Multi-Level Consumer Harm: A Study of Contemporary MLM Regulation in the Age of Gig and Platform Economies

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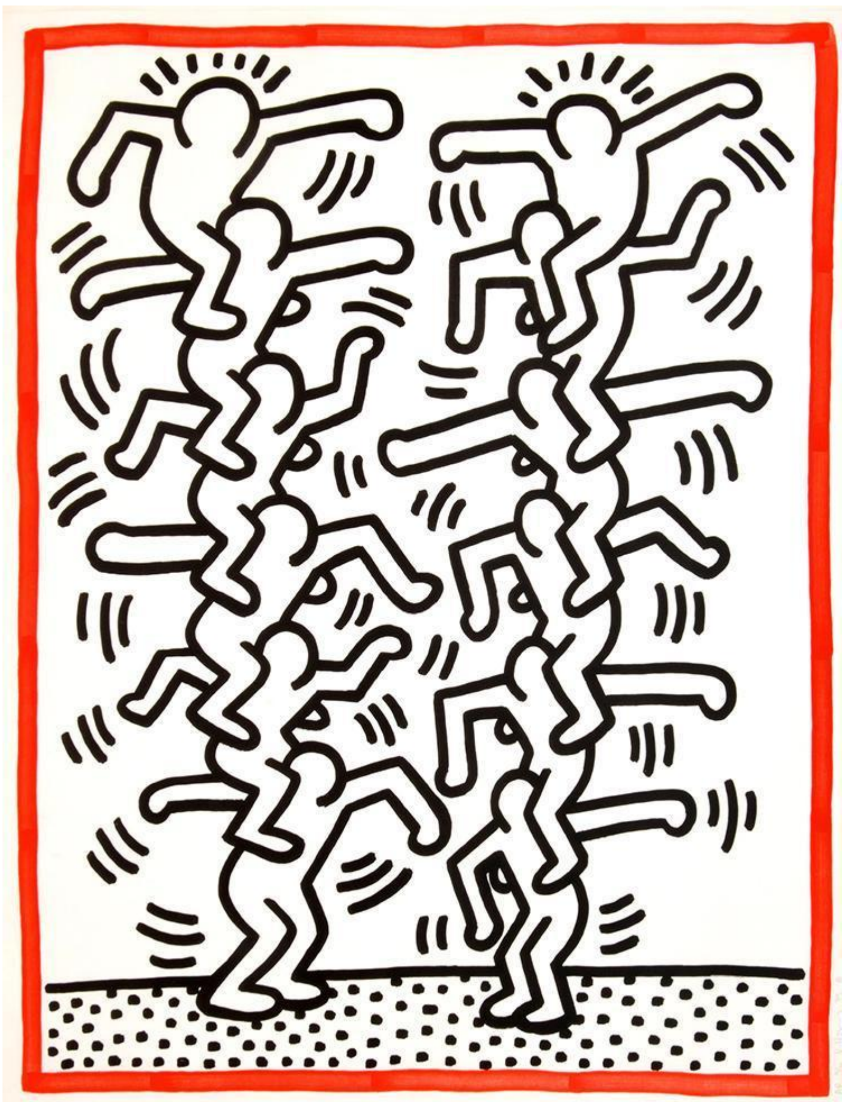

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Introduction

Internet access has become an integral part of modern life, facilitated global communication and revolutionised our commercial, personal, professional, and political lives. The internet and social media have not only facilitated social connections among friends and family, but they have also made entrepreneurship, commerce, and skill sharing more accessible than ever. Now, anyone who is interested in entrepreneurship can freely access and research the information, resources, and networks necessary for their venture. This has contributed significantly to global economic development by reducing the cost of production, increasing accessibility to commercial markets, reducing extreme poverty and increasing global standards of living. It has also increased and facilitated accessibility to worldwide communication regardless of physical, geographical, or even linguistic boundaries; thus, transforming the way people do business and create their personal networks in a way that is increasingly tailored to people's individual interests.[1]

A healthy free market economy is characterised by consumers having access to the best possible prices, quantity, and quality of goods and services to choose from. An unhealthy market, on the other hand, is characterised by market domination by a limited pool of businesses that, due to their lack of competition, can control prices to the detriment of the consumer and are not incentivised to maintain quality products or services. Antitrust and consumer protection regulation maintains healthy market competition to ensure that companies maintain fair yet competitive practices within the market. That the lines between business owners, employers, employees, and consumers have become increasingly blurred, anyone can interchangeably take on these roles as the market becomes more accessible and dynamic. Consequently, it is imperative that consumer protection regulation is at the forefront of understanding contemporary consumer harm within our rapidly changing economy, in order to best regulate and maintain a healthy and competitive free market.

[1] Zoltan J. Acs, Abraham K Song, László Szerb, David B Audretsch & Éva Komlósi, "The Evolution of the Global Digital Platform Economy: 1971–2021," *Small Business Economics* 57, no. 4 (2021): 1629–59, https://doi.org/10.1007/s11187-021-00561-x.

New economies have emerged following the facilitation of social and economic activity online. Platforms have made it so that people can advertise their job or needs online, and be quickly linked to someone who is able and willing to complete the one-time task for a negotiated price. The platform economy describes this contemporary development and all economic activity on platforms like Amazon, TicketSwap, Airbnb, and Uber known as "transaction platforms," who facilitate buyers and sellers to make safe, secure and mediated transactions of goods and services through their platform. The gig economy, more specifically, describes the free-market developments that have emerged as a consequence of increased platforms, where people are increasingly becoming freelance, short-term, and independent workers and taking up temporary job opportunities, or gigs, without being bound by a long-term labour contract.

Our modern economy has been significantly transformed by the emergence of platform and gig economies.[2] COVID-19 further propelled the success of short term gig workers as people increasingly looked for flexible means of labour opportunity in attempts to regain financial control in a time most uncertain.[3] Consequently, a wealth of economic research has been done on platform and gig economies and their impact on free market neoliberalism, international trade, workers' rights, workers wellbeing, and the environment.[4] Findings show the shift towards a gig economy has empowered workers with more labour flexibly and the ability to make money via diverse means that fit their needs.[5] While such unstructured work has been found to cause instability and loneliness, many workers find it provides a higher return on their skills.[6] However, research has also found that platforms were able to take advantage of the lack of dynamic labour

[2] Matthieu Montalban, Vincent Frigant and Bernard Jullien, "Platform Economy as a New Form of Capitalism: a Régulationist Research Programme," *Cambridge Journal of Economics* 43, no. 4 (2019): 805–24, https://doi.org/10.1093/cje/bez017.

[3] Srujana Katta, Adam Badger, Mark Graham, Kelle Howson, Funda Ustek-Spilda & Alessio Bertolini, "(Dis)embeddedness and (de)commodification: COVID-19, Uber, and the Unravelling Logics of the Gig Economy," *Dialogues in Human Geography* 10, no. 2 (2020): 203–7, https://doi.org/10.1177/2043820620934942.

[4] Vili Lehdonvirta, Otto Kässi, Isis Hjorth, Helena Barnard & Mark Graham, "The Global Platform Economy: A New Offshoring Institution Enabling Emerging-Economy Microproviders," *Journal of Management* 45, no. 2 (2019): 567–99, https://doi.org/10.1177/0149206318786781; Austin Zwick, "Welcome to the Gig Economy: Neoliberal Industrial Relations and the Case of Uber," *GeoJournal* 83, no. 4 (2018): 679–91, https://doi.org/10.1007/s10708-017-9793-8; Andrea Gessinger, Christofer Laurell, Christina Öberg & Christian Sandström, "How Sustainable Is the Sharing Economy? On the Sustainability Connotations of Sharing Economy Platforms," *Journal of Cleaner Production* 206 (2019): 419–29, https://doi.org/10.1016/j.jclepro.2018.09.196.

[5] Thor Berger, Carl Benedikt Frey, Guy Levin & Santosh Rao Danda, "Uber Happy? Work and Well-Being in the 'Gig Economy'," *Economic Policy* 34, no. 99 (2019): 429–77, https://doi.org/10.1093/epolic/eiz007.

[6] Paul Glavin, Alex Bierman & Scott Schieman, "Über-Alienated: Powerless and Alone in the Gig Economy," *Work and Occupations* 48, no. 4 (2021): 399–431, https://doi.org/10.1177/07308884211024711; Vili Lehdonvirta, Otto Kässi, Isis Hjorth, Helena Barnard, and Mark Graham, "The Global Platform Economy: A New Offshoring Institution Enabling Emerging-Economy Microproviders."

regulation in order to facilitate gig opportunities on their platforms. Economists have discussed the implications of employers benefiting from the freelance and independent status of gig workers, as it shifts liability towards the gig workers who are then not protected by traditional employees labour laws.[7] This has resulted in decreased wages and independent workers incurring costs that would otherwise be covered in a traditional contract; economists and policy-makers alike have established a consensus for the need for more research on digital economies in addition to increased labour regulation and consumer protection to protect workers.[8] Comprehensive consumer protection has always been a foundation for a strong economy, but rapid and irreversible developments in our modern economy have revealed a significant lack of forethought in existing consumer protection regulation. Regulatory institutions did not foresee the new possibilities for consumer harm in an everchanging and increasingly digital world, nor did they consider how quickly new businesses would adapt to digital developments by continuously leveraging opportunities and addressing everchanging hurdles. Consumer protection in itself has always been a challenge as fraud and deceptive practices are nuanced and often not transparent, making investigation and punitive action difficult.[9] Now, with the added nature of businesses and social dynamics taking place online, it has become evident that regulatory bodies desperately need to pre-empt contemporary hurdles in their regulatory actions.

Gig and platform economy discourse within economic and policy studies show an awareness that online labour markets need addressing, researching, and regulating as new markets mean new risks, frauds and other means of consumer harm. This thesis aims to contribute to these fields of research by addressing the literature gap on the FTC's contemporary consumer protection regulation practices; as well as the significant gap on Multi-level marketing (MLM/MLMs), which has similarly benefited from digital platform use, the exploitation of

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[7] Zwick, Austin. "Welcome to the Gig Economy"; Raghu Garud, Arun Kumaraswamy, Anna Roberts & Le Xu, "Liminal Movement by Digital Platform based Sharing Economy Ventures: The Case of Uber Technologies," *Strategic Management Journal* 43, no. 3 (2022): 447–75, https://doi.org/10.1002/smj.3148; Ben Z. Stein Berger, "REDEFINING 'EMPLOYEE' IN THE GIG ECONOMY: SHIELDING WORKERS FROM THE UBER MODEL," *Fordham Journal of Corporate & Financial Law* 23, no. 2 (2018): 577–96; Srujana Katta et al., "(Dis)embeddedness and (de)commodification"; Joep Cornelissen & Magdalena Cholakova, "Profits Uber Everything? The Gig Economy and the Morality of Category Work," S*trategic Organization* 19, no. 4 (2019): 722–31, https://doi.org/10.1177/1476127019894506.

[8] Vili Lehdonvirta et al.,"The Global Platform Economy;" Srujana Katta et al., "(Dis)embeddedness and (de)commodification;" Ben Z.Steinberger, "REDEFINING 'EMPLOYEE' IN THE GIG ECONOMY."

[9] Stacie A, Bosley, Marc F Bellemare, Linda Umwali & Joshua York, "Decision-Making and Vulnerability in a Pyramid Scheme Fraud," *Journal of Behavioral and Experimental Economics* 80 (2019): 2, https://doi.org/10.1016/j.socec.2019.02.011.

independent workers, and liability avoidance, but remain severely under researched in academia. MLM has been popular for almost half a century, grosses $40B in sales annually, and is made up of about 6.2 million Americans, of which 99% statistically end up losing money.[10] These statistics highlight the relevance of MLM as a business structure that is impactful to the economy. Yet, despite their long history as a business structure within the U.S., MLMs remain understudied within academia and there is a glaring gap within both legal and economic scholarship regarding the matter.[11] This is then reflected in a global pattern of disinterest by lawmakers on the personal losses caused by MLMs, and the lack of sector-specific regulation that would benefit employees and consumers alike.[12] The regulatory history of MLM can therefore contextualise regulatory habits that we see today, and allow for a deeper understanding of why contemporary consumer harm regulation did not foresee gig and platform economy developments. A key component to the sustainability of the MLM business structure has been its ability to consistently adapt to changing consumer needs and behaviour, and readapt the business model accordingly. This has been exemplified by the growth of MLM activity online, more specifically on social media platforms; which they have successfully used as a networking, marketing, recruitment, and sales tool. Social media usage is the foundation of contemporary MLM growth and success, despite the financial risks associated with the business structure it has become more popular than ever. The COVID-19 pandemic saw MLM and social media's relationship becoming further intertwined as more people turned to MLM as a means to make money online in a time where traditional employment was limited due to quarantine restrictions. Therefore, MLMs contemporary relevance is clear. Consumers, social media platforms, and regulatory institutions alike would benefit from an understanding of how such a business structure continues to successfully adapt and grow regardless of its controversial reputation. Such would contribute to the discussion of emerging economies in an increasingly digitised and

[10] "Direct Selling in the United States: 2020 Industry Overview," Direct Selling Association, 2020, https://www.dsa.org/docs/default-source/research/dsa-industry-overview-factsheetd601b69c41746fcd88eaff000002c0f4.pdf?Status=Temp&sfvrsn=6e75d9a5_2%27; Jon M. Taylor, "MLMs ABYSMAL NUMBERS," in *The Case (for and) against Multi-Level Marketing*, 7–14, Federal Trade Commission, https://www.ftc.gov/sites/default/files/documents/public_comments/trade-regulation-rule-disclosurerequirements-and-prohibitions-concerning-business-opportunities-ftc.r511993-00008%C2%A0/00008-57281.pdf.

[11] Zig Ziglar & John P. Hayes, "*Network Marketing For Dummies*" 1st ed. (New Jersey: Wiley, 2011): 6–10; Tibor Tajti, "Multi-Level Marketing and Pyramid Schemes," in *Protection of the Collective Interests of Consumers - Collection of Conference Papers*, ed. Katarina Ivančević (Belgrade: UNION University Law School, 2021), 46–47, 58–61, https://doi.org/10.18485/union_pf_ccr.2021.ch3.

[12] Tibor Tajti, "Multi-level Marketing and Pyramid Schemes," 58-61.

platform-reliant world, and provide a strong foundation upon which contemporary consumer protection regulation can be built. This thesis seeks to further the contemporary discourse on the importance of U.S. federal regulation in an everchanging economy that is greatly impacted by digitisation. Additionally, this analysis contributes to the academic gap on the structure and risks of the MLM business practice, as well as the gap in FTC consumer protection research, which has been overshadowed by antitrust analyses.[13]

This thesis aims to discover how the FTC, MLMs and social media have navigated consumer protection regulation amid the digitalisation of labour markets. The first chapter will examine the Federal Trade Commission's (FTC) history and evolution as the government institution responsible for antitrust and consumer protection regulation. Critiques on the FTC's laissez-faire approach to regulation will be contextualised with an structural analysis of the institution. Following this, an exploration of the risks and benefits of MLM participation will be contrasted against an analysis of the FTC's 1979 In Re Amway Corp ruling, which legalised MLMs, in order to illustrate the significance of MLM legality within the FTC's consumer protection regulation history. MLMs are then contextualised within COVID-19 in order to determine how the FTC navigated consumer harm at a time where everything took place online due to quarantines. The second chapter explores how MLMs are able to maintain the growth and popularity of the business model alongside its reputation for consumer harm practices by harnessing social media to its benefit and strengthen MLM community networks in ways that bolster MLM intrigue, trust, commitment and legitimacy. By analysing the structural, targeted, and linguistic methods used in MLM sales, recruitment and maintenance of their participants, the chapter reveals how the MLM structure systemically delays distributors from perceiving MLM consumer harm. Lastly, to determine how social media has navigated consumer protection regulation, the final chapter conducts a case study analysis on TikTok and Facebook, two major private social media platforms that have seen significant MLM activity. By contrasting their respective community and advertising guidelines, it is determined how MLMs have been regulated on the platforms, and whether such regulations differ from the FTC's MLM ruling. Regulatory differences between the platforms and the FTC reveal whether the platforms view

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[13] Zig Ziglar & John P. Hayes, *Network Marketing For Dummies*; Tibor Tajti, "Multi-Level Marketing and Pyramid Schemes," in 46–47.

FTC regulation sufficient enough to protect their users. Limitations of MLM activity on platforms signifies a perceived risk to either the platform users, as regulated within community guidelines, or the platform revenue, as regulated within advertising guidelines. The results will be discussed within the context of regulatory capacity, comparing the FTC's regulation of MLMs versus that of TikTok and Facebook and identifying discrepancies within perceived consumer harm, thus situating the current state of regulation in today's digital world.

Ch 1: The FTC and MLMs: Their Birth and Evolution

This chapter examines the FTC's history, evolution and structure to contextualise its regulatory patterns alongside the structural and regulatory critiques it has earned. Subsequently, the structure and history and development of modern-day Multi-Level Marketing will be dissected, as will the 1979 FTC ruling that legalised them. Lastly the impact of MLMs will be discussed with a brief overview of how COVID-19 saw significant MLM growth and FTC violations.

