

DEPARTMENT ADMINISTRATIVE ORDER NO. 8

Series of 2002

SUBJECT: Rules and Regulations Implementing Article 53 of the Consumer Act of the Philippines (R.A. 7394) in Relation to Section 8 Rule II, Chapter I, Title III of Department Administrative Order No. 2, Series of 1993 Prohibiting Chain Distribution Plans or Pyramid Sales Schemes in the Sale of Consumer Products.

WHEREAS, Republic Act No. 7394 otherwise known as Consumer Act of the Philippines states that it is the policy of the State to protect the interests of the consumer, promote his general welfare and to establish standards of conduct for business and industry;

WHEREAS, the Act provides that the State shall implement measures to achieve the objective of protecting consumers against deceptive, unfair sales and unconscionable sales acts and practices;

WHEREAS, the Act further provides that chain distribution plans or pyramid sales schemes shall not be employed in the sale of consumer products;

WHEREAS, the DTI has received numerous complaints and queries regarding sale of products using pyramid sales scheme and such sales scheme have been used in the guise of legitimate multi level marketing, thus depriving consumers of their savings and hard-earned money;

WHEREAS, it becomes imperative to define the instances constituting chain distribution or pyramid sales scheme practices to prevent the public from being victimized;

WHEREAS, the Act provides the procedures under which a consumer, a natural person, may file his complaint;

WHEREAS, Executive Order No. 913 as amended by Ministry Order No. 69 strengthens the rule-making and adjudicatory powers of the Minister (Secretary) of DTI by providing the procedures under which juridical person and DTI initiated complaint may be availed of;

NOW, THEREFORE, the following rules and regulations are hereby prescribed for the information, guidance and compliance of all concerned:

Section 1. Scope

This Order shall apply to any person, natural or juridical, who shall establish, operate, advertise or promote a chain distribution plan or pyramid sales scheme as defined under the Consumer Act and reiterated in Section 2.1 of the Order.

Section 2. Definition of Terms

2.1 "Chain Distribution Plans or Pyramid Sales Scheme" means sales devices whereby a person, upon condition that he makes an investment, is granted by the manufacturer or his representative a right to recruit for profit one or more additional persons who will also be granted such right to recruit upon condition of making similar investments: Provided, That, the profits of the person employing such a plan are derived primarily from the recruitment of other persons into the plan rather than from the sale of consumer products, services and credit: Provided further, That limitation on the number of participants does not change the nature of the plan.

2.2 Other Forms of Chain Distribution Plan/Pyramid Sales Scheme. - Without limiting the coverage of the term "chain distribution plan or pyramid sales scheme" above, business, sales or marketing plan or scheme is considered as Chain Distribution Plan or Pyramid Sales Scheme if:

a) A promoter persuades recruits to purchase products, services, credit, title or rank whereby the recruits can receive income primarily from the mere introduction, recruitment or sponsorship of other participants into the scheme rather than from the marketing and sale of products; or

b) Where the profits of the person employing such are derived primarily from the recruitment of the other persons into the plan or scheme rather than from the sale of consumer products, services and credit and said plan/scheme includes, but not limited to, one or more of the following attributes:

b.1. revenues or income are derived from participants' entry fees;

b.2. in order to earn income, participants must sponsor a fixed number of other participants, each of whom must in turn sponsor a fixed number of participants as in a plan compensating participants balancing number of recruits than number of sales volumes;

b.3. a participant's income is dependent primarily upon the participant's slot or position within the organization as determined by the time, date and order of participation;

b.4. participants are not allowed to return marketable and unused products for refund within a reasonable period of time or the conditions for such product return are contrary to the provisions of the Consumer Act and/or its Implementing Rules and Regulation (DAO No. 2, s. of 1993).

b.5. there is no fair market value for the goods received (Fair market value is a price determined an open market system. An indicator would be that consumers would still be willing to buy a product at its quoted price even without participating in the compensation plan).

Section 3. Administrative Proceedings

There are two Administrative procedures whereby complainants may seek to avail for themselves, to wit;

a. R.A. 7394 otherwise known as the Consumer Act provides the procedures whereby a consumer, a natural person, may seek redress.

b. E.O. 913 as amended by M.O. 69 provides the procedures whereby juridical persons and DTI initiated complaint may be adjudicated accordingly.

3.1 Administrative Proceedings under R.A. 7394

3.1.1 Who May File a complaint

"Consumer" is defined by the Consumer Act as a natural person who is a purchaser, lessee, recipient or prospective buyer, lessee or recipient of consumer products, services or credit.

