

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

Case Number: 25-2020 – NGO Inquiry – International Markets Live, Inc.

COMPANY DESCRIPTION

International Markets Live, Inc. (IML) is a New York based multi-level direct selling company that sells financial trading software and provides educational programs regarding financial trading to its customers.

BASIS OF INQUIRY

The Direct Selling Self-Regulatory Council (“DSSRC”) is a national advertising self-regulation program administered by BBB National Programs, Inc. Pursuant to section D(II) of DSSRC’s Policies & Procedures, DSSRC may commence an inquiry regarding the marketing disseminated by a direct selling company and/or its salesforce where the subject claims were referred to DSSRC by the Administrator of the Direct Selling Association’s Code of Ethics, through media reports, or identified by other parties. Here, a nonprofit, non-governmental organization (NGO) dedicated to protecting consumers¹ identified to DSSRC certain earnings claims for IML. Specifically, the NGO brought to DSSRC’s attention certain earnings claims being disseminated on the social media pages of certain Independent Business Owners (IBO’s) of IML. It alleged that many of the representations at issue include both express and implied claims that IML’s programs and educational opportunities will help individuals earn a minimum level of income and/or enjoy a lavish lifestyle. In the NGO’s initial written submission to DSSRC, it identified over 200 examples of such claims.

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

Earnings Claims

- “full time income from home”
- “an extra \$10,000 a month residually!”
- “\$25,000-\$30,000/MONTHLY”
- “THE MONEY IS THERE wether [sic] I’m there or not”

¹ See Tina.org for additional information.



IDENTIFICATION OF ISSUES

According to the NGO, IML has been using and continues to use unsubstantiated earnings claims to market its products and services. The NGO stated that such claims – made both expressly and implicitly – include, but are not limited to, representations that IML’s products and educational programs can help participants earn a minimum level of income and/or live a luxurious lifestyle. The NGO further alleged that IML has previously claimed, and continues to claim, that participants in their program will make a five-figure monthly income, earn millions of dollars per year, travel the world, buy luxury vehicles and live a lavish lifestyle. The NGO asserted that these claims are unsubstantiated and are belied by the Company’s 2018 Income Disclosure Statement that indicated that 95 percent of the Company’s participants averaged less than \$300 annually and that such amount is before expenses including accounting for monthly costs required to earn commissions. Examples cited to by the NGO of allegedly exaggerated earnings claims included those made by IML’s top performing IBOs and the Company’s leadership.

The NGO stated that it previously contacted IML in 2018 and brought more than 50 examples of allegedly unsubstantiated earnings claims to the Company’s attention that had been disseminated by the Company’s CEO as well as top IBOs. In response, IML stated through its Chief Operating Officer that the Company’s IBOs would be educated on proper procedures and any communications in violation would be taken down. Specifically, the NGO pointed to a July 2018 letter from the Company that stated, among other things, that IML “absolutely agree[d] that unrealistic income claims, as well as any income claims on social media is not good,” that all IML IBOs would “be trained with ‘Do’s and Don’ts’ in regard to any social media posts,” and that Company executives and top

IBOs “ha[d] made errors in comments or posts from the past, ha[d] been notified to eliminate any communication that is considered any type of income claims.”²

According to the NGO, while the Company removed a majority of the examples of earnings claims that the NGO identified to the Company in 2018, the NGO has since collected more than 200 additional examples of unsubstantiated earnings claims, making it clear, the NGO argued, that IML did not properly or fully address the types of earnings claims at issue. In short, the NGO argued that IML was put on notice of problematic earnings claims being disseminated on its behalf in 2018, admitted that unsubstantiated earnings claims are unacceptable and vowed to correct the issue and train its IBOs. The NGO maintained that the Company nevertheless continues to mislead consumers with unsubstantiated earnings claims.

The NGO also maintained that IML’s written response to DSSRC in this inquiry made clear that the Company does not dispute the fact that a multitude of unsubstantiated earnings claims have been and continue to be disseminated by the Company and its IBOs. The NGO argued that IML’s implementation of a compliance system/department, has been ineffective. Specifically, the NGO submitted that IML has acknowledged past use of problematic income claims to promote IML’s business and has assured DSSRC of its efforts to curtail and prevent the use of new problematic claims. The NGO stated that IML’s attempts to ensure that its IBOs are not disseminating problematic earnings claims have ineffective and not working, and that IML needs to thoroughly examine its training and oversight systems to ensure that problematic earnings claims are not being disseminated.

