

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

Case Number: 24-2020 – NGO Inquiry – Primerica, Inc.

COMPANY DESCRIPTION

Primerica, Inc. (“Primerica” or the “Company”) is a 44-year-old financial services company. Through its subsidiaries and affiliated entities, Primerica offers term life insurance and certain savings and investment products to over 5 million clients in the U.S. and Canada. Primerica is the second largest issuer of term life insurance coverage in North America and distributes its products through more than 130,000 independent salesforce representatives and is headquartered in Duluth, Georgia.

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 marketing materials 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.

In this instance, a non-profit, non-governmental advocacy group¹ identified to DSSRC certain core income messages disseminated in certain communications by representatives of the Company, or, in some instances, by the Company, that the NGO believes overstated the Company’s business opportunity to potential representatives. The NGO focused its inquiry on core express and implied messages of earnings and lifestyle benefits arising from participation in the Company’s business opportunity that were communicated by the Company or certain of its representatives.²

The alleged earnings claims that were the subject of this inquiry included, but were not limited to, the following statements:

- “...Trying to describe the feeling of the freedom and the lifestyle and everything we’re able to do for our families, it’s like there’s almost no words to explain it. I mean, waking up every morning and really being able to live life in a way where you have no financial stress, no financial worries, I believe that that’s the greatest blessing that somebody could have in their lives.”
- “...When I got involved with the opportunity, I saw how we help families. Within, it was like six months, I was able to leave teaching. People thought I was crazy,

¹ Tina.org

² The NGO called DSSRC’s attention to approximately 150 examples of social media posts in its database.

they're like, Kerrie, you have a master's degree, what are you doing? And I'm like I'm working less hours and making more money..."

- "...I remember thinking, man, how do people do it? How do people take these vacations? ...they had money. They had time. They had freedom. And I remember thinking, how am I ever going to get that freedom? And then we[e] were introduced to Primerica. And I learned that this business opportunity would provide me that freedom."
- "...You don't become a firefighter to become a millionaire, and you don't do it for the money. You do it because you love to do it and you love to help people. But I also want to continue a legacy for my children. And as a parent, you want more for your children than what you had. And the part-time opportunity with Primerica has enabled me to provide things for my kids and wife that a firefighting paycheck wouldn't allow me to do."
- "All of a sudden, the part-time income starting matching what I was making on my full-time job. I knew the income earning potential at Primerica"
- "The truth is we're going through some major scary times right now. We are in a situation, this coronavirus has taken over the lives of so many people, it has damaged the financial futures of so many people...100%, you have a real shot, a real chance, to change your life forever. Ok, and I've lived through it and I've already proven that it's possible, it's doable for anyone."
- Instagram post of a stack of money with copy stating "Guess how much  1st to get it right, gets a call from me!



#wealthonthebeach #massivepassiveincome"
- "Congratulations to Gordy and Brenda Bohannon of Hiawatha, IA, for achieving the million-dollar milestone!"
- "...JC left a 10 yr nursing career to start his own business with his beautiful wife Chariz. They're only 2 years in the business and making over \$100k per year..."
- "In the middle of a financial crisis there IS STILL A WAY to earn money. We can teach you how to make \$11,000 within a month. We are on track to earn over \$200k this year. This business has transformed our life – all because we took a chance and allow someone to believe in us.

All you have to cover is a \$74 licensing deposit that goes straight to the state and a licensing course."

- “Today, I’m happy, and we’re financially secure. ...How would you like to work for a company where you have the freedom to work whenever you want, the ability to make as much money as you desire, and the luxury of building a business that you can pass down from generation to generation.... We always dreamed about being able to travel the world. And today, we’re doing just that.”

IDENTIFICATION OF ISSUES

The NGO alleged that the Company and/or certain of its individual distributors have made atypical and unsubstantiated income claims to market the Company’s business opportunity. The NGO claimed that certain excerpts of social media posts from the Company or its representatives included references to participants achieving “financial freedom,” quitting their jobs, making large annual incomes, and going on luxury vacations, among other statements. While the NGO acknowledged that some videos and social media posts disseminated on behalf of the Company did contain disclosures, the NGO contended that even those written disclosures were insufficient.

The NGO stated that it has been tracking statements made by the Company and its representatives since 2017 and has previously communicated with the Company regarding the NGO’s views of various income or earnings statements.

The NGO alleged that it has compiled more than 140 additional examples of what it described as unsupported income claims marketing the Primerica business opportunity from social media sites as well as those communicated on the Company’s website. In addition, the NGO pointed DSSRC to social media posts in which Primerica salesforce members disseminated earnings claims which referenced the current economic crisis resulting from the COVID-19 pandemic.

The NGO maintained that although a number of the videos and social media posts that were the subject of this inquiry did include earnings disclosures, the NGO contended that those disclosures incorporating qualifying information often appeared at the end of a lengthy video and did not clearly or conspicuously disclose what typical program participants earn, as the NGO contends is required by the Federal Trade Commission (FTC).

