



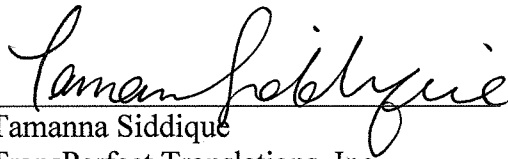
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CERTIFICATE OF ACCURACY

I, Tamanna Siddique, of TransPerfect, Inc. do hereby declare that the following are to the best of my knowledge and belief, a true and accurate translation of the document "Court of Appeals of Brussels Judgment, Dated December 2nd, 2013", translated from Dutch into English.

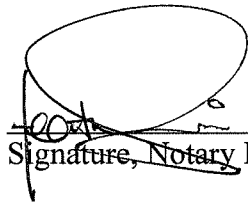
A copy of the final translation is attached.

I so declare under penalty of perjury under the laws of the United States on this 9th day of December, 2013.



Tamanna Siddique
TransPerfect Translations, Inc.

Sworn before me this
December 9th, 2013



Signature, Notary Public



Stamp, Notary Public

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Judgment

No. [handwritten:]
51006

The **Court of Appeal in BRUSSELS**, the Eighth Chamber, after deliberation,
rules the following judgment:

Rep. Nr. 2013/
[handwritten:]
9170

A.R. No. 2012/AR/736

8th Chamber

IN THE MATTER OF:

N.V. HERBALIFE INTERNATIONAL BELGIUM, with registered office at
1000 Brussels,
Drukpersstraat 4

Appellant,

represented by Henriette Tielemans LL.M.,
attorney at 1040 Brussels, Kunstlaan 44;

2.12.2013

AGAINST:

V.Z.W. TEST-AANKOOP, with registered office at 1060 Brussels,
Hollandstraat 13,

Respondent:

represented by Peter Vergucht LL.M, attorney at
1700 Dilbeek, Ninoofsesteenweg 255.

Final Judgment
(reform)

Given that the verdict was ordered after the contradictory procedures on
November 23 by the President of the Commercial Court of Brussels, who was
acting as and administrative law judge in interlocutory proceedings, a decision
of which no proof of service is provided.

[handwritten:]
'92 + Art. 118/2 WMP

In light of the instrument of appeal, which was submitted timely and accordingly on March 8, 2012 and filed with the court clerk's office on March 13, 2012.

After hearing the oral statement of the counsel for the parties at the public hearing on November 4, 2013.

PROCEDURAL PROCEEDINGS AND OBJECT OF THE APPEAL

1. On September 3, 2004, the respondent was suing appellant before the court at first instance.

In its final conclusion, the respondent claimed:

- the claim was made that the appellant is guilty of infringing Articles 91, 14^o, and 99 of the Belgian Commercial Practices Act (WMPC, Act of April 6, 2010, on market practices and consumer protection), due to establishing, managing and promoting a pyramid system in which a consumer or a company, after payment, is likely to receive compensation that is derived primarily from the introduction of other consumers or businesses in the system, rather than from the sale or consumption of products.
- that the appellant would be ordered to pay a fine of €25,000 for each identified failure of compliance with the cessation order within notification of this decision,

- the claim was made that any determination in that area may be made by any recruited bailiff and
- that the appellant should be ordered to pay the costs.

It was also asked that the counterclaim of the appellant should be declared inadmissible and unfounded at the least.

2. The appellant asked that the claim filed against him should be rejected as unfounded.

As a subsidiary argument and if an infringement were to be established, he asked that he would be granted a reasonable time period to end the infringement, in implementation of Article 112 of the WMPC, and, if needed, to set a maximum amount for the penalty payment.

He made a counterclaim and asked:

- that it would be established that the respondent has talked in demeaning and defamatory terms about his sales method and therefore has violated Article 95 of the WMPC and
- that a ban would be imposed on the respondent in order to refrain from any further demeaning and defamatory comments on the sales method of the appellant, under penalty of a fine of €25,000 for each violation within notification of the judgment.

Finally, he asked that respondent should be ordered to pay the costs and to pay him the litigation costs of €1,320.

