

BBB NATIONAL PROGRAMS, INC.
The Direct Selling Self-Regulatory Council

Case Number: 3-2019 – Non-Governmental Organization Challenge

INQUIRY BACKGROUND

Truth in Advertising, Inc. (“TINA” or “Challenger”) a nonprofit organization based in Madison, Connecticut challenged the marketing claims of Team National, Inc., (“Team National” or “Company”) a membership savings company located in Davie, Florida as well as claims made by its independent marketing directors (IMD).

BASIS OF INQUIRY

The Direct Selling Self-Regulatory Council (DSSRC), is a national advertising self-regulation program administered by BBB National Programs, Inc. This inquiry was commenced by TINA pursuant to the challenge provisions articulated in the DSSRC Policy & Procedures.

More specifically, TINA submitted this challenge based upon core earnings and savings claims that it alleged were being inappropriately disseminated on Team National company-owned websites¹ and social media pages of Team National IMD’s that it has identified over several years as well as on the Company’s official You Tube page.

The representative earnings claims that were the subject of this review are as follows:

A. Team National’s Road to Financial Freedom Archived You Tube Video

- *“I am thrilled to share with you how through a simple referral system you can live the life of your dreams and have more choices and how you spend your time and your money. In 1997 my father developed our membership savings program. I share this dream to create even more six and seven figure income earners than any other company in our industry and we are well on our way.... As a Team National independent representative, you can own your own business, be your own boss, and can create an incredible income without a big investment. No products, no employees, and no inventory.”*
- *“We’re on track to earn over one thousand dollars a year from shopping online on the big end marketplace... over \$83 dollars a month on average which is more than enough to pay for our membership”*
- *“Just 10 months of sharing this with my family and friends doubled my household income.”*
- *“When you accumulate 10 points on the right and 10 points on the left, as a result of you or your teams’ sales, you earn a \$1500 check and this could happen weekly”*

¹ www.teamnationalusa.com; www.teamnationalsuccess.com, www.livingteamnational.com and www.saveandearnmore.com.

- *“I was a full time college student one day when I first took a look at Team National and a year later I was able to graduate college, retire and turn 22 all in the same month... and in two and a half years we created an income that we could have never dreamed about making at this point in our lives.”*
- *“You develop more teams for extra earnings that pay you \$2,500 dollars each in addition to another \$1,500 You can earn more than enough to pay for the cost of your membership...”*
- *“I used to be an auto mechanic. I worked six days a week owning my own shop. I had dirty hands every single day and because of Team National for the last 6 years I’ve been able to have clean hands I’ve made more money every single week than I used to make in in a month.”*

B. Team National’s Road to Financial Freedom 2019 You Tube Video

- *“I’ve been in the financial services industry for 18 years and what I found is that most people haven’t saved enough for retirement or have way too much debt. With Team National what we’ve found is that not only can you save enough for retirement, but you can get out of debt in a short period of time.”*
- *“We are multiple business owners for years but, our businesses owned us. Thanks to the income from Team National, in just nine short months, we were able to walk away from those businesses and get our time back.”*
- *“... as Team National IMD, you own your own business and create incredible income without a big investment, no employees, and no inventory.”*
- *“We were introduced by Team National in our 20s and the first 90 days, we were making twice as much money from Team National than I was making as a high school basketball coach. We had no background in business, I wasn’t sure if we could do this or not, but with the help of a team, it was no big deal. Trust me. If we can do it, you can do it.”*
- *“In our first thirty days, we ... got a \$1,500 check and that helped us pay for our daughter’s private school tuition.”*
- *“[O]n a part-time basis, we created an organization that put us into financial freedom. It also allowed us to semi-retire and do this business out of the comfort of our home (which we paid off five years early). We are now debt free!”*

C. Teamnationalsuccess.com IMD Videos

- *“We did this part-time with significant income results in just weeks. This gave us choices. We sold our trucking company and Cindy retired from her job. We were left with extra time and money.”*
- *“We have saved our membership money back several times, and working part-time we have made a fulltime income every year since we joined, while helping others do the same. It has been a godsend for our family.”*
- *“As a result of our time and energy we devoted to Team National, we’re now in the top 2% of income earners for the State of South Carolina. We have saved our membership money*

back several times, and working part-time we have made a fulltime income every year since we joined, while helping others do the same. It has been a godsend for our family.”