COMPANY’S POSITION

The Company explained that it is a well-respected financial services firm, which focuses its business on sales of insurance and investment products to retail consumers. The Company’s primary business is to provide term life insurance and investment and savings products to middle income markets across the United States and Canada, which often are underserved by other financial services firms. Primerica’s business entities include both a licensed insurance agency and a licensed broker- dealer. Each of its representatives must satisfy all the applicable insurance and securities licensing requirements to offer its products. Through other affiliated providers, the Company’s representatives also offer property and casualty insurance, home security and legal protection, and mortgage loans if appropriately licensed. More particularly, the Company

provided DSSRC with an overview of its product offerings and business opportunity that included the pertinent information described below.

Life Insurance

The Company's life insurance subsidiary is the second largest writer of term life insurance in the United States, and has an A+ rating from A.M. Best, A1 by Moody's, and AA- by S&P. The Company believes that its term life insurance products allow average income households to obtain maximum life insurance coverage for affordable premiums when compared to other life insurance products. The Company stated that its clients include first responders, educators, small business owners and others who are at the heart of the communities served by its independent contractor representatives. The Company insures more than 5 million individual lives, with more than \$800 billion of coverage in place. In 2020 alone, the Company issued more than \$100 billion of life insurance coverage to clients.

Investment and Savings

Many of the Company's licensed insurance representatives also become licensed to sell investment and savings products through Primerica's FINRA-registered broker-dealer and SEC-registered advisory firms. Those products include straightforward investments and savings vehicles such as mutual funds and annuities, but do not include more risky investments such as individual stocks, options, or derivatives. The Company's advisory investments business opens managed accounts for its retail clients with one of the lowest minimum investment thresholds in the industry. In general, the Company's securities-licensed representatives help clients to assess their income, expenses and debts and provide education for them to better understand basic financial principles. This allows clients to save for college with 529 plans and for retirement with IRAs, often through affordable monthly account contributions that build up over time. Almost 70% of the Company's client accounts are IRA's. Currently, Primerica has more than \$77 billion of investment holdings in its securities client accounts.

Compliance Programs

The Company emphasized that strong compliance programs are essential to any effective financial services company. Primerica dedicates tremendous amounts of time and resources to develop, implement and maintain its compliance and supervision systems under the myriad of applicable laws and regulations that govern its financial services businesses. All of Primerica's licensed sales representatives must complete mandatory annual compliance training, which covers the Company's social media policies, among many other things. The Company also stated that its senior management team often discusses compliance and social media policies and related issues in field conference calls and meetings. The Company noted that its compliance and legal teams also connect with individual field offices to provide training and supervision on various matters, including social media rules and that the Company incorporates social media and other related topics in required trainings for the licensed principals in its securities business. The Company explained that, as the result of its strong compliance programs,

it has operated successfully over 44 years in the heavily regulated financial services fields without experiencing major consumer litigation or significant adverse regulatory findings.³

Focusing specifically on its recent social media initiatives, the Company stated that it has made large investments in headcount, compliance training and digital technology to satisfy the applicable regulatory requirements. The Company's in-house employees use automated search tools and customized workflows to monitor and supervise Company representatives who use the internet and social networks in support of their Primerica businesses. The Company further stated that its compliance team regularly reviews and adjusts its procedures to react to evolving regulatory rules and guidance, as well as new technology. In 2020, the Company shifted resources to increase its capacity to address social media issues arising in connection with the COVID-19 pandemic. This year, the Company also has substantially enhanced and updated its social media policies.

Independent Contractor Licensed Representatives

The Company stated that its salesforce members are subject to the eligibility and testing requirements of the governing state and regulatory licensing commissions, as well as to background checks. The Company explained that new representatives sign an Independent Business Application ("IBA") that contains agreements describing the independent contractor business relationship. According to Primerica, more than 130,000 licensed insurance representatives are currently affiliated with the Company, and more than 25,000 of them also are licensed to offer securities products to retail clients. If an individual already has an insurance sales license, there is no charge to contract with the Company. A person without a license has the option to obtain one on their own, or to pay a one-time \$99 licensing fee toward the cost of becoming a licensed representative.⁴

The Company stated that it offers an opportunity for salesforce members to establish an independent business and earn income either on a part-time or full-time basis. As independent contractors, the Company's representatives choose for themselves when and how often they will work in the business. Most new representatives choose to retain their full-time employment and sell life insurance on a part-time basis to gain additional income. However, thousands of Primerica representatives choose to work full-time in the business, essentially running their own agencies. Not surprisingly, those full-time representatives typically earn substantially higher incomes from the business than the part-time participants. Because of its insurance company origins, the Company's business compensation model was built based on a traditional insurance agency structure that includes override commissions on sales of insurance policies.

The Company explained that it only provides "retail sales to real customers" and that it has no quotas or other minimum sales requirements for its representatives. It never requires any representatives to purchase any product or service for his or her own use –

³ The Company noted that on July 1, 2020, Primerica received its annual DSA Code of Ethics Compliance Report, which shows zero reported ethics matters in any of the reported categories for 2019. That report, the Company submitted, continues its consistent pattern of having no reported DSA ethics problems.

