Response to Rebuttal by Jon Taylor, Ph.D.

Regarding Usana Report by Barry Minkow

By Len Clements © 2007

I am going to respond to Dr. Taylor's comments in a different manner than by previous responses. Rather than present a separate, stand alone rebuttal, I will incorporate my responses into Taylor's original document. The text in black is his (in its entirety, verbatim), the text in blue is mine.

Unlike previous responses to my Minkow rebuttal, Taylor's is presented on his own web site rather than on Minkow's FDI web site, as was the case with Robert FitzPatrick and Tracy Coenen. I have theories as to why, but they are not pertinent to the issue. I suspect you may form similar theories once you have read this document.

Len Clements and MarketWave – after Wave – of Deceptions.

By Jon M. Taylor, Ph.D.
President, Consumer Awareness Institute and Advisor, Pyramid Scheme Alert

In the article by Len Clements entitled "*An Open Rebuttal to the Fraud Discovery Institute Report on Usana Health Sciences*," he attacks my research and me personally. Unable to effectively refute my research, he frequently engages in personal attacks on me, which I routinely ignore. However, since his arguments reflect on Barry Minkow and his FDI, just a few of the litany of deceptions relating to my input seem appropriate:

Since Jon Taylor "routinely ignores" my "personal attacks" on him I am assuming he is also referring to the section of my Anti-MLM Zealots[1] series which I devoted to him. It's the only place where I've ever challenged his personal ethics, and only once. Sure, I've questioned his motives, I've belittled his logic, and at times I've perhaps too sarcastically mocked his research, but all within the context of challenging his position on MLM, not him personally. And the one exception wasn't just a token ad hominem attack. It was deliberate, and it was deserved. To wit…

In his research, Jon Taylor interviewed me and, allegedly, read my book "Inside Network Marketing." The only evidence of this anywhere in his prolific mountain of material is his recounting of a question I have on my MLM survey related to income goals. In spite of my crystal clear description to him of the question itself, and a detailed discussion on the phone where I reiterated my findings, his portrayal of the results to this survey question is so misleading and skewed as to suggest deliberate deception. My survey question simply asked at what income level one would consider themselves "successful?" Not their dream goal (of course we all want to be millionaires), but their "primary" income goal, and anything above that is icing on the cake. Eighty-six percent said they would consider themselves successful if they only made enough to quit their job and make a "comfortable living," which they quantified, on average, as being $5,988 per month.[2] However, according to Taylor, I asked what their "expectations" of this level of success were and that 86% said they "expected a full-time income to result from their (MLM) participation." My survey also found that 6% said they would not feel "successful" unless they made at least $84,000 per month (one million per year). This means, as I state in the survey, my book, and in every other situation when I've

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[1] http://www.marketwaveinc.com/articles/Zealots08.asp

[2] This was in the mid-1990s. Today the average response to this segment of the survey question is $8,236 per month ($6,000 is the median).

ever recited these findings, that clearly 6% misunderstood the question on the survey (obviously, they would probably consider themselves successful if they made only $10,000 per month, or surely $50,000). But Taylor calls it "remarkable" that 6% "expected" to make $84,000 per month, then asks "What do such expectations tell us about the more aggressive MLM promoters?" A better question might be, what does Taylor's betrayal of my findings tell us about the more aggressive MLM demoters? Surely someone with a doctorate in psychology and two years of training in statistics knows the difference between a *goal* and an *expectation*. When you play the Lotto your *intention* is to win $50 million, but do you have an "expectation" of it? Of course not. I sent in a video to CBS a few years ago with the goal of being on the TV show "Big Brother". It was by ambition, but knowing mine was one of over 90,000 videos submitted I certainly didn't have an *expectation* of being on the show (even after I made it past the first round!).

Ex•pect•ed *verb* (ĭk-spĕkt')
1. To look forward to the probable occurrence or appearance of.
2. To consider likely or certain.

