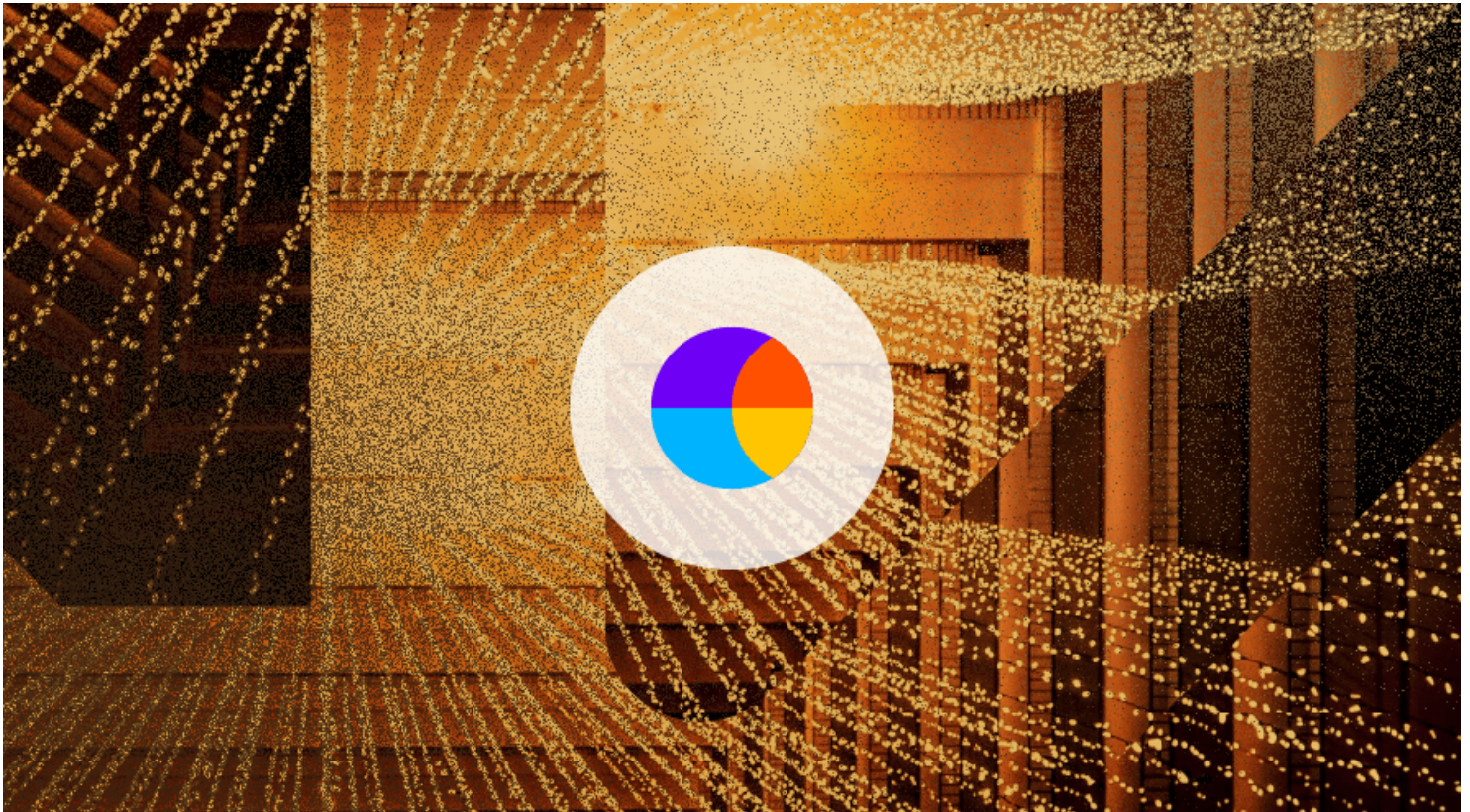


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Case #173-2024: Administrative Closure – Surge365

BBB NATIONAL PROGRAMS

Direct Selling Self-Regulatory Council
Case #173-2024: Administrative Closure – Surge365

Company Description Surge365 (or the “Company”) is a multi-level direct selling company headquartered in Wood River, Illinois that offers customers discounts on hotels, rentals, cruises, flights, and other travel services.

