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Weaponizing Rhetoric to Legitimate Regulatory Failures

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ABSTRACT

Pyramid schemes are illegal. According to the courts, they are fraudulent because they must eventually collapse, disappointing or exploiting the members at the bottom. This illegality, largely governed by the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC), is narrowly construed to encompass only very specific instances of activity. In essence, the specificity of the law allows MLMs to argue that they are 'not a pyramid scheme' to obfuscate exploitative conditions within the company. We take Lularoe as a case study of the ways in which this discourse is weaponized to obfuscate the harms of multi-level marketing. We conduct thematic text analysis on a popular internet discussion forum to study how ordinary people understand law surrounding multi-level marketing companies and how MLM law affects legal consciousness and cynicism about the protective capacities of law. We argue that a narrow legal interpretation of "pyramid schemes" serves to further exploit the very people that illegality is meant to protect.

INTRODUCTION

It can be tempting to delegitimize the economic effects and social consequences of Multi-Level-Marketing companies (MLMs) due to romanticized notions of suburban Tupperware parties and door-to-door lipstick sales or to dismiss them as frivolous nuisances, but this 35-billion-dollar industry operates in a legal gray area that leaves 99% percent of its consultants losing money after targeted and predatory recruitment tactics. Moreover, a lot of these companies can skirt the technical requirements of ineffective pyramid scheme regulations in the United States and continue to operate legally. We demonstrate that because of this they actually intentionally weaponize anti-pyramid scheme rhetoric to appear legitimate to vulnerable recruits and consumers. In this way, law serves to endorse and amplify the very harm it was intended to prevent.

This article uses LuLaRoe as a case study to interrogate the ways in which legal regulation of pyramid schemes utterly fails in the face of MLMs and, beyond that, creates an opening for businesses that are facially legitimate to exploit consumers and distributors in the very ways that anti-pyramid rules and regulations are theoretically meant to prevent. We use LuLaRoe as a case study because of its large market share, spate of legal problems, and the presence of a large discursive community focused on LuLaRoe, but the harms that this company perpetuates and the problems we articulate are generalizable across the industry. We broadly argue that the legal definition of a pyramid scheme is so narrow that predatory companies like LuLaRoe are insufficiently

regulated. Further, we argue that the specific construction of the law has additional consequences that affect consultants and consumers. We conduct a thematic analysis of text discussions about LuLaRoe and identify three primary concerns: 1) that the specific legal definition of a pyramid scheme creates a way for LuLaRoe and its consultants to differentiate LuLaRoe from an illegal pyramid scheme, 2) that ordinary people do not understand the legality of MLMs or the definition of pyramid schemes, 3) that ordinary people are consequently pessimistic about the capacity of law to protect them from exploitation and predatory practices.

In this article we trace the rise of multi-level marketing companies through popular society and the legal system, conduct a detailed case study on the weaponizing of legal rhetoric to confer legitimacy of MLMs using detailed digital text data, and propose changes to current pyramid scheme regulations.

I. HISTORY AND HARMS OF MULTI-LEVEL MARKETING

Direct-sales models have been popular in the United since the early 20th century, with early estimates in volume of direct sales ranging from 300-500 million dollars annually.¹ While some companies targeted male salespeople, college-aged salespeople, and in the case of Fuller Brush Company African American teachers, women have long dominated the beauty category.² With the rise of behemoth beauty brands like Avon and Mary Kay, women had new types of work options outside the home, propelling direct sales to billions of dollars in retail sales each year post-WWII.³ Today network marketing is driven by primarily female consultants delivering female targeted products like home goods, fashion, and beauty.⁴ Recent data collected by the Direct Selling Association in 2017 finds that 73.5% of the 18.6 million direct-sales consultants are female, and that they contributed to an estimated 34.9 billion dollars in annual retail sales.⁵

Direct-selling transitioned into Multi-Level Marketing in 1945 with the advent of several important structural and operational changes. While still strongly reliant on selling to networks of friends and family, the MLM model also makes recruiting, training, and supervising recruits the job of sales consultants.⁶ This creates a system where sales consultants develop ‘downlines’ from which they gain selling incentives or bonuses. Keep and Vander Nat explain that MLMs effectively combine 3 forms of entrepreneurial sales: 1) selling products to non-distributors, 2) selling products to other distributors, and 3) earning company compensation based on personal purchases and the purchases of a downline.⁷ Effectively, not only are sales consultants’ salespeople, they are also customers.

The reality for individual consultants is much grimmer than the industry profits or the ‘empowerment of women’ claimed by the Direct Selling Association suggest.⁸ In fact, 99 percent of consultants lose money, a statistic significantly worse than legally recognized pyramid schemes.⁹ This statistic is not new, nor has it slowed the meteoric rise of MLMs. As far back as 1980, an investigation by the Office of the Attorney General for the State of Wisconsin found that the top 200 distributors of Amway (a popular lifestyle MLM) made an average of -900 dollars: operating at a loss of nearly \$1,000.¹⁰ The 2011 report by the Consumer Awareness Institute conducted 30 years later found no improvement in the odds of MLM success, and reports that 100% of the 350 analyzed MLMs are recruitment driven, top-weighted, and that at least 99% of consultants lose money. Additionally, research has concluded that financial losses from MLM participation are felt more severely in areas with less formal labor force participation by women, higher inequality, lower social capital, and a higher percentage of people identifying as Hispanic.¹¹ This begs the question of why MLMs continue to be popular, continue to be profitable, and continue to be legal.