If Jon Taylor feels this was a personal attack, then so be it. But actually it was more of a compliment. I consider Taylor to be too smart and too literate to misunderstand my survey question so badly as to believe it was asking for an *expectation* of earnings.

1. (page 2) Clements refers to Robert Fitzpatrick and myself as "anti-MLM zealots" and our "biased, anti-MLM propaganda." The reader should note that the vast majority of our writings and advocacy are done gratuitously through our respective non-profit organizations, Pyramid Scheme Alert and Consumer Awareness Institute. While we are occasionally hired as consultants or expert witnesses, it does not cover but a small fraction of what we have donated out of pocket to serve consumers. We are entirely independent of any profit-making entities, especially MLM's.

First, Taylor may be independent of any "profit making" entities, assuming his own is indeed not profitable (which I accept with little doubt), but that does not mean he is independent of any *revenue* making entities, as he just confessed (his anti-MLM efforts, specifically his web site and writings, earn him consulting and expert witness gigs).

Secondly, I'm unclear as to how his failure to turn a profit with his anti-MLM materials in any way refutes my description of it as being "biased, anti-MLM propaganda" or involving zealotry in it's presentation. In fact, his response appears to be a complete non-sequitur.

I don't even sell anything on my site [Jon Taylor offers his services as a consultant and expert witness for hire, as does Robert Fitzpatrick, who also sells his books on his web site]. This is not true of Len Clements, who is selling books [two, only one of which I wrote – which is fewer than Fitzpatrick offers for sale], periodicals [not true – I stopped publishing my fee-based newsletter a decade ago and now only offer a free online MLM Alert service], advertising [also not true – I have *never* sold advertising on my web site - ever], seminars [I wonder if Taylor was ever paid for any of the live presentations he has given, which he lists on his web site], promotional materials [three CDs], consulting [just like Taylor and FitzPatrick does], etc. ["etcetera" means there's more – I challenge Taylor to list even *one* more!] – all on behalf of the MLM industry. His livelihood is dependent on his defending MLM.

Yes, I do make my living at Multilevel Marketing, both as an advocate and participant. So yes, when my livelihood is attacked by those who wish to completely destroy it, and take it from millions of others, I do defend it. He's got me on that one.

I'm also curious as to how, if this alleged ulterior profit motive of selling my book and CDs somehow reduces my credibility, this doesn't also apply to Barry Minkow who brazenly promotes his books, DVDs, seminars and consulting services on his web site. MarketWave contributes a single digit percentage to my annual income, where as the Fraud Discovery Institute appears to be Minkow's full time profession. Taylor's tangled web actually catches *Minkow* on this one instead of me!

2. (page 18) Clements states my only practical experience was in an "old-school breakaway program" 16 years ago. The company was Nu Skin, which still uses its breakaway compensation plan, and it was 12 years ago, not 16.

Perhaps I was "too hip for the room"[3] in the use of my term "old school", but this does not mean something no longer exists. It means it is in an older more traditional style. I am perfectly aware that Nu Skin still uses the older, more traditional break-away style pay plan. My point, which is clear once this quote is placed back in its proper contexts, was that the more contemporary style pay plans today are much simpler, evenly weighted, and with higher pay outs and lower qualifications that the type of plan Taylor was involved in. In other words, his experience back then, in that plan, is not at all indicative of what most distributors will experience in MLM today.

When Taylor spoke to me on the phone many years ago he plainly described his participation in Nu Skin as being *before* the FTC took action against them (long since resolved), so since that legal action began in May 1993 and was not concluded until mid-1994, the latest Taylor could have began his "one year test" was mid-1992. So let's call it 15 years ago. However, I am more than willing to use 1994 as the year he was involved, as he states on his current web site, because that would put his participation smack-dab in the middle of the maelstrom caused by the FTC law suit (accusing Nu Skin of fraud, deceptive trade practices and being a pyramid scheme) and the prominent, well publicized, and very negative, USA Today article also suggesting illegality. It would have been *extremely* difficult for *anyone* to succeed in Nu Skin during 1994 (or 1995 for that matter), and obviously makes Taylor's experience an aberration that would be utterly inapplicable and irrelevant to anyone else's experience today.