3. In the contested judgment, the Court at first instance rules that the appellant infringes Articles 91, 4° (apparently, Article 91, 14° was intended) and 99 of the WMPC, because it has established, managed and promoted a pyramid scheme in which a consumer or a company, after payment, is likely to receive compensation that is derived primarily from the introduction of other consumers or businesses in the scheme, rather than from the sale or consumption of products.

He recommends the cessation of the infringement and thus the Herbalife pyramid scheme in which a consumer or an enterprise, after payment, is likely to receive compensation that is derived primarily from the introduction of other consumers or businesses in the scheme, rather than from the sale or consumption of products.

He orders appellant to a penalty payment of €5,000 for each established infringement two months from the date on which the ruling was made and sets the maximum of the penalty payments at €250,000.

Finally, he dismisses the counterclaim of the appellant and orders him to pay respondent €1,320 in litigation costs.

4. The appellant requests that this decision be nullified, and that the court:
 - Primarily, should rule that the demands of the respondent are unfounded;

- in addition, and if the court were to rule that its Sales and Marketing plan infringes Article 91 and/or Article 99 of the WMPC, that it would explain in sufficient detail which provisions of this plan are infringing the WMPC, so that changes can be made, and, upon implementation of Article 112 of the WMPC, that it would allow a reasonable period and set a maximum amount for the penalty payments in accordance with the court's order;
 - in any case, that the respondent should be ordered to pay the costs and to pay him the litigation costs of €1,320.
5. The respondent asks for the rejection of the appeal of the appellant on the grounds of it being unfounded and that he should be ordered to pay the costs of the appeal and pay him the litigation costs of €1,320 for the proceedings before the court.

OVERVIEW OF RELEVANT FACTS

6. The Herbalife Company was founded in 1980 in Los Angeles, California.

It develops and markets products for weight management, nutrition, energy, sports, fitness, and skin care.

These products are not sold in stores, but are distributed exclusively through the system of direct sales by using independent distributors.

Since 1994, Herbalife products in Belgium have been sold by the appellant, a subsidiary of the American company Herbalife.

In 2010, Herbalife had over 2.1 million distributors worldwide, of which 7,453 are in Belgium.

In 2010, the appellant had a turnover of about €13,450,000. In 2003, these sales amounted to nearly €13,892,00 euros.

In his opinion, the products he distributes are high in quality yet reasonable in price.

7. Appellant describes his sales method as follows:

He distributes the products through the “multi-level” direct sales method, which is a distribution system in which, based on certain well-defined rules and within certain defined limits, vendors can acquire income not only from their personal sales, but also from the sale or consumption of products by persons who they themselves have introduced to Herbalife, directly or indirectly, and who they continue to train, assist and motivate.

Herbalife's sales method offers interested parties the chance to buy and sell Herbalife products as independent entrepreneurs, on their own account. They can do this at their own pace and on the scale they want. Many distributors sell these products as a sideline, combined with household chores or a part-time job, or to overcome a period of unemployment or

to finance an important purchase. Other distributors purchase the products solely for personal consumption within the family and do not resell them. The appellant formally challenges the assertion of the respondent that people would be encouraged to give up their regular jobs to become a Herbalife distributor.

Distributors also have the option, but not the obligation, to engage others in their sales efforts. They do this by introducing other people (“sponsors”) to the company, its products and the offered revenue opportunities. This implies that the existing distributor informs a candidate distributor (and continues to inform) on the range and quality of Herbalife products, including new products that are released from time to time, and that he keeps guiding, motivating and teaching the new distributor. As a result of all these efforts, it is possible that the sponsor will obtain a bigger sales volume himself. It is also perfectly possible that the sponsored distributor will outgrow his sponsor.

The newly joined distributors can also sponsor other distributors, who then are part of the “downline” of the sales network of the first distributor whose efforts and skills continue to contribute to the sale and consumption and the resulting revenues.

Sponsoring is not an obligation and according to a list of distributors, as of February 17, 2011, more than 85% of Belgian distributors decide not to sponsor, and they settle for personal sales and purchases for their own consumption.

