

DIRECT SELLING ASSOCIATION
ANNOTATED CODE OF BUSINESS CONDUCT

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SCOPE AND DEFINITIONS

1. This Code concerns a member's dealing with

- (a) direct sellers; and
- (b) other members.

In those dealings, members (and their direct sellers) will comply with all law relevant to those dealings.

"the Association" and "DSA" means the Direct Selling Association;

"business opportunity presentation" and "presentation" mean any meeting or discussion at which a member or a direct seller describes a commercial relationship between a member and potential direct sellers;

"direct seller" means any person involved in direct selling in any capacity;

"direct selling" means the direct selling of consumer products either in the home or away from normal retail premises by which a salesperson either: demonstrates the product or presents a product catalogue; or, collects an order; or arranges for the delivery of the products; or collects payment for the product or arranges for credit;

"member" means a member of the Association and includes its employees;

"product" means any goods or services;

"sponsor" means a direct seller who engages in recruiting and/or supporting other direct sellers in a member's business;

"statutory rights" means those rights conferred by regulations made under the Fair Trading Act 1973 whether or not the regulations apply to the member's direct selling scheme

RECRUITMENT

2.1 Members and direct sellers shall not use misleading, deceptive or unfair recruiting methods.

2.2 Advertisements placed by members or direct sellers shall not make unrepresentative or exaggerated earnings claims.

2.3 At the first point of contact, verbal or face-to-face, with a prospective recruit, the recruiter shall clearly identify the name of the member.

2.4 An invitation, by whatever means, to a business opportunity presentation shall:

- (a) state the name of any sponsor or direct seller issuing the invitation;
- (b) state the name of the member and its class of membership of the

- DSA;
- (c) clearly and accurately indicate the purpose of the presentation and not imply that it relates to employment or that it is anything other than an occasion to be informed about a business relationship with a member.
- 2.5 Any member's recruitment advertisement over 30 words in length shall:
 - (a) include the member's name; and
 - (b) indicate membership of the DSA.
 - 2.6 All recruitment material (including advertisements) and in whatever medium (e.g. printed, audio, video, electronic) over 30 words in length must:
 - (a) be pre-approved by the member, and
 - (b) clearly identify the member, giving the member's name at least as much prominence as the name of the direct seller, or direct selling group, to whom prospects are invited to respond.
 - 2.7 Any recruitment material used in a direct marketing campaign, whether or not involving the purchase or rental of mailing lists, must be pre-approved by the member.
 - 2.8 In relation to its own website and the websites of its independent direct sellers, each member shall establish
 - (a) rules and standards, and
 - (b) a monitoring system to check the websites for compliance.
 - 2.9 Fly-posting of recruitment and other material on street furniture, telephone kiosks or any other property, public or private, is banned.
 - 2.10 All costs, whether for goods or services, charged by a member or direct seller to a prospective recruit who does not take up the opportunity offered shall be refunded. To the extent that those costs relate to the supply of non-consumable goods, the refund may be withheld unless the goods are returned within 30 days of their purchase. No refund need be made, however, in respect of any of the member's products purchased by the prospective recruit in the capacity of a consumer.

NOTES

It is essential that when direct selling companies and direct sellers recruit individuals, the information given is full, honest and, above all, realistic. It should be made clear that while high earnings are possible they are not easily achieved and are not representative of the business as a whole. Members should consider indicating what average earnings actually were (see Notes to Rule 3).

"Advertisements". It goes without saying that these must be legal, decent, honest and truthful; otherwise they are in breach of the British Advertising Codes of Practice. Individual direct sellers may place advertising material which contains a member's name and so give the appearance of being approved by the member. It is essential that members monitor all advertising copy which contains any reference to the member or which uses its copyright material (such as the name or

logo). A prudent direct selling company will make it a contractual requirement that direct sellers obtain prior approval for all advertisements.

"Unrepresentative or exaggerated earnings claims". An advertisement may say that it is possible to earn thousands of pounds without indicating whether it is per week or per year. Although it may be that one successful direct seller does earn such a sum, if that is very rare the message in the advert will be unrepresentative. A clear distinction should be made between turnover and income and also between gross income and what is left after paying overheads, downline bonuses etc.

