

Response to National Business Review Usana Article

By Len Clements © 2007

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I am writing this because I *can't stand it* when people can't admit they are wrong! I'm writing this because I *loathe* the ignorance that causes people to simply accept a version of something for no other reason that it fits their own prejudice! I'm writing this because I *abhor* it when someone writes something, screws it up, then tries to spin dance their way out of it! I'm writing this because *somebody* needs to *get the story right!*

Introduction:

On July 12th, 2007, an article appeared in the National Business Review, an online and print publication primarily focusing on the New Zealand market, that was critical of Usana Health Sciences. The article was titled "[Most people won't get their money back](#)", and was written by Helen Malmgren¹.

According to her [bio](#), Ms. Malmgren is the co-owner of [Vulperine Production](#) and spent nine years as a producer for CBS News/60 Minutes. Her documentaries and magazine pieces won two Emmys, a Peabody Award, a National Association of Black Journalists Award, a Society of Professional Journalists' Sigma Delta Chi Award and a Sidney Hillman Award, among other honors. Her work has covered subjects such as AIDS in Africa, prison camps in Iraq and, like Barry Minkow, crime and corruption within major US corporations. Ms. Malmgren has also worked to train journalists abroad.

While this is all genuinely impressive and sincerely commendable, it does beg the question, How could she have blundered on her Usana piece so badly, and why couldn't she muster up any of the abundant journalistic integrity she obviously possesses when she was shown to have blundered? My theory? Ego and prejudice. I mean, how *dare* Usana question the reporting and investigative skills of such a highly regarded journalist? And, much like Minkow I suspect, she went digging into her Usana investigation *looking* for dirt. Already experienced in reporting on "crime and corruption at a number of major US corporations", and after having already read Minkow's Usana attack piece² (and obviously not having read my [Rebuttal Report](#)), and after the NBR had just ran an overall positive article about Barry Minkow himself just seven days earlier³, and already not being a fan of multilevel marketing, it is highly doubtful Ms. Malmgren wrote her Usana article from an unbiased, neutral position. It appears

¹ The article makes no mention of it's author, and lists only "NBR Investigation" where the writer's name normally appears.

² Which she imbedded a prominent link to within her article.

³ Titled "[It Takes a Thief to Catch a Thief](#)".

she read Minkow's report and set out to validate it, not to present a fair and balanced depiction of the Usana products and business opportunity.

Usana has responded to Ms. Malmgren's article, and rather than retracting, or even clarifying her errors, the NBR follows up with a defense of her article. To hers and the NBR's credit they did run Usana's [response](#) unedited, but sandwiched it in between the original negative article, another thick slice of negative [reporting](#), and the NBR's negative point-by-point counter-rebuttal. The NBR made sure their side got the last word.

They didn't.

Response:

Below is the point-by-point rebuttal offered by NBR (in red), and Usana's original response (in blue)⁴. My commentary concludes each point (in black). The bolded blue text is what the NBR quoted from Usana's response. I've added back the entire response. Note that the omitted text is often significant and provides supportive material which the NBR ignores.

We are concerned with this article's statement that our company is under investigation by the U.S. Federal Bureau of Investigation. Our company has no knowledge – much less confirmation – of any such investigation. **What proof does your reporter have of such an [FBI] investigation?"**

Helen Malmgren confirmed the existence of this investigation with an informed source in the FBI.

Ah, the ol' "We don't have to reveal our sources" angle. I thought this was a Constitutional issue here in the United States. Apparently it can be used to protect journalists who don't want to be held accountable in New Zealand as well. Considering Usana clearly stated that they have "no knowledge – much less confirmation – of any such investigation" by the FBI, wouldn't the appropriate response here be to *name* the "informed source" so we can determine if they were indeed "informed" correctly? After all, it would seem extremely unlikely that the FBI would openly reveal their investigation to a *newspaper reporter*, (and now a magazine columnist, too, since the same alleged FBI "criminal investigation" was just cited again in a Forbes article) but want to hide the fact they are investigating Usana *from Usana!* They're openly discuss it with the media, but not even *contact* the subject of their investigation. Does that make any sense?

Here's my theory: In Ms. Malmgren's first Usana article she states, "In the US, Usana is being investigated by both the FBI and the US Securities and Exchange Commission (SEC)... the *Wall Street Journal* reported the FBI and SEC investigations in March...".

First, there is a broad and highly significant distinction between an SEC "investigation" and an "informal inquiry"⁵. The SEC is absolutely *not* formally investigating Usana. They are, in fact, conducting an *informal inquiry*. Also, within the Wall Street Journal (WSJ) article it said, "Mr. Minkow has sent a critical 500-page report on Usana to the Securities and Exchange Commission and the FBI. According to people familiar with the matter, the FBI plans to question the company. Neither the SEC nor FBI would comment." So, the FBI won't comment to the Wall Street Journal, but they will to the National Business Review?

⁴ Provided by Daniel A. Macuga, Jr. Vice President of Network Development & Public Relations for Usana Health Sciences, with references to responses from Joseph Poulos, Vice President of Financial Communications.