According to the appellant, the main features of the Herbalife sales method are the following:

- The candidate distributor does not have to pay a subscription or entrance fee, he however does have to purchase a Herbalife starter package (hereinafter called IBP, abbreviation of “International Business Pack”), which contains a limited range of products (four products) that Herbalife offers in Belgium in order for the candidate distributor to familiarize himself with them, as well as information on the different products, a copy of the Herbalife procedures and rules and an application that he must complete in order to become a distributor; the price of this package is €107.15, exclusive of VAT, which corresponds to the value of the four products in the IBP, after all, the recommended retail price of these products is, €43, €19.55, €17.90 and €26.70; there are no other charges; if the appellant accepts his candidacy, he becomes a Herbalife distributor and a contractual relationship between him and the appellant is created;
- There is no obligation to purchase a minimum quantity of products, and, a fortiori, no obligation to have a minimum number of products in stock;
- All products are purchased from the appellant himself (this rule was introduced in 2012; previously, as long as the distributor wasn't a “supervisor,” he could also purchase from his sponsor, but according to the appellant, this rarely happened); the price that the distributor has to pay depends on the granted discount on the recommended retail price; he can go through several steps in the Herbalife sales system: essentially, there are five different levels (distributors, “senior consultant,” “success builder,” “qualified producer” and “supervisor”) and each level has its own discount rate

(from 25% to 50%) assuming that the distributor shall qualify by buying a certain quantity of products, at once or in the course of several months; once a distributor qualifies for a particular discount level, he will stay on this level either for as long as he remains a Herbalife distributor or for the remainder of the year, after which he will have to qualify again; therefore, he is not required to make purchases month after month just to stay at the same discount level;

- There is no obligation to sponsor other distributors; most sales are made based on informal contacts and require a lot of personal contact between the distributor and his customer; an individual distributor can only serve a limited number of customers personally; if he wishes to reach more customers, he can call upon the assistance of one or more vendors for whom he will act as a mentor or tutor;
- There is no financial compensation for adding other consumers as distributors; therefore, the addition in itself of a new distributor does not offer the sponsor any benefit; nor will he gain profit, receive compensation or gain volume on the IBP that the candidate distributor shall purchase from Herbalife (for each sale of any Herbalife product - but not for the IBP - a number of volume points are assigned and a distributor must have a certain number of volume points to his name in order to qualify for a particular position within the system); the sponsor shall receive a fee once the sponsored distributor buys products;
- all the benefits granted to distributors are linked to the sale of products with the goal of resale or consumption; a distributor

can make a profit by reselling the products which he bought at the recommended retail price from Herbalife, minus the discount which he is entitled to (a minimum of 25% and a maximum of 50%) at a higher price, for example, at the recommended retail price; a distributor can also extract an indirect profit from the sale or his own consumption of products through his “downline”; if the volume of a sponsor is good for a 50% discount and his “downline” distributor receives a discount of 25%, the sponsor will earn 25% (50% minus 25%) on the transaction, which will be paid out to him by Herbalife; in certain circumstances and within certain limits, a distributor may also receive bonuses and royalties on sales of the distributors within his organization;

- in order to protect against overstocking, it has been decided that royalties or bonuses on the sales of the distributor's organization are only awarded if the distributor himself has developed a sales activity and has not purchased excessive amounts which aren't sold; to earn these royalties and bonuses, the distributor must confirm, every month, that he personally has sold at least 70% of the products he ordered to at least 10 different customers;
- Every novice distributor may decide within a period of 90 days to terminate his distribution contract and return his IBP; in this case he will receive a full refund of the IBP purchase price, regardless of any opened products or whether or not they can be sold again; in case he has purchased other products from the appellant, he can return these and he will receive a refund, provided that the products haven't been opened and that they are in good condition;

If the distributor wishes to end his distribution agreement, which he can do at any given time, he can return the products from his stock to the appellant and he will get a refund of the purchase price for the purchased products that are in good condition within 12 months of the termination.

- The appellant attaches the utmost importance to the respect of his sales rules by his independent distributors and will, if necessary, impose appropriate penalties for improper action, up to and including suspension or even termination of the distribution agreement; the sponsors do not have any disciplinary authority; bearing in mind the independence of his distributors, the appellant cannot be held responsible for the content of websites of distributors, though he does insist that websites that do not comply with his sales rules shall rules be changed immediately.