"Invitation" has not only the common, everyday meaning but covers handbills, circulars, telephone calls, faxes and messages placed by E-mail or through the Internet.

It covers *any* situation where a member or a direct seller tries to recruit potential entrants. So it includes conversations in pubs, across a dinner table or on the golf course. All members will ensure that their direct sellers comply with the Code by explaining the point of the meeting - or of the conversation - before anyone attends.

In order that the Association can offer protection and help to the public it is vital that its name and the logo become well known. One way in which this message can be circulated is to make reference to the DSA in all corporate advertisements for recruitment of direct sellers. Such information underlines to anyone reading it that the company is a member and draws the public's attention to the association.

Business cards used by direct sellers should contain: the direct seller's name and description - eg: independent distributor; the member's name; a statement that the member belongs to the DSA or the DSA logo.

Para.2(5) emphasises that direct sellers must disclose not only the member company whose products are being promoted but also show that the member belongs to the Association.

Control of independent direct sellers' recruitment material. Most direct sellers are engaged under contracts whereby they are not employees but are in business on their own account. Such direct sellers are therefore not able to be "controlled" to the same degree as would an employee. Nevertheless, it is important that a direct seller does not present a recruitment opportunity in a way which fails to identify with a meaningful degree of prominence that it is the member's trading scheme to which recruitment is being invited. Para 2.6 requires sufficient identification of the member. Equally it is in the member's interests that none of its direct sellers puts out advertising material which can bring the member's good name into disrepute, whether that is: (a) by misuse of the member's logo/tradename; (b) by exaggerated earnings claims; (c) by reason of any other element of the content of advertisements; or (d) in the way such advertisements are published. Thus it is important that recruitment advertisements put out by direct sellers, including those on their websites, are monitored by the member. Where direct sellers have independent websites, these must be subject to standards to be established by the member and the member must have a system for monitoring such websites. It is not inconsistent with the independent status of the direct seller, if the standards for direct sellers' websites set by member companies do not seek to control the websites to any greater extent than is objectively justified as designed to secure the legitimate interests of the member, which interests undoubtedly include (a) upholding the good reputation of the member, (b) ensuring respect for the member's logos, (c) ensuring (in the case of an MLM company) compliance with the Trading Schemes Regulations 1997.

Fly-posting e.g. on street lamps, in phone kiosks, on walls, fences etc gives rise to a lot of complaints from local authorities and others. It is important that members make their direct sellers fully aware that this is a totally unacceptable practice. The ban on fly-posting does not, however, prevent the placing of advertisements which both comply with legal requirements and also are displayed with the consent of the owner of the property on which they appear.

Pre-recruitment expenditure. The purpose of any direct selling scheme must be to promote and achieve sales of the products (whether goods or services) which the scheme markets. The purpose is not for one direct seller to make a living or a profit from the process of recruiting or seeking to recruit new participants. Any expenditure which a potential new direct seller is invited to incur should be (a) modest, and (b) no more than is reasonable in return for the goods

or services purchased. Para. 2.10 entitles any potential recruit, who decides not to join up, to recover all the pre-recruitment costs he/she has been charged by the member or an existing direct seller. It does not, however, require any refund to be made in respect of a product which the prospective recruit has bought in order to sample for himself/herself the wares marketed by the member company.

PRESENTING BUSINESS OPPORTUNITIES

- 3.1 Members and direct sellers shall not describe the opportunity to a prospective direct seller in a false or misleading manner.
- 3.2 At all presentations of any kind reference shall be made to the name of the member and its class of membership of the DSA.
- 3.3 At all times:
 - (a) members and direct sellers shall only promote the opportunity as a business relationship with the member;
 - (b) no unrepresentative or exaggerated earnings claims shall be made;
 - (c) any earnings claims must relate to actual earnings from the opportunity by an identifiable person and be capable of verification;
 - (d) income claims should not imply that earnings are quickly or easily achieved.
- 3.4 Members and direct sellers shall not promote any business based solely on recruiting other direct sellers.
- 3.5 All presentations must promote the business as one where direct sellers sell products to consumers.
- 3.6 It is permissible for a direct seller to be rewarded (e.g. by retail mark-up or commission on sales volume) for building a network of consumers who purchase goods either from the direct seller or directly from the company. However, members and direct sellers shall not encourage anyone to purchase a product on the basis that the product cost they incur will be recovered, reimbursed or reduced if they get others to make similar purchases.

