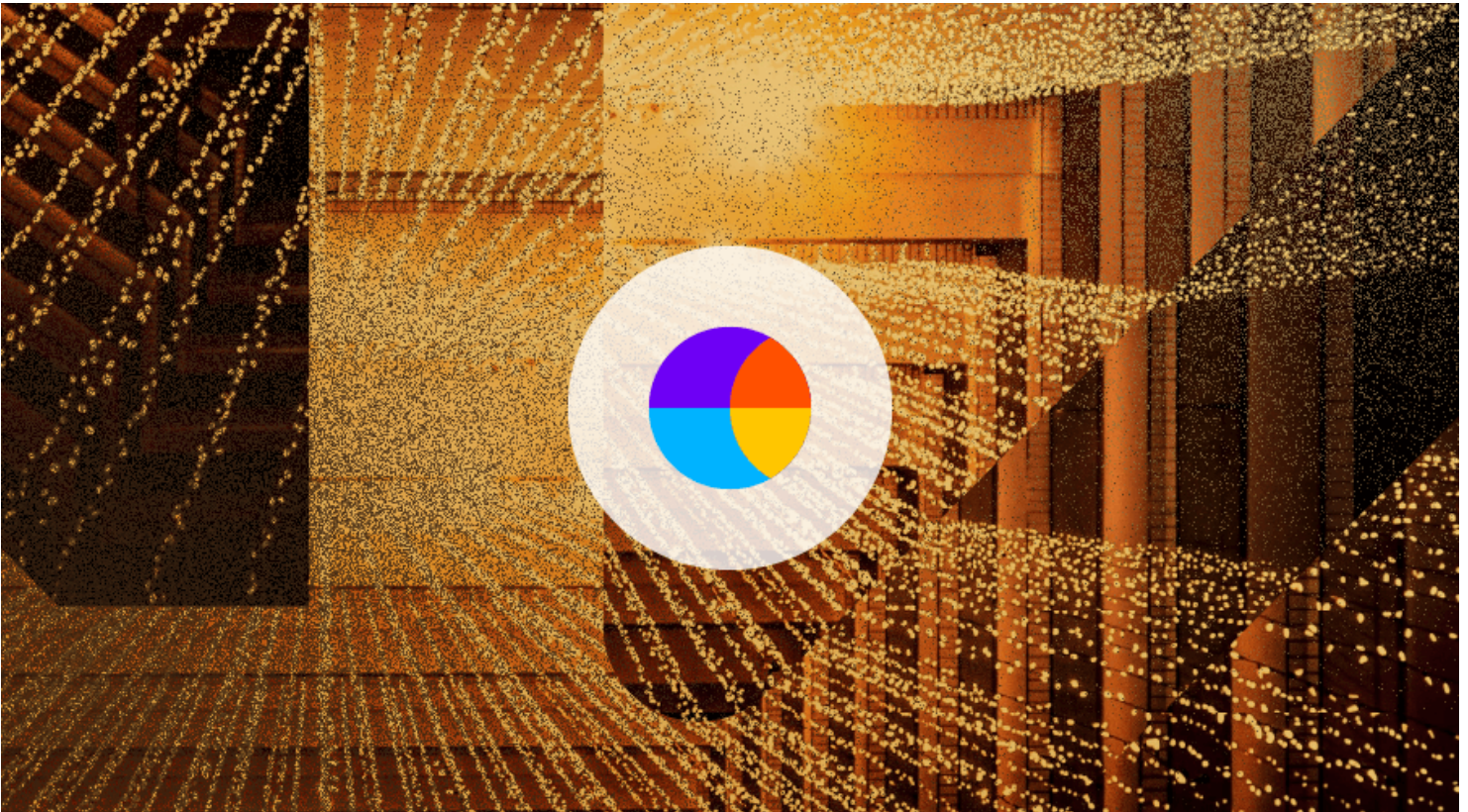


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Case #148-2024: Monitoring Inquiry – LiveGood, Inc. USA

BBB NATIONAL PROGRAMS

Direct Selling Self-Regulatory Council

Case #148-2024: Monitoring Inquiry – LiveGood, Inc. USA

Company Description

LiveGood Inc. USA (“LiveGood” or the “Company”) is a direct selling company that sells a variety of multivitamins and supplements with a focus on sleep aids, inflammation management, muscle recovery and weight management. The Company is headquartered in Jupiter, Florida and was founded in 2022.

Basis of Inquiry

The Direct Selling Self-Regulatory Council (“DSSRC”) is a national advertising self-regulation program administered by BBB National Programs. This inquiry was commenced by DSSRC pursuant to its ongoing independent monitoring of product and income claims in the direct selling industry.

This inquiry included three earnings claims and five product performance claims. DSSRC was concerned that the representative claims below communicated the message that Company salesforce members can generally expect to earn significant income from the LiveGood business opportunity and that the Company's products are efficacious in addressing serious health-related conditions. The social media posts were disseminated on Facebook and YouTube.