8. The respondent describes the different actors in the Herbalife marketing system as follows:

- the distributor

to become a distributor, it suffices to sign a distributor agreement and purchase a starters package for the price of €107.15, excluding VAT, containing a number of products as well as advertising materials; furthermore, distributors shall pay an annual fee of around €10 for administrative costs (for sponsoring distributors this annual fee amounts to around €70); immediately after the payment of the said sums, the distributor receives a 25% discount on

all products purchased by him, which leads to the fact that a relatively large group of users of Herbalife products, for obvious reasons, enroll themselves as distributors; he is encouraged to buy as many products as possible each month, since his discount goes up in proportion to his monthly purchase volume, making it his direct profit; indeed, a number of volume points is awarded for each purchase and each time he reaches a certain level of volume points, he reaches a higher hierarchical status and a bigger discount;

-the senior consultant

at a certain purchase volume (hence, a number of volume points), the discount for the distributor can reach 42%, which can vary each month depending on the amount of purchased products;

- the success builder

the distributor may make a one-time order with a value of 1,000 volume points (which almost corresponds to a purchase of 1,000 U.S. dollars) and he is subsequently automatically eligible for a discount of 42% on this order;

- the supervisor

if, in one month 4,000 volume points are earned, or 2,500 volume points in two consecutive months, the distributor is eligible to be promoted to supervisor,

which not only generates immediate profit, but also profits in the form of “royalty overrides,” which is a percentage ranging from 1 to 5% on the business volume of three success levels below him; the right to obtain these “royalty overrides” can only be maintained on the condition that the distributor-supervisor has sold products to at least 10 clients every month (these do not need to be new clients every month nor is there a minimum amount of sold products), plus, he must have sold 70% of the stock he purchased in the previous month;

- the active supervisor

as the supervisor collects a larger number of volume points through the sales of his network, he can qualify himself for a special status. In ascending order, these statuses are “World Team,” “TAB Team,” “Global Expansion Team,” “Millionaire Team” and “Presidents Team” and he can earn, in addition to the aforementioned “royalty overrides,” a production bonus on the sales of sponsors he sponsored up to the third generation and until reaching another supervisor from the active supervisor team; furthermore, this supervisor can also acquire fringe benefits, such as Cartier watches and beautiful trips.

The members of the sales network may subsequently earn their income in five ways:

- profits from direct sales, which is the difference between the purchase price of the product and the selling price to the consumer which varies between 25 and 50%;
- profits from indirect sales: i.e. the difference between what a sponsoring distributor pays for the product and what the “downline” distributors

in the organization of the sponsoring distributor pay for it; these profits vary between 8 and 25%;

- monthly income from “royalty overrides,” i.e. a 5% profit on the sale of all supervisors up to three levels deep in the organization of the beneficiary of such income;
- monthly production bonuses from 2% to 7% over the entire downward organization volume of the supervisor, or in other words, the points earned from the sales of the sponsored sponsors from the beneficiary up to the third generation;
- annual bonuses: these are bonuses that Herbalife hands out to its “Top Achievers” for their outstanding achievements.

In the opinion of the respondent, since the introduction of the Herbalife sales structure, numerous persons registered themselves as distributor, often merely to be able to purchase products at a reduced rate and often proceeding to the development of their own distribution network. However, the pyramidal structure of these networks entail that after a period of time, the distributors' “market” becomes saturated and the bottom of the pyramid only attracts distributors who have no real possibility to build their own network. Even if one takes the fact into account that there is a huge rotation in the number of distributors, there has been an exponential increase, which is not in conformity with the market. It is at that moment of exhaustion of the distribution potential that problems manifest themselves, also because of the fact that on that particular level and moment the distribution market for consumers has shrunk considerably, or in other words, is already played by other distributors.