NOTES

The DSA has the duty to promote the direct selling industry and to advance the cause of its members and direct sellers who have the right to advertise and promote their business opportunity. They must do so legally and within the spirit of this Code.

The expectations of income, and how it may be achieved, vary considerably from modest to very significant. The following points must be adopted by DSA members and communicated to direct sellers to assist them in the development of advertising and other promotional material for the business opportunity.

- (a) Advertising can be expensive and the results unpredictable. The recruitment of direct sellers is most productive when carried out on a one-to-one basis.
- (b) A direct seller should always seek advice from a member or another, more experienced, direct seller before buying advertising space.
- (c) All advertising materials must be legal, decent, honest and truthful.

- (d) All advertising materials should be informative, inviting and motivational but without excessive hyperbole.
- (e) Claims made should be based on fact and should not attempt to mislead. Puffery should be at a minimum.
- (f) If specific sales achievements are mentioned, they should relate to the direct seller's personal sales, together with sales generated by other direct sellers over whom that person has any influence, or the sales generated by that part of the network from which income is derived.
- (g) Income claims by direct sellers should not include any income which is required to be passed on to other direct sellers.
- (h) Income claims must reflect the average income of at least three identified consecutive periods of months or years – and, where an income claim does not reflect the average income of all the direct sellers of the DSA member, the claim should make clear the range of direct sellers (e.g. the top ten earners) whose income the claim reflects.

"Presenting business opportunities" includes presentations on a one-to-one basis, small meetings, formal business opportunity presentations, videos and the use of business opportunity manuals. The promotion of the Association is one of the obligations of a member. The better the DSA is known, the higher will be the public regard for direct selling. All Members must ensure that they and their direct sellers always inform all meetings, large or small, informal or public, that the company belongs to the Association.

Any specific "earnings claims" must be presented in the context of expected average earnings and not be based on any geometric pattern of recruitment and growth in sales.

INVESTMENT IN BUSINESS OPPORTUNITIES

- 4.1 Members, sponsors and direct sellers shall not require or encourage any direct seller to purchase products in unreasonable amounts. Nor shall a member accept orders for purchases which it knows are for unreasonable amounts.
- 4.2 The appropriate investment shall take account of (among other things):
 - (a) the purchase of a reasonable quantity of products for self consumption or use;
 - (b) sales that have already been made;
 - (c) a reasonable amount of product for effective demonstration or display to potential consumers.
- 4.3 Any purchase would be for an unreasonable amount if it was a purchase of re-saleable goods which was made:
 - (a) prior to those goods being re-sold; and
 - (b) primarily to secure a higher position in the organisation for the purchaser or primarily to benefit another individual in the organisation.
- 4.4 A purchase would also be for an unreasonable amount, irrespective of whether the order was placed on an automatic or recurrent basis, if the purchaser had no need of the goods either for his/her own use or for re-sale.
- 4.5 Members shall take reasonable steps to ensure that direct sellers who are receiving compensation for downline sales volume are either

consuming or reselling the products they purchase in order to qualify to receive compensation.

NOTES

It is desirable for direct sellers to use the products they are promoting; their ability to sell will be enhanced when they can describe the advantages they have discovered themselves.

However, it is not acceptable for any benefits from a business opportunity to be dependent on purchases in excess of a reasonable volume for personal consumption.

It is unacceptable for an individual to be encouraged to make a payment for goods for personal use where the principal motive/reason for making the payment was to earn and retain financial benefits gained from encouraging others to make similar purchases. The test is whether what is being bought is for genuine use or simply to gain a better financial position in the scheme.

The 70% rule. Some Member companies include in their direct seller contracts a standard clause requiring the direct seller to ensure that he/she consumes and/or sells at least 70% of the products he/she orders. This 70% rule is not required by the DSA Code nor is it prohibited. However, having the rule as part of the direct seller's contract is not sufficient to ensure compliance with paragraph 4.5 of the Code. Steps must be taken to check that products ordered are being consumed and/or sold. This requires some monitoring of the pattern of orders placed by any given direct seller and, at the least, some follow up action being taken where, say, a direct seller either

- (a) orders an unusually large amount of product, or
- (b) consistently orders just before a qualification deadline an amount of product which is both:
 - (i) just enough to qualify, and
 - (ii) sufficiently large in quantity that it is unlikely that that individual direct seller could reasonably be expected to consume and/or sell it.