The terrain of MLMs has continued to change with the advent of the internet. Although MLMs got their start in Cold War living rooms and in door-to-door sales, in 2021 they largely exist through social media. The classic “Tupperware party” is largely a phenomenon of the pre-internet days and, now, most buying, selling, and recruiting takes place online. MLM distributors utilize all forms of social media -- including Facebook groups and Instagram stories in particular -- in order to buy, sell, and recruit additional participants. This has given MLM consultants a wider customer base than ever before. Selling tactics on social media have been documented to be misleading, including creating misleading images and posts about money making potential and flexible work opportunities.¹²

The Covid-19 pandemic has led to increased legal and popular problematization of MLMs. Since the pandemic reached the United States in March 2020, MLM distributors have made health and earning claims related to coronavirus: exaggerating the health benefits of their products and making guarantees of income for furloughed workers in addition to generally exploiting a time of panic for profit. This pandemic rhetoric prompted the FTC to release multiple rounds of warnings directed at companies and individual consultants beginning in April 2020. These warnings specifically highlight financial claims that tout MLMs as a viable employment strategy in the wake of mass unemployment due to Covid-19.¹³ One such highlighted claim, comparing an MLM to the United States government’s stimulus package in a bid to recruit new distributors, was made in a video that stated:

I can tell you that there's thousands of people that are out of work right now. They're all looking for a way to go earn money. This is a great stimulus package, because you get to teach somebody how to go earn \$1,730 literally in their first 10 days in the business.

Just over a month later in June of 2020, the FTC released another round of warnings to combat claims made in English and Spanish languages. Again, the FTC focused on misleading health claims and financial claims made by Multi-Level Marketing companies and their sales consultants.¹⁴ It remains to be seen if there will be a significant rise in MLM consultants and consumers as a result of the economic devastation of the pandemic, though several news outlets report an increased prevalence of predatory recruitment tactics.¹⁵ Given the increased attention from the FTC and ripe conditions for predatory recruitment, knowledge about the continuing harms toward women and vulnerable populations, and the new selling terrain of the digital area we must interrogate the enduring popularity of MLMs and their discursive relationship with the law.

II. LEGAL REGULATION OF PYRAMID SCHEMES

Although the FTC is paying increased attention to MLMs in the Covid era and although, as we will show, consumers are increasingly curious about their legal standing as pyramid schemes, the substantive case law on MLMs as pyramid schemes is incredibly thin. Pyramid schemes are illegal; a company theoretically cannot operate as a pyramid scheme without facing potential civil or, in some instances criminal, sanctions. However, it is incredibly difficult to determine the standards against which companies will be measured in determining if they're legally cognizable as pyramid schemes. This is particularly true for MLMs which operate as complete structures and always involve -- at least facially -- the sale of goods or services. Ultimately, although the relationship between MLMs and pyramid schemes has taken hold in the popular imagination, the law has not adequately provided guidance for or testing of this relationship. In fact, insofar as a legal definition of pyramid schemes exist, we argue that it is so narrow as to be functionally meaningless.

In legal actions against MLMs alleging a pyramidal structure, the cases are likely to be civil suits where the plaintiffs are individuals (or classes of individuals) or regulatory action taken by federal agencies like the FTC, the Securities and Exchange Commission (SEC) or the Department of Justice (DOJ). The major players here tend to be individuals in class action suits and the FTC. LuLaRoe has faced litigation and enforcement from both.

In addition to a host of other civil lawsuits, including for improper calculation of sales tax, intellectual property theft on their product design, and breach of contract failure to pay their suppliers, LuLaRoe has been the named defendant in several civil cases alleging that they operate as a pyramid scheme.¹⁶ In 2017, LuLaRoe was confronted with five class action civil suits in the Central District of California alleging that LuLaRoe operated as a pyramid scheme.¹⁷ All five of these cases were voluntarily dismissed by the plaintiffs.

In 2019, LuLaRoe was the named defendant in another Central District of California class action suit which resulted in an arbitration order and another voluntary dismissal.¹⁸ Often the reasons for the voluntary dismissal are unclear; here, however, the plaintiffs named the reasoning in their motion to dismiss. In this instance, they expressly state that the arbitration order was unduly prohibitive because it functionally decertifies the class, mandating that each plaintiff proceed with arbitration individually.¹⁹ Class action suits work effectively as a response to companies causing harm to large groups of individuals because they allow for damages sufficient to compensate representation while still providing some form of restitution for the harms experienced and those individuals harmed.²⁰ Arbitration is typically more financially feasible for defendant corporations and more expensive for individual plaintiffs because it requires each individual participate in their own action against the company. Arbitration is typically not subject to standard rules of discovery (limiting the kinds of evidence that can be introduced) and arbitral awards tend to be smaller.