The respondent also points to what it considers a very vigorous recruitment strategy of the distributor network, which Herbalife allegedly tolerates and doesn't take action against even though certain practices are conflicting against its own rules, such as offering mail orders and products at exorbitant prices, offering these to potential distributors who are not part of the "downline" concerned, demanding an excessive financial contribution for stepping into the network of the distributor-supervisor concerned, statements in leaflets that the recruitment of distributors is in fact an underestimated system of financial gain, but that in essence it is more important than the profit on direct sales and suggesting millions of profits to potential distributors. He refers to distributors who have stepped into the system with the goal of realizing such profits, but who ultimately ended up on the losing side and who, after a few months, are unable to return the mail orders, which they purchased for an overpriced amount, to Herbalife or the distributors above them, or they are stuck with the stocks they purchased in order to continue enjoying discounts month after month. He also refers to the fact that during the recruitment meetings, potential victims are encouraged to quit their regular jobs so they can fully concentrate on being a distributor and follow into the footsteps of the top distributors who are present.

DISCUSSION

9. Article 91, 14° of the WMPC (Law of April 6, 2010, on market practices and consumer protection) provides that under all circumstances the following commercial practice shall be regarded as unfair:

establishing, managing or promoting a pyramid scheme in which a consumer or an enterprise, after payment, is likely to receive a compensation that is derived primarily from the introduction of new consumers in the scheme rather than from the sale or consumption of products.

Under Article 86 of the WMPC, unfair business to consumer commercial practices are prohibited.

Article 99 of the WMPC provides that it is prohibited to establish, manage or promote a pyramid scheme in which a company, after payment, is likely to receive compensation derived from the introduction of new companies into the scheme rather than from the sale or consumption of products.

Article 91, 14° of the WMPC is the conversion into Belgian law of Annex I, point 14 of Directive 2005/29/EC concerning unfair business to consumer commercial practices in the internal market. Concerning unfair business to persons other than consumers, the Belgian legislator has elected to adopt a provision that is identical to the provision of Article 91, 14°, but it refers to the use of businesses instead of consumers (Article 99).

The Court makes the following considerations:

10. The Information Brochure on the aforementioned Directive that has been published by the European Commission, even though serving as a guidance only, with no legal value, describes the forbidden pyramid scheme as follows:

“Unfair network

Directing a marketing network that sells beauty products, whereby persons who wish to join the network of distributors must pay a subscription fee that is not in proportion to the value of the costs of the educational material received (e.g. information on the products) or administrative costs, in order to be included in the network, and whereby the main source of income is obtained from enrolling other persons in the network.”

In the Articles 91, 14° and 99 of the WMPC, a more detailed explanation has not been included concerning the wording used “other than from the sale or the use of products.”

The law requires therefore that it is not a question of own sales, so that the circumstance that the compensation is obtained on the grounds of the sale of products by other participants in the network, namely “downline” distributors, does not form any infringement of the legal provision.

Nor does the law stipulate that the compensation may be obtained only from sales to a consumer who is not a distributor.

As far as use is concerned, finally, the law does not stipulate that it is a question of the use by a non-distributor.

11. The Court establishes first and foremost that the distributor who wishes to obtain access to the system should not be required to pay any subscription or entry fee in order to obtain this.

He must however purchase from the appellant an IBP, which comprises four products, as well as advertising material and all sorts of documents.

The appellant is convincing in its argument that the price to be paid for this, of €107.15 excluding VAT, is in accordance with the recommended retail price of these products and that there is in any case no proof to the contrary. *A fortiori* it has not been demonstrated that this price is out of proportion to the value of the four products.

In the event that the distributor, after the purchase of this IBP, decides to no longer be a distributor, he may return the starter package and he will be repaid the price that he paid for this, as long as the return takes place within 90 days, even if the products have already been opened.

The price that the distributor has paid for the IBP can therefore not be considered a subscription fee or entry fee, even if at the time of the purchase no discount was granted, which is however the case with later purchases.

Nor may the annual fee to be paid by the distributor of approximately €10 for communication and other administration costs, be considered a subscription fee or entry fee. In the first place, this compensation is payable only from the second year onwards. Moreover, it is not proven that this compensation amounts to more than the value of the service that is paid for with this contribution, let alone that it is out of proportion to it.

The ruling states therefore that it can also not be assumed that the consumer or the company obtains any entry into the sales system of Appellant by virtue of a payment.

12. The appellant asserts that the distributor does not have the obligation to place a minimum number of orders within a certain period of time, nor have at all times a minimum stock of products.