BUSINESS SUPPORT MATERIALS

5.1 Members shall require their direct sellers who sell promotional or training literature (sales aids) in hard copy or electronic form:

- (i) to utilise only materials that are approved by the member or comply with the same standards to which the member adheres,
- (ii) to refrain from making the purchase of such sales aids a requirement for downline direct sellers,
- (iii) to provide such literature (and any other sales aids) at no more than a reasonable and fair price, equivalent to the price of similar material available generally in the marketplace,
- (iv) to offer a written return policy that is the same as the return policy of the member, and
- (v) not to require any other direct seller to purchase any sales aids or other materials that are inconsistent with the member's policies and procedures.

5.2 Members shall take reasonable steps to ensure that sales aids and other materials produced by direct sellers are not misleading or deceptive and are sold only in compliance with the provisions of this Code.

- 5.3 The sale of sales aids shall not be permitted to be a profit centre for either a DSA member or any of its direct sellers.

NOTES

The purpose and aim of any direct selling business is to achieve sales of the products of the Member company. It is from that activity that the Member company's profits should come. Profits (either for the Member company or for any of its direct sellers) should not come from the supply of aids, guides and training as to how to sell the company's products. Member companies who have direct sellers with substantial downlines should be particularly vigilant to ensure that such direct sellers do not themselves develop businesses making profits from the supply of business materials to their downlines. Of course such materials do not have to be provided free of charge. They should, however, be supplied at little more than cost price and not be a profit centre.

ADVERTISING

- 6.1 Members' advertisements shall be truthful and accurate and, as a general rule, shall incorporate a reference to their membership of the Association. Members' sales and promotional literature shall be truthful and accurate and shall always contain a reference to their membership of the Association.
- 6.2 Members must be able to satisfy the Association that they comply with the British Codes of Advertising Practice and Sales Promotion where relevant and any other recognised self-regulatory codes.
- 6.3 Where members use direct mail or telephone selling they will make use of the Mailing Preference Service and Telephone Preference Service.

NOTES

The notes to Paragraph 3 of the Code shall be read as applying to this Paragraph also.

CONTRACT AND PAYMENTS

- 7.1 Members shall provide every direct seller with a written contract.
- 7.2 Contracts shall:
- (a) define a direct seller's financial obligations and meet all statutory requirements;
 - (b) contain or refer to all the terms between the parties in a clear and legible format;
 - (c) provide for termination by either party;
 - (d) state whether or not it may be transferred to anyone else, and if so upon what terms;
 - (e) contain or refer to full details of how earnings will be calculated and paid to direct sellers;
 - (f) require direct sellers to observe all DSA codes;
 - (g) contain details of any restrictions relating to competitive activity by direct sellers.

- 7.3 Members shall not require direct sellers to pay unreasonable fees for participating in a business opportunity, for training, or for promotional or other materials.
- 7.4 Members shall ensure that active direct sellers are provided at no charge with regular statements of account showing:
 - (a) full and accurate financial details of all transactions;
 - (b) how any deductions are calculated.
- 7.5 Members shall make any payments to direct sellers on time.

NOTES

The "statutory requirements" for a contract are set out in the Trading Schemes Regulations 1997. The newly recruited direct seller has an inalienable right to cancel the contract within 14 days. It is recommended that contracts be in simple, non-legalistic terms. Fundamental aspects of the relationship are often contained in a Manual or other written material prepared by a Member and handed to a new recruit. For those terms to be regarded as part of the contract, clear "sign-posting" reference must be included in the contract - preferably as close as possible to the place where the direct seller signs.

Many existing contracts are in small type and printed in pale colours on tinted paper. Although there are no regulations covering the way commercial and business contracts are prepared, there is clear legal authority that any contracts which are difficult to read or in a very small type may be disregarded by a court. It is therefore in the interests of the Member (as well as the direct seller) that good sized black type on white paper is desirable.