- *“We started sharing Team National’s Road to Financial Freedom with family and friends, strictly on a part-time basis. By doing so, I was able to earn more with Team National than I was earning annually at my job. Then, I made a decision to ‘fire the boss’ and make Team National my new career.”*
- *“We did this part-time with significant income results in just weeks. This gave us choices. We sold our trucking company and Cindy retired from her job. We were left with extra time and money.”*
- *“[O]n a part-time basis, we created an organization that put us into financial freedom. It also allowed us to semi-retire and do this business out of the comfort of our home (which we paid off five years early). We are now debt free!”*
- *“In our fourth month, we made twice as much part-time with Team National as Dee Dee was making with her full-time job. We made the decision to bring her home at that point, so now she gets to ‘roll over instead of roll out!’*
- *“Sharing this very part-time we were able to match Ginger’s teaching salary in the first month. The income has continued to grow and allowed us to send both of our sons to college, and develop a track of land near a local resort. It has also allowed both of us to retire early and spend our time helping others pursue excellence through Team National*
- *“By sharing this part-time around our busy schedules, we created an income that allowed Codi to walk away from that 14-year career in January 2017 and “retire” at 35. Team National has given us the time and financial freedom to do things and have choices that otherwise would have never been possible.”*
- *“We started sharing Team National’s Road to Financial Freedom with family and friends, strictly on a part-time basis. By doing so, I was able to earn more with Team National than I was earning annually at my job. Then, I made a decision to ‘fire the boss’ and make Team National my new career.”*

CHALLENGER’S POSITION

TINA is an online resource dedicated to protecting consumers against questionable advertising and marketing. It aims to achieve its mission through investigative journalism, education, advocacy, and the promotion of truth in advertising.

According to the Challenger, Team National and its distributors have been disseminating atypical and unsupported income claims to market the Company’s business opportunity. TINA alleged that such marketing materials include claims of representatives quitting their jobs, becoming stay-at-home parents, traveling the world, as well as buying homes, vacation properties and luxury vehicles, among other things. It was the Challenger’s position that the representative claims at issue are particularly egregious given that Team National’s 2017 and 2018 Income Earnings Disclosure make it clear that the eighty-eight percent (88%) of the Company’s “eligible distributors” received no income and the average earnings for all Team National distributors was approximately \$600 each year.

The Challenger called DSSRC's attention to a December 18, 2017 letter TINA sent to Team National notifying the Company that it had collected more than 80 examples of what it believed to be inaccurate income claims. TINA stated that although Team National did not dispute the ongoing presence of these claims, as of June 2018, all of the claims continued to be disseminated. Moreover, over the next two years, TINA found over 150 more examples of what it argued were unsupported income claims made by the Company and its distributors. TINA maintained that almost all of the claims it brought to Team National's attention are still available online.

While TINA did recognize that "some of the company's marketing materials include language to indicate that the results depicted are not typical" it also contended that the language was "legally insufficient" because it did not clearly or conspicuously disclose the amount of income that typical Team National participants earn and that none of the disclosures are located prominently enough or in close proximity to earnings representation for consumers to interpret them appropriately.

The Challenger noted that Team National acknowledged that, at a minimum, clear and conspicuous disclosures are required for all earnings claims used to market the Company and that the only issue left for the DSSRC to evaluate is whether the disclaimers at issue are adequate. Accordingly, TINA contended that the use of atypical earnings realized by only a few IMDs to market Team National's business opportunity runs afoul of the FTC Act and that the disclosures Team National is using fail to remedy the violation. TINA referred to various guidance documents from the FTC and its staff as support for its position.²

TINA disputed Team National's contention that the disclosure that the Company uses in its current marketing materials comply with the law "by providing an Income Earnings Disclaimer and a clear and conspicuous link to an Income Earnings Disclosure wherever a Success story or lifestyle testimonial appears." Conversely, the Challenger maintained that neither the Company's disclaimers nor its link to an income disclosure statement remedy the unsupported messages being communicated in the Company's marketing materials.

In support of its position, TINA called DSSRC's attention to the FTC's Guides On the Use of Endorsements and Testimonials ("FTC Guides").³ According to the Challenger, the FTC Guides propose that when a Company markets its business opportunity using income claims that are not representative of what consumers will typically achieve, the marketing material – including materials disseminated by a Company's distributors – must, at a minimum, clearly and conspicuously disclose *what is typical*.