There is no proof to the contrary and Article 2-A of the Book of Rules (*Boek van de Regels*) of the appellant stipulates as follows:

“The only expense that a candidate can be requested to make is for the purchase of an official International Business Pack (IBP). A potential or existing distributor cannot be obliged to make other expenses, not even for the examples cited below:

- ° the replenishment of stocks, products or materials*
- ° the purchase of products, materials or services that are offered by Herbalife or by third parties with the exception of the official International Business Pack (IBP).;*
- ° the purchase of entry tickets for seminars, meetings or other events.”*

13. As far as the return of products is concerned, the appellant refers to the following stipulations in its Book of Rules:

“Rule 9-B: 90 days period of decision

If a distributor decides within the 90 days of his/her request to cancel his/her distributorship, he/she must send a signed letter to Herbalife. He/she may then return to Herbalife his/her (1) IBP, irrespective of whether this is still in a sellable state, and (2) unopened, unused and sellable products and sales materials that the distributor has purchased after the time that he or she became distributor. The repayment shall be made

for the net price paid by the distributor for the products and materials that he or she returns (...).

Rule 9-F: Repurchase of remaining stocks

A distributor who terminates his/her distributorship may return for resale remaining products and sales materials that are unopened and in a sellable state only up to 12 months after they have been purchased and on the condition that the distributor can submit a proof of purchase. If these conditions are complied with, the distributor shall receive indications of how the products can be returned to Herbalife accompanied by, if applicable, data concerning the 10 clients/70% rule. In the event that all the conditions are complied with, and after receipt of the products and documents, the repayment of the full purchase price of the products will be made to the distributor.”

Until 2012, the rule applied that a deduction of 10% was imposed for administration costs, which did not as such have the consequence that this concerned a banned pyramid system. In the “Seldia European Code of Ethics” concerning direct sales, it is in fact stipulated that at least 90% of the purchase price must be repaid. This deduction has now been dropped as can be seen in the Book of Rules submitted by the appellant.

The respondent has not been able to provide convincing evidence that these rules are applied in any other way in practice. At least this cannot be deduced from the sums that have actually been repaid. For it is also necessary to take into account the number of goods for which there is the request that they be returned.

The fact that this take-back rule is applied correctly by Appellant can also be seen from, among other things, the fact that the respondent has not been able to submit a single complaint of a Belgian Herbalife client who feels that he/she has been duped in this respect.

14. Rule 9-F of the appellant stipulates furthermore that the appellant shall deduct in respect of the distributors concerned all sums concerning “royalty overrides,” commissions, production bonuses and other earnings or benefits that have been paid in respect of the returned products and if necessary, adjust the qualifications.

This may be considered a safety measure in order to avoid that a “downline” distributor would be urged to purchase an unnecessary quantity of products.

15. Until May 2012, it appears to have been the case that a distributor who was not yet a supervisor was allowed to purchase products from his/her sponsors. According to the appellant this did happen but it was an exception to the rule. The IBP could therefore also be purchased by the sponsor.

The Court rules that this fact does not as such signify that it referred to a forbidden pyramid system. It does not imply that the consumer or a company had the opportunity to obtain a greater compensation from the introduction of new consumers or companies into the system than from the sale or use of products.

In the Book of Rules of Appellant (version of December 2012) it is now stipulated:

“Rule 16-A Purchasing products via the correct channel

Distributors may purchase products only directly from Herbalife. It is therefore an infringement of this rule if a distributor sells products to another distributor, or purchases products from another distributor. Distributors are duly informed that they may not sell any IBPs to Potential and/or other distributors. Nor are any volume points awarded to IBPs.

Rule 20-B Distribution of production

Herbalife is a distribution company for the wholesale and retail trade. The products that a distributor purchases from the company must be sold to clients or used for personal or family consumption. It is not permitted to purchase products exclusively and solely in order to rise to a higher position in the Sales and Marketing Plan.”

Therefore, distributors may purchase products and the IBP only from the appellant, a distributor may not sell products to another distributor and products may therefore be sold only to consumers or retained for own use.