Many direct selling contracts are transferable but Members may wish to control how (and to whom) such transfer takes place. It is right that such a basic term is clearly stated in the contract between the Member and the direct seller so that he knows at the outset whether he can dispose of the contract when he sells his business and how he goes about it; if a contract is not assignable, there must be an unequivocal term saying so.

Some direct sellers complain that they do not know how their earnings are calculated. The contract must contain (or refer to) a clear explanation of both the method of calculation of earnings, when and how they are paid, including the following matters:

- * the day or the week or month;
- * to the direct seller by post or by hand;
- * to a bank account;
- * as a credit to another account.

The contract must contain a term requiring the direct seller to agree to observe both the DSA Consumer Code and the DSA Business Code.

It is not unreasonable to expect people attending a meeting to pay a small contribution towards the cost of hiring a room, for any food they may be given or for promotional and training material used at the meeting. Training should not be regarded as a profit making opportunity for the member or any other person.

INFORMATION & TRAINING

- 8.1 Members shall inform their direct sellers of their legal obligations, including those relating to income tax, national insurance and, where relevant appropriate vehicle insurance.
- 8.2. Members shall provide or arrange for direct sellers to receive a reasonable standard of training in product knowledge and on how to develop their business.

- 8.3 Where sponsors or others provide training relating to a member's business, members shall ensure:
- (a) that they approve all materials referring to the member's business opportunity and/or its products;
 - (b) that direct sellers understand that they do not need to purchase training materials as a condition for obtaining advice from a sponsor.
 - (c) that if direct sellers pay for training material of any description the price shall be reasonable and relative to the cost.
- 8.4 If members or sponsors charge for training, they shall, for 14 days afterwards, offer full refunds (less the cost of any subsistence) to any direct seller who is dissatisfied with the training.

NOTES

Information – in relation to paragraph 8.1, see the Notes to paragraph 1 of the DSA Consumer Code, where issues relating to legal obligations and insurance are set out. Direct sellers should be informed about them. As regards income tax and national insurance, direct sellers who are not employees should be informed that these are matters of their own personal responsibility and that failure to inform the HMRC of their income could result in significant penalties.

Every direct seller taking up an opportunity is entitled to expect a reasonable level of training, free of charge, in how to build up a business. If this basic training is not provided by the Member, it is the Member's responsibility to ensure that it is provided to the new recruit by a direct seller responsible for introducing him to the business.

Training includes attendance at business meetings and the provision of business building aids. Refunds shall be made in respect of training materials, whether books, tapes, cassettes or anything else so long as they are returned in good condition accompanied by proof of purchase. If a member permits a sponsor to make a profit from the provision of training and motivational materials then the basis on which that additional income is available should be disclosed to direct sellers at the time of their recruitment.

It is for the member to ensure that any buy-back terms for such training materials are the same as those for product supplied by the member.

PRIVACY

9. Members shall take appropriate steps to ensure the protection of all private information provided by direct sellers and to require that direct sellers take appropriate steps to ensure the protection of private information provided to them by consumers.

NOTES

See the notes to paragraph 5 of the DSA Consumer Code.

BUY-BACK PROVISIONS

- 10.1 When a contract is terminated by either party within 14 days of its being made, the member shall:
- (a) refund all money paid by the direct seller in connection with

joining the scheme, and

- (b) buy back any unsold product (including training and promotional materials, business manuals and kits) returned by the direct seller within 21 days of the termination upon terms which are no less favourable than the statutory rights.

10.2 When a contract is terminated by either party after 14 days of its being made, the member shall:

- (a) buy back product (including training and promotional materials, business manuals and kits) purchased by the direct seller within 90 days of the date of termination upon terms no less favourable to the direct seller than the statutory rights; and
- (b) buy back product (including training and promotional materials, business manuals and kits) purchased by the direct seller more than 90 days but within one year of the date of termination at a price not less than 90% of the VAT-inclusive price paid by the direct seller for the purchase of those products less an amount equal to:
 - (i) any commissions, bonuses or other benefits (in cash or in kind) received by the direct seller in respect of those products;
 - (ii) any amounts due from the direct seller to the member on any account; and
 - (iii) a reasonable handling charge,

provided that:

- (i) such product has not been purchased or acquired by the direct seller in breach of the contract;
- (ii) the direct seller returns such product to the member in an unused, commercially resaleable condition not more than 14 days after the date of termination; and
- (iii) the member did not clearly inform the direct seller prior to the purchase that the items were seasonal, discontinued or special promotion products which were not to be subject to the buy-back provisions of this Code.