² For example, *see* Keynote Remarks of FTC Chairwoman Ramirez, DSA Business & Policy Conference, Oct. 25, 2016, https://www.ftc.gov/system/files/documents/public_statements/993473/ramirez_-_dsa_speech_10-25-16.pdf "A legitimate multi-level marketer must accurately represent its business opportunity and what a participant is likely to earn. These representations must be truthful, non-misleading, and substantiated. Practically speaking, this means that multi-level marketers should stop presenting business opportunities as a way for individuals to quit their jobs, earn thousands of dollars a month, make career-level income, or get rich because in reality, very few participants are likely to do that. Although it may be true that a very small percentage of participants do have success of this type, testimonials from these rare individuals are likely to be misleading because participants generally do not realize similar incomes."

³ 16 CFR § 255.2

TINA also disputed Team National’s assertion that it “discloses clearly and conspicuously the average earnings of its Independent Marketing Directors everywhere a Lifestyle or Success story testimonial appears on any of the websites . . .”. The Challenger informed DSSRC that Team National’s disclosure language states simply that “This information is not intend to represent typical, actual or average savings or earnings. Actual earnings results by an Independent Marketing Director (IMD) will depend on the time and effort devoted to building the business. We do not guarantee success or earnings. Visit www.testimonialusa.com/business opportunity for the Income Earnings Disclosure.” In addition, the Challenger asserted, the disclosure appears on screen accompanied by a monotone, fast-talking voice-over; is then followed by several minutes of express and implied income claims and; ends with this same disclosure on the screen.

TINA argued that the Team National language referenced above is a disclosure of typicality that fails to inform consumers what typical participants earn and cited to the remarks of a former director of the FTC’s Bureau of Consumer Protection who explained, these types of disclaimers are ineffective:

“The Commission’s enforcement history with false or deceptive advertising using consumer endorsements, as well as its own research on consumer perception of such ads, has made it increasingly clear that in one key aspect – disclaimers of typicality – the Guides were not working as intended to prevent deception. Such disclaimers simply are not effective. Consumers interpret the results depicted in testimonials to be representative of what consumers can expect to achieve, even where testimonials are accompanied by the statement, “Results not typical.”⁴

According the Challenger, the Commission’s consumer research found that even where testimonials were accompanied by the strong statement, “These testimonials are based on the experiences of a few people and you are not likely to have similar results,” consumers still believed that the results in the testimonials were representative of what would generally be achieved. TINA further maintained that the revised FTC Guides no longer contain the so-called “safe harbor” for disclaimers of typicality, so it is no longer a shield from liability to simply use the “results not typical” language with testimonials.⁵

TINA also contended that the language in Team National’s disclosure stating that “[a]ctual earnings results by an Independent Marketing Director (IMD) will depend on the time and effort devoted to building the business,” is also ineffectual. The Challenger mentioned that the FTC and federal courts have made clear that such language is not sufficient – nor appropriate – for direct selling companies to say or imply that actual earnings will depend on the time and effort devoted to building the business or, put differently, that financial failure is due to participants’ failure to

⁴ FTC Remarks of David C. Vladeck, Director, FTC Bureau of Consumer Protection, Feb. 25, 2010, https://www.ftc.gov/sites/default/files/documents/public_statements/remarks-magazine-publishersamerica/100225mpaspeech.pdf.

⁵ FTC Publishes Final Guides Governing Endorsements, Testimonials: Changes Affect Testimonial Advertisements, Bloggers, Celebrity Endorsements, Oct. 5, 2009, <https://www.ftc.gov/news-events/pressreleases/2009/10/ftc-publishes-final-guides-governing-endorsements-testimonials> (“In contrast to the 1980 version of the Guides – which allowed advertisers to describe unusual results in a testimonial as long as they included a disclaimer such as “results not typical” – the revised Guides no longer contain this safe harbor.”)

devote enough effort.⁶ TINA added that this is especially true where, as here, the Company's own marketing materials directly contradict this assertion by repeatedly claiming that distributors can earn full-time pay working part-time hours.

According to the Challenger, on Company webpages, Team National provides – at the very bottom of pages, below express and implied income claims – a hyperlink to the Company's Income Earnings Disclosure, along with the same disclaimer of typicality referred to above. The Challenger contended that similar insufficient disclosures appear elsewhere in marketing materials.

In addition, TINA noted that the FTC has made clear that it is not legally sufficient for a company to rely on a hyperlink for a necessary disclosure and cited to the FTC's Dot.com Disclosure Guide which states that:

“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.”⁷

In sum, TINA maintained that Team National's Income Earnings Disclosure, to which the hyperlink directs consumers, does not remedy the deceptive income claims because it fails to inform consumers what a typical distributor is likely to earn.