In addition, distributors may not purchase large quantities of products exclusively and solely in order to rise to a higher position on the hierarchical ladder. There is no evidence that it is necessary that the distributor purchase products month after month in order to maintain his position at the particular certain level for which he has qualified.

It is not been demonstrated that a distributor who introduces a consumer to the appellant and sponsors him to become a distributor obtains any financial compensation for this from the appellant or from the

candidate distributor. Nor has it been proven that he obtains compensation for the IBP that must be purchased by this candidate distributor from the appellant, or that he has ever obtained any compensation for this, or that he will be or has been awarded volume points for this (see rule 16-A above).

It is only in the case that the new distributor him/herself purchases products for his/her personal use or sells them on to a consumer that the sponsor obtains any benefit from this.

Furthermore, it has not been demonstrated that the distributor is obliged to sponsor other distributors, or that he/she is put under pressure to do such. According to the figures communicated by Appellant, that are not contested, 85% of the distributors decide not to sponsor and opt therefore to sell the products directly to third parties or use them themselves.

Article 24-B of the Book of Rules of Appellant stipulates as follows:

Whenever a distributor offers the business opportunity or proposes the Sales and Marketing plan of Herbalife, the following rules must be complied with:

° He/she must state clearly that the most important activity of a distributor is composed of selling and distributing the Herbalife products via direct sales. He/she may not assert or imply that this is subordinate to sponsoring or to the expansion of the organization;

° He/she may not assert or suggest that a distributor can obtain his/her income by sponsoring other distributors;

° He/she may not assert or suggest that a distributor is in any way whatsoever obliged to sponsor third parties or recruit them

to become a distributor;

° He/she may not assert or suggest that a distributor does not need to do anything or need only make the minimum of effort in order to book success;

° He/she may not make any statements that do not accord with reality.”

From the description of the sales system and the compensation, it is evident that the distributor can not only obtain direct profit by selling the products purchased for a higher price but that he/she may also use these products him/herself. A distributor who sponsors may also obtain indirect profit from the sales or from own use of these products by means of his/her “downline.” Also this indirect profit, which is subject to a quid pro quo, must be considered a compensation that comes from the sale or use of products as referred to in Articles 91, 14° and 99 of the WMPC. The obtaining of this compensation and therefore the possibility to obtain this form of indirect profit does not therefore indicate the existence of the forbidden pyramid system.

Consequently, it cannot therefore be claimed that it is a question of the forbidden pyramid sales for the reason that the distributor could obtain additional profit from the indirect distribution of profit, “royalty overrides” and production bonuses, calculated on the sale of products by the distributors ranked below him/her in the network, rather than from the direct sales to consumers. As such, it is not forbidden for a distributor to aim for a network that is as broad as possible of “downliners” in order to make as much profit as possible, as long as he/she is compensated on the basis of the purchase of products for selling on or for own use and not merely on the basis of the recruitment of new distributors.

The respondent wrongly raises the objection that the sale system of the appellant is a forbidden pyramid scheme on the grounds that indirect profits are paid out on the basis of the purchase of products by the distributors as such situated there under in the network and not on the grounds of the sales actually realized by these distributors. Since the determinations of the WMPC do not require that the distributor resells the products to the consumer and allows that the distributor can even keep the products for his own consumption, the fact that the payout is granted at the moment when the sponsored distributor buys the goods from the appellant, cannot lead to the conclusion that this would entail a forbidden pyramid scheme. For the same reasons, the respondent cannot demand that the appellant would have to prove in which measures the products were resold to the end users and at what price.

Furthermore, the distributor always has the possibility to return the products purchased by him to the appellant and in that case will be paid back the purchase price of these goods. From rule 9-F of the Book of Rules of the appellant, it furthermore becomes clear that the advantages that are granted to the “upline” (those situated above him in the network) distributor are restated retroactively, in case the “downline” distributor returns the products to the appellant conforming to the contractual return policy. This policy provides a guarantee against an exaggerated expansion of stock by the distributor and prevents that such an expansion is encouraged.

Under such circumstances it cannot be argued that the system of the appellant makes it possible that her products wander about endlessly and never find their way to the consumer. All products that are bought by a distributor from the appellant, are either resold to a consumer, or are used by himself, or are returned by him to the appellant.