⁴ Primerica stated to DSSRC that the Company's costs to provide the licensing services exceed the individual licensing fee for any new representative. If a person decides not to move forward in the business, the Company has a liberal policy to provide a refund of the licensing fee upon request.

and no Company product ever is purchased by a representative for resale to a client. Rather, all product sales are made directly to the end consumer on a retail basis. The relatively small percentage of representatives who choose to purchase products for their own use must pay the same premium rates and prices as any other retail consumer. According to the Company, fully 100% of their sales are made on a retail basis. Representatives do not purchase any products for resale, nor does the concept of “inventory loading” exist at Primerica.

Accordingly, the Company maintained that its products, business model, and structure are fundamentally different from a typical direct sales company. The Company noted the DSSRC’s statement in its recent Guidance on Earnings Claims for the Direct Selling Industry that some direct selling companies require their salesforce members to incur “mandatory costs of the direct selling product or service that participants purchase for resale.” This guidance statement has no application to the Company because there are no such mandatory costs at Primerica and no products or services ever are purchased by the Company’s salesforce members for resale to clients.⁵

Summary of Company’s Response

According to the Company, its policies expressly prohibit any earnings or lifestyle claims that are untruthful or misleading under the governing legal standards. The Company stated that it has policies and procedures in place designed to ensure that proper earnings disclosures are utilized by the Company and its representatives. For example, among many other positive actions, the Company often reviews, updates, and enhances its compliance policies and procedures to address applicable legal requirements and to be sure that appropriate and necessary information is provided to consumers. Accordingly, it was the Company’s position that through these and other actions, it satisfies Section 4 of the DSSRC’s written Guidance on Earnings Claims, which suggests that Company provide “effective training, monitoring and enforcement procedures to provide reasonable assurance that claims made by salesforce members are truthful and non-misleading.”

The Company stated that the particular statements referenced by the NGO were all contained within longer videos and/or printed materials of the Company, which provided additional context and information regarding the challenged statements. The Company contended that much of that content was old or outdated and the Company stated that it already had removed many of those videos from its public sites before the NGO raised these issues with DSSRC.

Primerica advised DSSRC that, at the time of the inquiry, the Company already was engaged in its periodic process of reviewing, supplementing, and enhancing its policies and procedures regarding social media use. It has continued and expanded

⁵ The Company stated that it competes directly with other insurance companies and investment firms for retail sales of financial products and services to consumers and that it considers 100% of its transactions to be “third party” sales because no representative ever resells any such product. Rather, the Company’s representatives build their independent businesses through sales to clients, often obtained through personal referrals, just like most other financial services companies.

those efforts as part of its productive discussions with DSSRC and has taken proactive steps to discuss and address DSSRC's potential concerns. For example, the Company stated that, in connection with its normal internal review processes, it evaluated its written disclosures and adopted additional disclosure language to state even more explicitly that certain Primerica representatives are recognized for having achieved extraordinary levels of cash flow and that those individuals' achievements do not reflect typical earnings of the Company's representatives. In addition, the Company also is considering other appropriate disclosures to more explicitly state that representatives are independent contractors who bear all their own business expenses and that average cash flow numbers cannot account for individual expenses that any representative may incur in connection with the Primerica business.

In response to the specific matters enumerated in this inquiry, the Company asked each of the representatives responsible for the posts enumerated in DSSRC's opening letter to remove the identified claims from their social media sites. The Company stated that it also counseled each of those representatives on the applicable Company policies and regulatory guidance.

Although many of the Company posts identified in the opening letter reflected old or outdated content, Primerica also responded with appropriate actions to address those matters. In addition, the Company advised DSSRC that it is actively working to create additional and supplemental disclosure documents to make its communications regarding the business opportunity even more clear.

Notwithstanding the abovementioned actions, the Company stated its belief that its communications provide accurate information regarding its business and are substantiated by the underlying facts. Given the reality that many of the posts complained of by the NGO were previously removed or had become outdated, the Company chose not to assert its rights for continued use of those materials. However, it is important to note that the Company strongly disagreed with many of the arguments and claims made by the NGO, which the Company believes are not well-supported by the applicable facts or governing legal standards. To begin with, the Company distinguishes itself from direct selling companies and "MLM" businesses. Given the nature of Primerica's financial services business, a \$99 licensing fee goes entirely to defray the expenses associated with obtaining a life and securities license. There is no payment required to contract with Primerica if a person is previously licensed. Moreover, the Company's representatives are paid commissions solely for selling its products. No commissions whatsoever are paid for recruiting and representative compensation arises only in connection with actual sales to retail customers.

The Company also disagrees with the NGO's characterization of several of its statements as alleged "earnings claims." As one example, the Company called DSSRC's attention to a video describing the personal story of a firefighter who contracted with Primerica on a part-time basis to gain additional income for his family. There is no claim made in this video regarding the representative's own earnings, and no promise or representation of potential earnings for any other person. Accordingly, the Company believes that such content accurately describes a common Primerica scenario of a

representative seeking supplemental income for his family and that it is consistent with the applicable rules.