3.1.2 When to file complaint

The complaint shall be filed within two (2) years from the time the consumer transaction was consummated or the deceptive or unfair and unconscionable act or practice was committed and in case of hidden defects, from disarray thereof. (sec. 169, Consumer Act)

3.1.3 Venue of Actions

Pursuant to Department Order No. 4, s. of 1997 the complainant may file the complaint in duplicate with the Provincial Offices, or in an area where there is no Provincial Office, with the Regional Offices, in any of these places, at his option:

- a.) place where the offense was committed wholly or partially;
- b.) place where an essential ingredient of the offense was committed;
- c.) place specified by the parties by means of a written agreement;
- d.) place where transaction was consummated;
- e.) place of the execution of the contract sued upon as appears therefrom;
- f.) place of residence of the complainant;
- g.) place of the residence of the respondent.

The option of the complainant shall be limited to the venues as enumerated. The choice however shall not be such as to restrict the speedy resolution of the case.

By written agreement of the parties, the venue of an action may be changed or transferred from one province to another

3.1.4 Procedure.

A.) Commencement of Action

a.1. An action under the Consumer Act is commenced only by the filing of a complaint by a "consumer" (as this term is defined in Section 3.1.1 hereof) in any of the places listed in Section 3.1.3 hereof. In those instances where there is a violation of the Consumer Act but there is no consumer complainant, the action may be commenced motu proprio by the proper DTI office, but the procedure that shall govern is M.O. No. 69, S. 1983.

B.) Mediation Stage:

b.1. The Arbitration Officer (AO) schedules a date (anytime within 15 working days from the time a complaint is filed) for a mediation conference where concerned parties are ordered to attend. The purpose of this is to provide opportunity to settle the case amicably.

b.2. If the parties agree on an amicable settlement of the complaint, they shall sign an agreement indicating the terms and conditions thereof. The agreement shall not be contrary to law, morals, good customs, public order and policy. The Arbitration Officer shall render a decision based on the compromise agreement.

C.) Pre-Hearing Stage (No Compromise/Amicable Settlement has been reached by the parties):

c.1 Summons and schedule of Hearing are sent to the respondent who is required to file his Answer to the complaint. Complainant is also notified of such summons and schedule.

c.2 If respondent fails to file an Answer within 10 days from receipt of summons, he is declared in default. Such declaration will enable Arbitration Officer to receive the evidence of the complainant .

D.) Hearing Stage

d.1 The Arbitration Officer shall have the discretion to conduct a Preliminary Conference on the first day of hearing in which the AO will clarify the

issues, allow stipulation of facts, and/or provide a last opportunity for amicable settlement of the case.

d.2 If the complainant fails to appear, the case shall be dismissed for failure to prosecute.

If respondent fails to appear, he shall be declared in default.

d.3. Hearing Proper - presentation of witness and documentary evidences

E.) Rendition of Decision

Within fifteen (15) days after the end of hearing or upon submission of required document/memoranda.

F.) Decision on Appeal - The Secretary shall decide the appeal within thirty (30) days from receipt thereof. The decision becomes final after fifteen (15) days from receipt thereof unless a petition for certiorari is filed with the Court of Appeals under Section 4, Rule 65 of the Rules of Court.

3.1.5 Administrative Penalties. - After formal hearing, the Consumer Arbitration Officer may impose one or more of the following administrative sanctions/penalties, even if not prayed for in the complaint, when warranted:

- a) the issuance of a cease and desist order;
- b) the acceptance of a voluntary assurance of compliance or discontinuance from the respondent which may include terms and conditions set forth in Article 164 of RA 7394;
- c) the restitution or rescission of the contract without damages;
- d) condemnation and seizure of the consumer product found to be hazardous to health and safety unless the respondent files a bond to answer for any damage or injury arising from the continued use of the product; and
- e) the imposition of administrative fine in an amount which shall in no case be less than Five hundred pesos (P500.00) nor more than Three hundred thousand pesos (P300,000.00) depending on the gravity of the

offense and an additional fine of not more than One thousand pesos (P1,000.00) for each day of continuing violation.

A schedule of fines contained in Annex "A" which is made an integral part of this Order shall be the basis in the imposition of administrative fine for the violation of the Consumer Act involving provisions on chain distribution plans and pyramid sales scheme.

The filing of an administrative case does not bar the complainant from filing a criminal case under Section 60 of the Consumer Act or under other applicable laws.