So I am gladly conceding this point. He's absolutely right. It was indeed 1994, not 1992.

3. (page 2) Clements assumes Minkow was influenced by Fitzpatrick and myself when he began his investigation in 2004 and that we "played a significant role in his three year education into the MLM industry." My first contact with Minkow was an email from him dated January 16, 2007.

I have read and reread this paragraph several times in an effort to try to appreciate how Jon believes this in any way counters my point. I loath the debate where my opponent conveniently pretends to not understand my point so they don't have to respond to it, and I certainly don't want to appear as if I'm now doing the same thing. But I am genuinely stumped.

First, taking a giant step back, I have to wonder how Taylor's first three points even made it into a list of only ten responses to 28 lead-heavy pages of numerous, detailed counter arguments to Minkow's Usana Report. Weren't there more important issues to defend here than how much money Taylor or I make doing this, how many years ago he was in Nu Skin, or when he sent his first email to Minkow?

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[3] A term coined by the late comedian Sam Kinison.

Anyway, I have no choice but to take this one at face value, so I'll respond with the way-too-obvious rhetorical question – do you have to have direct personal contact with someone for them to be part of your education into something? I've never emailed or spoken on the phone with Dale Carnegie or Napoleon Hill, but I've certainly been educated by them. Likewise, there sure was no shortage of already produced Taylor material (if he's anything he is certainly prolific) to educate Minkow on how to be anti-MLM. Furthermore, I said Taylor *and* FitzPatrick played a significant role, so when did Minkow and FitzPatrick first join forces?

4. (page 8) Clements touts Usana's low product return rate (1.5% to 2.1% for the past three years). He asks why more buyers didn't return their products if they didn't want them and didn't resell them. First, recruits are encouraged to use their products, not store them [so then this was not a loss. They received value for their cost. Is the $50 you spent at the Gas Station on your last fill-up a loss? If you splashed fuel on a fifty and set it on fire, then yes. If you drove away with $50 worth of petrol then no it wasn't. Besides that, there was well over *$365 million* in unreturned products last year. Is Taylor suggesting reps would rather have the products than all that money back? If so, Minkow's got to be wondering about now which side Jon's on!], and few meet the strict refund requirements (unopened, time limits, etc.) [yes, they do have to be unopened, but that would be the vast majority of unconsumed products, and the "time limit" for a 90% refund is *one year!* Or 30 days for a full, 100% refund. The only other "strict requirement" is that it be the current formulation, but Usana only reformulated *two* products in the last *ten years* – out of over 80 products – and even those two was still refundable for 90 days after they were withdrawn from the line. Again Taylor uses "etcetera" to create the illusion there is more. Besides calling to get a Return Authorization Number (standard in most industries) there is not. Returning products in Usana, and most MLM companies, is that easy and that simple.] Also, victims seldom seek refunds for the same reasons they seldom file complaints with law enforcement. They are taught to blame themselves for their "failure," they fear self-incrimination (since in every chain selling program, virtually every major victim becomes a perpetrator – having to recruit enough buyers to recover his/her initial and ongoing investment), and they fear consequences from or to their upline or downline – who are often close friends or relatives still in the chain. For a more complete analysis of low return rates and "pay to play" requirements of MLM or chain selling companies, read my full report prepared for the National White Collar Crime Center - *"THE 5 RED FLAGS: Five Causal and Defining Characteristics of PRODUCT-BASED PYRAMID SCHEMES or RECRUITING MLM's."*

This "too ashamed" or "too afraid" rationalization is simply ridiculous. I'm not going to spend a lot of time on this because I'm sure any rational, objective reader will see that the explanation is nonsensical on it's face. If there is over $330 million[4] to be had by a group of folks that merely have to make a 5 minute phone call for an RA number, box up their remaining inventory and mail it, they'd do it if they still had it and didn't want it (we're talking about over $2,000 *per rep)*. And how does the level of personal responsibility one assumes for their failure have any bearing what-so-ever on their decision to trade unwanted inventory for hundreds of dollars in cash? Another way of looking at this would be that Usana is offering to *buy* their entire inventory back (including sales aids). They're *paying* them to return their products, and they *still* don't!