Further, the NGO took issue with Company’s recitation of its company compliance policies. Specifically, the NGO noted, that according to IML, the Company informs its IBOs that they must, “conduct themselves in a professional, honest and considerate manner,” and may not make, “exaggerated income or service claims.”³ However, the NGO argued that such policy is incomplete. Specifically, the NGO asserted that in addition to the Company’s IBOs being required to be honest and prohibited from depicting results that are not representative of what consumers will generally achieve, a successful top IBO cannot make even honest claims of what their income is if that income is not representative of what a typical IBO earns.

COMPANY’S POSITION

IML explained to DSSRC that the Company is involved in direct sales and network marketing and additionally deals with on-line education focused on the financial markets. Specifically, the Company provides users with on-line educational opportunities, tools, and mentorship programs focused on educating the user about various financial markets. The Company describes itself in its Statement of Policies and Procedures as, “a direct to

² https://www.truthinadvertising.org/wp-content/uploads/2019/12/6_18_18-iMarketLive-statement.pdf

³ Int’l Markets Live, Inc., *Statement of Policies and Procedures*, IM ACADEMY sec. 1.2 (Jan. 15, 2019), <https://im.academy/policies>.

consumer, subscription based, training and education company that markets its Services through a network of independent business owners.”⁴

IML stated that to become an IBO an individual must adhere to the Company’s Statement of Policies & Procedures, Mutual Commitment Statement, and Code of Ethics. The Company noted that it expects all IBOs to conduct themselves in a professional, honest, and considerate manner.⁵

IML expressly provides in its Statement of Policies and Procedures that IBOs must not make any exaggerated income or service claims and additionally must not engage in unethical business practices.⁶ Additionally, the Company stated that it prohibits any IBO from making any income projections, claims, or guarantees to prospective IBOs or customers.⁷ The Company defines income claims as including, but not limited to, copies of checks, bank statements, rank earnings, tax documents, trading profits, lifestyle claims, and photos depicting lavish lifestyles.⁸ Income claims are expressly prohibited at events and from being posted on social media.⁹ If an IBO is found to have violated this policy, the Company maintained that such IBO is reprimanded, and the IBO will be instructed to remove the offending claim or social media post immediately.¹⁰

The Company maintained that it shares DSSRC’s mission in enhancing consumer confidence in direct selling advertising and marketing by providing assurance that direct selling earnings and product claims that are communicated in direct selling advertising and marketing are truthful, accurate, disclose information material to consumers and have the necessary evidentiary support. The Company also informed DSSRC that its priority is, “geared toward and focused upon the application of consumer protection principles to its business practices, especially in the legal realm or legal department”

IML’s Compliance Process

IML outlined its compliance process to DSSRC; specifically, the Company informed DSSRC that its IBOs are, “encouraged to educate and train new IBOs about IML’s Services, effective sales techniques, the IML Compensation Plan, along with compliance with IML Policies and Procedures and any and all social media guidelines or any other guidelines”¹¹ The Company also stated that it has implemented an in-depth compliance program including, but not limited to, proactive avoidance and company-wide education in order to prevent messages that may be viewed as false or misleading.

⁴ Id., § 1.5.

⁵ Id., § 1.1.

⁶ Id.

⁷ Id.

⁸ Id., §11.2

⁹ Id.