The FTC

The 1800s were marked by the domination of giant companies, known as trusts, who controlled and monopolised large sections of the economy. Trusts eliminated all competition within the market, allowing them to dictate prices and reduce the quality of produce.[14] Efforts to "bust the trusts" were made through the passing of the Sherman Antitrust Act of 1890 and the 1914 Clayton Act, which prohibited monopolisation and unfair methods of competition and deceptive practices.[15] In 1914, the Federal Trade Commission Act established the Federal Trade Commission (FTC) as an independent federal institution with the power to investigate and enforce such anti-competitive acts. The act also entrusted the FTC with the power to regulate, investigate, educate, and enforce consumer protection.[16] Since, the FTC has been responsible for safeguarding consumers from unfair, defective, deceptive, or fraudulent products or business practices by suing and prohibiting people and companies that break competition and consumer protection laws. An estimated two million people in the U.S. fall victim to fraudulent business opportunities of which many are underreported due to the shame and psychological impacts of experiencing fraud, though the cost of fraud on U.S. consumers has been estimated at about $45 billion annually.[17] The FTC has the cautionary, advisory, legislative and punitive power to

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[14] Tim Wu, *The Curse of Bigness*: *Antitrust in the New Gilded Age* (Columbia Global Reports, 2018): 78, https://doi.org/10.2307/j.ctv1fx4h9c.

[15] William L. Letwin, "Congress and the Sherman Antitrust Law: 1887-1890," *The University of Chicago Law Review* 23, no. 2 (1956): 221–58. https://doi.org/10.2307/1598473; "Clayton Act," Statutes, Federal Trade Commission, September 30, 2021, https://www.ftc.gov/legal-library/browse/statutes/clayton-act.

[16] Paul A. Paulter, "A Brief History of the FTC's Bureau of Economics: Reports, Mergers, and Information Regulation," *Review of Industrial Organization* 46, no. 1 (2015): 59–94. https://doi.org/10.1007/s11151-014-9430-3.

[17] K.B. Anderson, "Consumer Fraud in the United States," *The Third FTC Survey* (2011), retrieved January 30, 2020,https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey_0.pdf; Deevy, M., Lucich, S., Beals, M., 2012. Scams, Schemes, & Swindles: A Review of

identify and regulate fraud and deceptive acts; and is an institution founded on tending to the needs and safety of consumers over that of private businesses. The FTCs mission of antitrust and consumer protection regulation is necessary and important for the maintenance of a fair and accessible marketplace for businesses and consumers alike. Trust-busting throughout history has shown the importance and utility of the FTCs regulatory purpose of minimising unfair competition and consumer practices through monopolisation, and making the market equitable. However, history has also shown that without active and effective regulation, businesses will take advantage of laissez-faire approaches by institutions, and consolidate markets until regulatory bodies take action.[18]

Since its conception, the FTC has expanded its branches to better distribute its regulatory responsibilities. It is an independent agency that consists of three head departments. The Bureau of Competition's mission is to prevent anti-competitive mergers and enforcing antitrust laws in aims of safeguarding consumer "freedom to choose goods and services in an open marketplace at a price and quality that fit their needs."[19] The Bureau of Consumer Protection is tasked with protecting consumers from "unfair, deceptive or fraudulent practices," by performing Congress backed investigations within industries.[20] They also maintain communication with Congress and other government institutions, updating them on the impacts of legislation on consumers. The Bureau of Economics aids the FTC in evaluating and analysing the economic consequences of FTC actions, as well as the impact of government regulation on competition and antitrust enforcement through economic analyses. These three main departments are supported by varying offices across the U.S. that offer specialised attention to anti-competitive deceptive and unfair business practices. Today, the FTC has a total of 1,160 employees, headed by five FTC commissioners and backed by an annual budget of $332 million.[21] A minimal growth

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Consumer Financial Fraud Research. Financial Fraud Research Center at the Stanford Center on Longevity Retrieved January 30, 2020, http://longevity.stanford.edu/wp-content/uploads/2017/01/Scams-Schemes-Swindles-FINAL-On-Website.pdf.; Stacie. A. Bosley et al., "Decision-Making and Vulnerability in a Pyramid Scheme Fraud," 1.

[18] Paul A. Paulter, "A Brief History of the FTC's Bureau of Economics: Reports, Mergers, and Information Regulation," Review of Industrial Organization 46, no. 1 (2015): 59–94. https://doi.org/10.1007/s11151-014-9430-3.

[19] "About the FTC Bureaus & Offices," Federal Trade Commission, April 30, 2021, https://www.ftc.gov/about-ftc/bureaus-offices.

[20] Ibid.

[21] "FTC 2021 Agency Financial Report - Federal Trade Commission," Federal Trade Commission, 2021, https://www.ftc.gov/system/files/documents/reports/agency-financial-report-fy2021/ftc_fy2021_agency_financial_final.pdf.

comparative to 1999, which was made up of 1000 employees and an annual budget of $100 million.[22] The FTC's complex structure reflects the institution's long history, which has often been at the centre of academic discussion as the influences that have shaped the FTC shed light on how the institution tackles anticompetitive behaviour and consumer protection.

It is important to note that prior to established institutional structures, anticompetitive regulation preceded the FTC and consumer protection regulation significantly. Antitrust research has been carried out since the Sherman Act in 1890, while consumer protection was born 24 years later alongside the FTC in 1914.[23] Historical analyses of the FTC highlight the significant role of economists within the institution's origins, who strengthened its federal role and impact by providing the executive branch with detailed economic reports analysing market concentration, antitrust enforcement, and developments in industrial financial performance.[24] These reports have become essential to the executive branch's decision making, and have contributed to a culture of economic focus within the FTC that persists and is celebrated by many as a cornerstone to U.S. economic research.[25] The majority of academic literature on the FTC echoes this economic focus, and is primarily discussed in technical terms by policy specialists, lawyers, economists, and business analysts, who primarily address antitrust regulation from an economic and corporate standpoint, and often overlook consumer protection.[26] Consequently, antitrust research significantly outweighs consumer protection research, resulting in a knowledge gap of how to adequately legislate and apply consumer protection regulation.

The FTC's known tradition of predominantly economist staff and FTC heads has been critiqued as a structural bias led by their economic culture, while this is explained by the FTC's

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[22] "Federal Trade Commision," Federal Trade Commission - site visit report, accessed August 16, 2022, https://govinfo.library.unt.edu/npr/library/papers/bkgrd/ftc.htm#:~:text=The%20FTC%20has%20five%20Commissioners,eliminating%20noncompetitive%20business%20practices%3B%20and.

[23] Lawrence J. White, "Economics, economists, and antitrust: A tale of growing influence," *In Better Living Through Economics*, ed. John J. Siegfried (Harvard University Press, 2010): 233.

[24] Paul A. Pautler, "A History of the FTC's Bureau of Economics," in *Healthcare Antitrust, Settlements, and the Federal Trade Commission*, ed. James Langenfeld & Edwin Galeano (Bradford: Emerald Publishing Limited, 2018).

[25] James Cooper, *The Regulatory Revolution at the FTC* (New York: Oxford University Press, 2013) https://doi.org/10.1093/acprof:oso/9780199989287.001.0001; Paul A. Pautler, "A History of the FTC's Bureau of Economics."

[26] Kenneth W. Clarkson & Timothy J. Muris, *The Federal Trade Commission Since 1970: Economic Regulation and Bureaucratic Behavior* (Cambridge: Cambridge University Press, 2008). See also: Gary L. Ingle, "FTC Anti-Trust Compliance," *The American Music Teacher* 65, no. 1 (2015): 28–33; Paul A. Paulter, "A History of the FTC's Bureau of Economics."

early economic beginnings, little efforts have been made to close the gaping gap between antitrust and consumer protection regulation. The bias is structurally evident, as antitrust regulation is centralised within the FTC, while consumer protection is splintered within FTC sub-institutions, as well as throughout national, state and local institutions that specialise in consumer protection in specific industries and factions.[27] Additionally, consumer protection offices and FTC sub-institutions are vastly under researched, showing that no efforts to bridge the knowledge and regulatory gaps between antitrust and consumer protection have been made and indicating that the FTCs structure is more equipped to address antitrust issues than consumer protection issues. The imbalance between economists over consumer harm specialists in the FTC can be seen in the laissez-faire regulatory habits of the FTC. However, this has not prevented antitrusts from growing. This is best illustrated by increased monopolisation in the 21st century, especially within the tech industry, has indicated that even an economic approach to anti-trust busting has not effectively prevented market consolidation as the FTC is responsible for doing. Companies who wish to make large merger acquisitions must file a premerger notification with the FTC as a part of an official Merger Review Process reviewed by the FTC in cooperation with the Department of Justice. If it is found that a merge request is anti-competitive, the FTC can take legal action to stop it in federal court.[28][29] The FTC has allowed notable non-competitive mergers, one of them being Facebook's acquisition of Instagram and WhatsApp.[30][31] Although the FTC's lack of antitrust prevention can be seen in the consolidation of the tech industry which has been enabled by the FTC to further engulf competitors and consolidate the market, under the guise of being economically beneficial.[32][33] Muris notably criticised the FTC for rewarding private companies for furthering national economic goals at the cost of consumer protection.[34]

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[27] Lawrence J. White, "Economics, economists, and antitrust: A tale of growing influence."

[28] "Premerger Notification and the Merger Review Process," Federal Trade Commission, March 4, 2022, https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/mergers/premerger-notification-merger-review-process.

[29] "Merger Review," Federal Trade Commission, May 23, 2022, https://www.ftc.gov/enforcement/merger-review.

[30] Felix Chang & Seth Benzell, "Facebook, Welfare, and Natural Monopoly: A Quantitative Analysis of Antitrust Remedies," *Cincinnati College of Law: Faculty Articles and Other Publications* (March 7, 2022), 415, https://scholarship.law.uc.edu/fac_pubs/415.

[31] Josh Kosman, "FTC Gives Facebook Go-Ahead on WhatsApp Deal: Source," *New York Post*, April 9, 2014, https://nypost.com/2014/04/08/ftc-gives-facebook-go-ahead-on-whatsapp-deal-source/.

[32] Dennis D. Hirsch, "That's Unfair! Or Is It? Big Data, Discrimination and the FTC's Unfairness Authority," *Kentucky Law Journal* 103, no. 3 (2015): 345.

[33] Kean Birch & D. T. Cochrane, "Big Tech: Four emerging forms of digital rentiership," *Science as Culture* 31, no. 1 (2022): 44-58.

[34] Timothy J. Muris, "The FTC and the Law of Monopolization," *Antitrust Law Journal* 67 (1999): 693.

The significant power and influence of these companies have been of growing concern especially in the face of increasing consumer harm concerns surrounding tech companies responsibility over their users, especially in regards to privacy and data protection.[35][36][37][38] The U.S. has also seen market consolidation in agriculture, food retail, telecommunications, health care, and financial intuitions, among many others; and subsequently seen rising tensions with labour rights, decline in wages and environmental decline.[39] Rising market consolidations indicate that the FTC's economic bias, laissez-faire approach to regulation and lack of consumer harm focus has not benefited consumers, nor has it brought the FTC closer to achieving their mission. A laissez-faire approach to regulation within the FTC also highlights an inability to understand the growing role of the consumer within modern markets. Social media has allowed for the lines between consumer and producer to be blurred, and in order to protect consumers in an everchanging world, it must be active and cannot let the market dictate harm. Without a larger influence and understanding of consumer harm, the FTC will continue to lack the foresight necessary to pre-emptively predict and regulate new forms of consumer harm in this rapid paced economy. The FTC lacking foresight comes at the cost of consumers who then become vulnerable to harm while the FTC regulates with delay instead of with pre-emption.

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[35] Greg Dickenson,"Privacy Developments," *The Business Lawyer* 71, no. 1 (2016): 293–304.

[36] Ralf Boscheck, "Internet and Consumer Privacy: Considering the FTC's 'do Not Track' Proposal," *Inter Economics* 46, no. 5 (2011): 270–74, https://doi.org/10.1007/s10272-011-0391-6.

[37] Michael Cooney, "FTC P2P Data Leak Alarm Could Give Law-Makers Big Stick; FTC Says P2P File-Sharing Networks Are Leaking Sensitive Data," *Network World* (Online), 2010.

[38] Lawrence J. Trautman, "GOVERNANCE OF THE FACEBOOK PRIVACY CRISIS," *Pittsburgh Journal of Technology Law & Policy* 20, no. 1 (2020), https://doi.org/10.5195/tlp.2020.234.

[39] Leemore Dafny, Mark Duggan, & Subramaniam Ramanarayanan, "Paying a Premium on Your Premium? Consolidation in the US Health Insurance Industry," *The American Economic Review* 102, no. 2 (2012): 1161–85, https://doi.org/10.1257/aer.102.2.1161; John Goddard, Donal Mckillop & John O. S. Wilson, "U.S. CREDIT UNIONS: SURVIVAL, CONSOLIDATION, AND GROWTH," *Economic Inquiry* 52, no. 1 (2014): 304–19, https://doi.org/10.1111/ecin.12032; Emilia Bonaccorsi Di Patti & Giorgio Gobbi, "Winners or Losers? The Effects of Banking Consolidation on Corporate Borrowers," *The Journal of Finance* (New York) 62, no. 2 (2007): 669–95, https://doi.org/10.1111/j.1540-6261.2007.01220.x; S. Wood, "Revisiting the US Food Retail Consolidation Wave," J*ournal of Economic Geography* 13, no. 2 (2013): 299–326, https://doi.org/10.1093/jeg/lbs047. See also: Jessica Calfee Stahl, "Effects of Deregulation and Consolidation of the Broadcast Television Industry," *The American Economic Review* 106, no. 8 (2016): 2185–2218. https://doi.org/10.1257/aer.20110948; Traci Bruckner, "Agricultural Subsidies and Farm Consolidation," *The American Journal of Economics and Sociology* 75, no. 3 (2016): 623–48, https://doi.org/10.1111/ajes.12151; Martin Gaynor & Deborah Haas-Wilson, "Change, Consolidation, and Competition in Health Care Markets," *The Journal of Economic Perspectives* 13, no. 1 (1999): 141–64, https://doi.org/10.1257/jep.13.1.141; Brian Callaci, "Labor Unions and the Problem of Monopoly: Collective Bargaining & Market Governance 1890-Present," *Politics and Society* (forthcoming), available at https://ssrn.com/abstract=4014661 or https://dx.doi.org/10.2139/ssrn.4014661; "Monopoly by the Numbers," Open Markets Institute, 2022, https://www.openmarketsinstitute.org/learn/monopoly-by-the-numbers.

In instances where the FTC does impose punitive action on businesses who breach the FTC Act, penalisation is often monetary which is said to deter FTC breaches as being prosecuted by the FTC is long and expensive.[40] However, this has garnered criticism as such punitive action is not enough of a deterrent against powerful businesses who have the time and resources to combat the FTC.[41] As previously mentioned, the FTC has very limited financial and employee resources to combat the powerful businesses within the increasingly consolidated market, therefore placing doubt in their capacity to fulfil their goal of antitrust and consumer harm regulation. Such developments have triggered debate questioning the FTC's effectiveness at antitrust and consumer protection regulation, the FTC has been criticised for not being equipped to address contemporary challenges characterised by the digitalisation of big business, nor the changing role of consumers within that.[42] Scholars highlight the need for a more balanced application of both economics and consumer welfare in order to best legislate antitrusts and consumer protection, noting the importance and developing role of the consumer in our increasingly digital and tech focused world.[43] As well as to better the focus, knowledge and application on consumer protection to a similar level of expertise as that of antitrust specialists within the FTC, but with the added prioritisation and understanding of how FTC regulation impacts the lives of U.S. citizens.

The FTC is a vital institution to the U.S. economy, as their mission of preventing market monopolisation and consumer fraud and harm prevention is essential to setting standards for regulatory behaviour and business etiquette. Their mission is essential in a world that is experiencing the growing pains of a digitalised labour market, especially as businesses increasingly rely on independent workers to lessen liability risks. More policy and economic research needs to be done on the structural biases of FTC, their regulatory practices, and their impact on U.S. businesses and consumers, in order to modernise the FTC's capacity for regulation in the contemporary world. Additionally, deficits in consumer harm research and application need to be addressed and lessened in order to balance the mission achievement

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[40] Gary L. Ingle, "FTC Anti-Trust Compliance."

[41] Alexander Volokh, "Are the Worst Kinds of Monopolies Immune from Antitrust Law? FTC V. North Carolina Board of Dental Examiners and the State-Action Exemption," *NYU Journal of Law & Liberty* 9, no. 1 (2015): 119.

[42] Lawrence J. White, "Economics, economists, and antitrust," 230.

[43] Timothy J. Muris & Jonathan E. Nuechterlein, "Antitrust in the internet era: The legacy of United States v. A&P," *Review of Industrial Organization* 54, no. 4 (2019): 651-681; Daniel D. Sokol, "Antitrust's 'Curse of Bigness' Problem," *Michigan Law Review* 118, no. 6 (2020): 1259; Tim Wu, *The Curse of Bigness*, 78.

capacity of the FTC and preserve its institutional legitimacy. With fraud and consumer harm costing the consumer billions annually, preventing consumer harm becomes especially imperative for a healthy economy from more than just an antitrust perspective.