Functionally, there is no precedential outcome in any of the class action civil suits brought against LuLaRoe because they all ended in a voluntary dismissal prior to actual litigation. The courts have not yet heard the issue of whether or not LuLaRoe is operating as a pyramid scheme. Although there are often legal reasons behind a pattern of dismissals, it is not possible to ascertain a legal rule from a case that did not proceed.

Additionally, the Washington Attorney General brought a civil suit against LuLaRoe in 2019, also claiming that the company was operating as a pyramid scheme.²¹ In February 2021, LuLaRoe settled this case for \$4.75 million.²² Although there are many reasons why a company might choose to settle instead of pursuing litigation -- LuLaRoe points to the comparative expense of a protracted legal battle -- the outcome is the same as with the dismissed civil suits above: we cannot definitively say what the court would do with these facts under those laws.²³

The cases against LuLaRoe ultimately go nowhere in terms of offering a definitive answer to the question of whether or not LuLaRoe is operating as a pyramid scheme. In fact, no cases against any MLM have offered a definitive standard for determining how (or whether) to distinguish MLMs from pyramid schemes. The closest any legal action has gotten into offering insight is the 2016 FTC settlement with health and wellness MLM Herbalife. In 2016, The FTC mandated that Herbalife, in order to continue operations, would need to pay \$200 million to compensate consumers and to fundamentally restructure their business to decouple compensation from recruitment.²⁴ The terms of this settlement are not precedential but they offer more contemporary insight into the FTC's regulatory process and broadly reiterate an older regulatory action as well as model some standards that become clear in FTC and SEC consumer-facing guidance.

The idea that a pyramid scheme is one because it is “doomed to fail” has definite popular analytical traction although that is only part of the legal story.²⁵ This term is analytically simple in organizations operating without the transmission of products or services. An enterprise is “doomed to fail” if its sustainability depends upon the continued recruitment of additional investors at lower and lower levels of the pyramid. Pyramid schemes require top level investors to recruit a larger number of investors at the next level to turn a profit and, in turn, those investors must recruit a larger number of investors at the next level in order to turn a profit. As long as the next level is and can be bigger, the members will be profitable. A pyramid scheme is analytically doomed to fail because, eventually, there cannot be a bigger level and investors who are at the bottom when the scheme runs out of potential investors will inevitably lose their money. This structure is easy to identify in something like the “airplane game” where the whole enterprise exists solely to pay money up the pyramid and became the salient news media touchstone for what a pyramid scheme looked like at its simplest.²⁶ Here, there are no goods or services being exchanged and the scam is much more evident.

The analytically more difficult question occurs when a company includes a product or service in their model, as is always the case in an MLM. A product fundamentally changes the nature of the agreement or promise: any financial investment looks, legally and rationally, more akin to a traditional financial investment. The buy-in to an MLM looks closer to a franchise or licensing agreement -- a normalized business opportunity whereby a participant exchanges money for permission to sell (and potentially turn a profit) -- and becomes legally distanced from a simple exchange of money for a promise of an impossible return. However, the existence of a product is

insufficient to defeat concerns about an enterprise being doomed to fail -- and the doomed to fail term of art is not, in fact, the only way that courts look to evaluate whether or not an enterprise is a pyramid scheme.

The still-leading case on determining whether or not an MLM is operating as a pyramid scheme is the FTC decision in *In re Amway* (1979).²⁷ This 1979 case leaves open the possibility that an MLM could be legally cognizable as a pyramid scheme while, at the same time, decidedly determining that *Amway* is not one. Amway, founded in 1959 by Jay Van Andel and Richard DeVos, sells health, beauty, and cleaning products and has also been the defendant in various cases alleging that their operation is a pyramid scheme. Like LuLaRoe, Amway has never been found liable for or guilty of acting like a pyramid scheme.

The FTC, in *In re Amway*, looked to Amway's own rules as a proxy for determining how the company functioned. The Amway Rules, a set of Amway's own rules for consultancy and distribution, speak to the implicit legal question defined from this action: are the consultants operating as distributors or as customers? In other words, is the profit primarily from recruitment? Notably, this test is a reframing of the "doomed to fail" idea that is both more specific and more potentially applicable to an enterprise that does involve the distribution of products. The material rules, together sufficient to establish that Amway's profits are primarily from recruitment, were the 70 Percent Rule, the 10 Customer Rule, and the Buy-Back Rule.

The 70 Percent Rule and the 10 Customer Rule both pertain to the allocation of bonuses among consultants. In order for an individual Amway consultant to qualify for Amway's bonus framework -- money on top of ordinary commission from a resale -- a consultant must sell 70 percent of their inventory to others and it must be to 10 or more other individuals. These rules seek to ensure that consultants are *distributing* rather than purchasing items "as customers" (either intentionally or incidentally becoming the final destination because the items will not or cannot be redistributed). However, this is largely an aesthetic concern as less than 1/5 of MLM consultants meet the requisite sales threshold to qualify for bonuses.²⁸

Amway's Buy-Back Rule stipulated that Amway would accept returns of and offer refunds on unsold merchandise should a consultant choose to sever their relationship with the company. Although terms and conditions may apply -- the company need not buy back at the full purchase price or might exclude certain types of merchandise -- this *does* provide substantial insurance that the consultant is not the final home of the merchandise and is not, functionally, a customer.