According to the Company, such videos contain accurate and substantiated information about the featured representatives. The Company pointed out that such videos do not promise that any level of income or lifestyle will be obtained by any recruit – nor do they represent that any recruit is likely to achieve similar cash flow levels to the successful representatives. In addition, the Company emphasized that such videos include an earnings disclosure stating the annual earnings of the average licensed Primerica representative to show that higher levels of cash flow do not reflect an average representative. Finally, the Company noted that in every instance the level of earnings depicted were “achievable” in the business and that, like in all financial services firms, there is a wide range of compensation for its representatives.

The Company stated that pursuant to Section 9 of the DSSRC’s written Guidance, when a communication is made to the general public such as through social media or the internet, the “net impression” conveyed by communications must be evaluated by consideration of the “relevant audience” which is defined by the DSSRC as a “reasonable consumer.” In contrast, when the communication is made at a particular event or directed to a smaller group such as an internal audience, the net impression is evaluated more narrowly and by reference to the “specifically targeted group” for the communication. The Company maintained it has met all the legal standards applicable to its business and also has satisfied the DSSRC’s Guidance. The Company further noted that throughout its long history it has not experienced any significant claims that reasonable persons joining the Company have actually been misled regarding the earnings potential in the business.

Based on its cooperative work with the DSSRC, the Company has continued its own efforts to enhance its disclosures and information provided to the public. For example, the Company has adopted enhanced disclosures to state even more clearly that certain representatives achieve an extraordinary level of success within Primerica, that those achievements are not typical of the salesforce generally, and that most representatives do not achieve such cash flow levels. In addition, with the guidance of the DSSRC, the Company is enhancing disclosure documents included with its Independent Business Application (IBA) to provide further detailed information on the contractual relationship and earnings opportunities to people considering whether to participate in the business.

ANALYSIS AND RECOMMENDATION

This inquiry arose from a complaint by the NGO alleging that the Company and certain representatives made statements containing inappropriate earnings claims and lifestyle depictions to the public. In addition to the representations enumerated in DSSRC’s opening letter, the NGO described its efforts to collect more than 150 other examples of statements made since 2017 that it contends were express or implied earnings claims. Many of the examples raised by the NGO had been previously addressed by the Company. In fact, a significant majority of the social media posts presented by the NGO to DSSRC were no longer active on social media.

The Company cooperated in good faith with DSSRC throughout the inquiry process and took appropriate steps to address its concerns.⁶ DSSRC and the Company also had very productive conversations regarding the broader issues arising generally in connection with earnings and lifestyle claims. Unlike traditional direct selling companies, and because of the nature of the products and services that Primerica provides to consumers, the Company is subject to extensive compliance and regulatory oversight applicable to insurance companies, securities broker-dealers and other financial services firms. For example, Primerica representatives must obtain life insurance licenses from their resident states, and, when applicable, Series 6 and 63 FINRA registrations and mortgage brokers' licenses. Moreover, Primerica's businesses are regulated by the United States Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA) in addition to being subject to the scrutiny of securities commissions, insurance departments and Attorneys General in all fifty states, as well as the FTC.

In addition to the external regulatory oversight described above, Primerica also requires that its licensed representatives must complete mandatory annual compliance training, which covers social media policies and procedures. The Company was responsive and diligent in addressing the issues raised by this inquiry. The representative statements that were expressly delineated in DSSC's opening letter were all immediately taken down. More specifically, the Company promptly removed the social media posts and the Instagram post that DSSRC brought to its attention and took down the Company's listed YouTube videos and suspended its use of that content pending further discussions with DSSRC. Moreover, notwithstanding the large-scale compliance efforts utilized by Primerica and the regulatory oversight that the Company is subject to, the Company agreed to take further steps to address the specific posts identified in this inquiry and to continue its ongoing efforts to enhance its procedures and disclosures regarding such matters.

DSSRC determined that a number of the posts at issue either expressly or impliedly communicated income levels that exceeded the amount of annual income that would be generally expected for a typical Primerica representative. Some examples included statements such as, "the part-time income started matching what I was making on my fulltime job" and "...left a 10-year nursing career to start his own business... They're only 2 years in the business and making over 100K." In addition to these types of statements, the NGO also called DSSRC's attention to several other social-media posts referring to "future millionaires" or to "be the first millionaire in your family" and photographs of Primerica representatives who have earned "\$1 Million." The NGO also pointed to several "Success Story" videos that were disseminated on both YouTube and on the Company website and which included atypical and/or career-replacing income

⁶ Pursuant to Section I(D) of the DSSRC's Policies and Procedures, a company's participation in this self-regulatory process "is not an admission of any wrongdoing and shall not be interpreted to constitute an admission by the company or finding that the law has been violated. The DSSRC's findings "shall not constitute a legal finding" regarding application of its standards or the DSA Code of Ethics. Moreover, a company's choice not to raise the independent contractor status of a salesperson as a defense in the DSSRC's review "shall not be construed to be a waiver of a company's right to raise such defense under any other circumstance."

claims (e.g., “Within, it was like six months, I was able to leave teaching. People thought I was crazy, they’re like, Kerrie, you have a master’s degree, what are you doing? And I’m like I’m working less hours and making more money.”).