¹⁰ Id., §11.2

¹¹ Id., § 3.3

IML informed DSSRC that all IBOs must submit any sales, marketing, promotional, and training materials to the Company's Compliance Team prior to dissemination for written approval.¹² According to the Company's Statement of Policies and Procedures, unless the IBO receives specific written approval, the request to disseminate any materials are deemed to be denied.¹³

With respect to the Company's compliance and monitoring structure, IML argued that it has implemented a careful monitoring and early detection system in order to be proactive in avoiding the issue of problematic claims being disseminated by IBOs. If the Company determines that an IBO has violated the Statement of Policies and Procedures, the Company may issue disciplinary actions at its discretion. The Company outlined to DSSRC the various actions that may be taken pursuant to a violation of the Policies and Procedures including but not limited to: monitoring an IBO's conduct to ensure compliance; issuing a written warning; suspension from the Company or suspension from events, rewards, or recognition; and termination.¹⁴

IML informed DSSRC that a first-time violation by an IBO will result in counseling and an initial warning letter from the Company.¹⁵ The Company maintained that such letter provides the Company's Compliance Team an opportunity to bring the issue to the attention of the IBO and inform such IBO of the Company's Policies and Procedures.¹⁶ The Company further stated that a second violation by an IBO will result in a warning letter and a temporary suspension.¹⁷ A third violation, IML maintained, will result in a termination of the IBO.¹⁸

IML maintained that it has taken multiple steps in correcting previous violations with respect to claims by its IBOs as well as in preventing future violations. The Company informed DSSRC that it revamped its Statement of Policies and Procedures as to ensure the Company's commitment to truth and accuracy in its marketing practices and material disseminated via social media and the internet. During the pendency of this inquiry, the Company stated that it disseminated a company-wide notice informing IBOs about the importance of strict compliance with the Company's Statement of Policies and Procedures in an effort to further educate the IBOs about the contents of the Company's Statement of Policies and Procedures. The Company pledged itself to "do better" and to protect consumers and further enhance confidence that consumers have in the direct selling marketplace.

The Claims at Issue

IML took the position in this inquiry that many of the earnings claims at issue have been taken down and that the Company was in the process of removing any remaining claims during the pendency of this inquiry. Additionally, as noted above, the Company

¹² Id.
¹³ Id., § 3.3
¹⁴ Id., § 7.3
¹⁵ Id., § 7.4
¹⁶ Id., § 7.4
¹⁷ Id.
¹⁸ Id.

asserted that it educates its IBOs about the Company's Statement of Policies and Procedures and has implemented a compliance program that allows for prompt enforcement.

In addition, IML has provided DSSRC with a spreadsheet containing information regarding the status of the claims at issue in this inquiry.¹⁹ The spreadsheet catalogued the social media posts at issue and the status of each respective post. The spreadsheet shows that the vast majority of the subject marketing claims for IML have been entirely removed and the subject IBOs were either notified of the violation and further educated on how to avoid future issues, suspended, or terminated from the Company. IML stated that while it is appreciative any time a third-party informs it of needed improvements to its compliance processes and efforts, it nonetheless respectfully disagreed with the NGO's characterization that IML "turned a blind eye to deceptive income claims being used to promote its business opportunity."

ANALYSIS AND RECOMMENDATION

Given that the Company agreed that the earnings claims identified to DSSRC by the NGO violated the Company's Policies and Procedures, there is no dispute that such claims should not have been disseminated by the Company's IBOs. DSSRC acknowledged the Company's efforts to promptly have such claims removed from circulation and determined that such removal was necessary and appropriate. The spreadsheet the Company provided to DSSRC cataloging the claims at issue in this inquiry shows that the vast majority of the claims at issue were removed. DSSRC independently confirmed that the claims were in fact removed. In a few instances, where a particular IBO was unresponsive to IML's efforts to contact them, the Company terminated the IBO in question which DSSRC also found to be necessary and appropriate.²⁰

With respect to IML's efforts to enhance its compliance process as well as its training and monitoring of the Company's IBOs, DSSRC acknowledged the Company's efforts and determined that such actions are necessary and appropriate. DSSRC also recommends that IML engage in effective training and monitoring of its IBOs and use appropriate enforcement procedures to provide reasonable assurance that earnings

¹⁹ https://docs.google.com/spreadsheets/d/1XCh54_1d1FCMfDN6vQ4YaDgKJ-y2n2oxlr8B-bFHEgM/edit#gid=0