10.3 At any time during the subsistence of a contract, if requested by a direct seller, the member will buy back any product returned by the direct seller which he purchased at any time within one year of the date of such request upon the terms set out in Rule 10.2(b) above.

NOTES

Para 10.1

In the case of termination within 14 days of a contract being signed, the new participant has an

absolute right to a full refund of all money paid for product and training materials - whether or not the external wrappings have been broken. The member can only refuse a refund if the product has deteriorated through some act or default of the participant. This means that in virtually every case the member must make a 100% refund for everything, whether it has passed a "use by" date or has ceased to be resaleable. The "statutory rights" in Rule 8.1(b) are those described in Paragraph 5(e) of the Trading Schemes Regulations 1997 (whether or not those regulations apply to the member's direct selling scheme).

Rule 10.2

For termination after 14 days from signature the member must buy back all product etc purchased within 90 days upon the "statutory rights" - which are those described in Paragraph 6(1) of the Trading Schemes Regulations 1997 (whether or not those regulations apply to the member's direct selling scheme. Deductions can only be made respect of deterioration caused by the act or default of the direct seller for product purchased within the preceding 90 days. This means, for example, that the direct seller has opened and part used a product, or has failed to keep it in an appropriate place - NOT that it is no longer in a current catalogue. When goods are sold in cases, for example, of six, removing one or two items is reasonable and a member cannot claim that a package has been damaged or is not resaleable or has deteriorated.

Rule 10.2(b) proviso (ii)

For termination after 90 days but within a year, the code allows members to make the deductions listed. To be in an "unused, commercially resaleable condition" product must still be within a stated shelf life or within a "use by" date; must be within a current catalogue or must not have become commercial useless.

RELATIONS BETWEEN MEMBERS

11.1 Members shall behave ethically towards other members.

11.2 Members and direct sellers shall not denigrate any other member or direct seller.

11.3 Members, sponsors and direct sellers shall not entice or solicit direct sellers from other members or other direct selling companies.

Poaching

Paragraph 11.3 addresses the issue of what is sometimes called "poaching". Poaching occurs where a direct seller for one DSO seeks to recruit someone who is already a direct seller for another DSO. Paragraph 11.3 prohibits the direct targeting of (or pitching to) someone who is already a direct seller for another DSO. It makes no difference whether the targeting is done face-to-face or by phone, letter or email. Paragraph 11.3 does not, however, ban recruiting someone who is a direct seller for another DSO where that recruit is someone who has responded to an invitation made to the public at large, e.g. in a newspaper or a shop window. [Note, though, that recruitment advertisements for an MLM DSO in a shop window – but not in a newspaper – must comply with the Trading Schemes Regulations 1997, which require the inclusion of the wealth warning as well as a general description of the products marketed and the DSO's name and address.] In the notes below, 'P' is used to describe the "poacher" and 'T' is used to describe a direct seller who is targeted by P.

A more subtle form of poaching?

Suppose that the following message from John and Mary appears in their Christmas cards.

“After a few family problems earlier this year things are looking up for John and me. We have both joined a new networking business called *Wondergoods*. They have a terrific range of products and the commissions and bonuses are amazing. I'm not surprised that it is now the fastest growing business in the US.”

Is this an attempt at poaching, contrary to the ban in paragraph 11.3? If the Christmas cards are sent to people who are not known to John and Mary to be working for another DSO, then the answer is “no”. If, however, a card with this message is sent to someone in John and Mary’s upline or downline in the DSO in which John and Mary operated prior to switching to *Wundergoods*, then *perhaps* it is contrary to the ban on soliciting in paragraph 11.3. But wait a minute.

