

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

Case Number: 23-2020 – Monitoring Inquiry – Fifth Avenue Collection, Inc.

COMPANY DESCRIPTION

Fifth Avenue Collection, Inc (“Fifth Avenue Collection” or the “Company”) is a multi-level direct selling company located in Alpharetta, GA that was founded in 1988. The company's line of business includes the wholesale distribution of jewelry, precious stones and metals, costume jewelry, watches, clocks, and silverware.

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 including claims made by salesforce members on social media.

Specifically, DSSRC identified several business opportunity claims, including statements that were disseminated on the social media pages of Company distributors.

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

- “Before Fifth Avenue, I was a shy girl who worked a lonely full time job. That has totally changed with the help of Fifth Avenue's mandate of "people helping people". With a much higher income than before, working only part time hours that I set, I have time to spend with family and friends, especially my grandbabies.”
- “Our amazing opportunity has never been easier or more crucial during these challenging times.”
- “Who do you know who’s income has been affected by the corona virus pandemic. Earn money immediately. Let me help get you started.”
- “Whether you need \$50 a week or \$5,000 per month...”.
- “I am thrilled to announce that the ladies who have joined Fifth Avenue Collection during these crazy times, with this \$99 showcase special, are rocking it...already 😊 I'm not surprised because this is an amazing company with an amazing product Ladies, this is such an amazing business opportunity, full of amazing supportive women, and we are not just surviving during this pandemic time...we are thriving.”



COMPANY'S POSITION

Fifth Avenue Collection provided a business description for DSSRC stating that its product offering runs from the simplest earrings to the most sophisticated neckpiece. Originally, this exclusive jewelry could be purchased only in North America. However, the overwhelming popularity of the collection has been proven successful to many and is continually attracting many more high-quality individuals and its sales force has expanded globally.

With respect to the posts at issue, the Company informed DSSRC that it has advised all of its Stylists not to use the words COVID -19, coronavirus, or pandemic at all in their business dealings and that it takes a vigilant approach to monitoring its Stylist's social media postings and will immediately contact Stylists to remove any language or claims that appear false or misleading.

Fifth Avenue Collection advised DSSRC that although the posts that were identified by DSSRC were made by stylists outside of the United States, it was able to facilitate removal of four of the five posts. The Company stated the remaining post (i.e., "Before Fifth Avenue, I was a shy girl who worked a lonely full time job. That has totally changed with the help of Fifth Avenue's mandate of "people helping people".") was disseminated by a stylist residing in Canada and it has made several attempts to contact the salesforce member and have the post removed. Fifth Avenue Collection stated that it will continue its good faith efforts to contact the Stylist and educate her on why the post is inappropriate.

CASE DISPOSITION

DSSRC appreciated the efforts of Fifth Avenue Collection to address the claims at issue and determined that the removal of the four posts was necessary and appropriate.

Earlier this year, the Federal Trade Commission (FTC) sent several letters to direct selling companies to remove and address claims about their products' ability to treat or prevent coronavirus 2019 (COVID-19) or about the earnings people who have recently lost income can make due to the coronavirus 2019 (COVID-19) pandemic.¹ The DSSRC issued a public statement supporting the actions by the FTC to address those claims.²

With respect to the remaining post, DSSRC noted 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 commonly used in earnings claims can carry a particularly high risk of being misleading to consumers including terms that suggest "full-time income" or "replacement income."³ Similarly, The FTC has stated that representations about a business opportunity, including earnings claims, violate Section 5 of the FTC Act, 15 U.S.C. § 41 et seq., if they are false, misleading, or unsubstantiated and material to consumers. Express and implied earnings claims must be truthful and non-misleading to avoid being deceptive, which means that claims about the potential to achieve a wealthy lifestyle, career-level income, or significant income are false or misleading if business opportunity participants generally do not achieve such results. Even truthful testimonials from participants who do earn significant income or more will likely be misleading unless the advertising also makes clear the amount earned or lost by most participants. Business opportunity participants and representatives should refrain from making any express and implied earnings claims that would be false or misleading to current or prospective participants.⁴

Accordingly, DSSRC remains concerned that the statement of the Fifth Avenue Collection Stylist that she earned "much higher income than before, working only part time hours" could be reasonably interpreted by potential Company Stylists to mean that they will be able to replace their full time income while only working part time. Although the post at issue originated outside of the United States and is thus outside the purview of DSSRC, it is recommended that Fifth Avenue Collection continue in its attempts to contact the Stylist responsible for the post and request removal of any language that could be construed by potential salesforce members as meaning that they could earn career level income working part-time hours.

¹ See <https://www.ftc.gov/news-events/blogs/business-blog/2020/04/new-ftc-warning-letters-cite-unsupported-coronavirus-related> and <https://www.ftc.gov/news-events/press-releases/2020/06/second-round-warning-letters-to-mlms-regarding-coronavirus>.

² <https://bbbprograms.org/programs/all-programs/nad/nad-press-releases/bbb-national-programs-direct-selling-self-regulatory-council-applauds-federal-trade-commission-s-warning-letters-on-coronavirus-claims>

³ DSSRC Guidance on Earnings Claims for the Direct Selling Industry. <https://tinyurl.com/y7vsj7oc>

⁴ See https://www.ftc.gov/system/files/warning-letters/covid-19-letter_to_melaleuca.pdf

Based upon the actions of Fifth Avenue Collection to remove four posts referencing the opportunity to earn significant income either during the corona virus pandemic or in an amount that has not been demonstrated to typical of income that would be generally expected by Company Stylists, DSSRC has administratively closed this matter pursuant to section (C) III of the DSSRC Policy and Procedures.

(Case No. 23-2020 PCM, closed on 08/10/20)
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