COMPANY'S POSITION

Team National explained that it is an MLM (multi-level marketing) Company that seeks to provide money-saving products and services for its members in more than 20 industries, such as jewelry, home furnishings, communications services, travel, insurance, financial services, and rental cars. Its membership savings program provides value in a variety of areas through collective buying power and strives to connect consumers with savings and value-added services on products they purchase regularly.

The Company informed DSSRC that TINA previously brought the same concerns at issue in this inquiry to the DSA Code Administrator and other regulatory agencies. Team National maintained that, notwithstanding the fact the Company was in full compliance with the DSA Code of Ethics, it has made significant improvements to better clarify information for consumers and for Team National's independent sales force. Moreover, Team National has indicated that it will

⁶ See *FTC v. Vemma Nutrition Co.*, Complaint for Permanent Injunction and Other Equitable Relief, dated Aug. 17, 2015, 15-cv-01578 (D.Ariz.), <https://www.truthinadvertising.org/wp-content/uploads/2015/08/VEMMAComplaintforPermanentInjunction.pdf>, at ¶ 39 (“While Defendants sometimes attempt to provide disclaimers when making these and other income claims, their attempts are inadequate. Vemma typically dilutes purported disclaimers, such as ‘results may vary,’ with statements implying that negative results are due to the inadequate efforts of the Affiliate.”).

⁷ <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staffrevises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

continue to make ongoing modifications to its marketing materials and internal compliance process improvements in the best interest of the consumer. For example, Team National will continue making modifications to testimonials from its IMDs and revisit the content and presentation of older, archived success stories. In response to this TINA challenge of its advertising and marketing claims, the Company informed DSSRC that it clearly and conspicuously posts an income earnings disclaimer at the bottom of its website with a hyperlink to the income earnings disclosure. The income disclosure states:

“The income chart is for all US TN IMDs who were eligible to earn downline commissions in 2018. An Independent Marketing Director (IMD), is a distributor that currently registered as eligible to represent TN to market and sell TN products and services and to sponsor a downline sales organization. In 2018, 12.4% of IMDs received commissions or bonus income, 87.6% of all received no income at all and of all IMDs the average earnings were \$636.99”

Team National asserted that it clearly and conspicuously discloses the average earnings of its Independent Marketing Directors everywhere a lifestyle or success story testimonial appears on any of its websites. It noted that in January 2018 the Company increased the size of the font used in its income earnings disclaimer stated below to make it even more conspicuous to consumers:

“This information is not intended to represent typical, actual or average savings or earnings. Actual earnings results by an Independent Marketing Director (IMD) will depend on the time and effort devoted to building the business. We don’t guarantee success or earnings. Click here for the Income Earnings Disclosure.”

With respect to the statement in the video from the Team National spokesperson, the Company alerted DSSRC that the quote identified by TINA is from an old video that the Company is no longer in uses and is not being used on any of its current sites. Team National also contended that sharing a video from Team National’s founder should not be considered a statement of expected results because it does not create expectations in the minds of consumers or downline recruits. Moreover, the Company maintained that the representation was essentially a broad vision statement and that the video containing the statement had both a disclaimer as well as a link to the income earnings disclosure.

Team National contended that the Challenger’s inquiry of Success Story and Lifestyle content is really an issue of transparency of the disclosure and disclaimer and that the Road to Financial Freedom video expressly directs consumers to an income earnings disclosure and a disclaimer that clearly and conspicuously addresses generally expected results.

More specifically, the Company explained that its income earnings disclosure appears prominently below all of the videos on the on the www.teamnationalsuccess.com website and is also prominently listed on the side of all fifty-three (53) “Success Story” videos located at www.livingteamnational.com and at the outset of every video posted on the website. The Company noted that there are no Success Stories posted directly on its other websites, teamnationalusa.com and saveandearnmore.com. In addition, Team National stated that a conversion project was recently completed updating all Success Stories videos on the Team National Youtube channel

with earnings disclaimers and a Company web address directing consumers to the income earnings disclosure.

Team National indicated that closely adheres to the FTC recommendations regarding express and implied earning claims, hypothetical scenarios and earnings projections. More specifically, the Company is committed to disclosing:

- the percentage of recruits that make money
- the average earnings of active representatives who make money; and
- the percentage of distributors that achieve a specific level of earnings when a quantified amount is provided by advertising

The Company also maintained that the official Team National website is fully compliant with the DSA Code of Ethics.

