



## **New Herbalife Top 10 Misrepresentations by Herbalife Senior Management, from The Fraud Discovery Institute**

*Herbalife (NYSE: HLF) Independent Director sells lead generation tools to distributors*

For Immediate Release

SAN DIEGO/EWORLDWIRE/April 16, 2008 --- The Fraud Discovery Institute has just issued a Top 10 Misrepresentations by Herbalife (NYSE: HLF) Senior Management, which includes a never-before revealed fact that an independent board member - who is a part of the top 1 percent of Herbalife distributors, sells lead generation lists to distributors through his line of sponsorship.

"Wall Street analysts can promise stock buy-backs and predict an ever-increasing stock price by believing anything the company says," stated Barry Minkow, Co-founder of the Fraud Discovery Institute, "but the truth of the matter is that Herbalife is faced with growing evidence that it is the company's recruiting through deceit and the promise of a money-making, business opportunity that lures innocent victims into the doomed-by-design model. One can only hope that by exposing these recruiting techniques, people who want to join will have access to all the information before they end up in not-a-recession-proof business but more a recession-causing business."

### **Top 10 Misrepresentations of Herbalife Senior Management**

1. Never before revealed: Herbalife independent Board member sells "lead generation" lists to Herbalife distributors

According to Herbalife, independent Board member John Tartol, age 55, has been an independent Herbalife distributor for 25 years and a member of the Chairman's Club since 2000. He is active in training other Herbalife distributors all over the world and has served on various strategy and planning groups for Herbalife. He is also active on behalf of various charities in his community and worldwide on behalf of the Herbalife Family Foundation. He has a bachelor's degree in finance from the University of Illinois.

The Truth: "Based on his standing as an independent company director, Mr. Tartol takes away all deniability from the company and prevents it from distancing itself from the horror of lead generation list sales, as Mr. Tartol has in the past and continues to sell leads to distributors all over the world," says Minkow. "These lead lists are the underbelly of the industry and prevent Herbalife from blaming expensive list sales on those independent distributors that we cannot control. However, with the presence of Mr. Tartol, Herbalife can no longer distance itself from this victim-generating practice of selling lists to distributors who end up failing anyway but only at a much higher cost."

2. The fate of the other 41 percent of Herbalife supervisors: they did not quit but did not break even either

On November 7, Herbalife CEO Michael Johnson said: "In the same report, the age-old, MLM stereotypes were mentioned regarding earnings claims, specifically suggesting that 82 percent of Herbalife's compensation was paid to less than 1 percent of our distributors. Let us go through the numbers. Of our 1.7 million distributors, approximately 25 percent, or 419,000, have attained the level of supervisor. Supervisors are those distributors who conduct part-time or full-time business with Herbalife."

"Yet despite protests by the company and Wall Street analysts, as well as the company defending this renewal number, the truth behind the 41 percent deception is telling," adds Minkow. "Herbalife's own documentation shows that the average annual commission paid to a supervisor is \$549, and only 41 percent of supervisors remain in that position for more than one year. Each supervisor must pay a minimum of \$4,000 to obtain the required point value to become a supervisor. However, only 12.4 percent of supervisors make enough in commissions to even recover that amount. Thus the truth is, only approximately 12.4 percent of the best of the

best ever earn enough money to get their original investment back. Worse yet, the bottom 88 percent of the Herbalife sales chain (1.5 million distributors in 2007) received no commissions at all; less than 1 percent (0.76 percent) of the total distributor organization (just 13,000 people worldwide out of the entire 1.7 million in 2007) gets 85 percent of all compensation (commissions) paid out by Herbalife. The mean income of the bottom 99 percent (99.24 percent) of all Herbalife sales representatives was \$1.65 per week, or the average cost of senior management's option exercise price."

3. The official company Web site and other Herbalife promotional materials say: "Start Living the Life You Want! 1.7 million people have changed their lives with the Herbalife business opportunity - and you can too! If you've ever dreamt of a better life, Herbalife can show you how. Now's the time to take charge of your future, earn extra income and help others improve their lives."