In my 18 years of full time, active, in-the-trenches participation in this business I have never known of even *one single person* who was too ashamed or afraid to return their inventory and sales aids for a refund. But Jon Taylor would like us to believe there are literally *tens of thousands* of such folks all within just Usana, just within the last year. Does this really need any further rebuttal?

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[4] This assume no one returns their product in the first 30 days for a 100% refund, so all returns would be subject to the lower 90% refund.

5. (page 8) Clements claims we "choose to believe that the FTC requires 70% of all sales by MLM companies to be to (non-distributor) retail customers." If he read our writings, he would know that we understand very well the origin of the "Amway safeguards" and that these were not FTC demands, but a voluntary safeguard to which Amway agreed. However, the Amway rules are neither enforced, nor voluntarily complied with by the MLM companies that Clements defends, including Amway (now Quixtar).

I never said he and FitzPatrick didn't understand the *origins* of the rule, I said they didn't understand the *rule*.

According to Taylor, in one of his earlier works, this rule demands "distributors must derive at least 70% of their income from retail sales to non-distributors."[5] He has also stated elsewhere that in the FTC vs. Amway decision "certain 'rules' would be adhered to", including the 70% Rule which he again defines as "distributors must derive at least 70% of their income from retail sales to non-distributors."[6] In Taylor's "Five Red Flags…", the very document he asks us to read above, he references the FTC ruling again, lists the three "Amway Safeguards", and describes the 70% Rule as "Distributors were to sell 70% of the products they purchase each month to non-distributors."[7] He then oddly references the same actual FTC ruling that I'm about to reference to show you that he got it completely wrong.

Since Taylor brought Robert FitzPatrick into this by claiming he, too, understood the correct definition of the 70% Rule and I was wrong to state otherwise, let's see how he has defines this rule.

Fitzpatrick claims that the FTC "uses the percentage of retail-based income as a defining characteristic" when prosecuting MLMs, and that in the specific case of Equinox "70% of all Equinox sales to its representatives would have to be retailed" to pass the FTC's test.[8] Elsewhere Fitzpatrick states "There are many precedents, other than the FTC's test, for setting 70% as a minimum required retail sales level for MLMs…".[9]

Here are excerpts from the actual FTC vs. Amway decision relevant to this rule:

> Page 28; Part 73: To ensure that distributors do not attempt to secure the performance bonus solely on the basis of purchases, Amway requires that, to receive a performance bonus, distributors must resell at least 70% of the products they have purchased each month.[10]
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> Page 47; Part 146: Amway's 70% rule deters inventory loading by sponsoring distributors.[11]
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> Page 91: The "70 percent rule" provides that "[every] distributor must sell at wholesale and/or retail at least 70% of the total amount of products he bought during a given month in order to receive the Performance Bonus due on all products bought…". This rule prevents the accumulation of inventory at any level.

As these passages clearly show, Jon Taylor does not understand what the 70% Rule requires. It only requires that reps deplete at least 70% of their product stock before they can qualify for a certain bonus in Amway's pay plan. Also, note on Page 91 that this product could be sold

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5 See: http://www.marketwaveinc.com/articles/taylor-70rule1.jpg
6 See: http://www.marketwaveinc.com/articles/taylor-70rule2.jpg
7 See: http://www.marketwaveinc.com/articles/taylor-70rule3.jpg
8 See: http://www.marketwaveinc.com/articles/FitzPatrick–70Rule1.jpg
9 See: http://www.marketwaveinc.com/articles/FitzPatrick–70Rule2.jpg
10 RX 331, pp. 16-B to 17-B
11 Cady, Tr. 5795-97; Halliday, Tr. 6231; Lemier, Tr. 176