⁵ See section titled "SEC Enforcement Authority" at <http://www.answers.com/topic/securities-and-exchange-commission?cat=biz-fin>

I think Ms. Malmgren's "informed source" is nothing more than Barry Minkow's FBI liaison describing to her his review of Minkow's report, and the WSJ comment about the FBI's "plans" to question Usana. Which also likely originated with the FDI. That's Minkow's FDI, not the FBI.

Unless this was an unofficial leak, which would be an egregious, and likely terminatable act on the part of any FBI personnel, the only other reasonable, logical assumption that can be made here is that Mr. Malmgren is not revealing her source because *she* has something to hide, not the FBI. Most likely that would be the lack of credibility her source would have. An "informed source within the FBI" sounds so much better than "Barry Minkow's contact", doesn't it?

Bottom line: Usana emphatically denied any knowledge of an FBI investigation, and asked Mr. Malmgren, and the Forbes article author as well, for her evidence of such an investigation. Both completely *failed to provide any such evidence!*

And speaking of Minkow, the Usana response began with this statement:

"Our company has recently been subjected to a number of baseless attacks from a convicted stock fraud felon who has admitted to having a financial interest in a decrease in our stock price."

The NBR didn't even try to respond to this and completely ignored it.

"This article states that associates are required to buy hundreds of dollars of products every month. This is simply not true. There are no requirements that our associates buy any products whatsoever. USANA's rules are clear on this issue, as demonstrated by the compensation plan that this article links to. Furthermore, Dr. Fred Cooper specifically informed Ms. Malmgren of the facts, which she left out of her article."

Our article states that, to qualify for commissions, distributors have to buy a minimum quota of Usana products every four weeks, and that quota in New Zealand costs \$290. Please see Usana's 2006 10K filing to the US Securities & Exchange Commission, which states that "qualifying purchases are the amount of product that associates must purchase each month, which they must either re-sell to consumers or personally use, to be qualified to earn commissions or bonuses under Usana's compensation plan."

Here is the section of the article, verbatim: "...each new Usana distributor must buy a minimum of about \$445 worth of the company's business tools and health products, then continue to buy \$290 worth of its health products every month thereafter in order to qualify for commissions. Usana's critics say these monthly qualifying purchases are the reason so many of its distributors fail to make a return on their investment."

So, did Ms. Malmgren say every new Usana distributors *must buy* products, or didn't she? She did *not* say "to qualify for commissions", she said, "...each new Usana distributor must buy a minimum of about \$445 worth of the company's business tools and health products," (emphasis mine) and *then* they must "...continue to buy \$290 worth of its health products every month thereafter in order to qualify for commissions." Not only was her first statement absolutely, completely, 100% *wrong*, but she included "business tools" which, to my knowledge, *no* MLM company requires the purchase of – even to qualify for commissions! Quotas (monthly or otherwise) must be met with resalable products, as is the case with Usana. Furthermore, a new distributor need only purchase about \$157.40⁶ in products to

⁶ Based on the exchange rate of 1.43 NZD to 1 USD, as of 8/8/07 (thanks, Steven ©).

begin qualifying for commissions, *not* \$445, and “buying” these products isn’t even required in Usana, nor *any* legitimate MLM company, to earn those commissions. These are not *buying* quotas, they are *sales* quotas! All of the qualifications described by Ms. Malmgren can be met with sales to non-distributor customers, and *none* if it need be met by the distributor’s own purchases. Now, if Ms. Malmgren wants to argue the retailability of Usana products, and the likelihood that many Associates are meeting their quotas this way, that’s fine. It’s a fair point. But it’s also an entirely *different* point.

The NBR response also states the \$290 quota is applied “every four weeks”. Now they are misquoting their own article! Ms. Malmgren correctly defined this as a “monthly” qualification. The difference is significant. There are 13 “four week” periods in a year, there are only 12 months.

Bottom line: Ms. Malmgren is *wrong* when she said products must be purchased by new distributors. Like virtually all MLM companies, you can become a Usana Associate, with the right to enroll and resell to others and purchase products at reduced prices, access all back office facilities online, obtain exclusive training and support, attend Associate functions and events, participate in contests and promotions, etc., etc., all *without* ever purchasing a single product! Ms. Malmgren is *wrong* when she said new distributors must move about \$445 in products even if she did mean to qualify for commissions. The requirement is about 42% *lower* than that amount!⁷ Ms. Malmgren is *wrong* when she said one could purchase business tools to meet this quota. They can’t. Ms. Malmgren is *wrong* when she said distributors “must” *buy* their products. They can *sell* products to meet their quota. And finally, Ms. Malmgren is *wrong* when she said the monthly requirement “in order to qualify for commissions” is *anything* over about \$179. The \$290 NZ quota Ms. Malmgren describes is the quota to earn the *maximum* commissions. An Associate can “qualify” for commissions with 100 points.