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 advertising and marketing claims in the direct selling industry and to further explore the findings of an evaluation of the Company’s income claims previously conducted by a non-governmental organization¹.

This inquiry concerns 21 social media posts that include earnings claims disseminated by the Company and its salesforce members dating back to 2018. The representative claims that formed the basis of this inquiry were located on social media and on the Company’s website. Those claims are set forth below:

Earnings Claims:

- “I’m looking for 7 serious minded people who are ready to dominate and make unlimited bonuses with Surge 365.”
- “Surge365 Corporate have NOT bounced an earnings check and have NOT missed a PASSIVE INCOME payment and have NOT Stopped the continuance of RESIDUAL INCOME!” (picture of \$1,000 checks)
- “*You can receive Unlimited amounts of Bonuses. *You can write all of this off on your taxes.”
- “Our program offers many executive perks including a monthly director paycheck in addition to your regular weekly and monthly earnings. The opportunity for a company car, a presidential Rolex and the ultimate Achievement Award a million-dollar bonus. Director monthly income starts when you reach 500 active membership sales”
- “The biggest reason our agents have earned more than 250 million dollars is that we help them every step of the way. You can learn how to turn that family reunion, a friend's destination wedding or your church's holy land tour into thousands of dollars every month.” and “Enough people signed up for the tour that i earned over ten thousand dollars.”
- For those who want to dramatically impact their finances quickly, earn the ten-thousand-dollar bonus in your first 100 days which is just one sale per day and qualify for an additional twenty-five-thousand-dollar bonus. We have the industry's best director program with annual bonuses of up to 1.2 million dollars and rewards that include company purchased cars, exotic vacations, yachts, vacation homes and more.”
- “This is their 5th \$10,000 Bonus!!!”
- “🔴 Earn Unlimited \$1,000 & \$10,000 Bonuses
 - 🌟 no selling involved
 - 🔴 no collecting money
 - 🌟 hours are flexible
 - 🔴 can be done alongside a full-time position
 - 🌟 all you need is a laptop or smartphone
 - 🔴 \$50K Bonus in 100 days or less”
- “Would you invest \$79.00 to secure financial freedom?”
- “But if \$1000, \$5000, 10,000 bonuses and residuals don't excite them, they probably won't click this link.”
- “Finally, I utilized the website that I had to start telling people about the business and the thousand-dollar checks are coming out of nowhere. I mean like every week I was making to 1,000 1,500 yeah, I mean all the consistent weekly basis.” and “I start bringing in four five thousand dollars a month and a lot of people don't even bring that” and “when they went I came home I went on the cruise for free and came home to almost a four thousand dollar check” and “five, six, seven thousand dollars a month now because she took a hundred eighty seven dollars investment in a website.”
- “. . . you know people who have been my top income earners for years are seven figure earners. See, I don't want you to get involved because they have made a significant amount of money in you know, indirect sales” and “. . . businessman who on a part-time basis was able to replace a hundred-thousand-dollar income loss. This grandmother says she made it for a lifetime of retirement mistakes and has seen the world since joining our Founders. Here's a couple who use their additional income to take vacations around the world while putting three kids through college” and “it's worth my while but if i had to do it again and think about it as long as I'm making an additional thousand dollars a month it's all peaches and cream over on this side you know that is the average answer - a thousand dollars a month.”
- “They offer unlimited bonuses So, whether it's a thousand-dollar bonus, ten-thousand-dollar bonus, fifty-thousand-dollar bonus, or even the coveted on million-dollar bonus... On top of that, there is residual income that you can earn.”
- “Bikers to Bonus \$1k \$10k and \$50k bonus”
- “You must be open to the following:
 - ✓ Traveling for low to no rates
 - ✓ Earning unlimited \$1,000 & \$10,000 bonuses
 - ✓ Earning a free company car
 - ✓ Setting your own hours from home (or wherever you choose to be)
 - ✓ Being coached with a proven success strategy
 - ✓ Tax write offs & keeping more income
 - 🔴 Investing a minimum of \$197 in your business”
- “. . . this video is doing all of the presenting. With just three more sales your total earnings will be more than seven thousand dollars. What if it took three months to accomplish this - it would be worth it, right? Do this same thing with another one of your personally sponsored SBA's and you will have almost 100 active in your group which triggers another ten thousand dollar bonus. Add this to the previously earned bonuses and overrides and your total compensation is more than twenty six thousand dollars and for those who want to dramatically impact their finances quickly earn the \$10,000 bonus in your first 100 days, which is just one sale per day, and qualify for an additional twenty-five thousand-dollar bonus. We have the industry's best director program with annual bonuses of up to 1.2 million dollars and rewards that include company purchased cars exotic vacations yachts vacation homes and more. Welcome to the industry's most lucrative compensation system welcome to surge 365 . . .”.
- “Through travel, creating financial freedom.”
- “Our goal is to empower you by helping you to create passive income that exceeds your monthly lifestyle expenses. That's your bills plus all the fun stuff!”
- “Imagine owning your own travel website that will give you passive income. And, since the internet never closes, you can make money, technically, while you're sleeping.”
- “Join the Team and let's start building a life of Financial Freedom!”
- “Would you invest \$79.00 to secure financial freedom?”