Neither rule on its own is necessary but each may or may not be legally sufficient individually though the sufficiency of each rule has yet to be tested. However, the Amway Rules are models for how to parse out the legal distinction between a pyramid scheme and a legitimate enterprise. Although the universe of behaviors modified by the Amway Rules is extraordinarily small, MLMs can and do adopt the Amway Rules as a mode of signaling their legal legitimacy and the FTC can and does use the Amway Rules to establish that standard.²⁹

Beyond the Amway Rules, the FTC and SEC offer published guidance on distinguishing between pyramid schemes and “legitimate MLM business opportunities.”³⁰ What the agencies suggest potential consultants look for can be broken down into three types of behaviors: first, the use of bombastic rhetoric in recruitment; second, the framing of the opportunity as a recruiting opportunity rather than a sales opportunity; and, third, behaviors that position the consultant as the buyer.

The FTC and SEC warn against promoters who utilize bombastic rhetoric in recruiting additional participants.³¹ They warn against the deployment of rhetoric that seems “too good to be true”: promises of high returns in a short time period or extravagant promises about earning potential, easy money or passive income, or emotional/high-pressured sales tactics (such as saying that the opportunity is time sensitive).

They warn against promoters who pitch the opportunity as one about recruitment rather than sales and they warn against structural features of the enterprise that position the opportunity as one about recruitment rather than sales. The FTC identifies this as a prominent warning sign: “*Promoters emphasize recruiting new distributors for your sales network as the real way to make money.* Walk away. In a legitimate MLM program, you should be able to make money just by selling the product.”³² The SEC makes the structural critique implicit by warning against a lack of demonstrated revenue from retail sales to show that the MLM generates income by selling products/services to people outside the enterprise. In other words, it’s not a good sign if the recruiter cannot establish that consultants generate income by selling products or services to people who are not also consultants. Further, they warn against complex commission structures that reward for something other than sales (usually recruitment) made to individuals

Finally, they warn against structural features in the enterprise that position the consultant as the customer. The SEC warns against enterprises where buy-in is required. That is, if a potential consultant is required to pay to participate within the program. The FTC offers a more holistic warning against companies where consultants

buy more products than they personally use or can resell in order to stay active in the company or to qualify for bonuses. The concern about qualifying for bonuses seems to match exactly with the Amway Rules but the warning against buying to stay active does work to demystify the role of products as buy-in. It is clear that the existence of a product might not be sufficient to distinguish between a legitimate business opportunity and a pyramid scheme or other illegal enterprise.

The FTC and SEC guidance to consumers is not a set of legal standards. Notably, although there is substantial overlap, the boundaries discussed here go beyond those advanced by the FTC in *In re Amway* because the standard is lower. That is, there is a broader universe of potentially suspicious behaviors under the agency guidelines. Here, the agencies are offering warning signs to identify what could be a pyramid scheme rather than actually testing for pyramidal structure as they would in a regulatory action. All MLMs at some point or another meet one or more of these warning signs: consultants regularly make “limited time” recruitment offers and income disclosure statements routinely establish that only the top percent of consultants make income from the enterprise. However, none seem to ever cross the line from “warning signs” to “stop signs” in an actual legal proceeding.

Furthermore, although the FTC and SEC both advise consumers that some MLMs can be pyramid schemes, there is a tendency to identify a potential other option -- a legitimate MLM business opportunity -- without providing that for comparative purposes. That is, all of the guidance is predicated on the idea that there does exist such a thing as a legitimate MLM business opportunity but what that would actually meaningfully look like to a consumer is an open question.

Ultimately, the legal relationship between MLMs and the category of pyramid schemes is an open question. There has been very little traction in regulating MLM behavior or remediating harms related to MLM behavior through the pyramid scheme framework. MLMs are unlikely to face sanctions as pyramid schemes.

III. LULAROE CASE STUDY

We argue that the lack of suitable legal protection against predatory MLMs does more than leave consultants and customers vulnerable – it actually creates a weapon of legitimacy for predatory MLMs. There are massive gaps in the regulatory framework that allows for predatory behavior from MLMs to be legally legitimized and this legitimization is used by participants in the MLMs in order to recruit additional participants. Using conversational text data from the popular internet forum

Reddit.com, we analyze the process by which legal rhetoric surrounding pyramid schemes is used to distinguish an MLM company from an ‘illegal pyramid scheme’ and how the protections of law are both confusing and insufficient in the minds of ordinary people using LuLaRoe as a case study.

LuLaRoe is a massive MLM that is best known for selling leggings with outlandish patterns. In the nine years since LuLaRoe’s 2012 founding, the company has become among the most notorious: it is the site of intense discursive contestation. There are a number of competing stories about what LuLaRoe does, what LuLaRoe means, and how LuLaRoe functions within society. The self-told story of LuLaRoe is one of a struggling mother making a fortune in modest, size-inclusive clothing.³³ However, critics identify the consequences of LuLaRoe’s business strategy, saying that it is actually, “[T]he story of rural and suburban disenfranchisement and the MLMs that offer desperate American women a chance at clawing their way out. They’ve become part of the fabric of suburban America, as cherished and inevitable as barbeques and the county fair...it’s a genius manipulation of rural and suburban American societal norms.”³⁴ At one end of the spectrum, LuLaRoe’s own marketing materials suggest an interesting, disruptive company that fills a unique market need (modest, aesthetically pleasing clothing for mothers). At the other, critiques of the company suggest a predatory scheme that utilizes that very rhetoric in order to exploit the customers whose needs they claim to address.