The claims identified by DSSRC in this inquiry were as follows:

Earnings Claims

- “yesterday was payday and so I earned \$350 in commissions
- “show you how you can make \$2,047.00 without doing anything”
- 🌟 UNLIMITED MATCHING BONUSES
- 🌟 UNLIMITED INCOME POTENTIAL”¹

Product Performance Claims

- As a former Speech Pathologist & Audiologist working with people suffering from so many different illnesses & diseases...and experiencing my own mother suffer with Dementia... I (Jill) feel compelled to share this information with everyone around the world NOW!
- Nootropic Brain Boost Less Than \$13💙
 - ✅ activate NRF2 pathway
 - ✅ fuel the mitochondria of your cells
 - ✅ enhance memory & improve brain function
 - ✅ supports boosted mood (📈 serotonin)
 - ✅ blocks spike proteins
 - ✅ Tons of research on Depression, Cancer, Alzheimers. Remarkable hope for Depression, AIDS & other Viruses, Alzheimer's, Autism, Cancer, Heart Disease... Targeting Mitochondrial Dysfunction!"
- Screen capture of Zoom call presenting LiveGood products titled “LiveGood Focus Zoom-Insulin Resistance and Type II Diabetes”
 - “#diabetes #insulinresistance #type2diabetes”
- “Got pain? Got anxiety? Try out LiveGood products and experience what it can do for you. #financialfreedomfromhome”
- 🚀 ATTENTION 🚀 If you have HIGH BLOOD PRESSURE!!!!
 - Take a listen to this if you or someone you know has high blood pressure!! #highbloodpressure #bloodpressurecontrol”
- “The nutrients in LiveGood Organic Super Greens possesses ANTIOXIDANTS, ANTIBACTERIAL, ANTI-CANCER and ANTI-INFLAMMATORY properties....

Support ENERGY, Healthy aging, Digestive health and Immune protection, Improves Blood Circulation, Prevent Anaemia, Combat depression, Fatigue & Anxiety, Boost Fertility & Regulate hormonal imbalance.”

Company Position

In responding to DSSRC's Notice of Inquiry, the Company did not attempt to substantiate the claims communicated in the seven social media posts that were the subject of this inquiry. Rather, the Company stated that it was successful in having five of the seven social media posts identified by DSSRC as communicating earnings and health-related product claims removed from social media.

Earnings Claims

LiveGood contended that the claim stating “[salesforce members] can earn up to \$2,047.50 per MONTH” is not an earnings claim. The Company disputed that consumers and prospective salesforce members would understand the claim as communicating that they were guaranteed to earn the stated amount but, instead, asserted that the message of the claim was simply that it may be possible for salesforce members to earn \$2,047.50 per MONTH.”

With respect to the remaining earnings claims identified by DSSRC, the Company stated that any remaining posts that were the subject of the inquiry would be disabled.

Product Performance Claims

The Company notified DSSRC that it had promptly removed all five of the product performance claims at issue.

Analysis

Earnings Claims

LiveGood removed all but one of the social media posts which include the earnings claims at issue in this inquiry.

Section 6 of DSSRC's Guidance on Earnings Claims for the Direct Selling Industry (the "DSSRC Guidance") specifies certain prohibited words and phrases when communicated to a general audience of prospective or current salesforce members. Prohibited expressions include "residual income," "unlimited income," "full-time income," "replacement income," "quit your job," or any substantially similar statements.

As such, DSSRC agreed that the Company's efforts to remove these posts were necessary and appropriate.

With respect to the remaining YouTube video at issue, the video states "yesterday was payday and so I earned \$350 in commissions," The video also includes statements that the salesforce member "earned \$500 in less than 30 days" with her goal of earning "\$1,000 per week." The Company did not provide DSSRC with earnings data showing that the typical LiveGood salesforce members could generally expect to earn the amount of income (e.g., \$500 in less than 30 days) being referenced in the video. In the omission of such evidence, DSSRC determined that the earnings claim, in the unqualified context in which it is presented in the video, has not been appropriately communicated. As such, DSSRC recommended that the video be modified or discontinued.²

Product Performance Claims

Although LiveGood facilitated the removal of two of the five product performance claims at issue and modified one of the posts, DSSRC was troubled with the remaining two social media posts. The Company did not attempt to substantiate the claims.

One of the posts was targeted to individuals with high blood pressure and included the statement "ATTENTION If you have HIGH BLOOD PRESSURE!!!! Take a listen to this if you or someone you know has high blood pressure!! #highbloodpressure; #bloodpressurecontrol" and provided a link to LiveGood's Ultra magnesium Complex.

The other product performance post which remains publicly available makes reference to "the nutrients in LiveGood Organic Super Greens" which possess "ANTIBACTERIAL, ANTI-CANCER and ANTI-INFLAMMATORY properties.... Support ENERGY, Healthy aging, Digestive health and Immune protection, Improves Blood Circulation, Prevent Anaemia, Combat depression, Fatigue & Anxiety, Boost Fertility & Regulate hormonal imbalance."

DSSRC determined that these product performance posts communicate to consumers that LiveGood products can effectively treat several serious health conditions and that in the absence of reliable competent scientific evidence proving the truth of the representations, recommended that the claims be discontinued.