"at wholesale" to meet this requirement[12], so *no product at all needed to be retailed to satisfy the 70% Rule!* Most MLM companies today have revised the rule to require that 70% be sold or consumed before any more product can be purchased from the company (still to prevent front loading and stockpiling of inventory). The rule has nothing what-so-ever to do with requiring that a certain ratio of retail sales be made to non-distributors and everything to do with exactly what the FTC said – to "deter inventory loading" and "prevent the accumulation of inventory". Since this could also be accomplished by personal consumption of products by the distributor, and the court in the FTC case clearly recognized the abundance of product that was omitted from inventory that way, it has always been understood (by everyone other than a handful of anti-MLM zealots) that the rep could be that "customer" the product is sold to. But because there was no specific declaration of this in the 70% Rule definition (one way or the other), folks like Taylor and FitzPatrick began to exploit this. So the DSA asked the FTC for clarification, and the FTC responded that, yes, as we all already knew, personal consumption *does* apply (see #9 below). Taylor (and FitzPatrick) *want* it to mean only retail to non-distributors so they can claim that the FTC indirectly supports their "Product Based Pyramid" platform. It does not.

6. (page 9) Clements creates the pejorative appellation "FitzMinklor" to imply a unified conspiracy between the three of us. In fact, we could hardly have come from more diverse backgrounds and viewpoints regarding the field of marketing and direct selling. Fitzpatrick was involved in a no-product pyramid scheme (The Airplane Game), I was involved in an MLM or product-based pyramid scheme (Nu Skin), and Minkow was involved in neither. Our varying perspectives give added credibility to our agreed-upon conclusion: Usana is a highly fraudulent pyramid or chain selling operation that has victimized investors, Associates, and Preferred Customers – to the extent of hundreds of millions of dollars.

Once again I am left to respond to a non-response. I'm not even certain what Taylor is specifically rebutting. I'm lost to understand how their diverse backgrounds in any way counter my assertion that he is in league with FitzPatrick and Minkow, nor am I even certain that's what he's trying to say. I must assume not considering Minkow defines those he went to for guidance on his Usana Report, and he names Fitzpatrick and Taylor, among others.

I'm also clueless as to how the appellation "FitzMinklor" is "pejorative"[13] and I didn't create it to "imply" anything. I made up this abbreviation of their three names for exactly the reason I said I did in my rebuttal – I was getting tired of typing "Minkow, Taylor and FitzPatrick" over and over. It was simply more efficient. When I wrote something to the effect that all three of them were working as a unified conspiracy, that's when I meant to "imply a unified conspiracy between the three of (them)." When I want to say something I won't imply it, I'll just say it.

Finally, I'm also baffled as to how revealing that the *combined* MLM experience between the three of them is *one year*, in *one* company, over a decade ago in any way *adds* to their credibility as knowledgeable information sources on MLM (let alone "expert" sources).

I would sincerely love to professionally debate the issues in Minkow's report and my rebuttal, but look what Taylor has left me to refute. It seems as if Taylor is far more concerned with defending his own image and ego that Minkow's Usana Report.

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[12] Back in 1979, before the computerized MLM compensation systems of today, uplines resold inventory to those on downline, taking a small profit at each level of the process.

[13] Expressing criticism or disapproval.

7. (page 18) Clements refers to my PhD in psychology, obviously implying an unrelated and unqualified background. He fails to mention my MBA degree and my 30+ years experience in entrepreneurship and sales. Apparently unaware of the rigors of PhD study, he didn't know that my PhD included two years' training in statistics. I have also worked on the administrative staff of two universities where I evaluated the research of others.