With respect to other videos and posts raised by the NGO that dated back to 2017, the Company was already in the process of removing or modifying many of those videos and posts before the commencement of DSSRC’s inquiry. DSSRC recognizes and appreciates the Company’s good faith efforts to evaluate and address those matters and urges that the Company further consider the general recommendations described below.

2017 Posts and Videos

The NGO identified 22 social media posts and videos in its 2017 database which it argued conveyed improper earnings claims. The Company removed most of those videos and posts either before or during the pendency of the inquiry. DSSRC notes that the Company generally included a disclosure at the end of the subject videos. As noted in DSSRC’s Guidance on Earnings Claims for the Direct Selling Industry (“Earnings Guidance”), such a disclosure should be close in proximity to the claim it modifies. A disclosure that is not near the triggering claim may be missed by consumers.⁷ As such DSSRC recommends that the Company modify any remaining videos identified in the inquiry to include a proximate disclosure of average salesforce earnings when a reference is made to aspirational or atypical income levels that are attributed to the Primerica business opportunity.

Four of the representations from the NGO’s 2017 database originated from the Company’s website. Three posts made unqualified references to million-dollar earners and DSSRC recommended that they be removed in their original context. The fourth post described the Company representative working at a \$30,000 job and described how he built a “successful business” by availing himself of the Company’s business opportunity. This Real Life Success story did not state that the representative quit his job or replaced his income, but stated that the additional income did provide him and his wife with the “freedom” to enjoy life with his three young daughters. However, it is an advertiser’s responsibility to support any reasonable interpretation of its claims and not just the message that was intended. Here, DSSRC determined that one reasonable consumer takeaway could be that that depicted representative earned income beyond the amount earned by the average Company representative. Thus, DSSRC recommended that the Company discontinue this claim or modify it to include a clear and conspicuous disclosure of the income that can be generally expected by the typical Primerica representative.

The remaining 2017 Real Life Success story depicted the experience of a successful Company representative. DSSRC noted that there was no specific reference to the amount of income earned by the couple and the video did include a disclosure at the end stating that the average salesforce member earned \$6,030 in 2017. However, the success story of the Company representative did state that by virtue of the Primerica business opportunity that “my parents are taken care of, my wife is taken care of, my kids are taken care of” and talked about building a legacy and achieving the couples dreams because of the business. Because DSSRC believes that consumers could reasonably

⁷ See section 13(D) of DSSRC’s Guidance on Earnings Claims for the Direct Selling Industry

interpret the success story as communicating that the depicted representative earned income exceeding the amount earned by the average Company representative, it was recommended that the Company include a disclosure of the income that can be generally expected by a typical Company representative when the depicted representative references financial success that is attributed to the Company's business opportunity.

2020 Posts and Videos

Of the 144 posts and videos identified in the NGO's 2020 income claim database, the Company has either removed or adequately responded to a majority of them. DSSRC noted that several of the remaining posts/videos were duplicate postings that were otherwise listed in either the NGO's 2020 database or the 2017 database (i.e., except for having unique URLs). DSSRC expressed its appreciation to Primerica for its prompt actions to review and address the posts and videos brought to its attention in the spirit of voluntary self-regulation and for its ongoing commitment to continue to work with its salesforce to address any remaining posts and videos.

Two of the Company's individual sales representatives, in particular, were responsible for a majority of the remaining posts in the NGO's 2020 database. Several of those posts included express or implied claims of becoming a millionaire due to the Primerica business opportunity. Although some of those posts and videos contained motivational and aspirational language, DSSRC found that by virtue of using terms such as "creating passive income," "selling the dream" and being able to "travel the world," the core message communicated by the videos carried a risk of suggesting that a recruit likely could earn more than a typical amount of income from the Primerica business.

DSSRC also raised concerns regarding one representative's posts disseminated to the general public that referenced that representative's status as a millionaire seller, making \$100,000 by age 24, a current income of 1.3 million dollars, a linked-in profile representing to help people "achieve financial freedom through massive passive residual income, so you can spend your life doing what you want", and the use of hashtags such as #massivepassivewealth.

DSSRC notes that, pursuant to its published Earnings Claims Guidance, an advertiser is responsible for all reasonable interpretations of its claims, not simply the messages the advertiser intended to convey⁸, and should engage in appropriate training, monitoring and enforcement procedures "to provide reasonable assurance that claims made by salesforce members are truthful and non-misleading."⁹ Accordingly, DSSRC examines the totality or overall net impression created by the claim as a whole, not merely

⁸ Rubbermaid, Inc. (FreshWorks Produce Saver Containers), Report #6102, *NAD/CARU Case Reports* (August 2017); Verizon Communications, Inc. (Google Pixel Phone), Report #6086, *NAD/CARU Case Reports* (May 2016); Philips Oral Healthcare, LLC (Sonicare FlexCare Platinum Toothbrushes), Report #6073, *NAD/CARU Case Reports* (April 2017); Philips Oral Healthcare, LLC (Sonicare Electric Toothbrushes), Report #5963, *NAD/CARU Case Reports* (June 2016); ANTECH Diagnostics, Inc. (AccuPlex4 Diagnostic Screening Test), NAD Case #5732 (07/01/14); Unilever United States, Inc. (Degree Ultra Clear Antiperspirant), Report #4560, *NAD/CARU Case Reports* (September 2006).