About the only thing Ms. Malmgren got right on this entire issue is that Usana sells “health products” and they have “critics”!

Ms. Malmgren discussed these qualifying purchases with Usana vice president Fred Cooper, who confirmed that in 2006 87% of Usana’s commission-earning distributors did not make enough money to recoup the cost of their monthly purchases.

According to Usana, “Four witnesses who sat in on the conversation can attest that Mr. Cooper, like USANA, vehemently disagreed with the statement. It relies on this false assumption made by the felon Mr. Minkow that somehow products sold to customers are ‘costs’.”

The title of Ms. Malmgren’s article was “**Most people won’t get their money back**”. This, taken literally, is wrong on it’s face. Most people won’t *make* their money back, that’s true, and that’s only if you count the products they are consuming as an expense. From both a logical as well as an accounting standpoint, they are not. When you bought a loaf of bread at the store, was that an “expense” resulting in a net loss, or did you get an asset of equal value in return? “Most people won’t *get* their money back” for their products only if they didn’t voluntarily consume it, sell it, or sample it. Usana, like virtually all MLM companies, offers a very generous refund policy that applies not only to their resalable products but their sales aids as well.

⁷ The amount required to “activate” one’s position in the hierarchy (begin qualifying for income) is 150 points, or about \$180 US, which is currently \$257.40 NZ.

“Usana’s research, which was shared with Ms Malmgren, shows that over 75 per cent of the more than 128,000 associates participating in an online poll cited their interest in the company’s products as the primary reason they join. Dr. Fred Cooper explained this data to Ms. Malmgren, who unfortunately mischaracterized his statements as a simplistic statement that USANA associates are “happy” to spend their money and not earn commissions. (Adding to the confusion, the article states that associates are in fact “happy” to spend \$290 per month.”

Usana gave Ms. Malmgren three contradictory accounts of this survey. Ms. Malmgren asked repeatedly for information that would clear up these contradictions and put this survey into some kind of meaningful context. Her last request for this information was by email the day before the article ran, and Usana did not answer her. If Usana would like to answer Ms. Malmgren’s questions about the survey now, NBR would consider posting it on our website along with the July 13 story.

So, journalistically speaking, if you’ve got three different versions of what this survey means, and the surveyor hasn’t responded yet as to which version is accurate, is eeny-meeny-miny-moe the best way to decide!?

To be fair, it does appear that Ms. Malmgren did put at least some thought into this. It appears she picked the version that would be the most discrediting to Usana. This is a common mode of conduct for all Usana critics, it seems. That is, if there are several theories to explain a certain event or conduct, ignore the most rational, reasonable scenario if it at all excuses Usana, no matter how likely the explanation. [Occam’s Razor](#) is discarded into that little slot in the back of your medicine cabinet. I mean, come on. *Obviously* distributors would not be “happy” to just purchase products and not make money. If they *just* wanted the products why wouldn’t they just sign up as Preferred Customers? What this survey says, which I’ve heard explained several times now and it’s *always* crystal clear, and *always* completely consistent, is that the products are the main reason the large majority – 75% – of Associates joined Usana. It’s that simple. Sometimes this fact is used to explain that many Associates don’t consider their monthly product purchase, if greater than their monthly income, as a loss because they genuinely wanted the products anyway. This is resoundingly evident by the fact that over \$330 million in product was eligible for return last year – and *wasn’t!* Fewer than 2% of the products purchased by distributors were returned to Usana, even when Usana would have *paid* them to send them back!

Bottom line: Rather than choosing to interpret this survey in the way that makes the most sense, it was instead depicted in the way that made Usana look the silliest.

“Perhaps most troubling, Ms Malmgren’s article falsely states that a Usana spokesperson ‘suggested’ that the company’s July 17 corporate earnings announcement would confirm that sales were slated to continue to grow year after year. While USANA’s guidance published prior to earnings clearly stated that the company expected sales to continue to grow, our spokesperson made no statements whatsoever suggesting or characterizing earnings. The only discussion of earnings was to give your reporter a “heads up” that earnings were scheduled for July 17th as a courtesy. We are pleased that the National Business Review posted our email correcting the record on this issue, and that Ms. Malmgren confirmed via telephone that she did not have notes of any suggestion being made to her about earnings. However, we do believe that we have the right to expect a proper correction.”

In a phone call on July 6 Usana spokesman Joseph Poulos told Ms. Malmgren that “the most important point is that the company continues to grow sales year after year.”

He also later said, "the larger point is that sales continue to grow." Mr. Poulos then encouraged Ms. Malmgren to publish the date when Usana would announce its quarterly earnings.

Ms. Malmgren took this as a suggestion from Mr. Poulos that the Usana quarterly earnings report would reflect an increase in sales and wrote that in her story.

As for how Ms. Malmgren "took" the statements by Mr. Poulos, why not take them exactly as he stated them? *Of course* the most important point is that "sales continue to grow". That would apply to virtually *every company that has ever existed!* Why not take this obvious, simple statement on its face? Why *ass/u/me* that it means anything other than what Mr. Poulos actually said? Why take what he said and turn it into something that would be a *gross violation of securities law!*? Yes, public companies are not suppose to selectively provide inside information, such as what direction sales went the previous quarter, before the formal, public announcement of such information.