Accordingly, the Company maintained that it is completely transparent regarding its earnings disclosure and disclaimers and that it carefully adheres to both the DSA Code of Ethics as well as all FTC rules and regulations regarding disclosures.

ANALYSIS AND RECOMMENDATION

In its review of marketing materials for Team National, DSSRC recognized the unique and valuable opportunity available for Team National members to purchase automobiles, electronics, home furnishings, merchant credit card processing and a myriad of other products and services at very favorable rates through a collective buying business model. However, notwithstanding this enterprise model, DSSRC agreed that the Challenger raised legitimate concerns regarding the dissemination of video testimonials that discuss the extraordinary results achieved by a select group of Team National IMDs in an unqualified context.

During the course of this inquiry, Team National made ongoing revisions to a number of the videos referenced by the Challenger and in some cases the videos have been removed in their entirety. While DSSRC expressed its appreciation to Team National for the voluntary actions it has taken to address the concerns of the Challenger, DSSRC also felt it imperative to emphasize the fundamental disclosure obligations a company must adhere to when communicating atypical savings and business opportunity claims.

A. Team National’s Road to Financial Freedom Archived You Tube Video

In this archived video from 2014, the President and CEO of Team National explains the potential financial benefits and “incredible income” that may be realized by Team National IMDs using a simple referral technique and her dream to “*create even more six and seven figure income earners.*” The video also depicts several expensive boats and homes as the video narrator asks viewers to imagine the ability “to buy the home of your dreams and the financial stability that brings peace of mind these people are IMDs with Team National. Living the American Dream they have acquired the wealth they wanted for their family, their future and their freedom...”. The video includes a number of testimonials from Team National IMDs who, among other things, state that they: “*can now go on trips and vacations that we never ever thought we could ever do*”; “*saw*

that there was no risk... within the first 30 days we already put our membership money back in our pocket” and that “I used to be an auto mechanic....and because of Team National for the last 6 years I have been able to have clean hands and make more money every single week than I used to make in a month.” The video also explains the process of accumulating membership points in order to earn \$1,500 in weekly commission checks while noting that *“this can happen to you.”*

A ten-second, three paragraph disclosure does appear at the beginning of the video which notes that the presentation is not intended to *“... represent typical, actual or average savings of specific customers who may experience greater or lesser savings”* or *“... represent typical, actual or average earnings of specific Team National IMDs.”*

DSSRC acknowledged the Company’s assertion that the testimonials are literally true of the earnings and savings experienced by these particular Team National IMD’s. There was also no dispute that the stated results are not typical for the average Team National IMDs. Accordingly, the pertinent issue in this inquiry was whether the Team National videos adequately disclosed the results that may be typically expected by consumers and potential IMDs. DSSRC concluded that they did not.

It is a long-standing principle of advertising that an advertiser has the burden to support all reasonable interpretations of its claims and not simply the messages it intended to convey. Verizon Communications, Inc. (Verizon Wireless Services (“First to 5G”)), Report #6258, *NAD/CARU Case Reports* (May 2019). Further, in the direct selling context, the DSSRC has made clear that the responsibility of the direct selling company extends to the claims disseminated by members of a direct selling company’s salesforce.⁸

With respect to the use of testimonials from IMDs communicating earnings results that may not be consistent with the expectations of typical consumers or recruits, DSSRC agreed with the Challenger that the guidance provided by the FTC Guides was particularly relevant. More specifically, the FTC Guides state that:

An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser’s experience is representative of what consumers will generally achieve with the advertised product or service 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. 16 CFR § 255.2(b). (emphasis added).

⁸ See Wildtree, Inc., DSSRC Case No. 1-2019

As also noted by the FTC, testimonials claiming specific results usually will be interpreted to mean that the endorser's experience reflects what others can also expect. Statements like "*Results not typical*" or "*Individual results may vary*" won't change that interpretation.⁹

Thus, pursuant to section 255.2(b) of the FTC Guides, DSSRC determined that if the results expressed in the video by Team National IMDs are not typical, the burden is on the Company to disclose what the typically expected results would be. Moreover, this legal principle regarding the disclosure of typically expected results is applicable any time an advertiser communicates results obtained from using a product or service that would not be typically expected by consumer.