And the beat goes on…

I'm not saying I don't empathize with Taylor's compulsion to defend his own honor – I spend way too much time doing that myself sometimes – but make one or two of your ten points about that, and the rest about *defending your argument!*

Not only did I *not* imply any such thing, I strongly believe a PhD in psychology would be *invaluable* for someone trying to interpret the moods, motives and mindset of network marketers, their prospects, and customers. And being a stats nut myself I also appreciate how this math discipline could be quite helpful. No, that wasn't at all what I was "obviously implying". I pointed out his advanced degree in psychology as supporting evidence of Taylor's masterful manner of manipulating the most mundane, meaningless material to magnify or meretriciously manufacture misleading mud to sling at multilevel marketing.[14] It takes skill to create the illusion of substance – with charts, graphs, mathematical models, his anti-MLM manifestoes, a multitude of… wow, this is hard to turn off. What I'm saying is, his doctorate in psychology appears to have been put to good use. And his two years of training in statistics only goes to reinforce my conclusion. As economist Ronald Coase once said, "If you torture the data long enough, it will confess to anything." On any clear Utah night, if you listen carefully, you may hear Taylor's calculator screaming out in agony.

8. (page 18) Clements refers to my statistical findings on failure rates as "educated guesses." Nothing could be further from the truth. Years of research went into these statistics, drawing from a base of experience with legitimate direct sales programs that far exceeds that of Mr. Clements [What direct sales programs? When? For how long? And how does his experience with "legitimate direct sales programs" in any way contribute to his "findings on failure rates" within MLM companies?]. This was amplified by my direct involvement with MLM [*one* company, for *one* year, 13 years ago, which he was "successful" in but failed to make any money at.] and communications with hundreds of victims from a wide variety of MLM programs [but with, by his own admission, very few happy, successful MLM participants. Taylor does ask for feedback from the pro-side, but specifically demands that "anecdotal" evidence will not be considered – unless, of course, it's from "hundreds of victims". This anecdotal evidence he will gladly accept.] This background, combined with extensive independent surveys [this is what I was referring to in #7 above. This all sounds so substantial, doesn't it? But when you actually look at his "extensive surveys" you find things like his income survey of 60 MLM companies, that 0% responded to, or his survey of tax preparers, who produced literally tens-of-thousands of tax returns yet could remember all the ones from MLM reps who lost money, even though this type of profession isn't identified on a tax return.] and research on official MLM company reports [meaning, I'm left to assume, the disclosures of public MLM companies – which comprise less than 1% of all MLM companies, and which usually disclose very *positive* information] enabled me to debunk the misleading statistics supplied by the MLM companies – and to present a much more accurate picture of loss rates to consumers considering MLM as an income opportunity. [Here again is where Taylor's lack of actual, current day experience exposes itself. I'm going to say that only a vast majority of MLM companies and reps – even though I don't know of a single one who would contradict this – don't mention anything at all about high success rates. And when confronted

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[14] Most of that wasn't even on purpose! Or, I mean, meant to monotonously materialize in that manner.

with the failure rate question most will openly acknowledge it's very high but then go on to accurately and truthfully explain the reason for it (most reps fail because most reps do little to succeed). No one in the pro-MLM camp is denying that a high percentage of reps don't make a profit, we're denying that it's due to a flaw in the MLM business model. And no one is claiming the percentage of profitable distributors is high, we're claiming the *potential* for profits are high – if you do enough, long enough, to warrant those profits.] I have ample evidence (including surveys of tax preparers [like I said…] and statistics from gambling casinos in Las Vegas) that it is no more appropriate to post "business opportunity" above the gaming tables in Las Vegas than it is to tout an MLM such as Usana as a business opportunity. The odds of profiting are far better for participating in craps or roulette at Ceasar's Palace than in MLM's like Usana.

