosacea2](#)
- Eight of the 24 posts are published on www.rmbarry.com, a website listed as a resource in Melaleuca distributors' training materials, and which uses inappropriate health claims to market and sell Melaleuca distributor training materials.
 - [CellWise® Research Report](#)
 - [CranBarrier by Melaleuca - Urinary Tract Health Report](#)
 - [DHA and Pregnancy](#)
 - [Florify by Melaleuca - Intestinal Health Research Report](#)
 - [Grape Seed Extract_Cancer and More](#)
 - [Heart Disease_RMBarry](#)
 - [Melaleuca's FiberWise Bar and FiberWise Drinks](#)
 - [Phytomega by Melaleuca - Cardio Health Research Report](#)
- One of the 24 posts is a copy of a Melaleuca press release
 - [Cancer Benzinga Press Release](#)
- One of the 24 posts was made by Melaleuca distributor, [Chuck Holmes](#)
 - [Depression PTSD_onlinemlmcommunity](#)

Accordingly, we believe these 17 posts constitute commercial speech and will not be removing them from our database.

As for the remaining seven posts you've highlighted -- one published on www.circleofmoms.com and six published on www.sitejabber.com -- we cannot verify your representation that the comments were posted by individuals who are not Melaleuca distributors. In light of this uncertainty, we have removed these seven posts from our database but reserve the right to republish them if we learn that the comments at issue were indeed left by company distributors. Those seven posts are:

- [ADD, ADHD_circle of moms](#)
- [Melaleuca Reviews Page 2](#)
- [Melaleuca Reviews Page 3](#)
- [Melaleuca Reviews Page 4](#)
- [Melaleuca Reviews Page 5](#)
- [Melaleuca Reviews Page 6](#)
- [Melaleuca Reviews Pg 1](#)

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

Sincerely,

Laura Smith
Legal Director
203-421-6210 | lsmith@truthinadvertising.org
truthinadvertising.org | [@TruthinAd](https://www.instagram.com/TruthinAd) | [facebook.com/truthinad](https://www.facebook.com/truthinad)

Keeping
Ads
Honest





Legal Department

February 6, 2017

VIA FIRST CLASS MAIL AND EMAIL

Laura Smith, Esq.
Legal Director
Truth In Advertising, Inc.
P.O. Box 927
Madison, CT 06443

Dear Ms. Smith:

Thank you for your email response to my January 20, 2017 letter. Melaleuca appreciates TINA's willingness to remove third party claims from its online claims database. As we mentioned in our prior letter, we are grateful for the service that you provide to our country and for the feedback you provided on some of the posts that needed to be addressed.

In your response, you indicated that TINA would remove 7 of the posts identified by Melaleuca. Thank you for that accommodation. But you noted that TINA would not remove 17 of the 24 posts Melaleuca requested, including an alleged Melaleuca press release; one post published by Chuck Homes; and several posts from www.rmbarry.com. We again request that you remove 10 of the remaining 17 posts identified below from TINA's database, as these are posts by third parties that have no contractual or distributor relationship with Melaleuca.

Fake Press Release

TINA refused to remove the entry entitled "Cancer Benzinga Press Release," apparently believing that this is a Melaleuca press release. It is not. Melaleuca has never issued, nor would issue, a press release with a headline of "Melaleuca CellWise and Other Vitamin Complexes May Help Fight Cancer." Melaleuca is investigating who authored and issued this fake press release and will take immediate action against the responsible party. If TINA has any information regarding the people responsible for this fabricated press release, please forward that information to me. In the meantime, we request TINA remove this incident from the online database. If TINA continues to believe that this post was somehow created, allowed or endorsed by Melaleuca or one of its Marketing Executives, we would be happy to explore that with you. We do not believe that to be the case. To suggest that we are somehow responsible for that entry is simply unfair and without merit.

Chuck Holmes

TINA refused to delete the entry noted as "Depression PTSD onlinemlmcommunity" because TINA believes Chuck Holmes is a Melaleuca Marketing Executive. Even though Mr. Holmes

claims that he joined Melaleuca as a Marketing Executive in 2004, that is not the case. Melaleuca has no records of Mr. Holmes enrolling as a Melaleuca Marketing Executive or even being a customer. Indeed, when Melaleuca contacted Mr. Holmes and questioned him regarding his post, Mr. Holmes admitted that his relationship with Melaleuca was limited to using some of the products that his parents had purchased. In any event, Mr. Holmes (by his own admission) is not currently affiliated with Melaleuca as a Marketing Executive or Preferred Customer (and was not at the time of his post in 2013). Because Melaleuca cannot be held responsible for the claim he makes, we ask that you remove this post from your online database.

RM Barry

TINA refused to remove 8 posts related to www.rmbarry.com because it believes that this website is “listed as a resource in Melaleuca distributors’ training materials.” This assumption is incorrect and inaccurate for several reasons.

First, Melaleuca does not have “distributor training material” because Melaleuca does not have distributors. Melaleuca’s business model is very different than most direct selling companies and we are nothing like the multi-level marketing companies. Melaleuca does not sell products at wholesale prices to “distributors” or to any other third party and then rely on that individual to resell products at retail prices. Rather, all product purchases, including product purchases made by Melaleuca’s customers, are made directly from Melaleuca.