²⁰ In a small number of instances, the spreadsheet provided by the Company noted that a particular IBO did not reply and is no longer with the Company. As prior self-regulatory precedent makes clear, DSSRC acknowledges that a direct selling company may not be able to require a former or inactive salesforce member to remove a 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 a written request to remove improper claims made by salesforce members that have since become inactive. In addition, if the social media platform where the subject post was made provides a mechanism for reporting trademark or copyright violations, DSSRC recommends that the direct selling company promptly utilize such mechanism and seek removal of the subject claims and posts. If the subject claim occurred on a website or platform without a reporting mechanism, DSSRC recommends that in addition to contacting the former IBO in writing as described above, the Company contact the website or platform in writing and request removal of the subject claim or post. Young Living Essential Oils, LLC, Case No. 13-2020.

claims made by its IBOs are substantiated, contain appropriate disclosures and are not misleading.

As to the NGO's assertion that it is not enough for the Company to inform its IBOs that they must, "conduct themselves in a professional, honest and considerate manner," and may not make, "exaggerated income or service claims," DSSRC agrees that even truthful claims may be misunderstood by reasonable consumers. According to section 255.2 (b) of FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising, 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. Accordingly, as to any truthful but atypical earnings claim that is disseminated by an IML IBO, DSSRC recommends that any such advertising materials (e.g., social media posts) be accompanied by a clear and conspicuous disclosure indicating the percentage of IBOs that achieve the depicted success. DSSRC notes, however, that "Depending on the level of success, some income claims and lifestyle claims may be so extraordinary that they cannot be effectively qualified by a disclosure of generally expected results." DSSRC Guidance on Earnings Claims for the Direct Selling Industry ("Earnings Guidance"), § 4

Conclusion

DSSRC acknowledged the Company's efforts to promptly have the earnings claims at issue in this inquiry removed from circulation and determined that such removal was necessary and appropriate. DSSRC independently confirmed that the vast majority of such claims were removed from circulation and that where a particular IBO was unresponsive to IML's efforts to contact them, the Company terminated the IBO in question which DSSRC also found to be necessary and appropriate.

With respect to IML's efforts to enhance its compliance process as well as its training and monitoring of the Company's IBOs, DSSRC acknowledged the Company's efforts to enhance its compliance, training, and monitoring and determined that such actions are necessary and appropriate. DSSRC recommends that IML engage in effective training and monitoring of its IBOs and use appropriate enforcement procedures to provide reasonable assurance that earnings claims made by its IBOs are substantiated, contain appropriate disclosures and are not misleading. If an IBO that has disseminated problematic claims is no longer active or will not respond to the Company, DSSRC recommends that the Company nonetheless make a bona fide good faith effort to have the problematic claims removed from circulation.

Finally, as to the Company's policy that its IBOs may not make, "exaggerated income or service claims," DSSRC notes that even truthful claims may be misunderstood by reasonable consumers and, therefore, an advertiser should possess and rely upon

adequate substantiation for any truthful depiction of success. If the advertiser does not have substantiation that the individual whose experience is depicted is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances. In addition, as to any truthful but atypical earnings claim that is disseminated by an IML IBO, DSSRC recommends that any such advertising materials (e.g., social media posts) be accompanied by a clear and conspicuous disclosure indicating the percentage of IBOs that achieve the depicted success provided, however, that some claims may be so extraordinary that they cannot be effectively qualified by a disclosure of generally expected results.

Company Statement

IML respects the self-regulatory process and appreciates the time and attention the DSSRC has devoted to this matter. First, IML appreciates the DSSRC's acknowledgment of the Company's efforts to promptly remove such earnings claims at issue from circulation. It was duly noted by the DSSRC that the spreadsheet provided by the Company, cataloguing the claims at issue, served as supporting and corroborating evidence of the Company's steadfast removal of the vast majority of such claims at issue. Second, the DSSRC recognized and also, acknowledged the Company's efforts to enhance its compliance process as well as its training and monitoring of the Company's IBOs. IML will continue the utilization of strict enforcement procedures to avoid and deter earnings claims made by IBOs that are unsubstantiated inappropriate or misleading. And third, IML agrees with the DSSRC that even truthful claims may be misunderstood and that an advertiser should possess and rely upon adequate substantiation for any truthful depiction of success. IML will be guided by the DSSRC recommendations in its ongoing marketing programs.

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