Company Position

Surge365 informed DSSRC that the Company has significantly increased its commitment to compliance and effectively training salesforce members regarding appropriate claim dissemination over the past several years in an effort to adhere to evolving regulatory guidance.

More specifically, Surge365 explained to DSSRC that the Company:

- Includes ongoing reminders about Surge365's policies in its Company-wide communications and has increased the frequency of its communication with salesforce members to at least every other week.
- Distributes one stand-alone email each month reminding salesforce members of the policy to adhere to the Surge365 communication plan.
- Has implemented a back-office system providing compliance modules on the member portal landing page and a new module that references Surge365's policy and links to the specific location of its Policies & Procedures;
- Requires incoming salesforce members to agree to separate terms and conditions whenever they log on to their back office; and
- Revised its Income Disclosure Statement to include more details about the Company's business opportunity.

Shortly after its receipt of the DSSRC Notice of Inquiry, Surge365 attempted to contact all of the individuals responsible for communicating the claims at issue. As a result, 15 of the 21 social media posts at issue had been removed.

Surge365 informed DSSRC that the five social media posts that remain publicly accessible were communicated by inactive salesforce members and the additional YouTube post was made by a third-party review site that Surge365 has no affiliation with. As a demonstration of its good faith efforts, the Company provided DSSRC with copies of the correspondence that was sent to the individuals responsible for the five posts that remain accessible on social media.

Analysis

DSSRC acknowledged the actions taken by Surge365 to address DSSRC's concerns in this inquiry and concluded that the efforts of the Company to remove 15 of the 21 posts were necessary and appropriate.

In its April 2024 Business Guidance Concerning Multi-Level Marketing, the Federal Trade Commission (FTC) states that an MLM's or its participant's representations related to the business opportunity, including earnings claims, violate Section 5 of the FTC Act if they are material to consumers and false, misleading, or unsubstantiated. This is true wherever the representations are made, including on social media, in live presentations, in one-on-one conversations, or in any other medium. Moreover, the FTC notes that any earnings claim should reflect what the typical person to whom the representation is directed is likely to achieve in income, profit, or appreciation.