As Martha Stewart can attest, you're also not suppose to buy or sell stocks – or put options – based on "inside" information that can materially effect a company's stock price that only a select few *insiders* know about, but not the general public. Oh, like a scathingly negative report that's about to hit The Street, or a secret FBI investigation, for example.

Bottom line: To publicly claim that Mr. Poulos's innocent comment (that continued sales growth is important) was a "suggestion" that the yet unannounced quarterly results would be positive is tantamount to claiming Usana has violated one of the most important tenants of securities law. Surely knowing full well the legal implications of publishing this interpretation of Mr. Poulos's comments, it begs the question once again – why deliberately interpret it in the manner most potentially harmful to Usana?

"Ms. Malmgren's article in several instances presents income claims allegedly made by Usana associates or other third parties as claims made by Usana. Our associates are independent business owners, who are governed by USANA's strict compliance program. If Usana becomes aware of any inappropriate claims made by its associates, it takes immediate disciplinary action, which may include termination of the associate's privileges to sell USANA products."

NBR's article quotes two sources that make claims about income: The Enlightened Way to True Wealth, a Usana promotional CD by Robert Allen, a high-profile Usana distributor and promoter; and a New Zealand-based website for a group of Usana distributors, available at www.teamxcell.co.nz/financial+freedom/index.php.

Here the NBR basically confirms Usana's response. The two examples given of income claims were taken from third party materials, or made by independent distributors, *not* by Usana. Yes, those examples were derived from very successful, high profile Usana distributors, that's true. But how is this a counter-argument to Usana's response? Furthermore, selectively depicting such conduct in this way is extremely misleading given the large amount of publicly available promotional material that Usana *does* endorse that paints a very different picture of Usana's promotional campaigns than the one Ms. Malmgren attempts to portray.

Making "income claims" as an inducement to join is taboo within all responsible MLM companies, and they, like Usana, do have strict policies against such claims. Even if these Associates had made such claims they would have represented approximately .0013% of all Usana Associates. Out of over 160,000 independent distributors world wide you might find a

few who are overzealous in their promotions. But the thousands of Usana web sites, and tens-of-thousands of Usana distributors who play by the rules and don't make outrageous claims are just not newsworthy. They're boring. And their conduct wouldn't support any preconceived negative agenda.

Having said that, based on an abundance of legal precedent (at least here in the U.S.) the claims made by those sources quoted by Ms. Malmgren would not likely even be classified as a verboten "income claim". Such claims have three distinguishing characteristics:

- 1) That certain income amounts *will* be made, or are *likely* to be made;
- 2) That this income can be *created* with little or no effort;
- 3) That this income can be generated quickly;

Nowhere within any of the six specific quotes cited by Ms. Malmgren do *any* of these aspects apply.

Ms. Malmgren quotes Stuart Wallace of New Zealand's Commerce Commission's Fair Trading Branch (similar to the FTC in the U.S.) as saying, "If you're claiming you can make thousands while you're out playing golf, then that is probably an unfair scheme." She then follows up with, "Many of Usana's promotional materials seem to fit this description."

"I don't even have to be there to earn it!" says Robert Allen on a Usana CD. "We went on a cruise a while ago. We were gone for 10 days and when we got back there were two checks waiting for us—big ones—and we hadn't done anything that week but play."

I admit to being unlettered in New Zealand law, and certainly must grant Ms. Malmgren some deference here since her primary audience was made up mostly of Kiwis. But it would seem that an absolute, verifiable, mathematical fact would still be such a fact even if it applied to [Alpha Centauri](#). You absolutely *don't* "have to even be there" to earn MLM income. You indeed can earn it even if you "hadn't done anything that week but play". Yes, this is the "magic of *residual income*", and it is a fundamental, intrinsic part of any MLM program. If, as Mr. Wallace asserts, the claim that one can earn thousands while they're playing golf is indicative of an "unfair scheme", then this means book authors, song writers, actors, and pension recipients might all be participating in an "unfair scheme". Well, at least in New Zealand.

"You don't even have to be alive to make money with Usana," Ms. Malmgren says with a tinge of sarcasm. She then quotes one New Zealand-based website as saying, "Imagine receiving an income of \$100,000 plus for the rest of your life... And when you die? Will it on to your children – what a legacy to leave them!"

An absolute fact. Numerous Associates earn more than \$100,000 per year, and any Usana rep (nay, MLM rep) can sell or bequeath their distributorship.

"If you understand this concept, you'll make a fortune," says Allen. "In one to five years you could retire with residual income of \$50,000, \$100,000, even \$250,000 a year."