MLMs

Multi-level Marketing (MLM/MLMs) is a business structure wherein independent, unsalaried salespeople, known as 'distributors,' 'participants,' or 'contractors,' earn money through door-to-door or direct sales of MLM products or services.[44] Supplementary to the main job of selling products, MLMs also allow distributors to earn supplementary commissions, paid by the MLM, on all new distributors recruited in addition to a commission on all the sales made by recruited distributors. Distributors are therefore incentivised to recruit new distributors who, in turn, are incentivised to do the same, creating a *downline.* A downline refers to all the participants within one's recruited sales network that generate income for them. And the recruited distributors would refer to the sales network that preceded them as their *upline*. The larger one's downline is, the more passive income one can generate alongside the income generated through one's direct sales and sale commissions. MLMs are legal, but are often used interchangeably with pyramid or Ponzi schemes, both illegal and fraudulent business practices. In order to understand why they are sometimes used interchangeably; it is important to understand the structure of both business practices.

A pyramid scheme is a fraudulent model disguised as a business opportunity that relies on the recruitment of infinite investors to make profit. Investors are told they are investing in a product or service that is usually non-existent, or exaggerated promise to lure investors. Though in reality investments are used to line the pockets of the persons at the top of the pyramid, who simultaneously use investments from new recruits to pay off the earlier investors, in order to maintain the "scam."[45] Investors are incentivised to recruit more investors for a commission. Everything eventually collapses once investors realise the product they have invested in was a front, or never existed. Similarly, Ponzi schemes have the same business structure but are not reliant on asking investors to recruit new investors, the schemer finds the investors themselves.

[44] "Multi-Level Marketing Businesses and Pyramid Schemes," Federal Trade Commission, May 18, 2021, https://www.consumer.ftc.gov/articles/multi-level-marketing-businesses-and-pyramid-schemes.
[45] Ibid.

These schemes are characterised by the use of exaggerated false promises about earning potential; high pressure tactics to lure investors into more training, inventory; travelling, or other means; requiring distributors to purchase certain quotas of inventory, or training in order to progress or access one's earnings from the business; and most importantly, emphasising the recruitment of new investors as the primary form of income.[46] MLMs are therefore legal because they claim to not primarily earn from recruits, rather claiming that the sale of products and services is the primary source of legitimate income for their distributors. The FTC emphasises MLMs "pay based on your sales to retail customers, without having to recruit new distributors," unlike pyramid schemes.[47]

Research has shown MLMs to be a historically instinctive business structure that emerges when communities make large-scale shifts towards market economics, though historically it more closely resembles peddling without the hierarchical pyramid business structure and commission incentivisation.[48] The first known conception of a modern MLM was Southwestern Advantage, formerly known as Southwestern Company, founded in 1855. They used door-to-door direct selling methods to sell educational resources and have since grown to become the U.S.' oldest entrepreneurial program for university students.[49] However, the MLM structure as we know it today was created as a response to employment regulations introduced by the new deal.[50] In 1934 the 'father of network marketing,' Carl F. Rehnborg founded the *California Vitamin company,* which made door-to-door sales of mineral, vitamin and dietary supplements that he had developed. It was later rebranded as *Nutrilite*.[51]

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[46] Ibid.
[47] Ibid.
[48] Tibor Tajti, "Multi-Level Marketing and Pyramid Schemes," 46–47.
[49] "Southwestern Advantage," September 21, 2020, https://southwesternadvantage.com.
[50] Amanda, Montell, Cultish: The Language of Fanaticism (Amsterdam: HarperCollins, 2021), 174.
[51] Zig Ziglar & John P. Hayes, "*Network Marketing For Dummies*," 6–10.

In 1937, *Nutrilite* was subject to public outcry after an improperly concocted antibiotic, Elixir Sulfanilamide, had caused the deaths of more than 100 people, many of which were children. Nutrilite was able to offset their liability by arguing they have no direct control of how distributors, who are independent workers, advertised it to buyers. This incident prompted Congress to entrust the Food and Drug Administration (FDA) with more authority with respect to drug safety, allowing them to enforce a requirement of approval before marketing drugs. Nutrilite became frequently scrutinised by the FDA who subsequently cracked down on marketed supplements, particularly in regards to false and misleading labelling violations. Nutrilite continues to market their vitamins and minerals with false and overstated claims of their ability to cure a broad array of illnesses and diseases, thus resulting in several FDA seizures of their products throughout the 1950s.[52] Violations of federal regulation regarding the harmful advertising of products became a common practice by MLMs and continue to persist to this day. Amid the FDA disputes, Nutrilite was bought and absorbed by Amway, another MLM, thus consolidating the MLM market.[53] This merger allowed Amway to obtain Nutrilite's popular vitamin and supplement formulas, which remained in high demand despite their regular seizures,

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[52] John P. Swann, "The History of Efforts to Regulate Dietary Supplements in the USA," 3–5; "NOTICES OF JUDGEMENT UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT," *Quackwatch*, August 7, 1951, https://quackwatch.org/wp-content/uploads/sites/33/quackwatch/casewatch/fda/court/nutrilite.pdf; Ronald T. Ottes Fred Lofsvold,"FDA Oral History Interview, Goodrich," Federal Trade Commission, October 14, 1986, https://www.fda.gov/media/87084/download.

[53] Zig Ziglar & John P. Hayes, *Network Marketing For Dummies*.

and evolve and rebrand into a bigger MLM without the controversy that had become associated with Nutrilite's lawsuits and seizures.

In 1975, a ground-breaking FTC complaint was filed against Amway, accusing the company of having violated five counts of the Federal Trade Commission Act: The first violation, engaging in resale price maintenance, defies antitrust regulation as it consolidates the market and stifles competition unfairly.[54] Other violations included allocating customers to distributors, restricting distributors' supply, their advertising, and the channels through which they were allowed to resell products. This violates the FTC Act by being an unfair labour practice, it heavily limits distributors' ability to make revenue on sales, therefore creating barriers to profit for distributors and putting them in financial risk. Amway further violated the act by misrepresenting turnover rates and income potential to distributors, with an imbalanced focus on recruiting over sales, and failed to disclose significant personal business expenses that being a distributor required. These business practices mislead and deceive distributors with exaggerated claims on the return of investment in MLMs, a form of investor fraud as distributors must invest in the MLM products they sell onwards. Amway's actions not only represent anti-competitive behaviour but also consumer harm according to the FTC Act. Yet despite being found guilty of unfair and deceptive business and anti-competitive practices, the FTC ruled that Amway was not a pyramid scheme in 1979.[55] Amway won on the basis that, despite their violations resembling illegal business practices performed by Ponzi and pyramid schemes, they were a legitimate business structure who prioritised revenue the sale of goods and not just recruitment.[56] The In re Amway Corp. effectively legalised MLM as a business structure for decades to come. Deceptive marketing of MLM products and services, as well as fraudulent and unfair business acts toward their distributor have characterised MLMs ever since. Amway has since grown to become the world's largest MLM, despite its history of routine deceptive business practices and the terminal endangerment of people's lives as a result of their false advertising.[57]

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[54] "IN THE MATTER OF AMWAY CORPORATION INC, ET AL.," Federal Trade Commission, accessed August 10, 2021, https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-93/ftc_volume_decision_93_january_-_june_1979pages_618-738.pdf.

[55] Ibid.

[56] Civil Action No. 86-1360 (District of Columbia), Federal Trade Commission Docket, no. D-9023.

[57] "About Amway," *Amway*, 2018, https://www.amway.com/en_US/about-amway.

The In re Amway Corp. ruling has been largely criticised as a historic failure of the FTC to regulate MLMs and their unfair business practices.[58] The ruling empowered future MLMs to get away with unfair business practices that put their distributors at risk, by setting a precedent that equipped them with the legal protection of being qualified as a legitimate business so long as they could prove the existence of a thinly veiled focus on selling products. Regulatory activity by the FTC also notably declined, alongside an increase in the variety and number of MLMs in the 1990s, which intrigued more MLM participants.[59]

As stated earlier, FTC consumer protection was in its infancy in the 1970s, with competition advocacy only taking centre stage in the mid-70s and 80s. Thus, explaining the competition focus of the ruling and the lack of consideration for consumer or employee safety. Since, MLMs have routinely survived decades of lawsuits regarding deceptive product marketing. Additionally, ample reports reveal their usage of high-pressure tactics, exaggerated promises and inventory quota enforcements on their distributors, all of which are illegal practices that constitute characteristics of a pyramid scheme.[60] The FTC investigates fraud on a case by case basis, and intermittently releases warnings and notes on potentially deceptive practices, but those hold no legislative weight and do little to deter them from their routine violations. [61]

Like many business structures, there are notable risks to being a distributor. Unlike traditional employees who are protected by employee contracts that must meet established standards, MLM distributors are freelancers and are therefore vulnerable to losses from sales deficits without the protections that traditional employees and retailers have. It is important to note here that ideally, if an MLM provides a quality service or product that is marketable to the masses, it can be a lucrative means for passive income if equipped with skilled salesmanship and

[58] Adam Epstein, "Multi-level marketing and its brethren: the legal and regulatory environment in the down economy," *Atlanta Law Journal* 12 (2010): 91.; Daryl Koehn, "Ethical Issues Connected with Multi-Level Marketing Schemes," *Journal of Business Ethics* 29, no. 1/2 (2001): 153–60.; Steven M. LaPradem, "Multilevel Marketing in the United States - The Federal Trade Commission and Pyramid Schemes," *Dankook Law Review* 42, no. 2 (2018): 429–56. https://doi.org/10.17252/dlr.2018.42.2.014. ; Alex Chumbley, "Brick by Brick: Deconstructing Pyramid-Like Companies by Requiring Disclosures from Multilevel Marketing Schemes," *William & Mary Business Law Review* 13 (2021): 867.

[59] William W. Keep & Peter Vander Nat, "Multilevel Marketing: A Historical Perspective," in *Proceedings of the Conference on Historical Analysis and Research in Marketing* 16 (Copenhagen Business School, 2013): 348.

[60] "Multi-Level Marketing Businesses and Pyramid Schemes," Federal Trade Commission, May 18, 2021, https://www.consumer.ftc.gov/articles/multi-level-marketing-businesses-and-pyramid-schemes.

[61] Steven M. LaPrade. "Multilevel Marketing in the United States - The Federal Trade Commission and Pyramid Schemes." Dankook Law Riview 42, no. 2 (2018): 429–56. https://doi.org/10.17252/dlr.2018.42.2.014.

a broad customer base with returning interest in the service or product. This is similar to any sales business. However, when traditional retailers lose customers or make sales deficits, the business as a whole takes a loss, employees might be terminated in case of bankruptcy but would not be directly financially affected by diminished sales or profits. MLM distributors are often asked to buy bulk inventory in order to subsequently sell them, leaving them at risk of excess stock and sales deficits. Distributors have no control over the product or service, while being responsible and liable for their sales. So if the product or service quality diminishes or is altered, distributors remain responsible for meeting quota sales to not experience sales deficits. MLM products are often more expensive than similar name brand products available within the market and are not conveniently accessible in a store, both are added challenges for distributors to sell them.

Additionally, the MLM structure is unsustainable. The pyramid structure of MLM downlines means that in order for the participants at the helm of the upline to gain significant earnings, high proportions of distributors in downlines must operate at a net loss. The pyramid would need an infinite pool of distributors in order for a downline to profit, in addition to the necessity of a market of customers to buy the products that allow MLMs to be legal. It's mathematically impossible for the majority of distributors to be able to maintain the sales or recruits at a volume that can sustain their livelihoods.[62] Mathematically, in order to become a millionaire off of one's downline and the commissions on products sold, a trillion people would have to be in that downline, 142 times the earth's population.[63] Research has shown that 99.5% of all distributors within the average MLM, lose money throughout their experience rather than making profit. MLMs necessitate a lot more time and resources to earn more money than you would at a minimum wage job. While distributors might be successful in making early sales, such sales would have to be maintained by returning customers as well as new ones, which is heavily dependent on the product and customers. When distributors recruit a downline to gain bonuses, they are contributing to the crowding of their own market, decreasing their own chances at maintaining sales. Distributors are also often encouraged to buy training, ongoing promotional items, subscription fees, mandatory events, in addition to inventory.[64] Despite the

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[62] Heidi Liu, "The behavioral economics of multilevel marketing," 112.
[63] Amanda Montell, *Cultish: The Language of Fanaticism* (Amsterdam: HarperCollins, 2021), 164.
[64] Ibid.

consumer safety laws in place to separate MLMs from pyramid schemes and other illegal business practices, there can be discrepancies between the tactics distributors use which complicates the regulation of MLMs. In 1997, a study was conducted wherein a researcher became a fully immersed MLM distributor for two years, and interviewed hundreds of MLM distributors from various programs.[65] It was concluded that MLMs employed predatory tactics in order to manipulate distributors into believing they could achieve unrealistic and deceitful goals and quotas that were not economically feasible given the conditions distributors were subject to. The researcher invited the sixty most prominent MLM companies to refute his claims with non-anecdotal data of their financial legitimacy through proof of the distribution of pay-outs to their distributors, extracted from their database of distributors.[66] However, at the time of writing this thesis, all of the MLMs have yet to respond or provide any proof of the contrary.

Regardless, the risks and controversies associated with MLMs have not prevented them from growing. Today, there are thousands of MLM companies worldwide, with many being billion-dollar industries. The contemporary rankings of most successful MLMs vary from source to source,[67] as their official earnings are often hard to pinpoint due to the structure of their revenue model. The top ten 2020 rankings are as follows:

[65] Jon M. Taylor, "NETWORK MARKETING PAYOUT DISTRIBUTION STUDY – LETTER TO PRESIDENTS OF 6O OF THE MOST PROMINENT MLM COMPANIES," Federal Trade Commission, May 13, 1999. https://www.ftc.gov/system/files/documents/public_comments/2006/07/522418-12748.pdf.

[66] Ibid.

[67] " Top 100 Best MLM Companies to Join in 2021?" *Economic Secretariat*, February 15, 2019, https://www.ecosecretariat.org/best-mlm-companies; "Top 100 Network Marketing Companies in the World 2020," *Ventaforce*, January 16, 2020, https://www.ventaforce.com/blog/top-100-network-marketing-companies-in-the-world/; "Top 100 MLM Companies List 2021," *Infinite Mlm Software*, June 11, 2021, https://infiniteMLMsoftware.com/blog/top-100-mlm-companies-2019; Carly Hallman, "The Top 25 MLMs by Revenue," *TitleMax*, July 14, 2020, https://www.titlemax.com/discovery-center/lifestyle/the-top-25-MLMs-by-revenue/.

	MLM Organisation	Country	Founding year	Revenue 2020 (in Billions USD)
1	Amway	U.S.	1959	$8.5
2	Natura & Co	Brazil	1969	$7.16
3	Herbalife Nutrition	U.S.	1983	$5.5
4	Vorwerk	Germany	1883	$4.48
5	Coway	South Korea	1989	$2.8
6	Nu Skin	U.S.	1984	$2.5
7	Primerica	U.S.	1977	$2.2
8	Young Living	U.S.	1993	$2.2
9	Exp Reality	U.S.	-	$1.8
10	PM-International	Germany	1993	$1.71

Direct Selling News [68]

Direct Selling News claims to have opted for this calculation of net revenue in order to better reflect corporate revenue as a whole.[69] However, commissions and value added tax in the calculation of MLM revenue fails to illustrate the potential revenues or losses of distributors. The incomes earned by MLM distributors are also not published, thus obscuring the true experience of their distributors. Nevertheless, regardless of the lack of clarity, low earning potential and controversy, MLMs continue to attract people in masses.

COVID and MLMs

MLMs have been known to thrive in times of recession, and 2020 was no different.[70] The COVID-19 pandemic forced people globally to adapt to new conditions and act in unity to

[68] "DSN Global 100 Lists - Direct Selling News," *DirectSellingNews*, April 2, 2021. https://www.directsellingnews.com/global-100-lists/.

[69] Ibid.

[70] Abby Vesoulis & Eliana Dockterman, "Pandemic Schemes: How Multilevel Marketing Distributors Are Using the Internet—and the Coronavirus—to Grow Their Businesses," *Time*, July 9, 2020, https://time.com/5864712/multilevel-marketing-schemes-coronavirus/.

overcome an invisible enemy. By April 2020, the U.S. saw job losses that it had not seen since the Great Depression, ascending to 5.9 % from 3.5% in February 2020.[71] Statistics showed high rates of hardship as a result of COVID related strains on the livelihood of Americans, who increasingly struggled to pay rents, mortgages, and household expenses.[72] Physical market-spaces were inaccessible for large stretches of time, and businesses suffered greatly as a result.[73] Many experienced unpaid furlough and layoffs, and many were unable to work due to health related fears and constraints. This led people to seek alternative opportunities to generate income and take control of one's own employment in a way that seems invulnerable to the volatile nature of employment in a COVID economy. With the rising relevance of health concerns and the downfall of traditional markets, COVID created an environment that increased the appeal of working for MLMs and sometimes even forced people to consider MLMs as an alternative means of revenue in such unprecedented times. MLM has the added benefit of not relying on physical market-spaces, and therefore being less affected by COVID-19 limitations.

