

# Rebuttal to FDI Usana Report Round Three

## Introduction:

This is my response to Barry Minkow's response to my response to his response to my rebuttal to his Usana report. Got it?

If not, here's a review to help catch you up:

My original Rebuttal Report can be viewed at:

<http://www.marketwaveinc.com/articles/FDI-Rebuttal-R1.pdf>

You can read Minkow's response at:

<http://www.frauddiscovery.net/ClementsResponse.pdf>

You can read my response to his response at:

<http://www.marketwaveinc.com/articles/FDI-Rebuttal-R2.pdf>

Here is Minkow's latest response:

<http://www.frauddiscovery.net/RebuttalAddendum.pdf>

Of the mere eight paragraphs proffered in this response by Mr. Minkow, only two provide any form of rebuttal to any Usana related issue being debated<sup>1</sup>. Since Mr. Minkow has chosen to not, or is unable to, offer any form of response to the vast majority of numerous counter-points presented in my original Rebuttal Report, my response will be understandably short.

## Response:

It astounds me, Barry, that you continue to devote so much attention to defending a one sentence, throw-away point that I made in passing, which has absolutely nothing what-so-ever to do with Usana. But if it will prevent you from continuing to use this "FCC" issue as a distraction tool, I'll concede the point. Of the over 2,200<sup>2</sup> companies in the United States who were using a multilevel compensation system three years ago, I was unaware of the one that occasionally used the acronym "FCC".<sup>3</sup> In spite of the fact their BBB report does *not* say they were ever MLM<sup>4</sup>, there is nothing on their current web site indicating an MLM pay plan, nor do they claim they have one when I called them and asked<sup>5</sup>, I should have spent much more time and applied considerably more of my investigative skills to verifying this utterly meaningless, completely irrelevant, microscopic aside. You got me, I'm wrong.<sup>6</sup>

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<sup>1</sup> The "75% savings" and Denis Waitley issues.

<sup>2</sup> Network Marketing Business Journal survey, 1997 (there are surely more today).

<sup>3</sup> That had also just opened in 1999.

<sup>4</sup> The "Nature of Business" section only describes a recent change to a direct sales system and makes no mention as to what form of system they used previously. The "Industry Tips" section is provided by the BBB, not the company.

<sup>5</sup> Nor did I ever say I was "sure they are not or were not an MLM" (emphasis mine). In fact, I openly and clearly acknowledge the possibility that they are *still* an MLM company! I then discussed the repercussions of such, and the benefits to the MLM industry should your claim bare out to be true.

<sup>6</sup> I'm sure you'll have fun taking that line out of context as well.

I know I should follow my own lead and move on, but your assertion that my not being aware of every abbreviation used by every MLM program that existed in the entire country years ago somehow reduces my standing as an MLM "expert", or my inability (disinterest, actually) in vetting the "FCC's" past forms of compensation is a foible in my investigative skills, what does that say about your claims that Dave Wentz is Usana's CEO, or that he signed the 10-Q statement? Yes, yes, I know about the later 10-K and all that, but that's not the point I'm making now. You made *two* statements that were dead wrong. Besides doubling my number, your blunders were related to present day facts, easily verified via numerous sources, and directly relevant to the primary issue. I expect you will now claim that they were innocent, harmless mistakes that have no material effect on your overall case. And you would be absolutely right, and I would completely agree with you. Had I omitted the great majority of the points I raised in my 28 page rebuttal and disproportionately expounded on only these two minor miscues, and then exploited them to demonstrate your lack of "expertise" or investigative prowess, you would surely accuse me of unfairly using an *ad hominem* attack, evading the point, and trying to distract the public from the real issues. And you would be absolutely right, and I would completely agree with you.

Can we now focus on debating the real issues pertaining to your Usana report?

In your response to the "75% savings" issue you state that I am claiming "Usana saves 75% by removing all the middlemen...". I am not. You are embellishing my comments. I only stated that this is what Usana is saying<sup>7</sup> as opposed to your claim that they were saying the customer received this savings. You once again completely ignore my clear and specific question: Where does Usana say that the customer saves 75% on the price of their products due to the elimination of middlemen in the distribution process? If you want to create a new argument denying that even Usana saves 75%, that's fine. I'd be happy to debate that issue next, but first let's deal with your demonstrative YouTube video and repeated assertions that Usana claims their distribution system provides a 75% product cost savings. You made this claim numerous times and built a substantial portion of your case on this issue, so it should be easy for you to show where Usana corporate makes this claim. If you can't, that's fine. Just admit you made a mistake on that one and we'll move on to where ever you wish to take the debate on this point.

You have again simply repeated your original assertion that Usana products are higher priced than products of the same or similar type. You oddly ask "How is this explained". Please reread pages 4 through 7 of my original Rebuttal Report. I can appreciate that you disagree with my responses, but please don't create the illusion that they don't exist.

You then state, "As for the defense of Mr. Waitley, there is none as the Masters Degree issue is enough, isn't it?" Well, no. You further alleged that the misstatement in Usana's disclosures was deliberate and their innocent explanation was a lie and a "cover up" – in spite of the fact that Dr. Waitley never stated a Masters Degree in his *own* bio on his *own* web sites! It is also debatable as to whether this misstatement was "material". Are you actually suggesting, Barry, that even a single Usana investor, ever, would have *not* purchased Usana stock had they read this bio of Dr. Waitley instead...?

"Denis E. Waitley, Ph.D., 72, has served as a director of USANA since May 2000. Dr. Waitley has also served as a consultant to and a spokesperson for USANA since September 1996. Since 1980, Dr. Waitley has been President of the Waitley Institute, a corporate leadership-training firm he founded to provide professional and personal development skills for business executives. Dr. Waitley also serves as President of International Learning

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<sup>7</sup> I have never professed to know what Usana's actual savings are.

Technologies, Inc., a company he founded in 1989 that produces educational audio/visual materials for companies and individuals. During the 1980's, Dr. Waitley served as Chairman of Psychology for the U.S. Olympic Committee's Sports Medicine Council. He is the author of several national best selling non-fiction books and audio programs on personal excellence. Dr. Waitley received a B.S. from the U.S. Naval Academy at Annapolis, and a Ph.D. in Human Behavior from La Jolla University.”

I assert that not one investor ever made a buying decision based on Dr. Waitley's entire bio (his reputation speaks for itself), let alone his stated Masters Degree. I further assert your motive for exposing this point was simply to “pile on” as much information as you could that would discredit the trust and reputation of Usana to make your other assertions easier to swallow.

But enough of this dodging, Barry. I challenge you to provide direct answers to the specific questions I have posed in my previous two responses to you. If you once again fail or refuse to provide answers to these questions I will assume this debate to be concluded and the last word will be yours.

Len Clements  
MarketWave, Inc.