

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW - DEFINITIONS
AND UNLAWFUL ACTS OR PRACTICES AND EXCLUSIONS

Act of Nov. 25, 2020, P.L. 1216, No. 123

Cl. 12

Session of 2020

No. 2020-123

HB 1534

AN ACT

Amending the act of December 17, 1968 (P.L.1224, No.387), entitled "An act prohibiting unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, giving the Attorney General and District Attorneys certain powers and duties and providing penalties," further providing for definitions and for unlawful acts or practices and exclusions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2(4)(xiii) of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, is amended and the section is amended by adding clauses to read:

Section 2. Definitions.--As used in this act.

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(4) "Unfair methods of competition" and "unfair or deceptive acts or practices" mean any one or more of the following:

* * *

(xiii) Promoting or engaging in any plan by which goods or services are sold to a person for a consideration and upon the further consideration that the purchaser secure or attempt to secure one or more persons likewise to join the said plan; each purchaser to be given the right to secure money, goods or services depending upon the number of persons joining the plan. In addition, promoting or engaging in any plan, commonly known as or similar to the so-called ["Chain-Letter Plan" or "Pyramid Club."] **"Chain-Letter Plan," "Pyramid Club" or "Pyramid Promotional Scheme."** The terms "Chain-Letter Plan" or "Pyramid Club" mean any scheme for the disposal or distribution of property, services or anything of value whereby a participant pays valuable consideration, in whole or in part, for an opportunity to receive compensation for introducing or attempting to introduce one or more additional persons to participate in the scheme or for the opportunity to receive compensation when a person introduced by the participant introduces a new participant. **The term "Pyramid Promotional Scheme" means any plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other persons into the plan or operation rather than from the sale and consumption of goods, services or intangible property by a participant or other persons introduced into the plan or operation. The term includes any plan or operation under which the number of people who may participate is limited either expressly or by the application of conditions affecting the eligibility of a person to receive compensation under the plan or operation, and includes any plan or operation under which a person, on giving any consideration, obtains any goods, services or intangible property in addition to the right to receive**

compensation. As used in this subclause the term "consideration" means an investment of cash or the purchase of goods, other property, training or services, but does not include payments made for sales demonstration equipment and materials for use in making sales and not for resale furnished at no profit to any person in the program or to the company or corporation, nor does the term apply to a minimal initial payment of twenty-five dollars (\$25) or less;

* * *

(5) "Bona fide inventory repurchase program" means a program by which an entity repurchases from a salesperson current and marketable inventory in the possession of the salesperson, on request and on commercially reasonable terms, when the salesperson's business relationship is terminated.

(6) "Commercially reasonable terms" means the repurchase of current and marketable inventory within twelve (12) months after the date of purchase at not less than ninety percent (90%) of the original net cost, less appropriate set-offs and legal claims, if any.

(7) "Compensation" means a payment of any money, a thing of value or financial benefit conferred in return for inducing another person to participate in a Pyramid Promotional Scheme.

(8) "Consideration" means the payment of cash or the purchase of goods, services or intangible property. The term shall not include the purchase of goods or services furnished at cost to be used in making sales and not for resale or time and effort spent in pursuit of sales or recruiting activities. The term shall not include payment for sales demonstration, equipment and materials furnished at cost for use in making sales and not for resale.

(9) "Inventory" includes both goods and services, including company-produced promotional materials, sales aids and sales kits that an entity requires independent salespersons to purchase.

(10) "Inventory loading" means the requirement or encouragement by a plan or operation to have the independent salesperson of the plan or operation purchase inventory in an amount that exceeds the amount that the salesperson can expect to resell for ultimate consumption or to use or consume in a reasonable time period, or both.

(11) "Person" means an individual, corporation, trust, estate, partnership, unincorporated association or any other legal or commercial entity.

(12) "Promote" means to contrive, prepare, establish, plan, operate, advertise or otherwise induce or attempt to induce another person to participate in a Pyramid Promotional Scheme.

(13) "Current and marketable" excludes inventory that:

(i) is no longer within its commercially reasonable use or shelf-life period;

(ii) was clearly described to salespersons prior to purchase as seasonal, discontinued or special promotion products not subject to the plan or organization's inventory repurchase program; or

(iii) has been used or opened.

Section 2. Section 3 of the act is amended to read:

Section 3. Unlawful Acts or Practices; Exclusions.--(a)

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of clause (4) of section 2 of this act and regulations promulgated under section 3.1 of this act are hereby declared unlawful. The provisions of this act shall not apply to any owner, agent or employe of any radio or

television station, or to any owner, publisher, printer, agent or employe of an Internet service provider or a newspaper or other publication, periodical or circular, who, in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published or takes part in the publication of such advertisement.

(b) The provisions of this act may not be construed to prohibit a plan or operation, or to define a plan or operation as a Pyramid Promotional Scheme, if the participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services or intangible property for personal use, consumption or resale if the plan or operation does not cause inventory loading, and the plan or operation implements a bona fide inventory repurchase program.

(1) A person must clearly describe a bona fide inventory repurchase program in its recruiting literature, sales manual or contracts with independent salespersons. The recruiting literature, sales manual or contract must disclose any inventory that is not eligible for repurchase under the program.

(2) A bona fide inventory repurchase program is not required to apply to inventory that is no longer within the inventory's commercially reasonable use or shelf-life period or has been used or opened.

(c) Before a salesperson of the entity purchases any inventory, the entity must clearly describe the inventory that is excluded from the entity's bona fide inventory repurchase program as seasonal, discontinued or special promotion products and the inventory that is not subject to the entity's bona fide inventory repurchase program.

Section 3. This act shall take effect immediately.

APPROVED--The 25th day of November, A.D. 2020.

TOM WOLF