Moreover, the respondent fails to submit any kind of documentation from which it would show that a Belgian distributor has filed a complaint about the alleged fact that he was being stuck with too large an inventory of products.

From market research, which the appellant has carried out in August 2012 in Belgium, it showed that only 8% of the consumers of Herbalife were also distributors thereof. This shows that these products most definitely are being sold to ordinary consumers and are not only bought and sold within the system, and contradicts that they wander around endlessly within the system.

16. The reality that the appellant allows for direct volume discounts, in the sense that products become cheaper in proportion to the increase of buying volume by a certain distributor (and his “downline”), does not in any way diminish the considerations made above and in and of themselves do not result that her sale system would be a forbidden pyramid scheme.

This also applies to the fact that the “10 clients” and “70%” rules are not applied by the appellant to all distributors, but only to those distributors who are supervisors. The appellant makes it sufficiently plausible that she supervises the compliance to these rules and the contrary is not indicated in any case.

17. The argument that one would be able to speak of a market saturation is not supported, and is not shown either by the large rotation of distributors and is contraindicated by the turnover numbers.

From the aforementioned market study, it also shows that more than 50% of the respondents have already heard about the brand name Herbalife, and that 87% of the respondent have not bought any Herbalife products and that 88% of those who have already used the products, are of the intention to keep buying and using these products.

Furthermore it concerns products that are used on a regular basis and not goods that are bought only once. As a result, as the number of buyers of these products increases, the demand for additional products will also increase.

That there is an apparent large rotation of distributors does not necessarily imply that the system is unlawful. It can be caused by the fact that the involved party wanted to do this only for a limited time or to finance a certain important purchase, with the conclusion that after a certain period of time, that this kind of involvement isn't for him or due to the fact that he only wanted to buy the products for personal use and wanted to enjoy the 25% discount.

In this context, it has to be also pointed out that 85% of the distributors are not sponsors and that discontinuing distributors can make use of the return policy set by the appellant.

18. References to websites, folders or other documents of distributors, who allegedly may have behaved in an unacceptable manner, are not relevant here.

First of all, the documents submitted by the respondent are already more than eight years old and do not prove that they were still current at the moment that this complaint was filed.

Taking into consideration that furthermore this concerns websites, folders or documents of enterprises which are independent of the appellant, the content thereof can in no way be made to impute the appellant.

19. From all previous determinations and considerations, it follows that it has not been shown that the sales system employed by the appellant can be considered as a system whereby the consumer/an enterprise, by means of a payment, receives a chance to a compensation which mainly flows from the establishment of new consumers/new enterprises in the system, than from the sale or consumption of products.

In conclusion, no infringement is shown to article 91, 14°, nor to article 99 of the WMPC.

The contested judgment must therefore be reformed and the requirement of respondent has to be rejected as unfounded.

The court does not consider it appropriate to order the submission of additional information and/or documents as suggested by the respondent. Given all the above considerations, these pieces are indeed irrelevant to the assessment of the dispute concerning the alleged infringement of articles 91, 14° and 99 of the WMPC.

The other invoked elements, number data and arguments are irrelevant to the case and in any case do not weigh upon what is being considered by the court.

FOR THESE REASONS:

THE COURT, making a pronouncement following contradiction,

Taking into account article 24 of the law of June 15, 1935, on the use of language in courts cases;

voids the contested judgment, insofar as the first court has accepted the claim of the respondent and has made a ruling on the costs.

Deciding anew,

Rejects this claim as ungrounded.

Sentences the respondent in the costs of both instances, determined to be €192.88 in virtue of its own, and to be €322.52 in virtue of the appellant, and to the payment of a court fee of €1,320 by predisposition to the appellant.

As such sentenced and pronounced at the public court hearing of the civil **eighth chamber** of the court of appeals in Brussels, on February 2, 2013, being present and presiding:

B. LYBEER,
C. VAN SANTVLIET,
E. HERREGODTS,
K. BATSELIER

[signature]

Kaatje BATSELIER

[signature]

Catharina VAN SANTVLIET

Counselor, President,

Counselor,

Counselor,

Court Clerk.

[signature]

Els HERREGODTS

[signature]

Bruno LYBEER