Additionally, in section 6 of its Earnings Claims Guidance for the Direct Selling Industry, DSSRC states that while it will evaluate any claim based upon the context in which the claim appears and the potential net impression of such claim to the audience, some words and phrases are prohibited when made to a general audience of prospective or current salesforce members. Such words and phrases include statements such as "unlimited income," "full-time income," "replacement income," "career-level income," or any substantially similar statements or representations. Other terms, such as "passive income" and "residual income," are prohibited when they convey that income can be continuously earned by salesforce members with little or no ongoing effort. Moreover, some words or phrases carry a particularly high risk of being misleading to consumers when communicated in a general context. Such words and phrases include but are not limited to "financial freedom."

In past inquiries when a direct selling company has demonstrated that it has made a good faith effort to address DSSRC's concerns, DSSRC will administratively close the inquiry.² Here, Surge365 has removed a significant number of the social media posts at issue. While DSSRC remained troubled with the posts that remain publicly accessible and which communicate several blatant, atypical income claims that would not be generally expected by the typical Surge365 salesforce member (e.g., "10k bonus," "50k bonus," "replace their income," etc.),³ DSSRC concluded that because the Company provided DSSRC with copies of the correspondence that it sent to the inactive salesforce members asking them to remove the posts at issue, Surge365 has made a genuine effort to address DSSRC's concerns.

In addition to the actions taken by the Company to contact the individuals as described above, if the social media platform where the posts appear provides a mechanism for reporting trademark or copyright violations, DSSRC recommends that Surge365 utilize such mechanism and seek removal of the subject claims and posts. If efforts to utilize a mechanism for reporting trademark or copyright violations are unsuccessful or if the subject claim occurred on a website or platform without a reporting mechanism, DSSRC recommends that Surge365 contact the website or platform in writing and request removal of the subject claim or post.⁴

Based upon the totality of the actions taken by Surge365 to reconcile the 21 posts brought to its attention, DSSRC administratively closed the inquiry.

Conclusion

DSSRC acknowledged the actions taken by Surge365 to remove 15 of the 21 social media posts in the inquiry. While Surge365 removed a significant number of the social media posts at issue, DSSRC nevertheless remained concerned with the posts that remain publicly accessible and which communicate unsupported, atypical earnings claims. As a demonstration of its good faith efforts to pursue the remaining posts that were the subject of this inquiry, the Company provided DSSRC with copies of the correspondence sent to the individuals responsible for those posts. Accordingly, based upon the bona fide actions taken by the company to address DSSRC's concern,

the inquiry was administratively closed. Notwithstanding the Company's genuine efforts, DSSRC recommended that the Company contact the social media platforms where the remaining posts appear to alert the platforms of the unauthorized claims.

Company Statement

"At Surge365, we are deeply committed to operating with integrity, truthfulness and transparency. Over the past several years we have honored this commitment by seeking out opportunities to provide training and resources to equip our sales force with the knowledge and tools they need to meet our high standard on ethical business practices and compliance. We remain dedicated to expanding our compliance efforts, including future enhancements to our training programs and technology. Our goal is to empower the members of our organization with the tools and knowledge necessary for long-term success, with transparency and integrity as the foundation."

Case No. 173, closed on 09/11/24

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[1] TruthInAdvertising.org

[2] DSSRC has noted that when a direct selling company is made aware of an improper claim that was made by an inactive salesforce member or a salesforce member located overseas, and the company recognizes the claim to be untrue and unsupported, DSSRC acknowledges that the direct selling company may not be able to require the individual to remove such claim. In that instance, DSSRC nonetheless recommends that the direct selling company make a bona fide, good faith effort to have the improper claim removed, including by attempting to contact the individual in writing.

[3] DSSRC recognized that one of the posts at issue in this inquiry originated from a third-party review site with whom Surge365 has no affiliation with.

[4] DSSRC advises Surge365 retain copies of all relevant communications with the platform and provide them as evidence of its good faith efforts upon request.

September 20, 2024

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