We argue that the truth is much closer to the exploitation end of the spectrum. Through unpacking how this particular company actually functions -- in addition to how LuLaRoe and its consultants and customers talk about the company -- we are able to show how LuLaRoe operates specifically and intentionally in relation to the regulatory frameworks discussed above.

A. Why LuLaRoe?

LuLaRoe is a compelling case study of MLM practices for logistical and legal reasons: including their recency, slew of legal troubles, relatively high (and unstable) buy-in costs, and the relatively heavy demonstrated use of MLM bonus structures that is most at stake in defining pyramid schemes in *In re Amway*. However, LuLaRoe also has an uncommonly strong retail presence and buy-back guarantee that makes it less likely to be sanctioned under existent pyramid scheme regulations. Although the particulars of how LuLaRoe operates might differ from other MLMs, the ideology driving their particular business strategies (fundamentally evading capture under pyramid scheme regulatory frameworks) is actually quite similar to other companies.

We begin with a brief history of LuLaRoe told through these salient and shifting features -- legal troubles, buy-in costs, bonus structures, retail presence, buy-back guarantees -- before transitioning into the rhetorical data project. This data project transforms the problem of MLMs from one characterized by a lack of protections, to one where the importance of the law actually grants some legitimacy and permanence to MLMs. In other words, the data project shows the ways in which pyramid scheme-related rhetoric functions to legitimize MLMs and create confusion and pessimism about the law itself. Regulatory loopholes are utilized not just as loopholes but as rhetorical strategies for recruiting additional members: regulation becomes its own kind of bombastic rhetoric offering promises to recruits of legality and legitimacy.

LuLaRoe is a women's fashion company founded by Mark Stidham and DeAnne Brady in 2013, primarily known for selling heavily-patterned, "buttery soft" leggings.³⁵ By 2017, LuLaRoe had grown from a family hand-sewing leggings into a retail juggernaut worth 2 billion dollars and with over 80,000 'independent fashion retailers' (IFPs, the LuLaRoe-specific terminology for distributors) concentrated mostly outside of large urban cities.³⁶ LuLaRoe's turbulent rise to the top of the MLM fashion industry has included lawsuits for improper taxes on retail goods, appropriated copyrighted artwork, non-payment to manufacturers, non-payment to the postal service, and, significantly, multiple rounds of pyramid scheme accusations -- most notably a 2019 filing by the Washington State Attorney General that resulted in a 4.75 million dollar settlement.³⁷

LuLaRoe is distinguishable from many other MLMs because it has historically involved a high start-up cost, though recently their start-up costs have shifted seemingly in response to litigation, and because it requires that distributors maintain a collection of an expensive inventory of clothing in many sizes. A class action filing in March of 2019 explains that the buy-in costs range from \$2,000 to \$9,000 for first orders of clothing.³⁸ Moreover, IFPs do not get to choose the patterns of clothing that they purchase as LuLaRoe ships orders in blind bundles: this leaves retailers constantly re-purchasing in the hopes of procuring desirable sizes and patterns.³⁹ Heightened levels of inventory accumulation has tangible consequences for the tens of thousands of women who have left the company: LuLaRoe's practice of blind bundling leaves many distributors with massive amounts of inventory when they decide to leave and it has historically been unclear whether or not LuLaRoe would "buy-back" that unsold, unwanted inventory.

Yearly disclosure statements -- of LuLaRoe and from MLMs as a category -- tell a profoundly negative story about the financial realities of participating in MLMs as a

distributor.⁴⁰ Most participants lose money through these “business opportunities.” But the stories told in litigation underscore how truly volatile this situation is. In a class action complaint filed in March of 2019, 3 plaintiffs explain the extent of financial ruin possible for former LuLaRoe consultants as a result of LuLaRoe’s culture of blind bundling merchandise to distributors. Plaintiff Tabitha Sperring was left with \$16,000 in credit card debt and \$11,000 in unsellable inventory, plaintiff Paislie Marchant was left with \$10,000 in unsellable inventory, and plaintiff Sally Poston lost \$22,000.⁴¹ These are financial consequences that outlast the yearly disclosures of MLMs and foreshadow the scope of the economic costs of MLMs to ordinary Americans.

This mass purchasing of polyester likely serves a more nefarious purpose due to the heavy top-weighted structure of consultant bonuses in LuLaRoe. According to their 2020 income disclosure statement, in LuLaRoe the median IFP gross profit was \$1,444.65. 19.2% of IFPs made \$0 or less, while 50.1% made between \$1 and \$4,999 (notably covering a substantial range of outcomes. However, 2.35% of IFPs made over \$75,000.