⁹ Direct Selling Self-Regulatory Council Guidance on Earnings Claims for the Direct Selling Industry, Section 4.

words or phrases standing alone, taking into consideration both the words and the visual images.”¹⁰ DSSRC further notes that its Earnings Claims Guidance state:

When evaluating express and implied messages from an earnings claim, DSSRC will review the totality of the claim including its words, images, and context in order to determine the “net impression” or the takeaway message conveyed to the audience. The relevant audience to consider is that of a reasonable consumer when the claim is made to a general audience, such as by posting the claim on public social media or the internet. The relevant audience may be more limited, for example, when the claim is made to a specifically targeted group or at a particular event.

DSSRC determined that because these posts and videos were disseminated to a general audience on social media, and not to a more limited internal audience, it may not be unreasonable for some readers of the posts to believe that they can achieve a similar level of success as this representative, when in fact, only a very small percentage of representatives achieve such a level of income through the Company’s business opportunity. Accordingly, DSSRC recommended that the Company make good faith efforts to cause the representative to remove such posts disseminated by this representative and other salesforce members to the general public or take appropriate steps to prevent reasonable consumers from concluding they will earn similar extraordinary income levels in Primerica’s business.¹¹

Other posts by one of the Company’s representatives that were included in the NGO’s 2020 database reflected descriptions of a luxury lifestyle, such as photos of large homes and expensive automobiles and accompanying references to the Primerica business. According to the 2018 FTC Business Guidance Concerning Multilevel Marketing, “... [s]ome business opportunities may present themselves as a way for participants to get rich or lead a wealthy lifestyle. They may make such representations through words or through images such as expensive houses, luxury automobiles, and exotic vacations. If participants generally do not achieve such results, these representations likely would be false or misleading to current or prospective participants.”¹²

¹⁰ See, Philips Oral Healthcare, LLC (Sonicare FlexCare Platinum Toothbrushes), Report #6073, *NAD/CARU Case Reports* (April 2017); The Clorox Company (Glad Tall Kitchen Drawstring Bags), Report #5951, *NAD/CARU Case Reports* (May 2016); The Procter & Gamble Company (Swiffer Dust & Shine Furniture Spray with Febreze Freshness), Report #5141, *NAD/CARU Case Reports* (February 2010).

¹¹ Consistent with the FTC Guide Concerning the Use of Endorsements and Testimonials in Advertising, DSSRC would typically recommend that, if the Company does not have substantiation that the experience of the individuals depicted is representative of what consumers will generally achieve, then the Company may modify a post or video to “clearly and conspicuously disclose the generally expected performance in the depicted circumstances” at the time the claim is made e.g., the average annual income for Company representative and the percentage of promoters earned the stated income. 16 CFR §255.2. Here, however, given that the posts are principally focused on income that is so exceptional and atypical as compared to the average Primerica representative DSSRC suggests that the Company consider whether a clear and conspicuous disclosure can be effectively communicated to clarify that the income level is achievable only by a select number of exceptionally performing promoters.

¹² *Supra* at 6. Second bullet point.

Moreover, DSSRC's Guidance on Earnings Claim for the Direct Selling Industry states that marketing materials or advertising describing or promising potential income amounts or demonstrating extraordinary or lavish lifestyles of salesforce members enabled by their participation in direct selling are considered earnings claims for the purpose of a DSSRC inquiry¹³. Here, DSSRC concluded that several of these Instagram posts made by the Company's representative to the general public included implied claims of a lavish lifestyle that is attributable to income earned from the Primerica business opportunity. Accordingly, DSSRC recommends that the Company make good faith efforts to cause this representative to remove the identified social media posts.¹⁴

DSSRC notes that communications disseminated to the general public regarding company incentive trips may be considered an earnings claim when those communications convey that a typical salesforce member is likely to earn the incentive by participating in the Company's business opportunity.¹⁵ Accordingly, other posts in the NGO's 2020 database pertained to Company-sponsored incentive trips. Although several posts from different individuals taken on Company trips did not expressly mention Primerica, three other posts from the Company's social media account in the 2020 database did make an unqualified reference to the same trip on the same dates.

With respect to claims from Primerica social media feed that reference company sponsored incentive trips, DSSRC was concerned that incentives such as a trip reward may not be generally expected or achievable by the typical representative. Accordingly, DSSRC recommends that in its review of social media posts that reference Company trips, the Company consider whether a disclosure of generally expected performance would be necessary on social media posts made by the Company to the general public such as the ones disseminated by the Company in these examples. For example, certain individual social media posts mentioning the same trip that was the subject of Primerica's social media posts did not mention the Company. Although it seemed apparent that these Primerica representatives were on the same Company-sponsored trip, DSSRC concluded that those posts disseminated in this context were not inappropriate because the posts made on the individuals' social media page did not reference the Company or indicate that the vacation was a Company-affiliated trip.¹⁶

¹³ Supra at 4. Section 2(E).