Additionally, social media facilitates a marketplace of ideas. In the pandemic, platform algorithms, engineered to hyper-personalise user feeds aiming to maximise platform interaction, created an echo-chamber of content that prioritised what users are most likely to interact with over factual news and information regarding COVID-19. With the wealth of varying information on the internet that covers an ever-growing spectrum of perspectives, people were exposed to differing COVID information, confusing an already uninformed population about the dangers of COVID-19.[74] This led to widespread misinformation with serious risks on people's physical wellbeing. Many distributors exploited rising health and safety concerns to market products that were not proven to be healthy or effective against COVID. Throughout both years, the FTC was forced to issue several rounds of COVID related warnings to MLM companies who sought to

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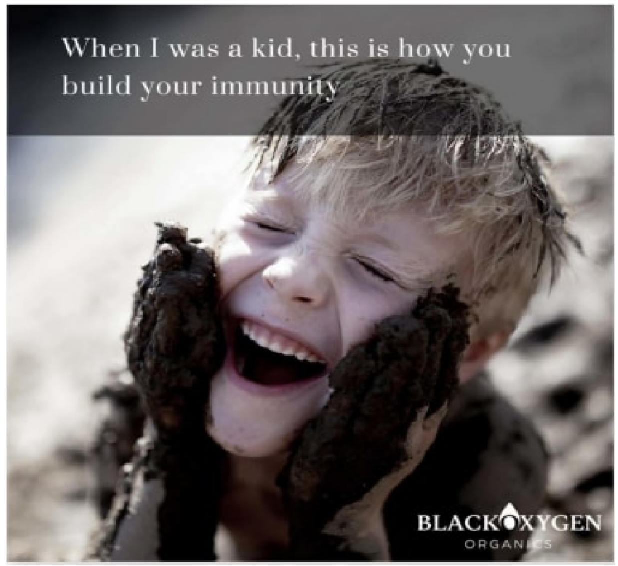
[71] "Unemployment Rates During the COVID-19 Pandemic," *Congressional Research Service*, June 5, 2021. https://fas.org/sgp/crs/misc/R46554.pdf; "Charts Related to the Latest 'The Employment Situation," U.S. Bureau of Labor Statistics, 2022, https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm.

[72] "Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships." *Centre on Budget and Policy Priorities*. July 29, 2021. https://www.cbpp.org/sites/default/files/8-13-20pov.pdf.

[73] Duffy Hayes, "Direct Sellers Capitalized on Pandemic Conditions in 2020, Earnings Reports Reveal," *Natural Products Insider*, March 19, 2021, https://www.naturalproductsinsider.com/business-resources/directsellers-capitalized-pandemic-conditions-2020-earnings-reports-reveal.

[74] Emilia Niemiec, "COVID-19 and Misinformation: Is Censorship of Social Media a Remedy to the Spread of Medical Misinformation?" *EMBO Reports* 21, no. 11 (2020), https://doi.org/10.15252/embr.202051420.

take advantage of the new global circumstances to attract new customers and distributors.[75] Some MLMs directly named COVID stimulus payments that had been offered to eligible U.S. to assist them with the economic hardships that accompanied the pandemic, encouraging people to invest their stimulus checks towards MLM start-up costs. "Will you get a stimulus check? $4,100 [could] change your family lifestyle. Well, my firm is offering that and more."[76] While other MLMs went as far as to claim their products could help prevent or treat the virus, without any scientific proof to back such claims.[77] A notable one depicted here by an MLM selling $110 bags of dirt deceptively advertised as able to improve immunity against COVID, an exaggerated claim that shamelessly violates consumer harm guidelines but also exploits widespread health fears in a time of dangerous COVID misinformation.[78] This MLM's advertisements, like many others, actively distredited traditional medicine to bolster false and exaggerated abilities of their products, which contributed to harmful rises in disinformation that put people's health at risk due to a lack of understanding of how COVID and treatment works. MLMs were unabashedly partaking in harmful and deceptive practices that actively endangered consumers for profit.



[75] "FTC Sends Second Round of Warning Letters to Multi-Level Marketers Regarding Coronavirus Related Health and Earnings Claims," Federal Trade Commission, June 5, 2020, https://www.ftc.gov/news-events/press-releases/2020/06/second-round-warning-letters-to-MLMs-regarding-coronavirus.

[76] Seena Gressin, "FTC Again Warns Multi-Level Marketers about Unproven Health and Earnings Claims," Federal Trade Commission, June 13, 2022, https://www.ftc.gov/business-guidance/blog/2020/06/ftc-again-warns-multi-level-marketers-about-unproven-health-and-earnings-claims.

[77] "With Omicron Variant on the Rise, FTC Orders More Marketers to Stop Falsely Claiming Their Products Can Effectively Prevent or Treat COVID-19," Federal Trade Commission, April 20, 2022. https://www.ftc.gov/news-events/news/press-releases/2022/01/omicron-variant-rise-ftc-orders-more-marketers-stop-falsely-claiming-their-products-can-effectively.

[78] Brandy Zadronzy, "'Magic Dirt': How the Internet Fueled, and Defeated, the Pandemic's Weirdest Company," *NBC*, December 2, 2021, https://www.nbcnews.com/news/magic-dirt-internet-fueled-defeated-pandemics-weirdest-mlm-rcna6950.

The FTC issued a warning to sixteen MLMs accusing them of violating the FTC act with similar false, misleading, and harmful claims, and issuing a 48-hour notice for them to remove all unfounded claims. Following removals, the MLMs were allowed to continue operating without additional legal action, and without being forced to correct any of their false or misleading claims, nor recall the products sold to people under such deceptive and harmful advertisements.[79] An unknown number of people were exposed to false and misleading claims regarding both health matters and financial prosperity throughout COVID, though there was little initiative to correct the false advertising, and even less punitive recourse that would deter MLMs from engaging in such behaviour again. MLM violations during COVID illustrated the impact and potential harm of deceptive advertising through its ability to directly endanger people's lives.

Reports show that MLM sales reached record high figures in 2020.[80] Following annual losses in revenue in 2019, MLMs saw a 13.9% increase in sales in 2020, with the wellness product category seeing a significant increase during the pandemic. According to a survey conducted by the Direct Selling Association (DSA), an independent trade association trusted by MLMs, 44% of companies reported COVID-19 to have a positive impact on them in the first survey poll taken in March 2020, which saw an overall steady increase towards the 60% of companies who reported positive impact in July 2021.[81]

	2008	**2012**	**2016**	**2018**	**2019**	**2020**
Direct Retail Sales* in billions[82]	$29.6	$31.6	$36.1	$35.4	$35.2	$40.1

79 "FTC Sends Warning Letters to Multi-Level Marketers Regarding Health and Earnings Claims They or Their Participants Are Making Related to Coronavirus," Federal Trade Commission, May 4, 2020, https://www.ftc.gov/news-events/news/press-releases/2020/04/ftc-sends-warning-letters-multi-level-marketers-regarding-health-earnings-claims-they-or-their.

80 "About: DSA," Direct Selling Association, 2021, https://www.dsa.org/about.

81 "Coronavirus Impact - QuickPulse," Direct Selling Association, 2021, https://www.dsa.org/statistics-insights/coronavirus-impact---quickpulse.

82 "Direct Selling in the United States: 2020 Industry Overview," Direct Selling Association, 2020, https://www.dsa.org/docs/default-source/research/dsa-industry-overview-factsheetd601b69c41746fcd88eaff000002c0f4.pdf?Status=Temp&sfvrsn=6e75d9a5_2%27; "Direct Selling in the United States: 2019 Industry Overview," Direct Selling Association, 2019, https://www.dsa.org/docs/default-source/research/growth-outlook/2019-research-overview-fact-sheet-final.pdf?sfvrsn=3bfedda5_2%27.

Sales by Product Category[83]						
	Wellness	**Services & other**	**Home & Family care**	**Personal Care**	**Clothing & Accessories**	**Leisure & Education**
2018	35.6%	22.6%	15.8%	15.6%	7.7%	2.7%
2019	36.0%	23.0%	16.0%	15.1%	7.2%	2.7%
2020	37.4%	22.6%	17.9%	12.9%	6.1%	3.1%

[84]	**Direct Sellers (Fulltime) *millions**	**Direct Sellers (Parttime) *millions**	**Discount Buyers *millions**	**Preferred Customers *millions**	**Female Customers**	**Male Customers**	**Direct sellers averaged in retail sales**
2018	1.0	5.2	10.4	26.2	75%	25%	$5,702
2019	0.9	5.9	9.6	27.3	74%	26%	$5,176
2020	0.9	6.8	9.0	32.6	75%	25%	$5,208

These statistics indicate a clear increasing significance of MLM growth and impact on the U.S. economy and labour market. MLMs were able to take advantage of financially and mentally vulnerable people, regarding health and their living situations that were increasingly unstable due to the pandemic. While many MLMs benefitted from participation growth due to quarantine

[83] DSA, "Direct Selling in the United States: 2020 Industry Overview,"; DSA, "Direct Selling in the United States: 2019 Industry Overview."

[84] "Direct Selling in the United States: 2020 Industry Overview,"; "Direct Selling in the United States: 2019 Industry Overview."

motivated job seekers, many others consciously spread false and deceptive information regarding their products with very little consequence from the FTC. The pandemic exemplified the way in which MLM continues to be a relevant and impactful business structure that appeals to many especially in times of financial uncertainty and crisis. The increased interest in both MLM participation and sales illustrated MLM success in using social media platforms to recruit and market their products and services, which then warrants additional research on the techniques used and why they are successful. However, COVID-19 also saw clear examples of consumer harm by MLM companies through deceptive and false advertising that endangered consumers with health-related misinformation during a global health crisis. Upon violations of consumer protection, the FTC only issued warnings and threatened financial recourse, but no efforts were made to undo the harm inflicted on consumers who were deceived and falsely advertised to. Additionally, given the growth that MLM businesses have seen in revenue, a continuous lack of transparency on distributor earnings or losses is being upheld by MLM businesses, thus making it hard to measure the risks compounded during the COVID related MLM boom, and therefore hard to maintain a view on their compliance of regulation. Vulnerable people are more likely to make risky decisions due to their inflexibility in time and resources to weigh out the costs and benefits of making potentially harmful investments. COVID-19 represented a unique time where people were most vulnerable, and yet the FTC was seen to give limited support regarding consumer harm in this matter. While it cannot be said that the FTC was inactive, their courses of action were limited and questionable in regards to being effective deterrents of consumer harm. MLM action during COVID-19 echoes the controversies that were overlooked in their legalisation, though MLMs have shown boldness in violating regulations while adapting to new more contemporary relevant methods of consumer harm.

Ch 2: Psychology of MLMs

There is no shortage of articles and content on the internet warning about dangers of becoming a distributor, yet MLMs remain popular. MLMs notoriety for selling deceptive and harmful products while being a financially harmful business structure warrants the psychology that lures people towards them. Little research has been done on MLM although some have analysed the techniques used for its success, especially regarding their applied understanding of socio-economic, linguistic and community nuances that have facilitated their online transition. This chapter will therefore explore the various methods MLMs use to lure and inspire loyalty within distributors to partake in the fraudulent business structure; such as the structure, language usage, and community-building mechanisms.

Structure

MLMs strongest selling points are their potential for flexible revenue and accessible entrepreneurship. Starting a business oneself is a complex process that often requires extensive planning regarding necessary legal permits and licences, logistics and production of a product or service, and even loans and investment seeking. On average, first-year costs of starting a business in the U.S. average around $30,000 to $40,000.[85][86][87] Start-up costs of becoming a distributor vary per MLM, although they can be as low as $5, with some even offering registration fee refunds within 90 days.[88][89] After investing the necessary start-up costs, new distributors are given starter packages with the necessary goods and tools needed to start one's MLM "journey", which are often marketed as being hundreds of dollars more in value than the start-up costs. Subsequent MLM investments are priced at wholesale value, so if a distributor trusts the product and their personal ability to resell them for profit it's appealing. This, in addition to the potential for high return, achievement, flexible working hours, financial freedom,

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[85] Mitch Black, "Business Startup Costs: How to Calculate and Budget," *Forbes*, April 21, 2022, https://www.forbes.com/advisor/business-loans/business-startup-costs/.

[86] Sammi Caramela, "How Much Money Does It Cost to Start a Business?" *Business News Daily*, June 29, 2022, https://www.businessnewsdaily.com/5-small-business-start-up-costs-options.html.

[87] Roxanne Voidonicolas, "The Cost of Being the Boss: What Business Owners Spend in Their First Year," *Shopify*, January 12, 2021. https://www.shopify.com/blog/cost-to-start-business.

[88] "Amway Questions & Answers," Amway, 2022, https://www.amway.com/en_US/amway-insider/common-questions.

[89] "Make Beauty Your Business: Sell Avon," *AVON*, 2022, https://www.avon.com/becomearep.

the opportunity to be one's own boss; are effective characteristics that appeal to potential recruits. MLMs do not disclose the reality of investment costs up-front, and often misrepresent the costs of training, travelling, maintaining one's inventory, and the requirements to actually receive one's money. These often come as a harsh reality that is revealed once distributors have already invested in significant amounts of inventory.[90]

While traditional entrepreneurship is usually more isolated and self-reliant in the organisation of a start-up, the MLM structure offers access to a community of peers who are motivated by the same goals and values of earning, hard work, and autonomy. Distributors are not only supported with structural guidance from the starter-pack, but also from a network and community of peers that are looking to achieve similar success and an upline that will train and motivate them throughout the MLM process. The MLM community is further strengthened by regular events. Distributors meet to discuss tactics, tips to improve their sales and recruitment skills, all while building friendships. The spectacular conferences can consist of concerts, parties alongside motivational talks that reinforce MLM messaging. These give distributors future prospects, an opportunity to strengthen their online and offline networks, and a sense of belonging. However, these events are also additional costs that come out of distributor's pockets, costs that are not communicated during recruitment, and such events are often mandatory, even for distributors who cannot afford them. Mandatory paid events constitute an FTC Act violation as it is a high pressure tactic to impose travel and additional investments from distributors. Although, again, these costs are not initially revealed in the recruitment process.

A pivotal MLM characteristic is the potential for earning supplemental income through the commission made off our downline sales and recruits. This attracts people, as most revel at the idea of earning income without having to exert additional labour to receive it. This is propelled by the thought of "how hard can it be to convince my friends, family, and acquaintances to join my downline?" In order to remain legal according to FTC guidelines, MLMs must not rely on recruitments as a main source of revenue, though MLM testimony shows a disproportionate focus on recruitment as a primary focus of distributors, over product sales. Though, unbeknown to distributors, MLMs cannot be as profitable as they promise without

[90] "Combating fraud in African American and Latino communities: The FTC's comprehensive strategic plan," *Washington, DC: Federal Trade Commission*, [Google Scholar] (2016), 11; Jon M. Taylor, "MLMs ABYSMAL NUMBERS;" Amanda, Montell, *Cultish: The Language of Fanaticism*, 160-174.

excessive recruitment, MLMs structure therefore pushes distributors to become disproportionately reliant on recruiting in order to make a profit on their investments, therefore violating FTC regulation.[91] However, success stories of early distributors at the top of large downlines, sells that possibility to new distributors.[92]

Lastly, MLM's are constantly adapting to the changing needs of their distributors and clients as they streamline the business structure and make it easier to navigate.[93] Distributors are relieved of the burden of creating a website, which requires hosting funds and IT skills, as the MLM provides that.[94] Many people, especially those advanced in age, do not have the skills necessary to adapt their businesses online, many traditional businesses still struggle with digitalising.[95] MLMs offer the tools to overcome these skill gaps, and further appeal to potential distributors through their adaptive facilitation towards entrepreneurship. For people with minimal experience in marketing and entrepreneurship, as well as people who lack the capital, time, legal status, or mobility to start their own business, the cost-benefit analysis of joining MLM appears attractive; especially in the face of deceptive recruitment that highlights positive MLM aspects and omits the reality of MLM financial risks.

Target Audiences

Oftentimes, people with non-affluent social circumstances are more likely to be interested in MLM. MLM remains an active commitment that requires time, investment and energy.

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[91]Heidi Liu, "The behavioral economics of multilevel marketing," 111-112; Jon M. Taylor, "NETWORK MARKETING PAYOUT DISTRIBUTION STUDY – LETTER TO PRESIDENTS OF 6O OF THE MOST PROMINENT MLM COMPANIES," Federal Trade Commission, May 13, 1999. https://www.ftc.gov/system/files/documents/public_comments/2006/07/522418-12748.pdf.

[92] Amanda, Montell, *Cultish: The Language of Fanaticism*, 160-174.

[93]Yuval Emek, Ron Karidi, Moshe Tennenholtz & Aviv Zohar, "Mechanisms for multi-level marketing," in *Proceedings of the 12th ACM Conference on Electronic Commerce* (New York: Association for Computing Machinery, 2011), 209-218, https://doi.org/10.1145/1993574.1993606.

[94] Ibid.

[95] Sapana Agrawa, Aaron De Smet, Sébastien Lacroix, and Angelika Reich, "To emerge stronger from the COVID-19 crisis, companies should start reskilling their workforces now," *McKinsey*, May 7, 2020. https://www.mckinsey.com/business-functions/people-and-organizational-performance/our-insights/to-emerge-stronger-from-the-covid-19-crisis-companies-should-start-reskilling-their-workforces-now;
Lauren Weber, "Why Companies are Failing at Reskilling," *Wall Street Journal*, April 19, 2019, https://www.wsj.com/articles/the-answer-to-your-companys-hiring-problem-might-be-right-under-your-nose-11555689542; Ioan Matei Purcarea, "Marketers' Reskilling within the Digital Transformation, a Today's Essential Task for Approaching New Digital Roles," *Holistic Marketing Management Journal*, 9 no. 3 (September 2019): 11-22; Guido Lang & Tamilla Triantoro, "Upskilling and Reskilling for the Future of Work: A Typology of Digital Skills Initiatives," *Information Systems Journal*, 20, no. 4 (2022): 4.