The Truth: "At the end of 2007, there were 473,000 supervisors," states Minkow. "Each supervisor must bring in a minimum of 4,000 points in order to qualify for supervisor level, or \$4,000 retail value. There are an additional 1.25 million distributors who each bring in a minimum of 200 points, or \$200 retail value."

"The total retail value of nutritional products sold by Herbalife for 2007 was \$3.1 billion, or 3.1 billion points. The supervisor minimum purchases account for 1.9 billion points, or 61 percent of total points. The distributor minimum purchases account for a conservative 250 million points, or 8 percent of total points. Between distributors and supervisors making their minimum required purchases, and the presence of Herbalife lead list sales income, little room is left for any meaningful retailing. The reality is, the vast majority of Herbalife's sales are not to retail customers but to distributors who are making minimum required purchases."

4. On February 28, Herbalife CEO Michael Johnson said: "Our revenue growth is well balanced. Our top 10 markets which represent 67 percent of our business grew 20 percent; all other markets were up 16 percent. In the U.S., our largest and oldest market, net sales are up 22 percent for the quarter which marks the sixth consecutive quarter of 20 percent growth for that market."

The Truth: "The growth being touted by management did not occur through the return of loyal retail customers who love the Herbalife brand. Instead, independent director Tartol (and others like him) cranked up the deception machine regarding 'potential income to be earned at Herbalife' and lured innocent people into the "doomed by design" model," remarked Minkow. "The deception can be seen in this sampling of 'income potential' representations made by the company, all of which management knows to be untrue."

The quotes come from the official company Web site and a sampling of distributor Web sites. People join Herbalife based upon the below promises that Herbalife knows to be untrue:

"One distributor made \$300 in their first 3 days as a distributor; another \$1,000 in their first month; another \$2500 part time income after 1 year; another 'a little over \$25,000 a month' and a distributor who claims to have made over a quarter million dollars in her first 9 months as a distributor."

"A couple's gross earnings average \$7,000 a month."

"I'm already averaging \$7,000 a month."

"Our average monthly earnings are approximately \$11,000 a month."

"We earn \$8,000 a month on a full-time basis!"

"Today, my business brings in about \$7,000."

"In our first 30 days we earned over \$1,000!"

"Francisco earns \$9500 per month; Patricia & Jose earn \$8,000 per month and Steven made \$1,800 his first month and is now making \$8,500 a month."

5. The 2007 10-K addresses "the Herbalife Refund Delusion" regarding product returns: "In addition, in most jurisdictions, we maintain a buy-back program pursuant to which we will repurchase products sold to a distributor provided that the distributor resigns as an Herbalife distributor, returns the product in marketable condition generally within twelve months of original purchase, and meets certain documentation and other requirements. Product returns, refunds and buy-back expenses were approximately 1 percent of retail sales in each of the years 2005, 2006 and 2007."

This 1 percent statistic is often cited in order to give credence to the idea that the MLM business model works. According to Minkow, "It is further used as proof that no one loses money in Herbalife: They have a chance to get their money back by returning the products."

The Truth: A low percentage of refunds given does not mean that the business model works, nor that people aren't losing money. "Independent director Tartol proves this by the sales of leads to distributors that cannot be returned by their very nature," comments Minkow. "To combat objections to the multi level marketing model by

stating, 'our return policy prevents people from losing money,' is disingenuous at best, and more likely just plain deceitful."

6. On November 28, Herbalife CEO Michael Johnson said: "Traditional companies are entering direct selling, you can look up here and you can see, that these are some of the biggest names out there: Warren Buffett, Berkshire Hathaway."