Again, this is an inarguable *fact*. According to Usana's [2006 Average Income Chart](#) hundreds of Associates earn at least \$50,000 per year, and dozens earn over \$250,000 per year (with \$1,109,995 being the highest annual income last year). Note that *nowhere* does Robert Allen even remotely suggest this income *will* occur, or will even *likely* occur, quickly, and with little or no initial effort. To the contrary, Allen specifically declares a time frame of "one to five years", and Usana history backs him up. The afore mentioned Income Chart clearly shows

annual incomes of at least \$50,000 taking an average of 50 months (4.17 years) and as much as 154 months (12.83 years). Furthermore, like any form of residual income, effort must be applied up front to create that income. No one just waves their hand over a keyboard and a 300 page novel suddenly appears on their publisher's desk (Steven King being the only exception). And nowhere does Usana, nor any of those quoted by Ms. Malmgren, say anything but exactly the *opposite* of such a claim. Indeed, Ms. Malmgren does concede that:

"At some point in their presentations, most Usana speakers are careful to say they can't promise anything, and that it takes time and work to build a successful Usana business."

Bottom line: Yes, they do.

"Without any challenge, Ms. Malmgren quotes Barry Minkow as saying that he made no money from his puts and that he does not have a financial backer. Reporting by the Wall Street Journal on March 15, 2007, which is selectively cited by Ms. Malmgren, clearly contradicts this."

The information Barry Minkow gave Ms. Malmgren does not contradict the March 15 Wall Street Journal article – it updates it. Ms. Malmgren has confirmed Minkow's statements through other sources.

[Here the NBR response again directs the reader to their previous article praising Barry Minkow's redemption.]

Ms. Malmgren does quote Minkow as saying he "hasn't made a penny on his put options", and that he "doesn't even have a paying client for the case because his client backed out.", yet he has "continued his efforts against Usana" anyway. You be the judge. What is Ms. Malmgren attempting to convey to the reader here? Isn't it obvious that, in a vacuum, said reader would assume from this wording that Minkow will *never* make money on his put options, and that the timing of his put purchases exonerate him from there being a profit motive behind his Usana attack? Wouldn't the reader be left with the impression that Minkow *never* had a paying client, at least one that actually paid him anything, because the one he was suppose to have had "backed out"? Aren't we then suppose to think that Minkow was so adamant about his case against Usana that he "continued his efforts" against them at his own expense? Please indulge my redundancy and reread this exchange again, intact, and within context:

Mr. Poulos: "You have this felon who's credited as one of the biggest fraudsters of the last century... shorting the stock and going around saying negative and misleading things about the company."

Ms. Malmgren: "Minkow said Usana's accusations are 'a joke' because he hasn't made a penny on his put options—he bought them too early. He said he doesn't even have a paying client for the case because his client backed out. Nevertheless, he has continued his efforts against Usana."

The NBR's claim that Ms. Malmgren simply "updated" the status of Minkow's paying client is disingenuous at best. She clearly did create the impression, whether intentional or not, that Minkow's paying client bailed on him early leaving the expense of his investigation, and subsequent promotion of his findings, all on him. Usana rightfully pointed out that Minkow *did* claim to have a paying client as late as March 15th – *after* his allegedly expensive investigation was completed. There is additional strong, albeit circumstantial, evidence that Minkow's aggressive promotion of his Usana-stock-dropping report was substantially funded. The

Google ads alone likely cost well into the thousands of dollars⁸, not to mention the professionally produced YouTube videos, product assays, and both the investigative and public relations firms Minkow hired. Even Minkow's good friend Brian Mohr, who is the Nutrimart store owner that was the subject of two of Minkow's YouTube videos⁹, didn't begin eluding to a change in Minkow's funding source until as late as July 2nd.¹⁰ Incidentally, Mr. Mohr also stated that he is "pretty sure (Minkow) purchased puts *after* the report was turned in" (emphasis mine).¹¹

In a [video interview](#) with TheStreet.com on March 20th, 2007, Barry Minkow was asked specifically "How did you discover Usana?" He responded, "By being asked to do a talk on an industry that I believed may have some problems – I gave the talk, I did some research, and the rest is history." Remember, this was just *five days* after the Wall Street Journal article where he revealed his client that was *paying* him to investigate Usana!

In this same interview Minkow refers to his "couple hundred puts", which moments later become "two or three hundred puts". The interviewer asked Minkow the direct question, "Whose money are you using to buy those puts"? Minkow then completely dodges the question by responding with this non sequitur: "The puts probably cost me at the time about 20 grand, plus or minus" (you can bet if the answer to that question was "my own money", Minkow would have answered it clearly and succinctly). Minkow is then asked, "When are you going to close your trade"? His response: "I don't know!" Now, if he had purchased his puts "too early" to make money on the 15% drop in stock price his report had just caused, thus the financial motive the interviewer had just challenged him on was invalid, wouldn't this had been a great time to mention that? And remember where Ms. Malmgren quotes Minkow, unchallenged, that he "hasn't made a penny on his put options"? Well, of course he hasn't – because he *hasn't closed the trade yet!* Minkow follows up with, "Look what the report cost me... lab reports, expert opinions... If I draw even on this deal it'll be a miracle." In Minkow's published response to Usana's law suit he states (within the context of his puts), "However, this case involved so much time and effort and lab reports and experts that we had to off set these expenses." Even Ms. Malmgren's original article included this comment: "According to reporting in the March 15, 2007 edition of The Wall Street Journal, Mr. Minkow , '...has bought 'put' options on Usana's shares in a bet the price will fall.'"