Effective recruitment is laborious and involves the strategic targeting of specific, usually financially disadvantaged, communities. Distributors comb through their existing friend groups on social media, examining their shared interests, life updates and personal information in order to see who is most likely to be interested in MLM participation. Constantin describes MLM as "building, developing and maintaining relationships with customers in order to obtain a high profitability."[96] Research shows that MLMs have excelled at training their distributors to implement techniques that establish long-term and profitable relationships.[97] MLMs focus on the needs of customers and skillfully adapt accordingly through constant expansion of the business market and diversification of their products and approaches.[98] The ever-adapting understanding of clients and potential recruits is well paired with the reliance on word-of-mouth within the MLM business structure as the means of advertising their products, services and opportunities. Distributors' reliance on direct interaction with clients and potential recruits, allows for a personalised approach to business that promotes a high level of trust due to the intimate nature of such communication.[99] If a distributor is able to establish personal trust with a customer or potential recruit they are more likely to trust the product, service, and business overall.[100] Increasing their likelihood of joining MLMs.

By targeting communities, MLM companies can access and exploit the pre-established trust and tight knit relations within members. Subsequently, once equipped with community trusts, MLMs have access to a wider pool of potential customers and recruits. More importantly, word-of-mouth within the community contributes to a brand awareness and perceived legitimacy of the MLM as an opportunity.[101] Outsiders might question why distributors would encourage MLM participation to those closest to them, but intentions are rarely malicious, distributors often have genuine belief in the success of MLMs. Additionally, distributors often first target those

[96] Cristinel Constantin, "Multi-level marketing-a tool of relationship marketing," *Bulletin of the Transilvania University of Brasov*, 2, no. 5 (2009): 31.

[97] Elin Bergquist, "Hey girl, I just wanted to reach out with this amazing business opportunity: A study on language used to attract people into a Multi-Level Marketing business" (Diss., Halmstad University, 2021), 9–19; Limor Schifman, Essay. In Memes in Digital Culture, 1st ed., 19–33. The MIT Press Essential Knowledge Series. Cambridge, MA: MIT Press, 2013.

[98] Ibid.

[99] Ibid., 36.

[100] Catherine Carey & John K. Webb, "Ponzi schemes and the roles of trust creation and maintenance," *Journal of Financial Crime*, 24, no. 4 (2017): 589-600.

[101] Aihwa Chang & Chiung Ni Tseng, "Building customer capital through relationship marketing activities: The case of Taiwanese multilevel marketing companies," *Journal of Intellectual Capital*, 6 no. 2, (June 1, 2005), 253–256, https://doi.org/10.1108/14691930510592834.

closest to them because friends and family are more likely to give us the necessary time and open mindedness to listen to our interests; approaching them with a business opportunity can sometimes be less daunting than doing so with a stranger.[102] When this is bolstered by the legitimacy that a communities trust in an MLM or an particular distributor, people become more vulnerable to ignoring the financial risks, and even persist in the MLM in the face of financial loss.[103] However, with community trust comes increased vulnerability to compounded harm. Some communities have been devastated en masse by the financial loss, inventory surplus, debt, and even disintegration of community ties that plague 99% of all MLM distributors.[104] Such compound harm is hard to recover from, especially when the community support systems have been equally affected.

Due to this interpersonal structure of MLMs distributors have been known to exploit the trust within communities where faith, optimism, and hard work are driving forces in community building.[105] Notably, students, immigrants, religious communities and women are frequently targeted. The socio-economic background of these communities makes them likely to seek accessible opportunities for financial stability. Muncy and Nga et al. have found students and young people to be targeted by MLM distributors who exploit their inexperience and interest in entrepreneurship in the gig economy.[106] More broadly, MLMs target communities with more permanent identities. For example, MLMs are advertised to immigrants as an opportunity to overcome language or citizenship barriers that they may face in traditional job markets.[107] These 'barriers' become strengths for distributors of immigrants and minorities who can use their language skills to market to their existing social network, as well as create closer bonds based on

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[102] Catherine Carey & John K. Webb, "Ponzi schemes and the roles of trust creation and maintenance."
[103] Heidi Liu, "The behavioral economics of multilevel marketing," *Hastings Business Law Journal* 14, no. 1 (Winter 2018): 109; Catherine Carey & John K. Webb, "Ponzi schemes and the roles of trust creation and maintenance."
[104] Stacie. A. Bosley et al., "Decision-Making and Vulnerability in a Pyramid Scheme Fraud," 1; Jon M. Taylor, "MLMs ABYSMAL NUMBERS;" *Federal Trade Commission*, "Combating fraud in African American and Latino communities: The FTC's comprehensive strategic plan," 11; Lisa M Fairfax, "The thin line between love and hate", 1073.
[105] Lisa M. Fairfax, "The thin line between love and hate: why affinity-based securities and investment fraud constitutes a hate crime," *UC Davis L. Rev*, 36 (2002): 1073.
[106] James A. Muncy, "Ethical issues in Multilevel Marketing: Is it a Legitimate Business or just another Pyramid Scheme?," *Marketing Education Review*, 14, no. 3 (2004): 47-53; Joyce Koe Hwee Nga, & Soo Wai Mun, "The influence of MLM companies and agent attributes on the willingness to undertake multilevel marketing as a career option among youth," *Journal of Research in Interactive Marketing*, 5, no. 1 (March 2011): 50-70, https://doi.org/10.1108/17505931111121525.
[107] Rhea Lisondra, "Pyramid Schemes Profiting from Immigrant Connections," *New Canadian Media*, March 11, 2022, https://newcanadianmedia.ca/pyramid-schemes-profiting-from-immigrant-connections/.

common linguistic, ethnic, or national background with potential customers and recruits.[108] These identities often intersect with others that are similarly targeted, such as religious communities. Many MLMs have been founded by devout Christians, and their structures resemble evangelistic missionary compositions in the ‘conversion’ of new recruits to a business structure centred around hard work and family.[109] MLMs have been studied and praised for their ability to organically adapt and incorporate common themes shared across different religions into their messaging in order to attract religious communities.[110] Religious themes are impactful and proven to be crucial elements for international MLM expansion, particularly in China, South Korea and India.[111] Religious studies scholar Kathryn Lofton, best describes the purpose and effectiveness of using religion as a targeting tool by arguing that "religion manifests in efforts to mass-produce relations of value."[112] Similarly, the popularisation of spirituality on social media has been co-opted by MLM distributors to mass produce relations of value without excluding people who are not affiliated with a specific religion. Research shows that businesses are increasingly blending spiritual practices with their enterprises as a tool to make capitalism more approachable, which has been coined this the feminization of capitalism and entrepreneurship.[113] MLMs are no different. They soften the hard edges that characterise capitalism and remarket it as a path to self-actualisation, "manifesting wealth," nurturing, and fulfilment; by emphasising people's ability to take agency in achieving personal goals, rather than waiting for changes from a higher power.[114]

In line with the feminization of capitalism women are historically targeted by MLM distributors who highlight traditional feminine traits, such as nurturing and social intuition, as positive attributes to the MLM business structure.[115] Building on that, MLMs advertise

[108] "Combating fraud in African American and Latino communities: The FTC's comprehensive strategic plan," *Washington, DC: Federal Trade Commission*, [Google Scholar] (2016), 11; Mona Bushnell, "Meta Title: Are MLMs Scams or Entrepreneurial Opportunities?" *Business*, June 29, 2022, https://www.business.com/articles/MLMs-target-women-and-immigrants/.
[109] Kira Ganga Kieffer, "Manifesting Millions: How Women's Spiritual Entrepreneurship Genders Capitalism," *Nova Religio: The Journal of Alternative and Emergent Religions*, 24, no. 2 (2020): 88.
[110] Nathalie Luca, "Multi-Level Marketing: At the Crossroads of Economy and Religion," *Research in Economic Anthropology*, 31 (December 12, 2011): 217–39, https://doi.org/10.1108/S0190-1281(2011)0000031012; Nathalie Luca, "Multi-Level Marketing", 217–39; Amanda, Montell, *Cultish: The Language of Fanaticism*, 174.
[111] Palmisano & Nicola Pannofino, "It Isn't Just about the Money: The Implicit Religion of Amway Corporation," *Implicit Religion* 16, no. 1 (2013).
[112] Kathryn Lofton, *Consuming Religion* (Chicago: University of Chicago Press, 2017), 2.
[113] Kira Ganga Kieffer, "Manifesting Millions," 80.
[114] Ibid., 80–86;
[115] Ibid., 80.

themselves as an opportunity for women to fuse their family and work life in a way that allows them to regain a sense of self-reliance and financial empowerment.[116] For stay-at-home mothers, expats, and military wives, MLMs offer an attractive means to socialise, create friendships, become a part of an active and supportive community and overcome the loneliness of those lifestyles. This subsequently incorporates the promise of female empowerment, supportive friendships strengthened by common goals, and a lack of compromise on traditionally "feminine" responsibilities surrounding home-making and child care. Mary Kay, one of the largest MLM companies, further targeted women with the theme of financial autonomy through their 'husband unawareness plan.' According to MLM testimonies the plan is an unofficial scheme, made available by distributors, that offered a payment plan wherein customers and distributors alike could purchase MLM goods in cash instalments as an attempt to conceal the extent of their MLM investment from their partners.[117] This form of deception is financial infidelity, or the engagement of financial behaviour that is "expected to be disapproved of by one's romantic partner and intentionally failing to disclose this behaviour to them," and can be extremely detrimental to families.[118] Distributors normalise the plan by framing it as a mundane expenditure that does not necessarily need to be communicated "would you mention every $100 you spend on food? Would he mention every $100 he spends on gas."[119] Women who engage in the plan are assured that "it's better to ask for forgiveness than permission," which can especially be true if the investment pays off. The secret drives a wedge between the secret holder and their family, and also cements their trust and commitment to the MLM.[120] Additionally, the secrecy is motivated by a greater mission toward financial autonomy and exemplifies the ways in which community and collusion are used to encourage women to make harmful financial decisions without asking their partners for a second opinion. The Husband Unawareness plan is not an

[116] Irena Lištiaková & Lucie Jarkovská "Multi-Level Marketing: A Promising Employment Opportunity for Women?" Gender and Research 2014, 15, no 2 (June 1, 2014): 77–86, https://doi.org/10.13060/12130028.2014.15.2.132.

[117] "Pink Truth." *Pink Truth*, September 6, 2020. https://www.pinktruth.com/2020/11/12/mary-kay-husband-unawareness-plan/; "The Husband Unawareness Plan." Families Against Cult-like Exploitation in Sales, *Mary Kay Victims*, 2022, https://marykayvictims.com/predatory-tactics/the-husband-unawareness-plan/.

[118] Emily, N. Garbinsky, Joe J, Gladstone, Hristina Nikolova & Jenny G Olson, "Love, Lies, and Money: Financial Infidelity in Romantic Relationships," *The Journal of Consumer Research*, 47, no. 1 (2020): 1–24, https://doi.org/10.1093/jcr/ucz052; Michelle M. Jeanfreau, Chelsey Holden, & Michelle Brazeal, "Our Money, My Secrets: Why Married Individuals Commit Financial Infidelity." *Contemporary Family Therapy*, 42, no. 1 (2019): 46–54, https://doi.org/10.1007/s10591-019-09516-7.

[119] "The Husband Unawareness Plan."

[120] Amanda Montell, *Cultish*, 184.

official part of the MaryKay structure, though it shows how distributors employ deceptive tactics to nurture and operate their targeted networks in a way that manufactures trust and closeness in their customers and downlines. It is important to note that MLMs impact men as well; they often get recruited by their wives. Having a couple as distributors lessens the likelihood of a spouse critiquing MLM involvement and investment.[121] There is no research on men's involvement in MLMs, though research could reveal how MLMs impact marriages given the associated financial risks.

Research has found that people with a post-secondary education had a larger reflex of calculating and carefully considering the probability of success, and a pre-existing understanding of the risks involved with 'get rich quick' schemes. They were statistically least likely to join MLMs but no significant correlation was found with specific demographics; proneness varies per person.[122] However, people are less likely to question a business practice if it is legal, and even less likely to question something that their community members are associated with.[123] Research additionally confirms that distributors play on the cognitive biases of recruits by drawing their attention to the unlikely benefits of MLM more so than the risks and labour necessary for success. However, in the face of promises of high returns, study participants gave split results; people were either quickly enticed by this, or deterred by it seeming 'too good to be true.' Though more research is needed to understand decision making processes in MLM recruitment. In sum, distributors understand and benefit from the established trust strengthened by the respective communities' existing shared history and socio-economic interests, making community members more likely to engage with an MLMs. The benefits of community for MLMs are further bolstered by MLMs unique language usage.

Language

Language fluctuates according to the needs and norms of a community, and is therefore an important skill and tool within any form of marketing as it allows a business to connect with

[121] Kira Ganga Kieffer, Kira, "Manifesting Millions."
[122] Brian Knutson & Gregory Samanez-Larkin, "Individual differences in susceptibility to investment fraud," Research on Fraud Susceptibility, Stanford University, *Save and Invest*, April, 2014, https://www.saveandinvest.org/file/document/individual-differences-susceptibility-investment-fraud; Karla Pak & Dough Shadel, *AARP Foundation National Fraud Victim Study* (Washington DC: AARP, March 2011).
[123] Stacie A. Bosley et al., "Decision-Making and Vulnerability in a Pyramid Scheme Fraud," 11.

their customers and communicate the benefits of their products or services. Throughout history, MLMs have grown due to an understanding of evolving identities and have adapted their language use accordingly, constantly remarketing themselves and growing despite their reputation. Sociolinguistic studies agree on the significance of community as an agglomeration of people bound by common beliefs, values and practices; and that language is a tool that constructs identity and community, as well as reinforces the way they are perceived.[124] Investigations on MLM behavioural norms found that socialisation was a fundamental part of their success as a business structure, as it creates the foundation of cooperation necessary to positively impact distributor sales and performance.[125] Exploring the way in which language is used to socialise existing and future distributors is therefore important to understand how people are persuaded to join the MLM and why the 99% of distributors who lose money stay for as long as they do.[126]

A distributor will often approach potential recruits via a social media platform's private chat, after having scoured through the potential recruit's profile and determining that they might be interested in additional income.[127] This interaction will on average consist of first (re)-establishing intimacy. If a distributor is recruiting a close friend, they might be more direct with their intention to recruit. When distributors are recruiting more distant acquaintances it is important to foster a sense of closeness through shared experience. This can be done with a trip down memory lane, or bonding over recent shared life developments like parenthood, divorce, financial struggle, or other life events that people might share on their profiles. Once a rapport has been established, it then becomes easier for the distributor to introduce the "exciting new opportunity" of MLM distribution, where the perks of flexibility, autonomy, and potential for passive income are highlighted. Such perks are usually contextualised within the background of the potential recruits' life in order to personalise recruitment and highlight how their skills are

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[124] Janet M. Fuller & Ronald Wardhaugh, *An Introduction to Sociolinguistics*, 329; Penelope Eckert & Sally McConnell-Ginet, "Putting communities of practice in their place," Gender & Language 1, no. 1 (2007).

[125] Sparks, John R., and Joseph A. Schenk, "Socialization communication, organizational citizenship behaviors, and sales in a multilevel marketing organization," 161-180; Aihwa Chang & Chiung Ni Tseng, "Building customer capital through relationship marketing activities: The case of Taiwanese multilevel marketing companies."

[126] Jon M. Taylor,"MLMs ABYSMAL NUMBERS."

[127] Ana Isabel Jiménez-Zarco, Jose Antonio Clemente-Almendros, Inés González-González & Jorge Aracil-Jordà, "Female Micro-Entrepreneurs and Social Networks: Diagnostic Analysis of the Influence of Social-Media Marketing Strategies on Brand Financial Performance," *Frontiers in Psychology* (April 2021): 630058–630058. https://doi.org/10.3389/fpsyg.2021.630058.

suited to MLMs. The potential recruiter, if interested, is then made to feel confident about their ability to become a distributor, which encourages people who might feel unsatisfied with their skills, life, career or financial circumstance. Subsequently, the accessibility and ease of MLM success is reinforced, with distributors often relating their own experience within the marketing of the opportunity while claiming their disbelief of MLMs legitimacy prior to joining. This can take shape in the distributor declaring they "never thought I would be an entrepreneur but…" "I never thought I'd own my own car, pay off my debts," or examples of other common financial goalposts that people seek to achieve in their lifetimes. Regardless of how unlikely MLM benefits seem, cognitive bias inclines people to act in conjunction with the possibility of fulfilling the American Dream.[128] MLM recruitment language has been adept at cultivating cognitive biases across all demographics, through the combination of established trust in the distributor through successful targeting, personal examples of success from the distributor's own MLM experience, and the potential for success.