In addition, the use of unqualified claims that imply receiving "*career-level income*" have been cautioned against by the FTC. In section 13 of its 2018 Business Guidance Concerning Multi-Level Marketing ("FTC Business Guidance"), the FTC states that unless it can be demonstrated that direct selling participants can generally achieve such results, companies (and/or their representatives) should not "*represent through words or images that participants can earn thousands of dollars a month, quit their jobs, 'fire their bosses'*".¹⁰ Team National's Road to Financial Freedom Archived You Tube video included several testimonials that reference such language including (but not limited to): "*in just nine short months we were able to walk away from our business,*" "*I was making twice as much money from Team National than I was making as a high school basketball coach*" "*...working part-time we have made a full time income every year since we joined,*" "*On a part-time basis, we created an organization that put us to financial freedom*" "*I was able to earn more with Team National than I was earning annually at my job. Then I made a decision to 'fire the boss' and make Team National my new career*", etc. It was also noted by DSSRC that images of large houses that appear throughout the video further contribute to the reasonable consumer interpretation that such luxuries may be generally expected by Team National IMDs. However, such a consumer take-away has not been supported by the Company.

Moreover, Team National's Road to Financial Freedom You Tube video includes a hypothetical scenario describing how Team National IMDs can accumulate income through selling standard and premium memberships ("When you accumulate 10 points on the right and 10 points on the left, as a result of you or your teams' sales, you earn a \$1500 check and this could happen weekly" and "You develop more teams for extra earnings that pay you \$2,500 dollars each in addition to another \$1,500 You can earn more than enough to pay for the cost of your membership..."). DSSRC determined that the amount of money described in this scenario would be considered atypical as it significantly exceeds the amount of income received by the average Team National IMD and as such, should trigger a Company disclosure of the average IMD earnings that could generally be expected by potential recruits. Such a scenario is addressed in the FTC Business Guidance stating that "*...a hypothetical earnings scenario – such as 'if you recruit 30 people who each sell \$1,000 of product each month, you will earn \$1,500 a month' – may imply that the assumptions made (e.g., the number of people recruited, the amount sold by each*

⁹ See The FTC's Endorsement Guides: What People Are Asking. www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking.

¹⁰ FTC Business Guidance Concerning Multi-Level Marketing, §13 (January 2018)

recruit) are consistent with the actual experiences of typical participants. If the assumptions are not, the earnings scenario likely would be false or misleading to consumers.”¹¹

Accordingly, while Team National did provide information indicating that the average earnings for all Team National distributors was approximately \$600 each year, this annual earnings is not consistent with the earnings claims at issue in this inquiry and, as such, the Company has the burden to clearly and conspicuously disclose its annual average earnings information to consumers. Team National did attempt to disclaim any potential inaccurate messages communicated by the video testimonials by including a three paragraph disclosure at the beginning of the video which includes language stating that the earnings attested to in the testimonials do not “... represent typical, actual or average savings of specific customers who may experience greater or lesser savings” or “... represent typical, actual or average earnings of specific Team National IMDs.”. Notwithstanding such language, DSSRC concluded that the disclosure was not in compliance with the FTC Guides.

Regarding the clear and conspicuous placement of disclosures in website videos, the FTC Dot.com Disclosure Guide states that in evaluating whether a disclosure is likely to be clear and conspicuous, advertisers should consider its placement in the ad and its proximity to the relevant claim. The closer the disclosure is to the claim to which it relates, the better. Additional considerations include: the prominence of the disclosure; whether it is unavoidable; whether other parts of the ad distract attention from the disclosure; whether the disclosure needs to be repeated at different places on a website and whether disclosures in audio messages are presented in an adequate volume and cadence.¹² The FTC Dot.com Disclosure Guide further states that because online ads often contain videos with claims that require qualification, the disclosure should accompany the claim. Visual disclosures presented in video clips or other dynamic portions of online ads should appear for a duration sufficient for consumers to notice, read, and understand them. As with brief video superscripts in television ads, fleeting online disclosures are not likely to be effective.¹³

Lastly, DSSRC determined that the fact that several earnings representations were communicated by a company spokesperson does not change the way that consumers would interpret the claims (*i.e.*, that the same results may be typically expected by Team National IMDs) and does not absolve the Company of its obligation to disclose the results that may be typically expected by consumers or potential downline recruits. For example, the BBBNP’s Electronic Retailing Self-Regulation Program (ERSP) has repeatedly determined that, unless qualified with a clear and conspicuous disclosure indicating that the consumers should not expect similar results, claims pertaining to the success of the marketer/spokesperson using the same techniques being advertised could be interpreted by consumers as meaning that they can typically expect the same level of success.¹⁴

Accordingly, DSSRC concluded that Team National’s Road to Financial Freedom Archived You Tube, in the context in which it is currently archived, should be either removed or significantly

¹¹ Id.

