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AdvoCare Reaches Settlement with FTC Banning it from Multi-Level Marketing and Requiring the Payment of a $150 Million Fine

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Texas-based direct selling company AdvoCare International, L.P. reached a settlement with FTC on October 2, 2019, after a multi-year investigation.

AdvoCare's products include energy drinks, health shakes, and bodybuilding and dietary supplements. AdvoCare is well-known for its celebrity endorsers, such as New Orleans Saints quarterback Drew Brees and Kansas City Chiefs wunderkind Patrick Mahomes, as well as its sponsorships of NASCAR, college football and the FC Dallas professional soccer team.

The settlement, which was filed in the Eastern District of Texas (4:19-cv-00715) and which FTC calls a “landmark,” requires AdvoCare and its former chief executive to pay a $150 million fine. In addition, two of AdvoCare's top promoters settled with FTC for $4 million. The funds are intended to go to affected consumers and to pay for consumer education.

The settlement also bans AdvoCare from multi-level marketing. The Company had voluntarily moved to a single-level compensation plan earlier in 2019, so the ban is somewhat moot.

The Complaint filed in Federal Court charged AdvoCare with running a “pyramid scheme” – a charge that AdvoCare vehemently denies. The Complaint also alleged that AdvoCare's marketing material regularly contained deceptive income claims – FTC stating that less than 5% of distributors earned more than $1,000.00 per year from the Company. In addition to the permanent ban on multi-level marketing, the settlement requires AdvoCare to notify all of its distributors about the settlement and advise them that:

- They will no longer be able to earn compensation based on purchases by distributors in their downlines;
- If they had significant losses pursuing their AdvoCare business, they may get some of their money back through the FTC settlement; and
- If they decide to end their participation in the business opportunity, AdvoCare offers a 100 percent refund on unused products.

This settlement continues FTC's recent push to force direct selling companies to restructure their businesses to a model where participants are rewarded for retail sales rather than recruitment. It comes on the heels of FTC's recent settlements with companies big (Herbalife) and small (Vemma). FTC has indicated that this is not the end of its efforts, so more actions are likely.

In the Advocare investigation, FTC focused on what appears to be classically extravagant income opportunity claims. In its complaint, FTC specifically noted Advocare's claims that independent business owners could "earn unlimited income, attain financial freedom, and quit their regular job...." It would be a good idea for direct selling companies to undergo a health checkup on their compensation plans and the marketing materials used to promote them. In addition, because FTC pursued top individual promoters as well the Company, it would be prudent to make sure that company policies on income claims are being adhered to by their sales forces.