The reason for this disparity is LuLaRoe’s Leadership Bonus Plan. Under this plan consultants earn bonuses based on the total pieces sold by the entire TEAM (Together, Everyone Achieves More) in the downline. That means that the highest-ranking consultants receive 1% of the dollar amount of inventory of all the consultants below them, even those they did not directly recruit.⁴² (Medium 2016). 85.38% of IFPs make between no money under the Leadership Compensation plan.⁴³ This is not necessarily facially illegal or even unethical. However, founder DeAnne Brady herself had consultants disclose the discrepancy between their commissions and actual retail sales at a leadership convention in 2017 which underscored the lack of a relationship between sales and income, despite that being the purported business structure.⁴⁴ Consultants reported that their monthly bonus checks ranged from \$85,000 to \$307,000 while their retail sales ranged from \$12,000 to \$25,000.⁴⁵ This demonstrates that, on average, a vast majority of income for high-ranking consultants is coming from recruitment incentives rather than selling retail products.

Despite this demonstrated use of incentive structure tactics which ought to raise a red flag per the FTC’s own guidelines, LuLaRoe can likely distinguish itself from pyramid schemes because a majority of consultants (especially those comprising the 99.84% in the lowest incentive tier) make their money by actually selling clothing and the company currently has a seemingly generous buy-back policy.⁴⁶ For example, in 2016, LuLaRoe claimed 72.63% of their income through selling clothing alone.⁴⁷ This reality

can co-exist with massively inflated bonuses at the top of the proverbial pyramid, since a vast majority of consultants lose money or make very little money. LuLaRoe as a company may make 72.63% of their income through selling clothes; however, that figure does not specify *to whom*. If much of those sales are taking place within the company (to IFPs who cannot sell their inventory to outside consumers), that tells a story that differs profoundly from an ordinary retail opportunity. LuLaRoe also has a 90% - 100% buyback program that seems to follow the precedent set by *In re Amway Corp.*⁴⁸ However, this program excludes a large amount of limited edition merchandise and numerous consultants report being unable to secure their full refund under the buy-back program, especially after LuLaRoe abruptly changed the terms of the buy-back program from 100% of wholesale investment to 90% in 2017.⁴⁹ The buy-back structure exists on paper, passing the *Amway* test, but does not necessarily actually exist/work in practice. Both the misleading nature of the compensation structure and buyback system further illustrate how an MLM such as LuLaRoe might escape the legal categorization of ‘pyramid scheme’ without doing anything substantive to protect their consultants compared to the victims of legally acknowledged pyramid schemes.

IV. DATA

In order to better understand the tangible consequences of the legal grey area of multi-level marketing we collected text data from internet chat forums known to host MLM retailers, former MLM retailers and MLM product consumers on. We mined 3 active forums on Reddit for threads that specifically reference LuLaRoe and coded the resultant posts into a set of themes that typifies understandings of pyramid schemes and the legality of MLMs. Reddit is a public facing platform where users comment pseudo-anonymously under a consistent username. While this information is public, we have redacted usernames to further protect the privacy of commenters.

Table 1: Subreddits Used for Data Collection

Name	Users	Rationale for Inclusion
r/Antimlm	637k	This is by far the largest MLM-related community on Reddit, making it a repository and hub for sharing screenshots and personal experiences/beliefs surrounding MLMs. There is no corresponding 'pro' MLM subreddit.
r/Defectivedetectives	8k	This is a subreddit specifically for former consultants of LuLaRoe. General topics of discussion are experiences with company, policies of the company, and the future of the company (including pending litigation).
r/LuLaRoe	6k	This a subreddit specifically for LuLaRoe apparel. It used to be more sympathetic toward the brand, even serving as a means for customers to find desirable patterns but has recently been anti-LuLaRoe.

We searched these three forums for a set of 7 terms including “LuLaRoe AND illegal, llr AND illegal, LuLaRoe AND legal, llr AND legal, LuLaRoe AND pyramid scheme, llr AND pyramid scheme, pyramid scheme.” Forums specific to LuLaRoe included searches only for the terms, legal, illegal, and pyramid scheme since refining LuLaRoe did not need to be accomplished through the Boolean search. This resulted in a total sample of 211 unique threads comprising of 101,848 upvotes, and 10,130 unique comments. Each comment was carefully examined by the research team and qualitatively coded into thematic categories, represented here with examples that represent those larger discussions across these three forums.

A. Pyramid Schemes are Illegal

Perhaps the most common way retailers engaged with pyramid scheme rhetoric was in explaining how LuLaRoe could not possibly be a pyramid scheme because pyramid schemes are illegal. One retailer wrote:

Network Marketing, Multi Level Marketing, Affiliate Marketing, all are pretty much the same thing, once you actually take time to research what it actually means and how it is structured. They are not pyramid schemes, those are illegal. If it is not for you, no biggie, but they are the wave of the future and are actually brilliant business models.

Specifically, this retailer argues that MLMs cannot be pyramid schemes because MLMs are not illegal. In this way, the lack of specific legal prohibition of MLMs is actually cast as a legitimating distinguisher from ‘illegal pyramid schemes’ without

addressing how the two business models are functionally different for the consultant consumer. Other consultants actually defined what a pyramid scheme is as a strategy for demonstrating how LuLaRoe could not possibly be a pyramid scheme.