As the FTC notes in its 2022 Health Products Compliance Guidance ("the FTC Guidance"), The first step in evaluating the truthfulness and accuracy of advertising and marketing materials is to identify all express and implied claims conveyed to consumers acting reasonably. Marketers must make sure that whatever they say expressly in advertising is accurate. Often, however, advertising conveys other claims beyond those expressly stated. Under FTC law, a marketer is equally responsible for the accuracy of claims suggested or reasonably implied in advertising. Marketers can't suggest benefits, safety, or other characteristics about their product indirectly that they couldn't claim directly. Regulatory legal principles focus not on the marketer's intent, but on the consumer's understanding. The determination of what claims are made in marketing is consumer-driven – in other words, what reasonable consumers understand the advertising or marketing materials to communicate about the product. When identifying the claims conveyed by an ad, marketers shouldn't focus narrowly on individual phrases or statements, but rather should consider each ad as a whole, assessing the "net impression" conveyed by all elements of the ad, including the text, product name, and any charts, graphs, and other images. When an ad lends itself to more than one reasonable interpretation, the advertiser is responsible for substantiating each interpretation.³

While the FTC expects that advertisers have a reasonable basis for all product claims, the standard of substantiation for health-related product claims is particularly rigorous. The FTC has defined the health claim substantiation standard as requiring "competent and reliable scientific evidence" in the form of "tests, analyses, research, or studies that (1) have been conducted and evaluated in an objective manner by experts in the relevant disease, condition, or function to which the representation relates; and (2) are generally accepted in the profession to yield accurate and reliable results." Health claim substantiation evidence must generally take the form of randomized, controlled human clinical trials ("RCT"), with animal and in vitro studies generally being insufficient without RCT confirmation, and

anecdotal evidence being insufficient. Moreover, the evidence relied upon must be relevant to the advertised product with respect to, among other things, dosage, formulation, and method of administration.⁴

Although DSSRC was appreciative of the good faith intentions of LiveGood to reach out to its salesforce members and have the social media posts at issue disabled, DSSRC remained concerned that two of the identified social media posts which include unsupported product performance remain accessible online.

Accordingly, DSSRC recommends that LiveGood reinitiate its communication with the individuals responsible for disseminating the social media posts that remain publicly available and which it had believed had been appropriately resolved. If those individuals are active salesforce members with the Company and are not responsive to LiveGood's request to remove the subject product performance claims, DSSRC recommends that the Company initiate the appropriate enforcement actions pursuant to its Policies & Procedures including either suspending or terminating the salesforce members' accounts.

Conversely, if the improper claims that were made by an individual who was an active salesforce member when such claim was made but has since become an inactive salesforce member of the company, DSSRC acknowledges that the direct selling company may not be able to require such individual to remove a social media post. In that instance, DSSRC nonetheless recommends that the direct selling company provide copies of the correspondence sent to those individuals as a demonstration that it has made a bona fide good faith effort to have the improper claim removed. If the company is unable to have the post removed, DSSRC also suggests that the company consider adding a comment on the post at issue to inform the public that the subject claim has not been authorized by the company.

Lastly, If the subject claim by a former salesforce member is communicated on a website or platform without a reporting mechanism, DSSRC recommends that LiveGood contact the website or platform in writing and request removal of the subject claim or post.

Conclusion

DSSRC appreciated the efforts of LiveGood to remove or modify eight of the 11 social media posts at issue in this inquiry and determined that the Company's actions were necessary and appropriate.

With respect to the remaining earnings claim post at issue, while DSSRC acknowledged the action taken by the Company to suspend the account of the salesforce member responsible for disseminating the post, DSSRC recommended that LiveGood take further action to facilitate the removal of the YouTube video.

As to the product performance claims that were the subject of this inquiry, while DSSRC acknowledged the removal of two of the social media posts which included health-related claims and the modification of one post to address its concerns, DSSRC remained concerned that two of the identified social media posts which include unsupported product performance claims remain accessible online and recommended that LiveGood reinitiate its communication with the individuals responsible for disseminating the social media posts and facilitate the removal of the posts.

Lastly, If the subject claim by a former salesforce member is communicated on a website or platform without a reporting mechanism, DSSRC recommends that LiveGood contact the website or platform in writing and request removal of the subject claim or post.

Company Statement

"LiveGood takes compliance very seriously and proactively. As we continue to do, anytime an uncompliant post, video, or other form of communication by one of our affiliates is brought to our attention, we take action to have them edit or remove it immediately. We are very proud to offer the highest quality nutritional supplements in the industry for the lowest prices anywhere, and will continue to maintain our highest level of compliance and integrity to ensure we are always able to help people get healthy, stay healthy, and do it in an affordable way."

(Case #148, closed on 02/13/24)

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[1] These same two claims were comminated by four different salesforce members in separate social media posts.

[2] DSSRC notes that during the pendency of the inquiry, it was informed by the Company that the account of the salesforce member responsible for the post has been suspended until the video has been removed.

[3] See page 5 of the FTC’s Health Products Compliance Guidance.https://www.ftc.gov/system/files/ftc_gov/pdf/Health-Products-Compliance-Guidance.pdf.

[4] *Supra* at page 12.

4.10.24

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