An important way in which MLMs use language to their benefit is in the term itself. MLM is one of the many terms used to describe direct selling with a commission-based structure for sales and recruitments. Other names such as network selling, direct selling, direct marketing, affiliate marketing, network marketing, friendship marketing or pyramid selling, all show the evolutions in which the business structure has adapted and consistently marketed themselves as a legitimate form of marketing. MLM distances itself from the pyramid and Ponzi schemes, its closest relative in the pool of business structures. The word *scheme,* while being defined as a "large-scale systematic plan or arrangement for attaining a particular object or putting a particular idea into effect," has increasingly become associated with dishonest calculated practices, plotting and conspiracy.[129] Due to the negative connotation of the word, any association to schemes is often perceived as disreputable and harmful. Meanwhile, marketing is a crucial part of any business, especially within an increasingly digital world where more marketing specialisations have emerged such as content, video, direct, database, social media, influencer and search engine marketing. MLMs therefore borrows legitimacy from those established and increasingly popular fields, and its snappy abbreviation adds to this as it resembles legitimate corporate jargon. This demonstrates how MLM businesses incorporate

[128] Heidi Liu, "The behavioral economics of multilevel marketing," 109.
[129] "Scheme," in the *Oxford Dictionary of English*, (Oxford: Oxford University Press, 2018).

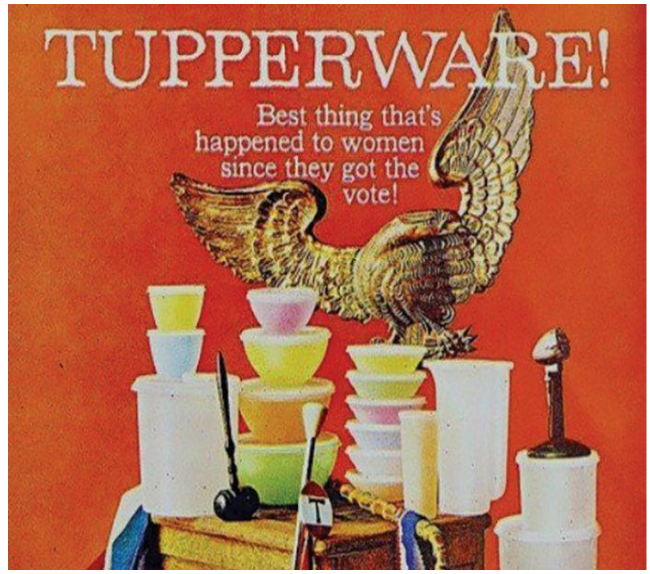
characteristics of traditional labour market structures into the MLM image. The MLM name is a key illustration of the way in which it has transformed and continuously rebranded itself to escape the negative associations it has with schemes. while incorporating traditional labour market language to both blend in with it, while also marketing the business structure as its alternative.

Linguistic legitimacy is also exemplified when an MLM company is caught crossing the thin legal boundaries, they're dubbed pyramid schemes.[130] This linguistic difference works in favour of MLM perception as it prevents the name from ever being directly associated with MLMs. In order to understand MLM risks, one has to understand the structural nuances alongside a clear and transparent understanding of the necessary time and money for MLM success. However, many lack this nuance, which is worsened by a general disinterest in raising awareness about MLM consumer harm. Consequently, MLM branding distances them from their controversies, and nurtures the cognitive biases in those who are searching for arguments to legitimise their investment and interest in MLMs despite its reputation.[131] When met with opposition, distributors can say "we are not a pyramid scheme, those are illegal, we are an MLM." MLMs even blur the nuances of why the pyramid structure is negative, as depicted in this image, by saying that "all businesses are structured in a pyramid, you have a CEO and the docile workers underneath them."

MLMs use this line of reasoning to dilute criticisms of the pyramid structure, while instilling 'us versus them' rhetoric against traditional jobs and MLM critics, which further strengthens distributor commitment to the wider concept of MLMs rather than it just being a personal side business. MLMs have been said to build on this narrative to encourage people to quit their traditional jobs and do MLM full-time, insinuating that they would be more successful if they did

[130]Amy Hebert, Alesha Hernandez, Rhonda Perkins & Alvaro Puig, "Multi-Level Marketing Businesses and Pyramid Schemes," Consumer Advice, FTC, March 7, 2022, https://consumer.ftc.gov/articles/multi-level-marketing-businesses-pyramid-schemes.
[131] Heidi Liu, "The behavioral economics of multilevel marketing," 109.

so.[132] Pedantic language use is vital to the way distributors perceive and justify their investment in MLMs.



Women in particular have consistently been targeted by the unique application of MLM language throughout history, reflecting the original popularisation of the business structure among middle-class women. MLMs gained significant popularity among suburban women in the 1950s. Following WWII, increased living costs propelled more women into the labour market upon the increased realisation that women were "crucial to the economy and society," as two income households were the backbone of the rising middle class.[133] The 1960s and 70's were marked by changing attitudes toward self-fulfilment and self-help.[134] The theme of self-help and self-reflection coincided with increased women in education, the equalisation of genders within the labour force, and increased divorces. However, this meant a rise in marriage separation costs and single parenting in a labour market that still limited upward mobility and financial autonomy for women.[135] MLMs gave suburban women an opportunity to financially support their families while still staying at home and meeting widely held cultural expectations about femininity and home-making. Suburbs were perfect marketplaces for potential clients or recruits, thus allowing for MLMs to flourish within active communities where networking could be done through parties and daytime gatherings. For those women, predominantly white and middle class, the MLM business structure had made labour and financial independence accessible to them in a world where men were the gatekeepers of capitalism and financial opportunity. Tupperware, a historically leading MLM brand, captured this best in their self-promotion as "the best thing that's happened to women since they got the vote." Today, gender continues to play a unique role

[132] Amanda, Montell, *Cultish: The Language of Fanaticism*, 166.
[133] William H. Chafe, "Women and American society," in *Making America: The Society and Culture of the United States*, ed. Luther S. Luedtke (North Carolina: NCU Press, 19): 262-268
[134] Robert J. Morris, "Samuel Smiles and the Genesis of Self-Help; the retreat to a petit bourgeois utopia," *The Historical Journal* 24, no. 1 (1981): 89-109; Amanda Montell, *Cultish: The Language of Fanaticism*, 158.
[135] Ibid., 267.

in the accessibility of financial opportunity, and MLMs exploit the gender imbalances within traditional capitalistic structures in order to market the business structure to women.

Language reinforces the way gender is perceived and practised.[136] Research on the differences in communication methods between men and women has shown that women generally use language to create cooperation, solidarity and connection.[137] MLM recruitment language exemplifies such findings. Research shows women use language to construct their femininity in one of two ways. The first is language that upholds hegemonic perceptions of traditional femininity, such as nurturing depiction of motherhood. Inversely, other language emphasises characteristics that are traditionally seen as masculine in attempts to construct a specific image of femininity that challenges hegemonic femininity, seen by tomboys.[138] A hybrid of these two methods of gendered identity construction can be seen by MLM distributors in their recruitment methods, as they market MLM as a means of upholding the feminine characteristics of housekeeping and nurturing while also being a means to entrepreneurship, a traditionally masculine endeavour "you can make money while still raising the kids at home!" This portrayal of gender blends traditional femininity with a more modern, autonomous, empowered one that is more likely to resonate with the multidimensional way in which different women experience their femininity. The feminization of capitalism makes entrepreneurship accessible and non-intimidating, by recognising labour alongside traditional family planning as valuable.[139]

MLM recruitment language has also popularised an array of feminist buzzwords and gendered language that have come to characterise MLM recruitment. They emphasise that their potential women recruits can, too, be a "bossbabe," "She-E-O," or "momtrepreneur" who can contribute to "building a fempire." The adoption of feminist, empowerment-coded terms in their recruiting successfully works as a means of exploiting a gender-based trust and intimacy, while also

[136] Penelope Eckert & Sally McConnell-Ginet, "Putting communities of practice in their place," *Gender & Language* 1, no. 1 (2007); Ronald Wardhaugh & Janet Fuller, *An Introduction to Sociolinguistics*, 329-330; Mary Bucholtz, "Why be normal? Language and identity practices in a community of nerd girls," *Language in Society* 28, no. 2 (1999): 203-223.
[137] Ronald Wardhaugh & Janet Fuller, *An Introduction to Sociolinguistics*, 326; Julia Davies, "Expressions of gender: an analysis of pupils' gendered discourse styles in small group classroom discussions," *Discourse & Society* 14, no. 2 (2003): 115-132 & Deborah Tannen,"Rethinking power and solidarity in gender and dominance," In *Annual Meeting of the Berkeley Linguistics Society*, 16, no. 1 (1990): 519-529.
[138] Ronald Wardhaugh & Janet Fuller, *An Introduction to Sociolinguistics*, 329.
[139] Kira Ganga Kieffer, "Manifesting Millions: How Women's Spiritual Entrepreneurship Genders Capitalism."

instilling a broader sense of feminist purpose in becoming an MLM distributor. These nicknames are derivatives of 'girlboss,' a neologism popularised by American businesswoman, Sophia Amoruso, whose bestselling self-help biography '*#Girlboss*' was seen as an empowering story on being unapologetically feminine and digitally affluent in the male-dominated world of entrepreneurship.[140] Amoruso defined a girlboss as someone "who is in charge of her own life [and] gets what she wants because she works for it."[141] Her story was inspirational to many, and #Girlboss rhetoric became popular among women of all ages on social media, increasingly popularised through female empowerment infographics with catchy inspirational messages. This was especially relevant within the context of the increased popularity of influencers, online entrepreneurs, and discussion about women in the workplace at the time. The terms work to highlight and critique the fact that supposedly gender-neutral business terms such as CEO and boss, are still implicitly coded as male. With time, their usage has earned increasing criticism for contributing to linguistic sexism more so than overcoming it.[142] Montell further critiques the popularisation of such buzzwords, arguing that they commodify and dilute feminist issues, and ultimately rebrands capitalism in a way that targets women without addressing the existing issues regarding labour standards within capitalist opportunities.[143] This, in addition to the aforementioned use of spiritual-coded language, has proven to be very successful in targeting women's interest in joining MLM.[144] Such neologisms and terms have come to be widely associated with MLM, further illustrating distributors' ability to naturally adapt their language usage to the everchanging social climate and cultural trends to further the marketability of the business model as a whole.

[140] Erin Gloria Ryan, "Women at Work," *The New York Times*, May 16, 2014, https://www.nytimes.com/2014/05/18/books/review/sophia-amorusos-girlboss-and-more.html; Sarah Nderi, "Book Review: Girl Boss by Sophia Amoruso," Book Review: Girl Boss By Sophia Amoruso. *Medium*, July 14, 2019, https://medium.com/blog-write-heal/book-review-girl-boss-by-sophia-amoruso-9f03ec89a7ee.

[141] Sophia Amoruso, *#Girlboss* (Portfolio, 2015): 14.

[142] Arwa Mahdawi, "Allow me to womansplain the problem with gendered language," *The Guardian*, April 23, 2017; Stav. Atir, "Girlboss? Highlighting Versus Downplaying Gender through Language," *Trends in Cognitive Sciences* 26, no. 8 (2022): 623, https://doi.org/10.1016/j.tics.2022.05.001; "Does the Elizabeth Holmes Trial Spell the End of the #girlboss Era?" *The Guardian*, September 4, 2021.

[143] Amanda Montell, *Cultish: The Language of Fanaticism*, 158.

[144] Kira Ganga Kieffer,"Manifesting Millions."

The Psychology of Leaving

The carefully curated language used to attract people to the business structure, as well as the language used to encourage people to stay motivated in their sales and recruitments, is key to the psychology of why people remain hopeful for success in MLM despite the unfavourable statistics and the low probability for success. 90% of MLM distributors experience losses, many of which will continue to try their luck within the business structure in hopes that they can turn their luck around and make a profit, or grow their downline and encourage them to make sales. With time, it becomes increasingly evident that the financial losses have piled up and the gains are few and far between; however, there are various contributing factors that encourage people to persist past financial loss and deepen their involvement in MLM despite financial loss.

As previously mentioned, distributors play on people's cognitive biases during the recruitment process, emphasising the potential benefits of MLM over the realities of risk and potential loss. That cognitive bias persists even once integrated within the MLM structure and is intensified by the phenomenon of sunk-cost fallacy.[145] This describes a person's resistance to abandoning a course of action that has proven to be harmful and fruitless to them, because the extensive costs and harm they have already endured, deters them from accepting that their investments were not worth it. After having made large investments of time, energy and effort, people are more inclined to prioritise on their past investments in their decision making, over their best interest as calculated by the present and future cost benefit. The larger the sunk cost, or the irretrievable investments, the stronger the bias and the less likely someone is to abandon the harmful endeavour. Everyone is equally vulnerable to sunk cost bias, it has been found to not differ per age group or cognitive ability.[146] Despite MLMs being marketed as a lucrative side project, distributors will find that regular and significant investment of money, time, and energy are needed to make the necessary sales and recruits that will amount to a profit.

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145 Corina Haita-Falah, "Sunk-cost fallacy and cognitive ability in individual decision-making," *Journal of Economic Psychology* 58 (2017): 44–59.

146 JoNell Strough, Clare M. Mehta, Joseph P. McFall & Kelly L. Schuller, "Are older adults less subject to the sunk-cost fallacy than younger adults?," Psychological Science 19, no. 7 (2008): 650-652; Corina Haita-Falah, "Sunk-cost fallacy and cognitive ability in individual decision-making."

MLMs never allow distributors to speak negatively about the business, structure or finances. When distributors experience financial loss, MLMs blame the distributor for not trying hard enough.[147] Distributors internalise this so upon realising their losses, and delay leaving hopes that their circumstance will be turned around and become a success as had been originally advertised to them. To some, the financial sunk cost would be enough reason to reconsider one's distributorship. However, for many the sunk-cost of having participated in an MLM goes beyond financial losses.

MLM, like many business structures, is based on meritocracy. Distributors are rewarded based on achievement that is quantified by the number of sales, the growth of one's downline, and the subsequent commission gained if a downline is active and successful as well. MLM structures have different rankings for distributors, which reflect their success within those three key performance indicators. The rankings represent milestones which distributors can strive to achieve, which further motivates them to not only perform well with sales but also with the creation and growth of their downline. Rankings also provide a sense of achievement and validation for distributors, however the costs, risk and liability of being an independent worker remains the same with no labour protections on a product and company they have no say in. This further entrenches people within the business structure, equipping them with internal goals that further convince them to invest more of their time, money and effort in the fraud that is MLMs; furthering the sunk cost. The implications of leaving are aplenty. After joining an upline and creating a downline, distributors' have a tight-knit relationship with them founded by the common interest of MLM. Therefore, abandoning the MLM creates a rift within that established network, one's decision to leave reflects negatively on MLMs and the people who remain within it. The downline of someone who chooses to leave will feel betrayed and confused as to why someone who has convinced them to join a supposedly life-changing opportunity, no longer believes in the opportunity. The guilt of leaving one's up/downline, the fear of failure after having not succeeded in a business one hoped to succeed in, in addition to the admittance to outsiders that MLMs don't work, are all components that delay peoples exit from MLMs even in the face of mounting unsold inventory and financial loss from lacking sales, minimal commissions and the investments in training and additional MLM activities. The internet is

[147] Ibid., 160-166.

littered with informal testimonies of former distributors sharing their personal experiences with MLMs online citing various harmful behaviours. Notably, there's a frequent report of illegal deceitful tactics such as misinforming and pressuring distributors into buying more products in order to ascend MLM rankings and potentially maximise their revenue, distributors have also reported disproportionate focus on recruitment over sales, and exaggerations of MLM earning and sales potential. Additionally reports of uplines pressuring and guilting downlines for not achieving sales and recruitment goals are frequent, as are claims that MLMs resemble cults.[148] As these communications primarily happen on private chats on social media, they are hard to regulate and track. All of these elements within the psychology of MLMs work to entrench distributors within the business. It is important to note that it is common for traditional jobs to have work environments that blur the lines of professional and personal life in potentially harmful ways. However traditional job places have human resources and regulations in place to regulate toxic work behaviours. Employees do not expend regular monetary investments into their jobs, and are free to quit without subsequent financial loss or repercussions. MLMs differ because distributors invest money upfront, regular investments to maintain stock and ascend MLM hierarchies, in addition to the time and effort necessary for sales and recruits. The regular investments required to sustain one's position within and MLM raises the exit costs, thus limiting and discouraging distributors who wish to leave. Distributors are also not guaranteed a regular salary therefore further increasing the financial pressure that might encourage them to continue in hopes of eventually succeeding rather than quitting and accepting the financial losses incurred. The deceptive recruitment tactics and advertising of MLMs shield the reality of the costs of participating in an MLM, as well as the improbability of earning a livable salary within the business structure. Although, the structural, social, ideological and financial elements all intersect to shape the psychology behind joining and staying in MLMs. All these elements allow for the context of MLM success and people's commitment to them, but also highlight the challenges of investigating fraudulent behaviour when it takes place in private spaces and intimate conversations.