Commenters also frequently discussed the process by which consultants continue to use this rhetoric as a recruiting tactic in their downlines and thereby explain one mechanism by which this misperception might be spread. As one commenter explains:

So when someone says it's a pyramid scheme, they ask their upline if it's a pyramid scheme, and their upline says no, because those are illegal. Then they parrot that back to someone.

Commenters also opined that the longevity of some MLM companies (i.e. avoiding penalty under the law as pyramid schemes) also served to confer an air of legitimacy around their business models. When comparing a company like LuLaRoe to longer-lived companies like Avon or Mary Kay, a commenter explains their theory:

They've been around long enough that they're seen as legitimate, they do have a reputation for pretty decent products ... That doesn't make them good companies by any means, if they were they'd launch as just regular cosmetics lines, but that's why. An air of legitimacy, products that would probably sell just as well if they were regular companies, and good PR teams.

In this way, the sheer survival of a company serves to legitimate it and its business model. This low bar for legitimacy is reified by a narrow legal classification of pyramid schemes. This narrow conceptualization also led to substantial confusion about what actually counts as a pyramid scheme under the law.

B. Incomprehensibility Surrounding the Legal Definition of Pyramid Schemes

Commenters opposed to LuLaRoe frequently explained to others on the forum why LuLaRoe is unlikely to be legally classified a pyramid scheme. As is true in any unmoderated space, the accuracy of these explanations varied widely. This conversation exemplifies a pattern of education and analysis displayed in the comment forums, including the misconceptions that come along with legal definitions of MLMs:

Person 1: They aren't different. MLM is simply a pyramid scheme. Calling it multi-level marketing is just a way to disguise this. Nobody wants to be a part of a pyramid scheme but they might sign up for something called "multi-level marketing."

Person 2: I had to look up pyramid schemes on Wikipedia. I guess the main difference is that they sell a non worthless product....Lularoe has an entire clothing line so that is why they can get away with it legally....so I guess the big question would be, can people make money off of selling their clothing alone without recruiting anyone underneath them and be successful?

In this example and more broadly, disillusioned commenters come to the forum to air their grievances with LuLaRoe and other MLMs and engage in legal education surrounding what actually legally constitutes a pyramid scheme, but even intentional research in the topic does not necessarily lead consumers (the group theoretically protected by law in this space) to accurate conclusions about the legality of MLMs. Specifically, commenters often focused on the presence of legitimate retail products writing things like:

A Pyramid Scheme is a form of investment (illegal in the US and elsewhere) in which each paying participants recruits two further participants, with returns being given to early participants using money contributed by later ones...AKA NO PRODUCT SOLD BUT MONEY IS GIVEN.

In reality, the FTC is clear that there CAN be a physical product and still be a pyramid scheme, but this nuance is not generally articulated by commenters in these public forms. Instead, consultants use the presence of product and the continuing legal existence of LuLaRoe as a justification for how it cannot be a pyramid scheme or cannot be illegal. Importantly, this misunderstanding isn't only used by consultants, but also by anti-MLM consumers.

A popular sentiment is articulated by one commenter below:

In their defense, Lularoe is not technically a pyramid scheme under the law, since there was an actual product being sold. But yeah they're c*nts. This is why I suggest people engage their thinking skills and not give their time and money to people like this.

This is another example of how current legislation and case law around pyramid schemes and MLMs can serve to amplify public confusion and vulnerability about how to identify manipulative companies by providing a shield of legality due to the extremely narrow definition of pyramid schemes under the law.

C. Pessimism About the Protective Capacity of Law

Commenters seemed to undergo a natural progression of learning to full-blown cynicism as they learned more (accurate or not) information about the law defining pyramid schemes, eventually leading them to abandoning hope of regulating MLM companies under pyramid scheme rules at all. An example of this is explained below:

Person 1: This company is shady AF, and hopefully something is able to get them on something which forces them out of business, but 'pyramid scheme will not be it.

Person 2: It just doesn't meet the legal definition of a pyramid scheme. There is actual retailing going on with Lularoe.

Person 1: It would be so amazing if one of these lawsuits could make ANYTHING happen, but if they keep harping on this 'pyramid scheme' nonsense, nothing will come of it.

After acknowledging and agreeing that LuLaRoe does not meet current standards for pyramid scheme classification, the original commenter opines that they are hoping for any type of improvement at all. In fact, they also suggest that focusing on whether or not LuLaRoe is a pyramid scheme at all is a smokescreen that will ultimately absolve the company of any legal responsibility. It is also important to note that commenters in these forums frequently engage in advanced legal analysis that leads to their cynical conclusion that the law in its current form is not designed to protect consumers. One commenter, writing specifically about the fate of a class action lawsuit against LuLaRoe, says:

I am not optimistic. If the class gets out of the arbitration clause and gets certification, and if LLR loses both suits, then this will be the end of MLMs as we know it. I mean, more actual retailing went on in LLR than any other MLM in history. If an MLM where actual retailing happened is considered a pyramid scheme (under the law), then the MLM industry as we know it is gone. If you think an industry that is constantly greasing palms is going to just get wiped off the map, then I have a bridge to sell you. MLMs are here to stay and LLR will not be losing these cases.⁵⁰

Here the commenter identifies the strength of MLMs politically and legally. They articulate that finding LuLaRoe to be a pyramid scheme would require a fundamental upheaval in the entire MLM industry that they view as unlikely or impossible. They

also specifically point out that LuLaRoe in particular has secured its position relative to legal precedent despite their widely acknowledged predatory and damaging business practices.

