

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

Case Number: 12-2020 – Monitoring Inquiry – Aloette Cosmetics

COMPANY DESCRIPTION

Aloette Cosmetics (“Aloette” or the “Company”) is a multi-level direct selling company that sells skincare, makeup and other cosmetics to consumers.

BASIS OF INQUIRY

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

Specifically, DSSRC identified several core earnings claims being disseminated on social media by certain consultants of the Company as well as an “unlimited earning potential” claim on the Company’s website. The representative earnings claims that were the subject of this review are as follows:

A. Social Media Posts by consultants of the Company

Claim 1: “I started at 16 years old with no confidence and no experience, the skills and confidence Aloette has provided me has allowed me to build my business to making an income of over six figures, and truly living life with experiences, the lifestyle and travel. I would have never imaged at 16 years old that I would have the life I have now!”

Claim 2: “If I told you \$39 could earn you an unlimited income, a minimum of 25% of all of your skincare and cosmetic products for at least a year and you could earn AMAZING all expense paid trips to places like Ireland, would I have your attention?”

Claim 3: “Would you like to have control of your own future and be able to make \$600 or more in extra income per month and Be Your Own Boss.”

Claim 4: “Stories of women who start Aloette and bring in an extra income that pays their families mortgage, car payment, credit cards, etc.

#6figureteaminyear1”

B. Implied Earnings Claim on the Company website

Claim 5: “Unlimited earning potential”

In the social media posts, the Aloette consultants communicate various unqualified income representations regarding the amount of money that they and other consultants have earned as well

as the possibility of earning all-expense paid incentive trips. In its inquiry, DSSRC informed the Company of its concern that the reasonable consumer may interpret these claims to mean that the success claimed by the Aloette consultants is representative of what could generally be expected by a consultant of the Company. As noted above, the Company's website contained an unqualified claim of "unlimited earning potential" which DSSRC was concerned could be reasonably interpreted by a reasonable consumer to mean that the typical Aloette consultant would generally achieve a significant income and / or achieve extraordinary success.

COMPANY'S POSITION

In accordance with DSSRC's Policies and Procedures, Aloette submitted a written response to DSSRC's initial inquiry letter.

As a general matter, Aloette maintained that each of the representative posts were true. With respect to Claim 1, the Company stated that it verified that such claim was true and that the consultant making the claim in fact earns a six-figure income selling Aloette products. As to Claim 2, the Company maintained that it does not cap a consultant's income and that the Company does run incentive trips for consultants and is currently running such a trip to Ireland. Likewise, as to Claim 3 ("Be Your Own Boss" and "be able to make \$600 or more in extra income per month"), the Company stated that its consultants are independent contractors and that it is possible to earn \$600 a month selling Aloette. As to Claim 4, the Company stated that the post was made by a consultant that had heard other consultants of the Company speak to their own success at a Company sales conference. Similarly, as to Claim 5 ("unlimited earning potential"), the Company stated that it is true that the Company does not limit the amount any consultant can earn.

DSSRC sent Aloette a reply letter reiterating its concern that the subject posts may convey an unsubstantiated message to consumers that the amount of income or success referenced in the posts may be generally expected by the typical distributor when, in fact, that may not be the case especially when presented in an unqualified context.

In response, Aloette wrote DSSRC to state that the Company would commit to improving its disclosures to make sure that anyone reading the posts would understand that the results depicted may not be the results that can be generally expected by the typical Company representative. To that end, the Company inquired whether DSSRC would consider it sufficient if the representative earning claims were paired with a written disclaimer that "the results represented are individual results and actual results may vary."

ANALYSIS AND RECOMMENDATION

A. Social Media Posts by consultants of the Company

An advertiser has the burden to support all reasonable interpretations of its claims and not simply the messages it intended to convey. Verizon Communications, Inc. (Verizon Wireless Services ("First to 5G")), Report #6258, *NAD/CARU Case Reports* (May 2019); FTC Advertising Substantiation Policy Statement, appended to Thompson Medical Co., 104 F.T.C. 648 (1984), *aff'd* 791 F.2d 189 (D.C. Cir. 1986). In the direct selling context, the responsibility of the direct selling company extends to the claims disseminated by members of a direct selling company's salesforce.