Were you, the reader, at all curious as to why Minkow can not seem to recall the number of puts he purchased to within a 20% margin of error (was it 200?, 250?, 300?) in spite of having disclosed this number to the FBI and SEC, and it being such a critical aspect of his defense? Here's my theory: *Of course* he knows how many puts he bought, and *exactly* what he paid for them, to the penny. But as long as he keeps the number ambiguously bouncing between 200 and 300, and the cost "probably" being "about" \$20,000, "plus or minus", no one can reverse engineer the math and determine exactly when he did purchase them, and what his profits will actually be.

Bottom line: Barry Minkow *did* have a "paying client" who did *not* "back out" until *after* they

⁸ Google's advertising program involves a variable "per click" or "per view" formula based on the value of chosen search terms. For example, Google estimated the average "per click" value of the terms MLM, nutrition, pyramid and scam, to be \$2.35 (every time someone searches Google using any of these terms and then just clicks on your ad that is displayed as a result of that search, you owe Google this "per click" fee). With Google performing 90 million searches per day, an advertiser using relatively obscure search terms could easily pay several hundred dollars per day. Currently Google estimates the "per click" value of the term "Usana" to be \$5.54.

⁹ According to Mohr himself, he and Minkow were friends long before Minkow supposedly picked his store at random as part of his product price comparison.

¹⁰ In a [post](#) on Usana's Yahoo Message Board, where he has posted regularly since May 1st, 2007.

¹¹ In a [post](#) on Usana's Yahoo Message Board.

had funded his investigation and a substantial portion of his anti-Usana propaganda campaign. And Ms. Malmgren did *not* challenge Minkow when he told her Usana's alleged profit motive was "a joke" because he had bought the put options too early to make money. Yet, she had Minkow's statement to the WSJ that he bought the puts "in the hopes the price will fall" right in the same article where she describes how sharply the price of Usana's stock fell! She also surely knows of Minkow's previous comments that the profits on his puts were to help defray the cost of his investigation. How could she *not* challenge this blatant contradiction?

"There are a great many other problems with Ms Malmgren's article – for example, falsely describing Ladd McNamara as a company executive, falsely reporting that Usana has claimed financial setbacks, failing to point out highly relevant information provided by the company, etc."

Ladd McNamara was on Usana's medical advisory board until he was exposed as having lost his medical license in two states. NBR does not claim that he was a Usana corporate executive and apologizes if its story gave the impression that he was.

Here is what Ms. Malmgren said in her article:

"Minkow also turned up some embarrassing facts about Usana's executives, including... Usana medical advisory board member Ladd McNamara..."

It appears that the NBR is so adamant about not being wrong that they are actually resorting to petty semantic game playing here. Yes, I suppose it's *technically* true that Ms. Malmgren said McNamara was a "Usana Executive", not a "Usana *corporate* executive". But what other type of "executive" is there!?

Bottom line: The NBR article "gave the impression" that McNamara was a Usana executive because it referred to him as a "*Usana executive*"! It's commendable that they've apologized for this relatively minor mistake, but why *deny* the mistake right before you apologize for it?

Regarding whether Usana has claimed financial setbacks, please see:

Usana's defamation lawsuit against Barry Minkow, first filing, page 12: "The damage to Usana is evidenced by a 13 percent decrease in the price of its publicly traded stock on the day the report was released"; and The Salt Lake Tribune, "Usana scales back its projections for growth," April 19, 2007, which states that Usana "dialed back growth projections for the second quarter and for the year, blaming negative publicity about the company and its sales model" and quotes Usana chief financial officer Gilbert Fuller as saying, "while we remain very optimistic about the future we felt it appropriate to adjust our estimates for 2007 slightly, partly due to distractions resulting from misinformation about the company appearing in the mass media."

This is perhaps the most blatant example of the NBR's fallacious attempt to spin responsibility away from their errors – and the most insulting to its readers.