Access to the internet has empowered people with a wider pool of people to make connections with, therefore allowing us to create complex networks based on our individual needs and

[148]P. Bhattacharya, "Socialization in Network Marketing Organization: Is It Cult Behavior?" *The Journal of Socio-Economics* 29, no. 4 (2000): 361–74. https://doi.org/info:doi/.

interests, rather than just based on convenience of geographic proximity or established traditional social structures.[149] We no longer have to rely on our direct vicinity for friends or potential customers, we can simply log online and create a network of people who share our views and interests. Social media has expedited communication adaptation as is exemplified by increased monetisation of skills, hobbies, and interests through content creation online.[150] The popularisation and modernization of MLMs on social media is therefore no surprise, as the networking potential enabled through social media allows MLM distributors to access large audiences of potential customers or recruits from the comfort of their home. This diminishes the need for traditional door-to-door direct selling techniques, and increases the speed and potential at which distributors can reach their target audiences.[151] Social media platforms act as global neighbourhoods where distributors can virtually travel from profile-to-profile, rather than door-to-door, to access, recruit, and market to the broad network of friends, family, and acquaintances, all from the comfort of their homes. Equipped with vast access to customers' personal data, most social media platforms offer a plethora of personal information on their users, providing access to user's names, friends, interests, life updates, employment information, relationship status etc. This wealth of obtainable information creates an ideal environment for MLM distributors to target people who are most likely to be enticed by the flexibility and independence that MLM offers. These tactics fare well on social media platforms where one's life is displayed and organised to reflect the social norms people subscribe to, alongside accessible messaging apps where such communications can occur within a vacuum, away from the public eye and away from governments regulatory agencies.[152] The lack of transparency within social media direct messaging channels, where most MLM interactions take place, shields MLM distributors from being policed or reprimanded in the case of illegal business practices in private conversations. Such can include using false, deceptive, misleading claims about products,

[149] Gabriele de Seta, "Memes in digital culture," 477.

[150] Dorie Clark, *Entrepreneurial You: Monetize your Expertise, Create Multiple Income Streams, and Thrive* (Boston: Harvard Business Press, 2017); Ryan Williams, "The Influencer Economy: How to Launch Your Idea, Share It with the World, and Thrive in the Digital Age," *Ryno Lab*, 2016.

[151] Harrison Rainie & Barry Wellman, "Networked Relationships," in *Networked* (Cambridge: MIT Press, 2012) 117–146, https://doi.org/10.7551/mitpress/8358.003.0011.

[152] Abby Vesoulis & Eliana Dockterman, "Pandemic Schemes: How Multilevel Marketing Distributors Are Using the Internet—and the Coronavirus—to Grow Their Businesses," *Time*, July 9, 2020. https://time.com/5864712/multilevel-marketing-schemes-coronavirus/.

and investment requirements for recruits, as well as prioritising recruitments over sales.[153] Consequently, social media allows deceptive and financially risky business practices to thrive and access users without many realistic ways for the FTC to ensure that the boundaries of MLM legality aren't being crossed.

MLMs have navigated consumer protection regulation in a digitalised world by taking advantage of the laissez faire approach of regulatory bodies, in which time they have adapted greatly to digital changes to embed MLM activity into distributors' lives in ways that are nuanced and challenging to regulate. Their reliance on independent distributors shield MLMs from liability of deceptive practices, such as the MaryKay husband unawareness programme, so that such actions can be blamed on distributors, thus shielding the MLM from legal wrongdoing. MLMs adaptation to gig economy structures, in their reliance of independent workers that primarily do business online, shows how MLMs have managed to use the growing role of social media in everyday life to its advantage. Skillful adaptation is an admirable feat for any organisation or business structure, and illustrates the importance and impact of being able to use and evolve with contemporary resources for communication and network building, in this case social media. However, the success of MLM recruitment and community building has also proven key in financially and socially enveloping distributors within the MLM, to distributors' detriment. The role of social media as a non-transparent facilitator to that, makes it all the harder to protect people from the financial losses experienced by 99% of distributors.[154] MLMs have been popular for decades without recourse, so their recent regulation on social media does indicate a growing inability to turn a blind eye to harmful practices due to internet accessibility, which could motivate the FTC to take more of an active approach to future regulation.

[153] "Multi-Level Marketing Businesses and Pyramid Schemes," Ftc.Gov, last modified May 18, 2021. https://www.consumer.ftc.gov/articles/multi-level-marketing-businesses-and-pyramid-schemes.
[154] Jon M. Taylor,"MLMs ABYSMAL NUMBERS."

Ch 3: Social Media & MLMs

Social media has been a powerful modern tool in facilitating global interconnectedness through accessible information and networking capacity. It is also highly personalised in nature, as expertly engineered algorithms tailor users' online experience based on their preferences and previous online behaviour to better fit individual needs and interests. Social media has familiarised users indirectly and directly curating the information made available to them, while also creating complex structures that stimulate an online sense of community.[155] Contemporary changes in communication and community building that have emerged as a result of accessibility of the internet, social networking platforms, and cell phones. Such is a natural evolution to the accessibility of technology as communication patterns naturally adapt to the environment where they are formed, now that communities are increasingly formed and maintained online, people and businesses have adapted accordingly.[156]

Social media platforms are not directly responsible for the actions of individual users on their platform, even less so if the activity is deemed federally legal, as is the case for MLM.[157] Internet regulation thus far holds people individually responsible for their acts online, however platforms remain liable to scrutiny for enabling harmful acts and can be subject to prosecution for endangering consumer safety. Additionally, like any company, platforms must answer to their shareholders and have an interest in reducing risks and potential threats to the shareholders' capital. Social media companies earn revenue by monetising engagement through advertising, it therefore becomes important to platforms to appeal to a wide audience. The bigger the user base, the more advertising revenue they can earn. The more user engagement, the more data they can

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155 Lisa Silvestri, "Memes in Digital Culture, by Limor Schifman," *Popular Communication* 12, no. 3 (Aug, 2014): 198-200, https://doi.org/10.1080/15405702.2014.929378; Gabriele de Seta, "Memes in Digital Culture," *New Media & Society* 17, no.3 (February, 2015): 477, https://doi.org/10.1177/1461444814563048.

156 Hua Wang, Renwen Zhang & Barry Wellman, "Are Older Adults Networked Individuals? Insights from East Yorkers' Network Structure, Relational Autonomy, and Digital Media Use," *Information, Communication & Society* 21, no. 5 (2018): 681–96. https://doi.org/10.1080/1369118X.2018.1428659.

157 Stephen Karis, "The Social Responsibility of Social Media Platforms," *The Regulatory Review*, December 20, 2021, https://www.theregreview.org/2021/12/21/stephen-social-responsibility-social-media-platforms/; Zia Muhammad, "Are Social Media Platforms Legally Responsible for What Their Users Post?" Digital *Information World*,, July 6, 2021, https://www.digitalinformationworld.com/2021/07/are-social-media-platforms-legally.html; Leetaru Kalev, "Should Social Media Be Held Responsible for the Atrocities and Deaths It Facilitates?" *Forbes,*, November 24, 2018, https://www.forbes.com/sites/kalevleetaru/2018/11/23/should-social-media-be-held-responsible-for-the-atrocities-and-deaths-it-facilitates/.

sell to third parties. Maintaining their active user base is fundamental to platforms' survival. So, while pressure to further regulate potentially deceptive acts on their platform does not come from a federal level, the pressure to keep the platform as accessible and appealing to as many users as possible comes from their revenue streams. Platforms are therefore externally incentivised to protect and nurture user trust and security, in order to maintain their user base and prevent liabilities for the platform. Such is ensured through the enforcement of their community and advertising guidelines.

Analysing how social media platforms have chosen to regulate MLM activity on their platforms, will reveal whether the platforms view such activity as a liability to the company as a whole. Platforms will have outlined their regulations based on first hand analysis of such activity on the platforms, and would therefore have a more in depth understanding than the FTC, of how MLM activity is structured and carried out on social media. Consequently, looking at the regulatory guidelines of MLM activity on social media platforms will offer a nuanced discernment of how MLM is experienced on a day-to-day basis, and whether that matches the FTC's perception of MLM as a safe and non-deceptive practice. If platform guidelines allow for the practice of MLM activity on respective platforms without the addition of restrictions that already exist within the FTC act, it can be concluded that the platform is in agreement with the legal ruling of MLM as a non-deceptive and legitimate business practice. On the other hand, restrictions or bans of MLM activity outlined within community guidelines would mean that platforms have identified such activity as a potential risk or threat to their users' safety. Similarly, restrictions or bans outlined within advertising guidelines indicate MLM activity as a perceived risk to the platform and its revenue stream.

If social media platforms, who are more acquainted with the contemporary intricacies and impact of MLM activity due to the frequency of it on their platforms, feel the need for restrictions and bans on MLM, this will prove and indicate the need for a present-day review of the business structure by federal regulatory institutions. Since social media platforms are more acquainted with the contemporary intricacies and impact of MLM activity, platform or restrictions and bans on MLM activity would be a significant indicator for the need for a present-day review of the business structure by federal regulatory institutions, and a reconsideration of whether existing regulations are sufficient to protect modern day consumers from the risks associated with MLM. This chapter will examine two leading social media platforms where MLMs have grown popular, Facebook and TikTok, and how they have regulated MLMs within their platform community guidelines in order to protect their users. Additionally, the platforms' advertising guidelines will be examined in order to determine whether differences exist within the way the respective platforms have chosen to protect their users, in comparison to the way they have chosen to protect their revenue from advertisers.

Facebook was founded in 2004, and became accessible for public and international use in 2006. Gaining global popularity and becoming the world's most used social media network with 2.936 billion active users, and 180.1 million U.S. users.[158] Users are distributed across all ages, their largest percentages of users being ages 18-44 years old.[159] Facebook has grown in notoriety, becoming a crucial part of the five big tech giants, and establishing its dominance in various areas of technology while being one of the most valuable companies globally valued at $124.879 billion.[160]

On the other hand, TikTok is a relatively new, Chinese video sharing social media platform founded in 2016 and introduced globally in 2018. Gaining global popularity at rapid speed, TikTok is the seventh most used social network in the world with 732 million active users (2021),

[158] "Facebook Worldwide Number of Monthly Active Facebook Users Worldwide as of 1st Quarter 2022," Statistics, *Statista*, April 28, 2022, https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/.; "The Latest Facebook Statistics: Everything You Need to Know - Datareportal – Global Digital Insights," *DataReportal*, May 11, 2022, https://datareportal.com/essential-facebook-stats#:~:text=The%20United%20States%20of%20America%20has%20at%20least%20180.1%20million%20active%20Facebook%20users.

[159] "U.S. Facebook Users by Age 2022," Statistics, *Statista* April 22, 2022, https://www.statista.com/statistics/187549/facebook-distribution-of-users-age-group-usa/#:~:text=As%20of%20March%202022%2C%2025.4,13%20to%2017%20years%20old.

[160] M. Szmigiera, "Biggest Companies in the World by Market Cap 2020," *Statista*, September 10, 2021, https://www.statista.com/statistics/263264/top-companies-in-the-world-by-market-capitalization/;Sean Dennison, "How Much Is Facebook Worth?," *GoBankingRates*, February 10, 2022, https://www.gobankingrates.com/money/business/how-much-is-facebook-worth/#:~:text=Shareholders%27%20equity%2C%20one%20of%20the,Q4%202021%20is%20%24124.879%20billion.

with 73.7 million of those representing U.S. users.[161] Users are distributed across all ages from 10-50 years old, with each age decade representing about 20% of TikTok's user base respectively, and the majority of TikTok user's being 10-19 years old.[162] TikTok is valued at $50 billion.[163]

	Facebook	YouTube	WhatsApp	Instagram	Messenger	WeChat	TikTok
Users *in Millions	2,853	2,291	2000	1,396	1,300	1,242	902

(Statista 2021)[164]

Facebook and TikTok's both have a diverse and international user base on their increasingly popular and influential platforms. Again, they both depend on their platforms being accessible to wider audiences and therefore monetisable. This motivates them to follow international laws, and additionally enforce comprehensive guidelines to protect their users amid differing international laws, child specific laws, and additional guidelines that facilitate increased user engagement and platform growth.

Community Guidelines

All social media platforms have community guidelines wherein they enforce their platform codes of conduct to ensure user and platform safety. TikTok does this through their Community Guidelines, and Facebook through Community Standards; both of which are tailored to best fit the differing platforms' format and user base. The two will be compared and contrasted

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161 "Most Used Social Media 2021," Statistics, *Statista*, August 2, 2021. https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/; "TikTok: Number of Users in the United States 2019-2024." Statistics, *Statista*, April 19, 2021. https://www.statista.com/statistics/1100836/number-of-us-tiktok-users/.

162 Ibid.

163 L Ceci, "U.S. Tiktok Users by Age 2021," Statistics, Statista, April 28, 2022, https://www.statista.com/statistics/1095186/tiktok-us-users-age/. See also: Jason Wise, "How Much Is Tiktok Worth in 2022? Here's the Latest Data," *EarthWeb*, May 20, 2022, https://earthweb.com/how-much-is-tiktok-worth/#:~:text=Valuations%20of%20TikTok%20in%202020,and%20up%20to%20%2475%20billion.

164 "Most Used Social Media 2021," Statistics, *Statista*, August 2, 2021. https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/.

to see how they have adapted to the growing role of MLMs on their respective platforms, and whether they are in agreement with federal regulations.

TikTok Community Guideline Clauses	
- Violent extremism - Hateful behaviour - Illegal activities and regulated goods - Violence and graphic content - Suicide, self-harm and dangerous acts	- Harassment and bullying - Adult nudity and sexual activities - Minor safety - Integrity and authenticity - Platform security

TikTok's *Illegal Activities and Regulated Goods* condemns all activities that violate laws or regulations. These are influenced by laws and regulations in question that are deemed illegal in "the majority of the world."[165] This section is the only one that contains directives relevant to the allowance of MLM activity; and is organised into the following six distinct categories which detail and condemn the display, promotion, purchase, sale, trade or solicitation of the following:

TikTok Community Guidelines: Illegal Activities and Regulated Goods	
- Criminal activities - Weapons - Drugs, controlled substances, alcohol, and tobacco	- Frauds and scams - Gambling; - Privacy, personal data, and personally identifiable information (PII)

Within this, the 'Frauds and scams' section explicitly states TikTok's condemnation for the exploitation or misuse of their user's trust. Following this they warn potential removal of shared, uploaded or streamed content that contains or resembles "*deceitful in aims to gain personal or financial advantage through others*."[166]

[165] "Community Guidelines." Tiktok, accessed August 10, 2021. https://www.tiktok.com/community-guidelines?lang=en.

[166] "Community Guidelines." Tiktok, accessed August 10, 2021. https://www.tiktok.com/community-guidelines?lang=en.

On December 15, 2020, TikTok updated their community guidelines to expand and improve their standards of practice to include COVID-19 relevant measures. The update included the addition of outright banning "content that depicts or promotes Ponzi, multi-level marketing, or pyramid schemes" to the clause.[167] The updated clause lumps Ponzi, multi-level marketing, or pyramid schemes together as similar business models, equating them all under the umbrella of *frauds and or scams*. Additionally, any MLM related content on the platform is explicitly banned, regardless of whether the content is illegal according to U.S. law or not. It further outlines the banning of "*content that depicts or promotes investment schemes with promise of high returns, fixed betting, or any other types of scams*." The timing of this updated clause reflects the increased presence and engagement of MLMs within the COVID pandemic. As previously stated, the pandemic not only saw an increased interest in MLM participation, but also in MLMs that marketed their products and services with misleading claims that exploited the prominent health concerns that continue to mark the world as we recover from COVID 19. MLMs therefore presented an intersection of risks to social media users and the platforms, from the risky business structure, to the deceptive marketing of their products and services. The timing of their outright ban indicates such changes to be more motivated by the latter rather than the former, especially as the pandemic highlighted the dangers of COVID and vaccine misinformation and a need for online platforms to increase their capacity to regulate such misinformation. However, prior to the clause update, it still took a stance on deceitful business practices that over-promise returns, a characteristic commonly employed by MLMs. Thus, condemning MLM activity, albeit indirectly. In both clauses, TikTok distances themselves from MLMs, though the pandemic cemented a need to state that more firmly. Highlighting it as a business practice that is too risky for their platform, but also framing it as a fraud and scam, despite the federal government's ruling of MLMs as a legitimate and legal business practice.

[167] Allana Akthar, "TikTok Is Banning Content That Promotes Pyramid Schemes and Multi-Level Marketing Companies," *Business Insider*, December 16, 2020. https://www.businessinsider.com/tiktok-bansmlm-pyramid-ponzi-scheme-content-promotions-2020-12?international=true&r=US&IR=T; TikTok, "Community Guidelines."

TikTok

Frauds and scams

We do not permit anyone to exploit our platform to take advantage of the trust of users and bring about financial or personal harm. We remove content that deceives people in order to gain an unlawful financial or personal advantage, including schemes to defraud individuals or steal assets.