The procedure provided in this Section 3 shall be supplemented by DTI-DOH-DA Joint Administrative Order No. 1, Series of 1993 and other existing rules.

Section 4. **Administrative Proceedings under E.O. 913 and M.O. 69**

a) **Who May File a Complaint**

- 1) DTI on its own initiative (motu proprio)
- 2) juridical person

b) **When to file a Complaint.**

The Complaint shall be filed within three (3) years from the day of the commission of the offense or if such date is unknown at the time, from the discovery thereof. After the said period of three years, the filing thereof shall be barred.

c) **Procedure** - The following procedures shall be undertaken in the enforcement of this Order.

DTI Provincial Directors shall undertake to do and perform the following acts, for and on behalf of the Secretary of DTI:

- c.1. To file and institute a formal charge against any person, company or entity who is found, upon verified complaint/reports supported with documents and other papers committing any act or activity in violation of trade and industry laws.
- c.2. To designate any employee, under his/her supervision or control to act as the investigation/mediation/prosecution officer where the services of said officers are necessary.
- c.3. If during mediation, respondent admits the violation, the Provincial Director shall issue the decision and impose such administrative penalties as may be provided under E.O. 913. If respondent does not admit the violation, the Provincial Director shall file statement of violation with the Regional Office concerned.
- c.4. The Regional Director shall conduct a formal investigation and render a decision in accordance with E.O. 913.
- c.5. Formal Hearing - The Provincial Director who instituted the formal charge/statement of violation shall prosecute the case himself or through his duly authorized representative.
- c.6. Decision - Within fifteen (15) days from the termination of the administrative proceedings, a written decision shall be served on the complainant and the respondent either by mail or personal service
- c.7. Execution - Unless a motion for reconsideration is filed within fifteen (15) days from receipt of the decision by the party adversely affected or an appeal is made to the undersigned within said period, the decision shall become final and executory after fifteen (15) days from receipt of such decision.

d) **Administrative Penalties.** After formal hearing, the proper DTI Office may impose one or more of the following administrative penalties, even if not prayed for in the complaint, when warranted: (M.O. 69 , E.O. 913)

- d.1. the issuance of a cease and desist order;
- d.2. the acceptance of a voluntary assurance of compliance or discontinuance under such terms and conditions may be imposed.

- d.3. the condemnation or seizure of products which are the subject of the offense;
 - d.4. the forfeiture of the products subject of the offense, the paraphernalia and all properties, real or personal, which have been used in the commission of the offense;
 - d.5. the imposition of administrative fines in such amount as deemed reasonable by the proper DTI office which shall in no case be less than five hundred pesos nor more than one hundred fifty thousand pesos plus not more than one thousand pesos for each day of continuing violation. The fine imposed under this Section shall be regardless of the limits of the criminal fine fixed in the "trade and industry law" violated;
 - d.6. the cancellation of any permit, license, authority, or registration which may have been granted by the Department, or the suspension of the validity thereof for such period of time as the proper DTI office may deem reasonable which shall not, however, exceed one year;
 - d.7. the withholding of any permit, license, authority or registration which was obtained by the respondent from the Department;
 - d.8. the assessment of damages;
 - d.9. censure; and
 - d.10. other analogous penalties or sanctions, such as closure for a period not exceeding one (1) year
- e. The procedure provided in this Section shall be supplemented by M.O. No. 69, S. 1983 as amended.

Section 5 A schedule of fines contained in Annex "A" which is made an integral part of this Order shall be the basis in the imposition of administrative fine for the violation of the Consumer Act involving provisions on chain distribution plans or pyramid sales schemes. The circumstances such as mitigating, aggravating, alternative, set forth in DAO No. 7, s. 1999, shall be taken into account to arrive at an appropriate fine.

Section 6 The filing of an administrative case does not bar the

complainant from filing a criminal case under Section 60 of the Consumer Act or under applicable law.

Section 7. Separability Clause. - If for any reason these rules and regulations or any of this provision or provisions or the application of such provision or provisions or portions thereof is declared invalid, all other provisions unaffected thereby shall continue to remain in full force and effect.

Section 8. Effectivity. This Order shall take effect 15 days after publication in two newspapers of general circulation.

Done in Makati City, this 28th day of August 2002.

MAR ROXAS
Secretary

Recommending Approval by:

JESUS L. MOTOOMULL .
Caretaker, BTRCP

ADRIAN S. CRISTOBAL, JR.
Undersecretary, DTI-CWTRG