¹² FTC Dot.com Disclosure Guide. Overview; page i.

¹³ Supra page 20.

¹⁴ See *Capital Information Group, Inc. Investing Daily’s Personal Finance*, ERSP Case# 434 (2/19/19) and *Clever Investor, Clever Investor Membership Program*, ERSP Case# 410 (9/18/17).

modified. More specifically, pursuant to the applicable regulatory and self-regulatory guidance described above, DSSRC recommended that any future promotional videos that make reference to the amount of income that IMD's can earn by working with Team National should include a clear and conspicuous disclosure at the beginning and end of the videos which indicates the amount of annual income that the average Team National IMD has earned and that a similar disclosure should appear in the video any time a reference is made (either by a Company spokesperson or a Team National IMD) to income that has been or can be potentially be earned as a Team National IMD.

In sum, DSSRC concluded that the income claims enumerated in the Basis of Inquiry were not appropriately disseminated in the context in which they appear in the Road to Financial Freedom video posted on YouTube and it is recommended that the video be removed in its entirety or be significantly modified to include clearly and conspicuously disclosures regarding the generally expected income of Team National IMDs.

B. Team National's Road to Financial Freedom 2019 You Tube Video

Although the 2019 Team National Financial Freedom video also archived on You Tube did not include express earnings from the Company spokesperson and appeared to be more focused on the Team National business model of providing savings through discounted products and services for its members, there were several earnings representations communicated by Company IMDs. Unlike the Road to Financial Freedom Archived You Tube Video discussed in the previous section of this decision, the 2019 video does not include any disclosure language at the beginning of the video but, conversely, contains a disclosure during the explanation of the Team National Compensation Plan (*i.e.*, "Actual earning results will vary. We do not guarantee success or earnings. Visit teamnationalusa.com/businessopportunity for the Income Earnings Disclosure") and at the end of the video (*i.e.*, "This presentation is intended to illustrate the marketing program offered by Team National. It is not intended to represent typical, actual or average earnings. Actual earnings results by an Independent Marketing Director (IMD) will depend on the time and effort devoted to building the business. We do not guarantee success or earnings. Visit teamnationalusa.com/businessopportunity for the Income Earnings Disclosure").

As noted above, the FTC requires that 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.¹⁵ As also noted earlier by DSSRC, the FTC has found that disclosures such as "*Results not typical*" or "*Individual results may vary*" does appropriately qualify testimonial claims which communicate results that may not be generally expected by consumers.

DSSRC also concluded that a passing reference in the middle and at the end of the 2019 Team National Financial Freedom video to a hyperlink to the Company's Income Earnings disclosure did not adequately satisfy its disclosure obligation of the results that would be generally expected by consumers. As stated in the FTC Dot.com Disclosure Guide:

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

¹⁵ FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising. 16 CFR § 255.2(b).

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. This is particularly true for cost information or certain health and safety disclosures.

Accordingly, similar to DSSRC’s analysis of the disclosure in Team National’s Road to Financial Freedom Archived You Tube Video, with respect to Team National’s Road to Financial Freedom 2019 You Tube Video, DSSRC recommended that any express or implied references to the amount of income that IMD’s can earn by working with Team National should be accompanied by a clear and conspicuous disclosure at the beginning and end of the video which indicates the amount of annual income that the average Team National IMD earned and that a similar disclosure should appear in the video any time a reference is made to income that has been or can be potentially be earned as a Team National IMD, as well as during any hypothetical earnings scenarios that are presented.

In addition, as was the case with Team National’s Road to Financial Freedom Archived You Tube Video, Team National’s Road to Financial Freedom 2019 You Tube Video also includes unqualified claims that imply receiving “*career-level income*” (“...Thanks to the income from Team National, in just nine short months, we were able to walk away from those businesses and get our time back.”; “... in the first 90 days, we were making twice as much money from Team National than I was making as a high school basketball coach.” “[O]n a part-time basis, we created an organization that ... allowed us to semi-retire and do this business out of the comfort of our home (which we paid off five years early). We are now debt free!” etc.). Accordingly, DSSRC concluded that unless it can be demonstrated that Team National IMDs can generally achieve such results, companies (and/or their representatives) should not represent through words or images that participants can earn thousands of dollars a month and/or replace their previous income.