Don't think this Vegas angle is a minor aside that Taylor just threw in. This is a major part of his case! That being, the odds of success at the Craps table are no better that success at an MLM opportunity. Of course, there's one glaringly obvious, gargantuan flaw in Taylor's logic. Gambling in Vegas is based solely on luck. Success at an MLM opportunity is based primarily on effort. You can't control the roll of the dice or the little ball on a Roulette wheel. But you can exert great influence on your ability to make money in MLM. It's amazing that I'm still having to explain this absurdly obvious fact, but for some reason, which bewilders me, Taylor won't stop clinging to this silly Vegas premise. I kind of wish he would. I feel silly debating it.

In addition to incentivized purchases when I was with Nu Skin, I kept careful track of the out-of-pocket costs of MLM recruiting, which I found absolutely essential to advance up the hierarchy of distributors [yes, operating a successful home business does require expenses, that's true], which qualify one for sufficient commissions and bonuses to have any hope of recouping "pay to play" investments – laundered as product purchases [What Taylor must be referring to (because there's simply no other explanation for the alleged $1,500 per month he claims he spent building his Nu Skin business) are the products that were often purchased back then by an individual looking to artificially meet their "group volume" qualification out of their own pocket. This was somewhat common in most MLM programs with "breakaway" pay plans back then, such as Nu Skin – at least up until the FTC action, when Nu Skin cracked down on this practice. But Taylor now claims to have been involved during that time (at least in part), so I'm still unclear as to where such a monthly expense could have come from. Furthermore, this "stockpiling" of product was a *voluntary abuse* of Nu Skins pay plan[15]. What I did back then was try to build a *group* to meet my *group volume*. Also, most contemporary pay plans today, such as Usana's, are not even remotely close in design, structure, and monthly qualifications (if any), to the plan Taylor experienced.] Clements will likely say "Well, that was Nu Skin." [Well, I suppose I just did. And it was.]

I have personally analyzed the compensation plans of over 250 MLM programs, including that of Usana. And I can safely assert that virtually all MLM's, including Usana, have compensation plans that reward primarily the recruitment of a downline and incorporate powerful incentives for investing in the initial package and in making ongoing "pay to play" purchases.

There's nothing more to debate here. This is simply a restatement of Taylor's original point, not a response to my rebuttal to it. Alas, he has offered no response to rebut.

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[15] I was a Nu Skin distributor in 1991 and part of 1992.

9. (page 8 and whole report) The deceptive arguments Clements uses to prove Usana is not a pyramid scheme, includes an out-of-context quote from the FTC's James Kohm regarding "internal consumption," as follows:

"In fact, the amount of internal consumption in any multi-level compensation business does not determine whether or not the FTC will consider the plan a pyramid scheme." Clements adds, "There it is, in black and white, straight from the horse's mouth. Case Closed."

But the case is far from closed, as this quote illustrates. He left out important parts of the letter from James Kohm, especially the following that leads to a completely different conclusion than the portion he quoted out of context:

"The Commission's recent cases, however, demonstrate that the sale of goods and service; alone does not necessarily render a multi-level system legitimate. Modern pyramid schemes generally do not blatantly base commissions on the outright payment of fees, but instead try to disguise these payments to appear as if they are based on the sale of goods or services. *The most common means employed to achieve this goal is to require a certain level of monthly purchases to qualify for commissions. While the sale of goods and services nominally generates all commissions in a system primarily funded by such purchases, in fact, those commissions are funded by purchases made to obtain the right to participate in the scheme. Each individual who profits, therefore, does so primarily from the payments of others who are themselves making payments in order to obtain their own profit. Such a plan is little more than a transfer scheme, dooming the vast majority of participants to financial failure."*

"This precisely describes Usana (and Nuskin and a host of others) and appears to condemn them as 'transfer schemes' that 'doom the vast majority of participants to financial failure'," as pointed out by Robert Fitzpatrick of Pyramid Scheme Alert in a letter to me dated April 26, 2007. *Careful analyses of payout data from the companies themselves by both Fitzpatrick and myself confirm the high loss rates (approximately 99%) and harm to consumers.*