Suppose now, that the same message from John and Mary appears on their Facebook page or in their blog. Can anyone realistically expect to ban this sort of message in such locations? Can one even expect it not to be included in one of those round-robin messages often included in the envelope with Christmas cards? What would be contrary to the ban in paragraph 11.3 would be if John and Mary were to react positively to an enquiry about joining *Wundergoods* which was prompted by the message and came from someone, T, whom John and Mary had known worked for another DSO. In that case, the message prompting T’s response and followed by John and Mary’s positive reaction to that response, would amount to them soliciting or enticing T contrary to the ban in paragraph 11.3. This is not equivalent to a response to an advertisement to the public at large - unless, of course, the message was in a blog available for the whole world to see. These examples illustrate the immense difficulty: (a) in defining what is caught by the ban in paragraph 11.3; and, (b) in enforcing that ban in the modern world.

Genealogies

Where poaching occurs, it is often carried out by someone, P, who was previously a direct seller for the DSO which finds that a number of its direct sellers are being targeted by P. “Genealogies” here is used to mean the lists (and personal data, such as names, phone numbers and addresses) of downlines and uplines who are signed up as direct sellers for a DSO. Most DSOs include in their direct seller agreements a clause stating that the genealogies are the property of the DSO. Where P, either before or after termination of his/her direct seller agreement, makes use of knowledge comprised within the genealogies, P is likely to be in breach of contract and also to be making unlawful use of the DSO’s property. In those circumstances the DSO is entitled to take legal action against P.

Meaning of “entice or solicit direct sellers from”

If someone, T, who is signed up to DSO I, accepts an invitation to join DSO II, that will normally mean that T either leaves DSO I or becomes inactive as a direct seller for DSO I. In those circumstances, it is no excuse for P to argue that P was merely trying to persuade T to join DSO II and was not trying to lure T away from DSO I. It is highly unlikely in practice that T will have the energy, time or inclination to work assiduously for both DSOs – even if the rules of those two DSOs allow such a combination of functions.

Unreasonable restraint of trade?

Is paragraph 11.3 unenforceable in law as being a restraint of trade? A restraint of trade is not unlawful or unenforceable in law if it is no more than is reasonable to protect a legitimate interest of the person in whose favour it is imposed. For example, where an employee in course of his employment gains an acquaintance with (and influence over) clients of his employer, the employer has a legitimate interest in preventing the employee from siphoning those clients off, either during the employee’s employment or for a reasonable period after he has left that employment. A firm of solicitors employing a solicitor, S, might well insist on a clause in the employment contract preventing S, for a (reasonable) period after S’s employment ceases, from setting up, or entering another practice, as a solicitor in the same area. Clients are the lifeblood of a firm of solicitors. Downlines and uplines are the lifeblood of many DSOs.

The main purpose of paragraph 11.3 is to prevent the siphoning off of downlines and uplines from DSO I. There is certainly a business interest to be protected where the product lines of DSO I and DSO II are of the same description, e.g. cosmetics. What about where they are different – for example DSO I trades in cosmetics and DSO II in nutritional supplements? In

those circumstances is it a reasonable restraint of trade to prevent one of DSO I's direct sellers being targeted to join DSO II? Is it a protection which is necessary for the protection of DSO I's legitimate interests? The answer is yes. The reason is that experience shows that when a direct seller, T, is enticed to join another DSO:

- (i) T will not in practice have the time, inclination and energy to devote to both businesses and will become inactive as, or will cease to be, a direct seller for DSO I;
- (ii) T is likely in turn to target other direct sellers of DSO I.

The combination of (i) and (ii) can mean that poaching is capable of quickly decimating the sales force of the DSO whose direct sellers are targeted.

Whom to take action against?

Where poaching occurs, there are two possible targets for action by the DSO I, the victim of the poaching:

- (i) the direct seller who is targeting the DSO I's direct sellers;
- (ii) DSO II, whose direct sellers are doing the poaching.

In practice, action against the former is the most likely to achieve a faster stop to the poaching activity in the usual case where the poacher was himself/herself previously a direct seller for DSO I. A strongly worded solicitor's letter, referring the "genealogies clause" in DSO I's direct seller agreement, should do the trick.

Action against DSO II is likely to lead a less fast result, especially if DSO II is new and desperate to recruit a critical mass of direct sellers fast. Also, if DSO II is not a member of the DSA, the DSA has less leverage and paragraph 11 of the Code cannot be relied upon.

INTERNATIONAL DIRECT SELLING

12.1 Where a member carries on business, or permits the direct selling of its product, in another country, it shall do so in accordance with legislation relating to direct selling in that country and all Codes of Practice of the local Direct Selling Association (whether or nor it is a member of that Association).