C. Teamnationalsuccess.com IMD Videos

According to TINA, www.teamnationalsuccess.com was one off several repositories for videos from Team National IMDs which detailed stories of atypical income results.¹⁶

During the pendency of the DSSRC inquiry, Team National voluntarily disabled the www.teamnationalsuccess.com website an action that DSSRC both greatly appreciated and believed was necessary and appropriate based upon the inadequacy of the disclosures that had been used by the Company to qualify atypical income representations made by Team National IMDs.¹⁷

If Team National intends to continue using www.teamnationalsuccess.com and other websites as an archive for future IMD Success Stories that communicate income results that would not be generally expected by the typical Team National IMD, DSSRC recommends that the Company be mindful of the direction provided in the FTC Guides regarding consumer endorsements, more specifically that statements relating the experience of one or more consumers

¹⁶ TINA also called DSSRC’s attention to www.saveandearnmore.com, www.livingteamnational.com and www.teamnationalusa.com as Team National-owned websites which housed similar atypical success story videos.

¹⁷ Team National is currently in the process of revising other company-owned websites including www.saveandearnmore.com, www.livingteamnational.com and www.teamnationalusa.com.

will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use.¹⁸ As noted above, any future videos from IMDs that make reference to the amount of income that can be earned by working with Team National should include a clear and conspicuous disclosure at the beginning and end of the videos which indicates the amount of annual income that the average Team National IMD has earned and that a similar disclosure should appear in the video any time a reference is made (either by a Company spokesperson or a Team National IMD) to income that has been or can be potentially be earned as a Team National IMD.

Finally, DSSRC concluded that disclaimers at the beginning, during and/or at the end of videos indicating only that the results attested to by IMDs are "*not intended to represent typical, actual or average savings or earnings*" and that "*... earnings results by an Independent Marketing Director (IMD) will depend on the time and effort devoted to building the business*" will not suffice for purposes of properly qualifying a representation of atypical results unless the Company also includes a clear and conspicuous disclosure of the average earnings that may be generally expected by consumers and that such a disclosure is also communicated in close proximity to any earnings claims that are communicated in such videos.

CONCLUSION

DSSRC expressed its appreciation to Team National for the voluntary actions it has taken in an effort to communicate a more accurate message regarding the income results of Team National IMDs. More specifically, during the pendency of the DSSRC inquiry, Team National voluntarily disabled the www.teamnationalsuccess.com website and significantly revised other Company-owned websites, actions that DSSRC believed to be necessary and appropriate based upon the inadequacy of disclosures that had been used by the Company to qualify atypical income representations made by Team National IMDs.

DSSRC acknowledged the Company's assertion that the testimonials in the subject videos are literally true regarding the earnings and savings experienced by these particular Team National IMDs videos but, conversely, it determined that the income results stated in the videos posted on Youtube and on Company-owned websites could not be generally expected by the typical Team National IMD. Accordingly, DSSRC concluded that the income claims were not appropriately disseminated in the context in which they appear in the two Road to Financial Freedom videos posted on YouTube and on other Team National controlled websites and recommended that the videos either be removed in their entirety or be significantly modified. Specifically, DSSRC recommended that any future videos posted by Team National include clear and conspicuous disclosures regarding the generally expected income of Team National IMDs at the beginning and end of the videos as well as at any time that an express or implied atypical income claim is communicated.

¹⁸ *Supra* at 14.

COMPANY STATEMENT

“Team National acknowledges the DSSRC report and appreciates the constructive dialogue. We have read the DSSRC recommendations, and without admitting agreement with the DSSRC, as a good corporate citizen in the direct selling community, Team National will take DSSRC recommendations into account. Team National continuously works to improve its marketing presentation to promote ethical marketing and consumer practices. Even before discussions with the DSSRC, Team National, under guidance from the Direct Selling Association and its Code Administrator worked to follow the best ethical and advertising practices of the industry including being in compliance with the Direct Selling Code of Ethics. However, Team National is always open to constructive suggestions; thus, reflective of our dialogue with the DSSRC, we are reviewing our training practices and our marketing material.”

(Case No. 3-2019 PCM, closed on 8/21/19)

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