D. Alternative Strategies

In a thematic category related but distinct from cynicism were former consultants and consumers who suggested alternative legal strategies for dismantling LuLaRoe. After acknowledging the difficulty of prevailing on pyramid-scheme-type claims, commenters suggested avenues for legal remedies that they felt may be more viable.

I'm afraid these lawsuits won't really go anywhere. As [redacted] said, there's an actual product. And in theory, even the lowest-on-the-downline consultant has gotten something (no matter how shitty and stale the inventory is) for their money put into LLR. That's how MLMs "get away with" hiding their pyramid-iness. The lawsuits would be better off if they address the unethical changes to policies and going back on returns.

This commenter specifically identifies the strong retail presence of LuLaRoe as a strategy for 'getting away with' a pyramidal shaped company. The commenter goes a step beyond this conclusion to suggest that the law might be better suited to punish the company for policy changes than for the fundamental way the company operates. Importantly, this commenter identifies a significant shortcoming in current law surrounding pyramid schemes: the vagueness with which something becomes a 'worth something' product for your investment. Rather than focusing on the nuance of product distribution, the presence of an actual product that is 'worth something' takes precedence. A second commenter responds directly saying:

The problem is the changes are just unethical not illegal. According to this suit the problem is that they incentivize by purchases rather than sales (they changed this in the last year). They have docs and videos stating the classic LLR phrase used "you need to buy more to sell more" which gives those at the top more money while those at the bottom couldn't make a profit. This is what makes it an endless chain which is illegal according to CA law.

That said, I still doubt it will get them any money from LLR, but according to some the way the RICO suit is filed it allows them to chain this to the top 100 consultants as well. I'm sure LLR lawyers will protect the company, but leave those out to dry.

This commenter shares the cynicism toward the pyramid scheme allegations but is pessimistic about the legal remedies owed for unethical behavior. Even with the presence of some evidence to imply incentivizing mass inventory hoarding by consultants, there is a lack of belief in the protective capacity of the law. In fact, the commenter postulates that other consultants are more likely to bear the brunt of legal sanctions than the actual company due to the adeptness of LuLaRoe's legal team.

Across all thematic groups identified here there is a common thread: that the current iteration of the law protects MLMs as distinct from pyramid schemes despite predatory tactics and consultant financial outcomes that are often significantly worse than legally recognized pyramid schemes. We find that active retailers leverage the weakness of current law to cast their businesses as more legitimate while disillusioned former retailers and consumers anticipate a hopeless cycle where MLMs are not only not held accountable, but where the law needs to be subverted and finessed to find a way to put MLMs out of business. This speaks to the ineffectiveness of the current regime in preventing harms meant to be mitigated by law prohibiting pyramid schemes.

RECOMMENDATIONS AND CONCLUSIONS

Generally, the United States broadly lacks consumer protection and worker protection for the types of work that MLM distributors do. A broader, federal regulatory plan that addresses these gaps to better protect individuals regardless of place of incorporation or residence would generally aid in the elimination of predatory business practices. Specifically, in light of our findings here, we recommend that the FTC promulgate rules with a particular eye toward the particular harms they intend to prevent and that Congress enact legislation, independently or through updating existing consumer protection statutes (to expand beyond action against individual distributors, shifting liability to the company) or RICO, that grants individuals private rights of action against companies with predatory recruitment and distribution practices.^{[51](#)}

A model statute would address how profits function within MLMs -- prohibiting the operation of business whereby most distributors pay money to the company rather than earn -- how *distributorship* rather than just the allocation of bonuses is based on maintaining an inventory from the company and enforcing liability against companies for the misleading rhetoric and recruitment tactics of their distributors. This would likely mean prohibiting business models based on multi-level marketing entirely.

The absence of legal regulation around MLMs does more than leave consumers/consultants vulnerable; it actually confers legitimacy onto MLMs by virtue

of “not being illegal pyramid schemes.” The current legal discourse around pyramid schemes -- and the ways federal agencies carve out a tiny pocket of businesses to fit this definition -- is, then, able to be exploited by the businesses themselves. By virtue of not meeting the impossibly narrow definition of “pyramid scheme,” MLMs and the small subset of individuals who profit from them are not only able to evade liability for harms in their downline, they are also able to utilize that distinction to establish their legitimacy. In other words, MLMs are “not bad” because they are not (quite) pyramid schemes. This slippery legal framework ultimately allows the businesses to perpetuate the very harm this language purports to prevent.

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51. RICO is potentially a viable site for updating regulations around MLMs because the digital world of MLMs is plausibly related to telecomm fraud and therefore under the scope of RICO. However, this potential pathway is yet to be pursued in any previous or active cases. [↵](#)