

# FTC Chairwoman Ramirez Addresses Direct Sales Association; Offers Compliance Recommendations for Industry and Signals that Additional Guidance is on its Way

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Last week, FTC Chairwoman Edith Ramirez spoke at the Direct Sales Association (DSA) Business & Policy Conference in Washington, D.C. In [her comments](#), Chairwoman Ramirez acknowledged that the direct selling industry was a \$36 billion industry that “has the capacity to provide consumers with valuable goods and services and an opportunity to try an entrepreneurial experience.” At the same time, Ramirez acknowledged a “negative public perception about how the industry operates” and highlighted three areas of potential improvement for industry to address concerns by enhancing transparency and credibility across the industry.

- Self-Regulatory Initiatives. Ramirez commended the DSA for recent improvements to the DSA Code, including the establishment of a mechanism to address consumer complaints in connection with DSA member companies and the publication of information related to those complaints. Ramirez also praised the recent inclusion of lifestyle representations in the definition of earnings claims in the DSA Code. While Ramirez commented that more improvements were possible, she indicated that she was encouraged that DSA appeared to be receptive to addressing concerns raised by the FTC.
- Business Opportunity and Income Representations. Ramirez highlighted false and unsubstantiated earnings claims as a top priority of the Commission and suggested that the FTC’s “law enforcement experience shows that many MLMs continue to misrepresent the amount of money participants are likely to earn.” Ramirez suggested that, because only a small percentage of MLM participants earn significant income or make career-level income, “testimonials from these rare individuals are likely to be misleading because participants generally do not realize similar incomes.” This means that companies should both refrain from making such representations directly and take reasonable steps to monitor and ensure that participants are also not making misleading claims about the business opportunity, according to Ramirez.
- Verifiable Retail Sales. Ramirez highlighted MLM structures that “are not focused on real sales to real customers” as “the second main problem” in the MLM industry and posited that “real

customers” means that products sold by a legitimate MLM “should be principally sold to consumers who are not pursuing a business opportunity.” This has been one of the most hotly contested issues within the direct sales industry, with some industry players arguing that there’s no reason to conclude that purchases for internal consumption are not motivated by real product demand without additional evidence. Ramirez, on the other hand, controversially suggested that “the law has always taken a skeptical view of paying compensation to someone based on the presumed ‘internal consumption’ or ‘personal consumption’ of recruits who are pursuing a business opportunity.” Ramirez highlighted the requirements imposed under Herbalife’s settlement with the FTC – including the differentiation between “preferred customers” and business opportunity participants, related multi-level compensation limits, and prohibitions against targets and thresholds met by product purchases rather than sales – as one possible approach to ensure that an MLM is compensating sales to real customers. Finally, Ramirez asserted that “real sales” must both be profitable and verifiable in order to be valid and cross-referenced the requirement in the Herbalife settlement for collection and verification of retail receipts.

As a closing point, Ramirez cautioned that it was not enough for direct selling companies to rely on the so-called Amway policies highlighted in the Commission’s 1979 *Amway* decision, calling such a reliance “misplaced” because those findings were highly fact specific and because the 10 Customer and 70 Percent Rules “offer, at best, weak and attenuated evidence of a business focused on real sales to real customers.”

There’s a lot to unpack in Ramirez’s speech, which is particularly noteworthy given it is the first time Ramirez has publicly spoke on multi-level marketing issues since announcing the Herbalife settlement on July 15. Moreover, Ramirez suggested that her remarks “provide an important foundation” for structuring MLM business practices and signaled that “the FTC will be issuing further guidance for MLMs” in the future. So, while a formal guidance document may still be forthcoming, the FTC may consider industry on notice based on Ramirez’s recent remarks and the Herbalife settlement.