In other words, Melaleuca ships products directly to the end user of the products. There are no “distributors” and Marketing Executives only refer customers to Melaleuca and do not handle products shipped directly to other customers. Melaleuca’s no-resell policy is strictly enforced and Melaleuca has a long history of taking aggressive action against Marketing Executives that violate this policy. That is a technicality, but an important technicality.

Second, RM Barry is entirely independent from Melaleuca. Melaleuca has no control of what he produces, writes or publishes.

Third, RM Barry Publications specifically takes responsibility for the claims that appear on www.rmbarry.com and affirmatively disclaims any connection to Melaleuca. The footer on the home page of www.rmbarry.com states, “About our Relationship to Melaleuca, Inc., RM Barry Publications is an independent publishing company and is not affiliated with or related to Melaleuca, Inc. We specialize in providing educational information to Melaleuca Marketing Executives about and related to Melaleuca, Inc. and its products. However, the claims and information contained in the publications distributed or authorized by RM Barry Publications are not endorsed, approved, or sponsored by Melaleuca, Inc.” Thus, by RM Barry’s own admission, RM Barry is truly an independent third party and its claims cannot be attributed to Melaleuca.

Fourth, Melaleuca does not reference or refer to www.rmbarry.com in any of its literature or training materials. Melaleuca has searched its records for the past several years and has not found any references to RM Barry Publications or www.rmbarry.com. RM Barry is not a Marketing Executive or even a customer. RM Barry is an independent third party that is not affiliated with Melaleuca. Melaleuca does not have any contractual relationship to RM Barry in

any capacity. Accordingly, Melaleuca should not be held responsible for the claims made by RM Barry.

Fifth, Melaleuca does not and would not condone the use of any of RM Barry's publications by our Marketing Executives. Melaleuca prohibits our Marketing Executives from making their own literature, including training materials. If we become aware of any Marketing Executives making their own training material, we discipline them harshly.

To the extent TINA has any Melaleuca "distributor training material," please help us identify the author and forward copies of these materials to me at the address listed above. Melaleuca also prohibits Marketing Executives by policy from using unapproved marketing materials. We take strong action in that regard when we find such violations. Melaleuca would appreciate the opportunity to review the materials referenced in your response to determine their origin and take action against any Marketing Executive that has violated Melaleuca's policies.

Based on the reasons detailed above, Melaleuca requests that the third-party posts from RM Barry, who is unaffiliated with and independent from Melaleuca, be removed from your online database.

Finally, Melaleuca has addressed the misuse of its copyright on the website whyiloveMelaleuca.com. We appreciate you raising that to our attention and have already facilitated the removal of the material TINA identified in the posts.

In short, as explained above, Melaleuca requests that you remove the additional 10 posts identified above from your online database that are completely unaffiliated with Melaleuca. As TINA has recognized, Melaleuca cannot be held responsible for claims made by independent third parties and retaining claims that TINA has no reason to believe were made by Melaleuca or its Marketing Executives would be improper.

As noted in our January 20 letter, Melaleuca has taken steps to remove or modify every single post, including those posted by third parties unaffiliated with Melaleuca, which can be identified. Still, we believe that TINA should act consistent with its commitment not to post publicly as alleged violations those claims for which Melaleuca cannot and should not be held liable. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,



Ryan D. Nelson
General Counsel

cc: Jared Blum, DSA Code Administrator (dsacode@usa.com)

From: **Laura Smith** <lsmith@truthinadvertising.org>
Date: Thu, Feb 16, 2017 at 3:31 PM
Subject: Re: Melaleuca response to TINA letter
To: Ryan Nelson <rnelson@melaleuca.com>
Cc: Julie Miller <julmiller@melaleuca.com>, Jared Blum <dsacode@usa.com>

Ryan,

Thank you for the update.

With respect to the database entry entitled "Cancer Benzinga Press Release," we are glad to hear Melaleuca is investigating who authored and issued this promotional publication and will take immediate action against the responsible party.

With respect to the database entry entitled "Depression PTSD onlinemlmcommunity," given your representation that Mr. Holmes is not, and never has been, a Melaleuca Marketing Executive despite his representation to the contrary, we removed this entry from our database.

With respect to the eight database entries that came from www.rmbarry.com, we will not remove these from our database. RM Barry states that it "specialize[s] in providing educational information to Melaleuca Marketing Executives about and related to Melaleuca, Inc. and its products" and its various publications are chalk full of inappropriate health claims, including, for example, claiming that Melaleuca products can treat the flu, asthma, ADHD, carpal tunnel syndrome, cardiovascular disease, shingles, and yeast infections, just to name a few. There can be no serious dispute that Melaleuca and its Marketing Executives are benefiting from RM Barry's deceptive marketing claims and publications. If Melaleuca is sincere in its commitment to eradicate deceptive and inappropriate health claims being made about and used to sell its products, then it should focus on stopping RM Barry's circulation of such deceptive promotional materials rather than trying to persuade TINA.org that there is no material connection between RM Barry and Melaleuca distributors.

If you have any questions, please let me know.

Sincerely,

Laura Smith
Legal Director
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