This is an admittedly brilliant dodge on Taylor's part. He has seamlessly diverted the argument away from the issue of the FTC requiring 70% of all MLM sales volume be to non-distributors (the point my FTC quote clearly and inarguably disproved) and stealthily veered it over to the issue of products alone not necessarily saving a company from FTC prosecution. I agree with his point. Equinox and Jewelway both had decent products, but they were still shot down by the FTC. And yes, as the FTC says, these "recent cases" demonstrate that if a lot of reps are making huge token purchases of inventory for the sole purpose of qualifying in the pay plan, they will likely still be deemed an illegal pyramid, no matter how good their products are. Reps for Equinox and Jewelway often times "bought in" for tens-of-thousands of dollars in upfront inventory and maintained their rank with monthly purchases of well over $1,000, and it was made all but impossible to return it for a refund – and now these companies are gone, and rightfully so. But let's be clear. The roughly $150 to $450 one might spend upfront for Usana inventory, or the $115 to $230 they would spend monthly (assuming no retail sales), which they can easily return within 90 days for a full 100% refund (90% for one year), in a company with over 80,000 pure product customers, is NOT what the FTC is referring to in Taylor's chosen FTC quote.

Other deceptions in Clement's paper would require reams of paper to debunk and more time than you as a reader or I as a writer have time to consider. [Okay, but why not at least try to debunk one!] But my 40-page "5 Red Flags" article cited above and linked to my law enforcement page essentially answers all his challenges, summarizing years of research on the topic. For that report and several related reports go to – http://www.mlm-thetruth.com/law_enforcement.htm

I'm leaving his link attached (I get asked a lot why I do this) because there is nothing to fear from it. Further, when I make certain claims about what my opponent has said in the past I don't mind facilitating the reader's ability to verify those claims.

It's interesting how Taylor, who is by far the most prolific and tenacious among all anti-MLM zealots, who has spent years pounding out more anti-MLM propaganda that Fitzpatrick, Van Druff, Carter, and every other member of the anti-MLM zealot Hall of Fame *combined*, suddenly doesn't have the time to offer a rebuttal to my Minkow response. He appears to have had the time to defend his own honor, qualifications, integrity, and credibility, but not to defend anything Barry Minkow presented.

If I were Barry, I'd send Jon an email saying something like, "Jeez, Jon, thanks for nuthin'!".

10. (whole report) Clements also buys into and promotes the whole complex maze of deceptions essential to the success of the MLM or pyramid/chain selling model. I would refer the reader to *"30 typical Misrepresentations Engaged in by Recruiting MLM's."* – linked from Item #1 on the law enforcement page of my web site at – http://www.mlm-thetruth.com/law_enforcement.htm

Um, no I didn't. I mean, where else can I go with this? This isn't a debate. Taylor is just repeating his original claims over and over. Please Jon, *tell me why my response to those claims are wrong!*

Given the time, I could debunk several dozen more deceptions in Clement's paper, which (as is true of all of his MLM treatises) is packed with deceptions. [Please find the time. Not to rebut my claims by repeating the original claim I rebutted, but to clearly, specifically, factually, debunk my position.] However, this sampling should be sufficient to support my conclusions about Len Clements and the business model he espouses. [How could any reasonable reader come away with such a conclusion? Only his responses 4 and 9 had anything to do with my Minkow rebuttal and the rest were either completely unrelated to it, or were verifiably proven wrong!] It is true that (in addition to recruitment skills) a limited number of persons can be "successful" at an MLM/chain selling program like Usana – but only if they meet four requirements:

- They must be deceived.
- They must maintain a high level of self-deception.
- They must go about aggressively deceiving others.
- They must maintain a state of denial about the multitude of victims left in their wake.

Len Clements and the leadership of Usana meet all four requirements.

I believe any MLM distributor can be successful if they meet these four requirements:

- They work hard.
- They don't quit.
- They learn how to get better at it.
- They ignore anti-MLM zealots.

The leadership in all MLM companies meet all four of these requirements.

Len Clements