Wildtree, Inc., DSSRC Case No. 1-2019. See also, FTC Guide Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR §255.1(d).¹

With respect to the social media posts discussing the amount of income that has or may be received by Aloette consultants, while the financial success claimed in the representative posts may be true, DSSRC determined that such posts may reasonably communicate to consumers that the success depicted could generally be expected by the typical Company consultant. Consistent with FTC guidance, if such results are not what would be generally expected by the typical representative of Aloette, that fact must be disclosed along with the earnings and/or success that can generally be expected by the typical consultant. DSSRC acknowledges and appreciates the Company's commitment to improve transparency in its marketing including its efforts to improve its disclosures to clarify that success depicted in social media posts such as those at issue in this inquiry may not be the results that can be generally expected by the typical Aloette representative. DSSRC, however, recommends that any such disclosure also include what results may generally be expected by the typical Company consultant.

Specifically, the FTC Guide Concerning the Use of Endorsements and Testimonials in Advertising provides that:

An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.

16 CFR § 255.2(b). Accordingly, DSSRC recommends that Aloette have its representatives remove the representative earnings claims, and similar claims, from social media or modify them by clearly and conspicuously disclosing the earnings that can generally be expected by the typical consultant of the Company. Such a generally expected earnings disclosure must be substantiated by competent and reliable evidence demonstrating its typicality.

The same principles that apply to testimonial earnings claims hold true with respect to claims regarding the ability of salesforce members to earn incentive trip vacations. Wildtree, Inc., DSSRC Case No. 1-2019 Here, Aloette stated that claims made by consultants regarding earned incentive trips are true and that the Company is currently running an incentive trip to Ireland. However, consistent with the FTC Guide Concerning the Use of Endorsements and Testimonials in Advertising, DSSRC recommends that, if the Company does not have substantiation that the experience of these individuals is representative of what the typical consultant will generally achieve, that Aloette remove the incentive trip claims or modify such testimonials to "clearly and conspicuously disclose the generally expected performance in the depicted circumstances" i.e., what percentage of Aloette representatives earn an incentive trip. 16 CFR §255.2.

¹ This responsibility is also expressly recognized by the Direct Selling Association's Code of Ethics. DSA Code of Ethics, § 8(b)(1)

B. Implied Earnings Claim on the Company website

Lastly, with respect to the “unlimited earning potential” claim on the Aloette website, DSSRC remained concerned that such claim could be interpreted by a reasonable consumer to mean that the typical individual engaged in direct selling of Aloette products would generally achieve a significant income or financial success. DSSRC has previously reviewed similar claims such as “we give you the means to achieve an extraordinary level of success” and “it is completely up to you to decide how much profit you wish to make, and which rung on the career ladder you wish to reach” and concluded that such claims could be interpreted by a reasonable consumer to mean that the typical individual engaged in direct selling of [the direct selling company’s] products would generally achieve a significant income and/or achieve extraordinary success. Aloe Veritas, Inc., DSSRC Case No. 5-2019. For the same reason, here too, DSSRC recommends that Aloette discontinue the “unlimited earning potential” claim in the unqualified context in which it appears on the Aloette website.

CONCLUSION

DSSRC determined that the express and implied earnings claims made on social media by Aloette consultants may reasonably communicate to consumers that a typical Aloette consultant would achieve significant earnings or financial success. DSSRC acknowledges the Company’s commitment to improving its disclosures and recommends that such claims be discontinued or modified to clearly and conspicuously disclose to consumers the typical earnings that can be expected by an Aloette consultant.

Similarly, DSSRC determined that the incentive trip claims made by Aloette consultants may reasonably communicate to consumers that a typical consultant would generally earn such trips. DSSRC recommends that such claims be discontinued or modified to clearly and conspicuously disclose to consumers how typical it is for a consultant of the Company to earn an incentive trip.

Finally, DSSRC found that the “unlimited earning potential” claim on the Aloette website could be interpreted by a reasonable consumer to mean that the typical Aloette consultant would generally achieve a significant income and/or achieve extraordinary success. Accordingly, DSSRC recommends that Aloette discontinue the “unlimited earning potential” claim in the unqualified context in which it appears on the Aloette website.

COMPANY STATEMENT

(Case No. _-2020 HJS, closed on __2020)
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