12.2 If there is no local Direct Selling Association, the member will ensure that all its employees and direct sellers in that country abide by the provisions of the World Federation of Direct Selling Association's Codes.

CODE RESPONSIBILITIES

13.1 Every member and direct seller shall follow all DSA Codes.

13.2 Only members may use the DSA logo and state that they belong to the Association.

13.3 Every member's chief executive is responsible for the observation of this Code by its employees and direct sellers.

13.4 Every member shall operate a system for dealing with reported breaches of the Code and keep records of complaints and of the action taken in response.

13.5 Every member shall give all their direct sellers a copy of the DSA Codes.

NOTES

In order to demonstrate that it observes this Code, and as a one of the conditions of membership of the DSA, it is necessary for all Member companies to have in place policies and procedures which establish authority and control over direct sellers in the way a business opportunity is presented and promoted - see Rule 3.

As part of the policies and procedures, Member companies must ensure that statements contained in all advertising and promotional materials developed independently by direct sellers are reviewed and vetted prior to publication; and that all advertisements are legal, decent, honest and truthful.

CODE ADMINISTRATION

14.1 DSA Codes are supervised and administered by an independent, legally qualified Administrator appointed by the Council on behalf of the Association.

14.2 The Code Administrator shall:

- (a) satisfy himself that members' trading practices and documentation comply with the DSA Codes and all relevant legislation;
- (b) report any breach of the Codes to the member's Chief Executive and recommend appropriate remedial action;
- (c) investigate any failure by a member to act upon any recommendation;
- (d) report any failure by a member to remedy any breach to the Council of the Association;
- (e) publish an annual report which includes any suggestions the Administrator has for the improvement of the Code in the light of experience.

BREACHES OF THE BUSINESS CODE

15 Any complaint about a breach of the Business Code shall be treated in the following way.

- (a) The complainant may refer it to:
 - (i) the Chief Executive of the member; or
 - (ii) the Director of the Association.
- (b) If the complainant is dissatisfied with any solution proposed by the member, or it is referred initially to the Director, the following procedure will be used:
 - (i) The complainant will be asked to set out details of the complaint in writing;
 - (ii) The Director will send a copy of the written complaint to the member requesting prompt remedial action; the complainant will be kept informed at all times;
 - (iii) If the Director is not notified within 21 days that the matter has been resolved, he shall refer it to the Code

Administrator and may notify the Council of the Association;

- (c) If the complainant is dissatisfied with the recommended action, or if the member fails to act as required by the Director, the Director shall refer the complaint to the Code Administrator.

INVESTIGATIONS BY THE CODE ADMINISTRATOR

16.1 The Code Administrator will investigate any complaint referred to him, obtain evidence from the complainant, from the member and any other relevant person and make a written adjudication as quickly as possible.

16.2 The adjudication is binding on the member and any direct seller; the complainant is not bound by the adjudication.

SANCTIONS

17.1 Where a member is found to be in breach of the Business Code, the Code Administrator may require the member:

- (a) to repay all money paid by the complainant;
- (b) to buy back any unsold product at a price to be fixed by the Code Administrator;
- (c) to replace or repair any product without charge;
- (d) to pay any costs incurred by the Code Administrator for technical advice or testing;
- (e) to give a written undertaking to observe the Code and to take all reasonable steps, including any specified steps, to prevent a recurrence of the breach;
- (f) to pay to the complainant compensation(not exceeding £5000)in respect of any financial loss;
- (g) to re-instate a direct seller's contract.

17.2 The Code Administrator may require that the member appear before the Disciplinary Committee and may make recommendations as to the action it should take.

DISCIPLINARY COMMITTEE

18.1 The Disciplinary Committee shall consist of two Council Members and three Independent Members nominated by the Council. The Disciplinary Committee shall consider all the evidence and may call for written or oral evidence from any person. The Disciplinary Committee will be empowered to exercise the Association's

disciplinary powers, including that of expelling a member from the Association.

18.2 The Disciplinary Committee shall send its report to the complainant and the member and the Council of the Association. The member is bound by the adjudication.

18.3 Members shall have a right of appeal to the full council of the Association, whose decision is final.