Can you find the part where they validate Usana's alleged claim of "financial setbacks"? No, not the "13 percent decrease in the price of its publicly traded stock". That would be, for all intents and purposes, a financial setback to the individuals, funds and institutions who hold

Usana stock.¹² In a subsequent response to the NBR article, Usana stated: "It is disingenuous to claim that the millions of dollars Mr. Minkow stole from investors in Usana's stock is a financial setback suffered by Usana itself." In fact, it is not unusual at all for companies to have falling share prices while it's financial condition remains solid, or even improves (just ask Warren Buffett, who became a billionaire investing in such stocks!). In this case, Usana's stock didn't drop due to failing financials or faulty fundamentals. It dropped "on the day the (Minkow) report was released" because of the *Minkow report!* And no, not where "Usana scales back its projections for growth". A *projection* is what Usana thought their financials might be *in the future!* If a company has improving financials, but they've just been hit with an adverse event that *could* create a temporary financial setback, providing such conservative guidance to current and prospective investors is an admirable and responsible act – that has *nothing whatsoever* to do with that company's actual financial condition now. What's more, Usana did indeed outperform their lowered estimates and just completed another record quarter! Please understand, I'm not picking nits off Ms. Malmgren's remarks, here. Her statement was semantically, logically, and financially *wrong!*

Bottom line: To claim that a public company said they were having "financial setbacks" when they said no such thing is a grossly irresponsible act. Then to try to deflect responsibility by citing statements that they surely *knew* did not exonerate them, in the hopes the reader will simply accept it on it's face, is an affront to their readers.

Conclusion:

As Usana claimed in their response, "[There are a great many other problems with Ms. Malmgren's article](#)", but which they chose not to specifically address. I will.

Ms. Malmgren quotes a number of distributor income statistics, derived entirely from data Usana supplies to every new Associate. This data demonstrates that about two-thirds of all those who join Usana don't make any money at all, let alone a profit. She then states, "[This information was obviously crucial to the hundreds of people \(at the Usana meeting\) who were deciding whether or not to become Usana distributors.... But the woman addressing them didn't mention it. Maybe she was not aware of it.](#)"

Maybe. Or, more likely, being someone who actually had *practical experience* within the business, and was not ignorant of what actually goes on within MLM opportunities, she knew that the majority of those who join *any* MLM program don't make money because the majority don't *do anything* to make money!

As I explained in my original [Rebuttal Report](#) to Minkow's findings, MLM opportunities are precisely analogous to Gym memberships. We join both to improve a certain aspect of our well being (we either want to get in better shape financially or physically). And then, in the case of Gym memberships, a very few go regularly, work hard, and get in shape. A few others go for a short time, don't stay long, and when they don't see any immediate results, and begin to realize the amount of effort it's going to take, then give up. The great majority never see the inside of the gym again after the day they signed the membership form. Yet, we never see anti-Gym-zealots obsessively building anti-Gym web sites and cranking out 50,000

¹² Usana does own a large portion of it's own stock, but this is obviously not within the context of the point made in the article. The "damage to Usana" was clearly describing damage to the company's credibility, image, and reputation.

word anti-Gym manifestos (as occurs among anti-MLM zealots). We never see Inside Edition, 60 Minutes, or 20/20 doing exposés on Gold's Gym or 24 Hour Fitness. We never see The Wall Street Journal, USA Today, or *The National Business Review*, writing lopsided hit pieces on Fitness USA or Bally Total Fitness. Yet the majority of people who sign up completely fail to get any results for exactly the same reasons! And yes, some go to the gym, work out hard, and still have little to show for it. But they are the *exceptions*, not the rule.

This explanation for MLM's high "failure" rate is so glaringly obvious, so blatantly true, that I'm utterly astounded that those "outsiders", like Ms. Malmgren and Mr. Minkow, find it so difficult, if not *impossible*, to accept!

Ms. Malmgren goes on to state that Usana blamed its "financial setbacks" on what it calls "a series of false and defamatory statements" against them. "But at several recent Usana recruitment meetings," she continues, "attended by *NBR* in New Zealand, no one mentioned any of this. On the contrary, the speakers at these meetings said Usana's stock was soaring."

Again, I'm amazed that someone so obviously astute in this area can so blindly and assuredly attribute a company's sudden plunge in their stock price to "financial setbacks" while at the same time fully recognizing such an obvious alternative explanation for the plunge – Minkow's report. But let's not retrace old territory. Clearly Ms. Malmgren's point here is that Usana reps at these meetings were being deceptive or misleading by not discussing those non-existent "financial setbacks", and the "series of false and defamatory statements" Minkow made against them. But, if someone accused you of a "series of false and defamatory statements", would you mention this to every new acquaintance you made, to prospective employers during interviews, or to those you were looking to hire? Now, if the SEC inquiry "goes formal" and becomes a full-fledged "investigation", or if Usana is actually found guilty in the law suits against it, then I agree this is germane to the presentation and should be disclosed. But to suggest mere *accusations* made by a *short seller* should be revealed at opportunity meetings borders on the absurd.

Ms. Malmgren quotes Mr. Wallace (New Zealand's Commerce Commission) on "a number of factors" his office considers "in pyramid scheme cases." One "critical point" he said, "is whether [a company] is primarily a scheme to recruit other members or to sell products... To what degree are their products sold to real customers, retail customers?" Ms. Malmgren follows up this "critical point" by stating that Usana "makes 86 per cent of its net sales to its own distributors and 14 per cent to what it calls 'preferred customers,' who buy products at wholesale prices." It's somewhat amusing to watch how things are phrased depending on which side of the Usana fence the writer sits. "Distributors" suddenly become "investors" when the argument is being made that Usana offers an "unregistered security".¹³ It's always "70% of the commissions were paid to 3% of the distributors" if your on the con-side. Never the equally factual "\$94.1 million dollars was paid to 59,600 people".¹⁴ And here again, the anti-Usana wording is that "14% of product purchasers are Preferred Customers", which sounds like a small amount, as I'm sure it was suppose to. They never use the equally accurate but more revealing sentence, "Of all product purchasers, over 80,000 are Preferred Customers." Now it sounds like a *lot* of people. Can't have that.