¹⁴ In addition, the NGO's 2020 database included another representative post that referenced the replacement of fulltime income (https://www.instagram.com/p/B_24pHLprT6/) and two posts which included the hashtag #primericamillionaire (<https://www.instagram.com/p/pnlMngzO29/>) and (<https://www.instagram.com/p/pnlMngzO29/>). DSSRC recommended that the Company make a good faith effort to have these posts removed.

¹⁵ Section 2(F) of the DSSRC Earnings Claims Guidance.

¹⁶ According to section 255.2 (b) of 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.

In determining the messages that a reasonable person may interpret from an advertisement, including social media posts, and other earnings representations appearing in any other medium, DSSRC will look not only at an isolated word or statement but will also consider the images and language that accompany the representation (e.g., hashtags), or are disseminated on the same social media account.¹⁷ DSSRC notes that there is nothing inappropriate about an individual posting vacation photos on an individual social media account so long as the post is not accompanied by other posts, image or language which would lead a reasonable person to take away that the depicted trip was associated with (i.e., sponsored by) the Company.

DSSRC additionally noted that the Company also made a good faith attempt to remove several Real Life Success videos located at <http://www.primericabusinessopportunity.com> and although the videos were disabled, scrolling transcripts of the Company salesforce members' atypical and unqualified Real Life Success stories were inadvertently left on the respective pages. Accordingly, DSSRC requested that Primerica remove the video transcripts as well.

Lastly, DSSRC considered a few other videos in the NGO's 2020 database that reflected aspirational stories from individuals who have achieved financial success through the Primerica business opportunity and also included images of exotic locations and several statements suggesting unlimited income opportunities ("There are no limits. At Primerica, its unlimited"; "How far you want to go, how much you want to accomplish is up to you" and "Achieve your dreams no matter what they might be"). Another YouTube video featured several stories from individuals who availed themselves of the Primerica business opportunity after working unfulfilling jobs. Another video discussed the fundamental principles of the Primerica business opportunity, the promises of owning your own business, and the necessity of working hard, but the video also referenced an "unlimited income opportunity."

In section 5 of its Guidance on Earnings Claims for the Direct Selling Industry¹⁸, DSSRC cautioned companies from making statements that either expressly state or imply through visual images or otherwise that participation in a direct selling business is likely to result in the ability of the participants to live a lavish or extravagant lifestyle and using "quit your job," "be set for life," "make more money than you ever have imagined or thought possible," "realize unlimited income," or any substantially similar statements or representations. Accordingly, DSSRC recommends that the Company review any existing videos in the NGO's database and consider removing the videos in their entirety or making appropriate modifications to any references that indicate to the general public that the typical salesforce member will earn career-level income and financial freedom.

Here, DSSRC concluded that it would not be unreasonable for potential salesforce members to interpret the videos as communicating a message of unlimited income and financial independence from the business opportunity, DSSRC recommended that the

¹⁷ Section 10 of the DSSRC Earnings Claims Guidance.

¹⁸ <https://tinyurl.com/y7vsj7oc>

Company remove the Dare to Dream video from YouTube or make appropriate modifications to the video.

Another YouTube video (“What Are You Worth”), features several stories from individuals who availed themselves of the Company business opportunity after working unfulfilling jobs. DSSRC determined that although the video did not convey that these individuals were now earning career-level income, that unqualified references to earning income warranted a disclosure of the amount of income that could be generally expected from the Primerica business opportunity.

A third YouTube video (“Why We Are Different”) discusses the fundamental principles of the Primerica business opportunity, the promises of owning your own business and the necessity of working hard. However, the video also makes reference to an unlimited income opportunity (“It doesn’t matter your race, gender or education. We want everyone to experience the possibility of an unlimited income opportunity”). As noted earlier in this section, promises of earning unlimited income through a direct selling opportunity are considered improper and unwarranted. Accordingly, DSSRC recommended that the Company remove the video or make appropriate modifications to the video to address these portions.

CONCLUSION

DSSRC recognizes that the Company proactively responded to the inquiry and acted in good faith throughout the discussions on these matters. In fact, the Company was already in the process of removing and modifying almost all of the videos and posts raised by the NGO, which dated back to 2017 and included some outdated content or materials no longer in use. The central issue in this inquiry was the dissemination of non-representative earnings statements including lavish-lifestyle depictions and representations regarding company incentives such as paid vacations. With respect to videos and posts that remained accessible to members of the general public, DSSRC determined that statements such as “Live the life you always dreamed about” and the promise to obtain financial freedom could be construed by consumers as meaning that the typical Primerica salesforce member would earn an amount of income beyond what could be considered modest or supplemental income.

Although some of the remaining videos and posts contained motivational and aspirational language, DSSRC determined that by virtue of using terms including but not limited to “creating passive income,” and being able to “travel the world,” one implied message that may be communicated by the videos was that Company representatives could achieve financial freedom by working for the Company. It was also concluded that although many videos did include a disclosure at the end indicating the amount of income earned by the typical Company salesforce member, that the Company should include a disclosure of the income that can be generally expected by the typical representative if the depicted representative references financial success that is attributable to the Company’s business opportunity.

