



July 6, 2017

Via Email: bpatten@truthinadvertising.org

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Re: May 30, 2017 TINA letter to Jared Blum DSA Code of Ethics
Administrator

Dear Ms. Patten and Ms. Smith,

I am the Chief Legal Officer of Nerium International, LLC ("Nerium"). I am in receipt of a copy of your captioned letter, which reflects that it was copied to the individuals whom I copy on this letter.

I assure you that Nerium takes your concerns seriously. Our Compliance Department is undertaking a review of the web posts you have referenced and will work with our independent representatives to alleviate any potential violations of law.

We understand that your organization is a Connecticut consumer watchdog entity formed in 2012 by billionaire Karen Pritzker¹ and Michael Vlock through their Connecticut "Seedlings Foundation" which represents that it "supports programs that nourish the physical and mental health of children and families, and fosters and educated and engaged citizenship."²

¹ https://en.wikipedia.org/wiki/Karen_Pritzker

² <https://www.truthinadvertising.org/about/>;
[https://en.wikipedia.org/wiki/Truth_in_Advertising_\(organization\)](https://en.wikipedia.org/wiki/Truth_in_Advertising_(organization))

Your web site indicates that both of you are Connecticut litigators.³ We understand that Ms. Mueller is your “Director of Marketing and Communications”.⁴

You refer the readers of your letter to your own web site page titled “What you should know about Nerium” in support of your statements that that “[a]lmost a year ago” you “undertook an investigation of Nerium” and that “[w]hat has become clear since that time is that Nerium has no intention of complying with truth in advertising laws.”⁵ However, neither your letter nor your web site references the specific “truth in advertising laws” to which you refer. Regardless, the latter statement is untrue. Nerium takes the law very seriously.

It is odd that the body of your letter does not reference the letter I sent to you last year outlining the efforts that have been undertaken by Nerium in response to your previous letter. For example, Nerium’s Compliance Department reviewed the statements identified in your 2016 letter and took steps to ensure that our independent representatives were made aware of appropriate concerns and that improper statements should be removed by the independent representative making same. Of the potential violations identified by TINA in 2016, Nerium successfully worked with its independent representatives to remove all “live” social media posts that could be linked to an independent representative.⁶

Your website claims to have identified “over 200 instances” from 2012 to 2017 of what you believe are improper statements. Your letter represents that “many of the inappropriate posts listed in TINA.org’s databases still remain on the internet” and that “TINA.org has been able to catalogue more than 100 new examples of inappropriate health and income claims being made by the company and its distributors”. However, it appears that you provide no link to where on Nerium’s web site these statements can be found. In addition, you apparently list only one statement that is made by a Nerium employee or that is on Nerium’s web site. It appears that you are claiming that the remaining statements are made by Nerium independent representatives.

Please advise if this is not accurate.

We note that the links to the postings made by independent representatives on your web site are largely links to postings *archived* by TINA. It appears that they are no longer actively being maintained on the internet.

³ <https://www.truthinadvertising.org/meet-our-staff/>

⁴ <https://www.truthinadvertising.org/meet-our-staff/>

⁵ <https://www.truthinadvertising.org/what-you-should-know-about-nerium/>

⁶ Unfortunately, as you know, once some items are placed on the internet, it may not be possible to totally remove them from the internet.

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You further fail to disclose that Nerium has approximately 40,000 independent representatives in 9 countries. These independent representatives have made millions of social posts. 200 social posts constitute less than 1% of these total posts.

You further fail to disclose the efforts which Nerium has undertaken and is undertaking to monitor statements made by its independent representatives.

As you know, and as made clear in my letter last year, Nerium utilizes Momentum Factor's FieldWatch Compliance Monitoring and Management System to proactively monitor social media posts by our independent representatives. Nerium's Compliance Department addresses improper conduct and earnings claims.

Further, as you know, Nerium's Policies and Procedures Manual specifically prohibits our independent representatives from making improper earnings claims. Specifically, Section 12.07 provides:

[Brand Partner] will make no income claims or representations regarding the Company Compensation Plan, remembering the ideal projections of the Company Compensation Plan are unrealistic. No network is grown in a perfect geometric progression and therefore it is impossible to predict incomes. Further a Brand Partner's success depends on many variables, such as the amount of time committed to his/her business and the degree of organizational ability.

Nerium's Policies and Procedures Manual also specifically prohibits our independent representative "Brand Partners" from making any claims that any Nerium International products treat or cure any disease. Specifically, Section 9.23 states:

Brand Partner shall make no claim, representation or warranty concerning any product or service of the Company, except for those contained in the official company materials. Brand Partner can only promote benefits of Nerium's products using language contained in the official Company materials. **Brand Partners may not make any medical therapeutic, curative or treatment claims regarding any Nerium product, Brand Partners may only use "Before" and "After" photos provided by the Company. The use of any unauthorized "Before" and "After" photos is prohibited.**

Section 12.06 further provides:

[Brand Partner] shall not make diagnostic, therapeutic or curative claims for the Company's claims for the Company's products.

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[Brand Partner] will not make any claims not contained in official Company literature.

As you know, Nerium's Compliance Department distributes monthly "Compliance Corner" emails to all of its independent representatives to educate them about important compliance issues; product and earnings claims are frequently addressed in these emails.

Finally, we would note that your site contains the apparently unsubstantiated, but cleverly worded allegation that "But is the company [Nerium] running a legitimate MLM business or an illegal pyramid scheme?" Surprisingly, your web site fails to even recite the legal definition of a "pyramid scheme". Since you are attorneys, we trust that you are aware, for example, that the phrase "pyramid scheme" is a legal phrase which has a specific legal definition. In our home state of Texas it may be found at Tex. Bus. & Com. Code §17.461(a)(6) which reads as follows:

(6) "Pyramid promotional scheme" means a plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from a person's introduction of other persons to participate in the plan or operation rather than from the sale of a product by a person introduced into the plan or operation.

Nerium is not an illegal pyramid scheme.

Further, it appears that your marketing department utilizes such hyperbolic rhetoric in an effort to raise money. <https://www.truthinadvertising.org/donate/>. We note that your stated mission is to "out deceptive marketing and promote honest advertising."⁷ We trust that your mission also covers your own activities.

Please let me know should you have any questions.

Sincerely,



Eric Haynes
Chief Legal Officer

⁷ <https://www.truthinadvertising.org/about/>

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