Usana distributors follow a "binary compensation plan," in which one person recruits two others, those two recruit four others, those four recruit eight others, and so on.

¹³ Douglas Brooks affidavit included in Barry Minkow's Usana report as Addendum 11.

¹⁴ [2006 Average Income Chart](#).

The NBR asked government statistician Murray H. Smith, “to review Usana’s business structure and compensation plan, and he said Usana showed some of the characteristics that commonly occur in pyramid schemes... As more people join the company over time it will become harder for the majority at the bottom of the company structure to recruit others. Those people tend to become discouraged and drop out.”

If the downline formed in the absurd manner as Ms. Malmgren just described, Mr. Smith might be right. Fortunately for those pursuing MLM, it doesn’t. At all. Ever.

Yes, the hierarchy in a “binary” compensation plan is structured in a 2-by-2 format. But by no means does “one person recruits two others, those two recruit four others, and so on.” In the real world a few recruit many, a few more recruit a few, and the majority recruit none. One of the biggest criticisms of traditional binary plans (there are myriad variations) is that the two “legs” (under those first two positions on your first level) can get lopsided, and most commissions are based on the sales volume in the lesser leg. How does that happen if the downline forms in anything even remotely resembling a perfect 2-by-2 progression? In fact, it doesn’t. Indeed, the vast majority of those who pursue MLM fail to earn a significant income because they *fail to fulfill this progression!*

This whole issue is discussed in detail in my [Rebuttal Report](#), so I will not belabor it further here (although it certainly deserves more attention). I’ll leave this point with the same set of question I posed to Team Minkow: If Usana, and indeed the entire MLM industry, is doomed to inevitable market saturation, but the vast majority “fail” to enroll others (perpetuate the 2-by-2 progression), how do you reconcile holding *both* of these completely contradictory positions? If Usana is doomed to market saturation, why has there been a net *increase* in total distributors, in the United States, for *twenty consecutive quarters*, which occurred *after* they had already been in business for *ten years!?*

“Although some of its shareholders – and in a recent court filing, some of its distributors – have accused Usana of being a pyramid scheme, no court or regulatory agency has yet taken a position or made a finding on the issue.”

To my knowledge, *none* of Usana’s shareholders have made any such claim. After Minkow’s report was showcased in a Wall Street Journal article three law firms filed a class action suit on behalf of shareholders – and then went hunting for plaintiffs!¹⁵ Furthermore, the distributor class action suit appears to have been instigated by Barry Minkow himself. The two lead plaintiffs, Jeanette Johnson and Christopher Crane, are both residents of the San Diego area (where Minkow resides) and Johnson was primarily a customer during her tenure with Usana, which ended years ago. Crane, who is now 23, was a childhood “best friend” of the son of Ladd McNamara (the past Usana Medical Advisory Board member who has been a favorite target of Minkow’s), and who had already supplied dirt on Usana and McNamara to Minkow well before the suit was filed. Crane also had a personal grudge against both McNamara, who he believes owes him money, and Usana, who refunded \$1,158.26 to him for returned products, but refused to refund about \$500 for products he *didn’t* return. This is why Crane contacted Minkow in the first place – about three months before the distributor law suit was filed, which asserts essentially all of Minkow’s original claims, which Crane is now the lead plaintiff of! Details are forthcoming in my next rebuttal report. Suffice it to say, I’ve researched the suit, I’ve done the interviews, and I’ve heard and read the evidence. No Usana distributors independently decided to file a class action law suit claiming Usana is an illegal pyramid. Once again, this is all the doing of Barry Minkow.

¹⁵ None of the initially filed complaints has any lead plaintiff listed. In fact, one complaint literally had a blank space where the plaintiff should have been listed, left open to be filled in later.

By the way, not only is it true that “no court or regulatory agency” has taken the position Usana is an illegal pyramid, their own state’s Attorney General has specifically declared them *not* to be an illegal pyramid!

“Soon after Usana filed suit against (Minkow), he made a series of videos on YouTube in which he interviewed several failed Usana distributors...”.

These YouTube videos are the basis for my next Rebuttal Report – which currently stands at 40 pages and counting. This upcoming report was almost complete, but after seeing the way the NBR countered Usana’s response to Ms. Malmgren’s article, I had to take a short detour. The YouTube (et al) Rebuttal Report should be published by August 31st.

Hopefully Ms. Malmgren will read it. If she does, I expect she will be astonished by what she discovers.

And she will be ashamed.