The Truth: "In order to impute credibility to the doomed-by-design multi-level marketing industry, Michael Johnson cites Warren Buffett as if Buffett has given a stamp of approval on the MLM industry," reports Minkow. "Herbalife will do whatever it takes to impute credibility to itself, whether that means slapping the company name on a soccer shirt or making the investment community and future distributors more at ease by citing Warren Buffett's alleged presence in this industry."

"What Mr. Johnson did not say is that during 2007, he personally dumped over \$20 million of Herbalife stock on the open market while he authorized the repurchase of over \$365 million of Herbalife stock. That stock was repurchased with the money taken from failed distributors."

"What does Warren Buffett think of a CEO who does that and even goes into debt in conjunction with the repurchase? He says: 'Now, repurchases are all the rage, but are all too often made for an unstated and, in our view, ignoble reason, to pump up or support the stock price. The shareholder who chooses to sell today, of course, is benefited by any buyer, whatever his origin or motives. But the continuing shareholder is penalized by repurchases above intrinsic value. Buying dollar bills for \$1.10 is not good business for those who stick around.'"

7. On November 28, Herbalife CEO Michael Johnson said: "With the emergence of the customer club model and its various cultural adaptations, distributors are now reaching more consumers than ever before. They are increasing access to our products. They are promoting daily consumption, and this has been the significant catalyst for growth in many of our markets."

The Truth: Herbalife does not grow the company through retail sales of their products. "By the company's own admission, the company grows through minimum purchases made by those wishing to become supervisors and the minimum purchases of newly recruited distributors," declares Minkow. "The most recent 10-K confirms this: 'The value of the average monthly purchase of Herbalife products by [Herbalife] sales leaders has remained relatively constant over time. Consequently, increases in [Herbalife] sales are driven primarily by [Herbalife] retention of supervisors and by [Herbalife] recruitment and retention of distributors, rather than through increases in the productivity of [Herbalife] overall supervisor base.'"

8. The Herbalife Web site claims: "We are one of the largest network marketing companies in the world, with retail sales of approximately \$3.5 billion in 2007."

The Truth: Herbalife does not document retail sales, and merely extrapolates this number from the wholesale value of products sold to distributors. Minkow puts forth that "no actual retail sales are tracked or documented by the company, so this figure is pure fiction manufactured for promotional purposes."

9. On November 7, Herbalife CEO Michael Johnson said: "In the same report, the age old MLM stereotypes were mentioned regarding earnings claims specifically suggesting that 82 percent of Herbalife's compensation was paid to less than 1 percent of our distributors. Let us go through the numbers. Of our 1.7 million distributors, approximately 25 percent or 419,000 have attained the level of supervisor. Supervisors are those distributors who conduct part-time or full-time business with Herbalife. In 2006, the company paid royalty overrides of \$675 million to this group. We proactively published the average earnings for our various supervisor team levels on our Web site. Of the remaining 1.3 million distributors, based upon average order sizes, we believe that 58 percent are discount buyers, that 22 percent are small retailers and customers and that 20 percent are potentially future supervisors."

The Truth: Mr. Johnson did not deny that 82 percent of commission compensation is paid to 1 percent of distributors. "He merely deflected by offering numbers that make it seem as if distributors don't want to make money in their Herbalife venture," asserts Minkow. "The truth is that the company's top tiers - those levels with titles like President's Team, Founder's Club, and Chairman's Club, and Millionaire Team - are in fact less than 1 percent of all distributors. This is further proof that the statements made in our initial report were, and are, true."

10. On February 28, Herbalife CEO Michael Johnson said: "We have been public now for three years. In both our financial fundamentals and our outlook for future success, well, frankly, they have never been stronger. In

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non-financial terms, we evaluate the strength of our business against the performance of three Rs - retailing, recruiting and retention."

The Truth: "CEO Michael Johnson is zero for three as the above ten points summarized prove the biggest misrepresentation of all: Herbalife neither retails, nor retains, and deceives from the Board down to recruiting."

11. Finally: "Herbalife is a recession-proof business."

Truth: Herbalife is a recession-causing business.

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