In addition, with respect to posts disseminated to the general public by the Company or its representatives that include a million-dollar income or similar claims,

DSSRC recommended that the Company remove such posts in their entirety or appropriately modify such posts.

With respect to claims from Primerica's social media feed to the general public that reference company sponsored incentive trips, DSSRC was concerned that incentives such as a trip reward would not be generally expected or achievable by the typical Company salesforce member and, as such, DSSRC recommended that the Company include a disclosure of generally expected performance on social media posts such as the ones disseminated by the Company to the general public. Regarding individual social media posts that mentioned the same trip that was the subject of Primerica's corporate social media posts but that did not mention the Company on a post made on a personal social media account of a salesforce member, DSSRC concluded that the posts were not inappropriate.

DSSRC also recommended that one remaining video be discontinued which included images of exotic locations and several statements that could be interpreted as suggesting unlimited income opportunities and financial freedom from the Primerica business opportunity. Another video that is still accessible featured several stories from individuals who availed themselves of the Primerica business opportunity after working unfulfilling jobs. DSSRC determined that although the video did not convey that these individuals were now earning career-level income, that unqualified references to earning income warranted a clear and conspicuous disclosure of the amount of income that could be generally expected from the Primerica business opportunity.

COMPANY STATEMENT

Primerica is dedicated to protecting and preserving its reputation as a company that does business the right way. We value the DSSRC's input and respect its guidance on the applicable regulatory requirements. We also appreciate the cooperative efforts of the DSSRC, its helpful analysis and advice, and the important role that DSSRC fulfills in assisting our Company, and many others, to operate in an appropriate and compliant manner. Primerica provides a valuable income opportunity for those who choose to participate in the business. As a major provider of financial products and services to middle income retail clients, we are committed to maintaining the highest levels of professionalism and compliance in our business.

The Company agreed to carefully consider each of the DSSRC's recommendations described above and to take appropriate action on those matters. In particular, the Company is committed to the ongoing review and enhancement of its own social media content, as well as content published by its representatives, to be sure that communications made to the public accurately and properly describe the Company's business opportunity and its relationship with its independent contractor representatives. Among other things, the Company already has updated certain disclosures and other communications to provide additional, pertinent information for consumers.

The Company indicated that it will carefully consider and act upon DSSRC's recommendations, but it did indicate its belief that no "reasonable consumer" would be misled by vague, aspirational statements of potential future success. To the contrary, it

noted that, in its 44-year history, the Company has not received significant consumer complaints arising from any unfulfilled expectations to achieve a certain level of wealth, as if such a result could ever be guaranteed. The Company believes that such consumer complaints have not been made because new recruits fully understand both the potential and typical results of participating in the business. The Company's experience has shown that people do not join the business opportunity on a part-time basis based on any reasonable expectation that they will achieve extraordinary levels of income. In fact, the Company's earnings disclosures clearly and conspicuously state the average annual cash flow of its representatives and provide the necessary information needed for a reasonable consumer to properly evaluate the business opportunity.

The Company expressed its appreciation for the most recent written guidance issued by the DSSRC in June of 2020. For example, in the Guidance the DSSRC stated that an "award or announcement of compensation" may be appropriate if the Company or its representatives "have a reasonable basis for its claim at the time the claim is made" and the Company or its representatives "clearly and conspicuously disclose key context related to the award or earnings to ensure that the net impression is truthful and not misleading." DSSRC Guidance on Earnings Claims, Section 8. The Company believes that its statements regarding extraordinary income milestones and other designations achieved by its representatives meet these standards described by the DSSRC Guidance. Under the DSSRC's Guidance only "reasonable" net impressions may be drawn from a communication. The Company does not believe that a reasonable consumer exercising appropriate due diligence would conclude that the payment of \$99 for insurance education and training somehow provides an assurance or guaranty of a lavish lifestyle or expansive income.

The Company also noted that its salesforce currently includes more than 130,000 licensed independent contractor representatives who personally operate their businesses. Applying the standards of the DSSRC's written Guidance, the Company maintains a system of reasonable policies and procedures designed to achieve compliance with any legal duties and obligations that it may have, and the Company makes good faith efforts to cause removal of problematic materials posted by individual independent contractor representatives when the Company becomes aware of them. It is unreasonable to apply a "strict liability" standard to expand a company's liability for the actions of independent contractor representatives and no such standard is supportable under the applicable law.

The Company appreciates and supports the DSSRC's overall mission to enhance understanding and compliance of any applicable legal requirements. Among other cooperative steps, the Company and DSSRC have discussed and agreed upon the benefits of enhancing the disclosure documents included in the Company's business application process. Such documents may include clear explanations of how the business opportunity works and provide helpful information describing the requirements, reasonable expectations and typical results for the Company's representatives at various levels of participation in the business. DSSRC and the Company share the common belief that such materials would provide useful information to benefit the understanding of members of the public about the Company's business opportunity and allow

reasonable and prudent consumers to make informed decisions about whether they choose to participate in the Primerica business.

(Case No. 31-2021 PCM, closed on 1/20/21)

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