Do not post, upload, stream, or share:

- Content that depicts or promotes phishing
- Content that depicts or promotes Ponzi, multi-level marketing, or pyramid schemes
- Content that depicts or promotes investment schemes with promise of high returns, fixed betting, or any other types of scams

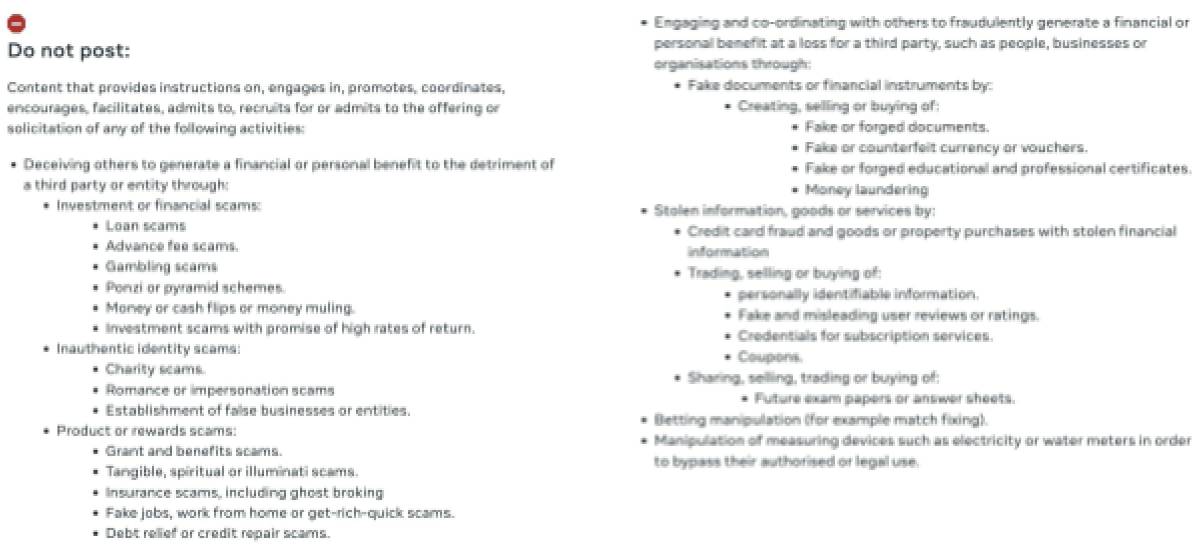
Facebook Community Standards[168]	
1. Violence and Criminal Behaviour 2. Safety 3. Objectionable Content 4. Integrity and Authenticity	5. Respective Intellectual Property 6. Content-Related Requests and Decisions 7. Additional Information

On the other hand, Facebook ensures their user and platform safety within their Community Standards which outline prohibited conduct and content. Similarly, to TikTok, Facebook has gradually adapted their community standards to address contemporary concerns. Notable differences lie in the close examination of the structural changes over time of such guidelines, which reflect the changing concerns of online safety and the increased perception that social media platforms must play an active role in regulating them. Facebook particularly demonstrated this by not having a Fraud and Deception clause until September of 2019, when they added it within the Violence and Criminal Behaviour Guideline to condemn content or activity that is deemed fraudulent or harmful to people or businesses.[169] Facebook notes that prior to the addition of this clause, policies on fraud and deception had been dispersed throughout the

[168] "Community Standards," Facebook, accessed August 10, 2021, https://www.facebook.com/communitystandards/introduction.
[169] Ibid.

Community standards and fell under 'Coordinating Harm' and 'Privacy violations and image Privacy Rights.' This clearly illustrates the increasing priority of regulating and ensuring clear consumer safety guidelines by private businesses over time.

Despite indicating a willingness to update and adapt their guidelines to contemporary safety concerns, Facebook distinguishes itself from TikTok through its notable lack of condemnation of MLMs by name within Facebook standards. Facebook, unlike TikTok, does not take an explicit stance against MLMs as a business structure, nor do they go as far as to categorise MLMs under the umbrella of frauds and scams. However, Facebook Community Standards do prohibit a variety of activity and business practices that are often employed by MLMs and their distributors within the *Violence and Criminal Behaviour: Fraud and Deception* clause. This can be seen through the prohibition of advance fee scams, which consists of up-front payment in exchange for the promise of a large return; As well as "Ponzi or pyramid schemes, investment scams with promise of high rates of return, fake and misleading user reviews or ratings."[170]



Do not post:

Content that provides instructions on, engages in, promotes, coordinates, encourages, facilitates, admits to, recruits for or admits to the offering or solicitation of any of the following activities:

- Deceiving others to generate a financial or personal benefit to the detriment of a third party or entity through:
  - Investment or financial scams:
    - Loan scams
    - Advance fee scams.
    - Gambling scams
    - Ponzi or pyramid schemes.
    - Money or cash flips or money muling.
    - Investment scams with promise of high rates of return.
  - Inauthentic identity scams:
    - Charity scams.
    - Romance or impersonation scams
    - Establishment of false businesses or entities.
  - Product or rewards scams:
    - Grant and benefits scams.
    - Tangible, spiritual or illuminati scams.
    - Insurance scams, including ghost broking
    - Fake jobs, work from home or get-rich-quick scams.
    - Debt relief or credit repair scams.
- Engaging and co-ordinating with others to fraudulently generate a financial or personal benefit at a loss for a third party, such as people, businesses or organisations through:
  - Fake documents or financial instruments by:
    - Creating, selling or buying of:
      - Fake or forged documents.
      - Fake or counterfeit currency or vouchers.
      - Fake or forged educational and professional certificates.
      - Money laundering
- Stolen information, goods or services by:
  - Credit card fraud and goods or property purchases with stolen financial information
  - Trading, selling or buying of:
    - personally identifiable information.
    - Fake and misleading user reviews or ratings.
    - Credentials for subscription services.
    - Coupons.
  - Sharing, selling, trading or buying of:
    - Future exam papers or answer sheets.
- Betting manipulation (for example match fixing).
- Manipulation of measuring devices such as electricity or water meters in order to bypass their authorised or legal use.

Similarly, to TikTok, Facebook also adapted their community guidelines to fit COVID-19 related developments. The December 17, 2020 updates added the prohibition of "work from

[170] "Fraud and Deception," Transparency Center, Facebook, 2022, https://transparency.fb.com/policies/community-standards/fraud-deception/.

home or get-rich-quick scams," reflecting the increase of such business models, and the growing necessity of their regulation. Additionally, clause update replaced "Investment *schemes* with promise of high rates of return" to "Investment *scams* with promise of high rates of return." aligning such business practices as negative and malicious.[171] Facebook's avoidance of explicitly naming MLMs could indicate an unwillingness to contradict the federal ruling of them as legal, while still establishing protective standards on the platform.

Additional COVID related updates were made by Facebook in May 2022 following rising concerns over the spread of COVID misinformation, and the complex role in which social media algorithms played to expedite it. Facebook added a *Misinformation* sub-clause within the Integrity and Authenticity Clause that aims to "*balance our values of expression, safety, dignity, authenticity and privacy."*[172]

Facebook Community Standards: Integrity and Authenticity: Misinformation[173]	
1. Harmful health misinformation a. About vaccines b. About health during public health emergencies c. Promoting or advocating for harmful miracle cures for health issues	2. Voter or Census Interference 3. Manipulated Media 4. Physical harm or violence

The clause outlines detailed guidelines regarding health-related messaging in aims of protecting users from being exposed to harmful welfare claims, products, or services on the site; and prohibits businesses and users alike from spreading such information. Specifying the prohibition of *Promoting or advocating for harmful miracle cures for health issues*,[174] as well as health related claims about how to cure or prevent viral diseases, that are not verified by expert health authorities. COVID misinformation was rampant throughout the pandemic, though this clause also addresses the MLMs that were officially warned by the FTC for deceptively marketing

[171] Ibid.

[172] "Misinformation," Transparency Center, Facebook, 2022, https://transparency.fb.com/policies/communitystandards/misinformation/.

[173] Facebook. n.d. "Community Standards." Facebook.Com. Accessed August 10, 2021. https://www.facebook.com/communitystandards/introduction.

[174] Ibid.

products as cures without proof, as well as the many other MLMs who narrowly escaped such warnings.[175] Deceptive MLM advertising was a key contributor to increased MLM participation and revenue, and this directly put consumers at harm's way regarding their health.

Other than the removal of such content from the platform, no subsequent repercussions on accounts of users that post such content are in place to further protect users from such content on the platform. Facebook does not indicate any intention to ban or restrict user profiles in the event of community standards breaches. While regulations are in place, they are not far-reaching nor even fatal to one's ability to use the platform, they are therefore a minor consequence for fraudulent and deceptive business practices. It is but an inconvenience to have one's content removed from a platform and it does not prevent fraudulent or deceptive actors from subjecting such practices onto someone else, elsewhere. The disparity between the community guidelines demonstrates the need for centralised regulation by the FTC so that people can enjoy consumer protection everywhere, rather than just on the platforms that felt liable enough to regulate it privately.

Advertising Guidelines

While community standards focus primarily on user interaction on the platform and the preservation of user safety. advertising guidelines offer a detailed blueprint that outlines the expected standards that should be met in order for third-parties to advertise on their platform. As platforms primarily earn revenue through advertising, Ad guidelines are drafted in coordination with platform stakeholders to ensure that platform revenue is earned in accordance with their stakeholders' interests and international laws. The wider the variety of advertisements that can be published, the more money the platform makes, therefore incentivising a standardisation of advertising rules and specifications to reduce the platforms liability in facilitating third party advertising.

[175] "FTC Sends Warning Letters to Multi-Level Marketers Regarding Health and Earnings Claims They or Their Participants Are Making Related to Coronavirus." Federal Trade Commission, May 4, 2020, https://www.ftc.gov/news-events/news/press-releases/2020/04/ftc-sends-warning-letters-multi-level-marketers-regarding-health-earnings-claims-they-or-their.

TikTok and Fakebook's guidelines offer specific details regarding the wording, content, presentation of the advertisements that they respectively prohibit or restrict. These guidelines reflect the structural differences within the platforms. Though contrasting the guidelines reveal similarities in the way they've regulated MLM activity within user interactions versus their source of platform revenue.

Facebook Advertising Policy	
Prohibited Content	Restricted Content

Facebook's advertising policy is divided simply, while TikTok's advertising guidelines standards are tailored to suit the video-centric format of the platform through the organisation into two distinct ad policies. *Industry Entry policies* outline the barriers of entry for industries to advertise on TikTok, and *Ad Creatives & Landing Page Policies* focuses on the technical requirements for advertisements in regards to their visual representation and media-based format.[176]

TikTok Advertising Guidelines	
Ad Creatives & Landing Page	Industry Entry Policies
- Ad Format and Functionality - Prohibited Content - Restricted Content	I. Prohibited Products or Services II. Restricted Products or Services III. Country or Territory

The first and foremost common trait between Facebook and TikTok's advertising guidelines are their explicit condemnation of MLMs advertising on their respective platforms. Facebook does so clearly, naming Multi-Level Marketing as its own sub-clause under Restricted Content. The clause restricts MLM recruitment and opportunities from being advertised, while citing it as a 'get rich quick' business model. Facebook's unwillingness to name MLMs within

[176] "TikTok Advertising Policies - Ad Creatives and Landing Page," Business Help Center, TikTok, 2022, https://ads.tiktok.com/help/article?aid=9552.

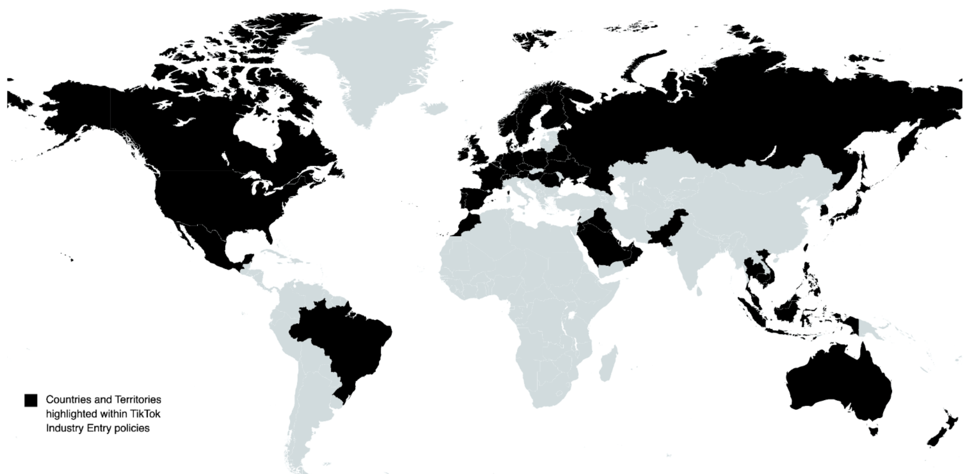
the Community Standards could reflect an understanding of the various forms that MLMs can take and the services or goods that they offer. It takes into consideration that not all MLMs are deceptive and focuses on the specific actions that Facebook considers inappropriate on their site. This is more encompassing of potential risks from a wider variety of businesses or actors, and is therefore more effective at protecting their users from such behaviour, that it would be with a narrow focus on MLMs. Though, taking a more direct approach to restricting MLMs from being advertised, and therefore Facebook from earning revenue from MLM advertisements highlights a perceived liability risk of MLMs by Facebook. Thus, casting doubt onto the legitimacy of MLMs and the FTC's ruling of them as a legal and safe business structure.

> **20. Multi-level marketing**
>
> Ads promoting income opportunities must fully describe the associated product or business model, and must not promote business models offering quick compensation for little investment, including multi-level marketing opportunities.

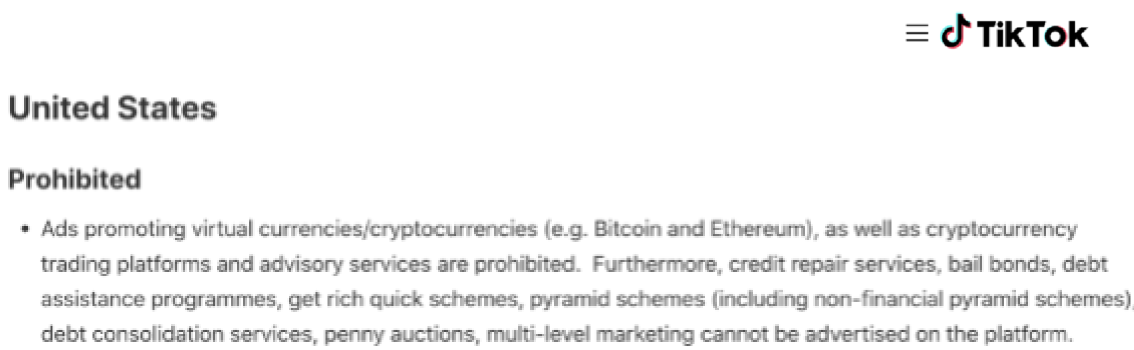
(Facebook Meta 2022)[177]

TikTok goes further than Facebook by prohibiting, rather than restricting, the advertisement of Multi-Level Marketing and recruitments. This is done quite interestingly within the *Country or Territory* sub-clause of TikTok *Prohibited Products or Services*. The sub-clause delves into additional country specific regulations that are in accordance with the laws of the specified territories and nations. Of the 195 countries worldwide, only 48 have nation specific restrictions and prohibitions, which encompass the same limitations as stated in the *Prohibited Products or Services* clause of the advertising policy, but go into further detail regarding these guidelines.

[177] "Advertising Policies," Facebook (Facebook Meta, 2022), https://www.facebook.com/policies_center/ads.



The United States is included within the 48 nation specific restrictions. There, TikTok explicitly forbids the advertisement of MLMs, despite their legal status within the U.S.[178] Similarly to their Community Guidelines, MLMs ban is placed alongside financial services and structures that are illegal in the U.S. Indicating that TikTok equates MLMs to illegal deceptive business structures and practices, and have a perceived mistrust in MLMs as a business practice that poses a danger to TikTok's liability, regardless of their legality.


TikTok

United States

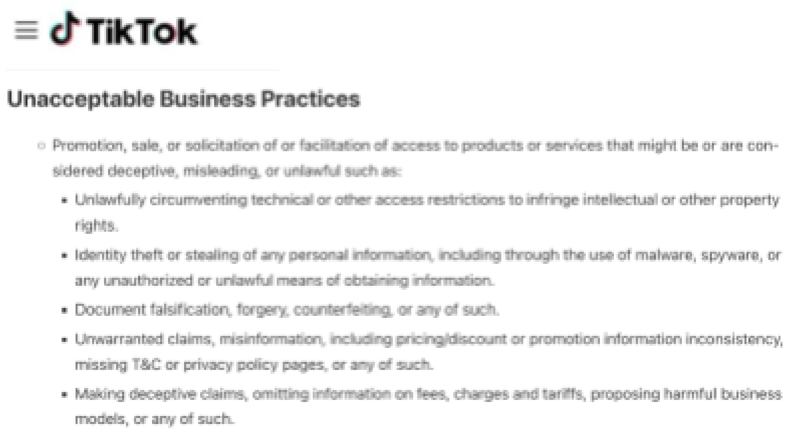
Prohibited

- Ads promoting virtual currencies/cryptocurrencies (e.g. Bitcoin and Ethereum), as well as cryptocurrency trading platforms and advisory services are prohibited. Furthermore, credit repair services, bail bonds, debt assistance programmes, get rich quick schemes, pyramid schemes (including non-financial pyramid schemes), debt consolidation services, penny auctions, multi-level marketing cannot be advertised on the platform.

Alongside such strong exclusion of MLMs as a means of advertising revenue for the platforms, both advertising guidelines further enforce regulations on advertising characteristics that MLMs have historically been investigated and warned about. This includes misleading or deceitful claims, false or unsupported claims regarding the efficiency and result of a product, lack of clarity on costs and finances of MLM or their products, and exploitative behaviour. TikTok goes further, offering concrete examples of prohibited deceptive language, such as "Get slim legs

[178] "TikTok Advertising Policies - Industry Entry," TikTok advertising policies - industry entry (TikTok Business Help Center, 2022), https://ads.tiktok.com/help/article?aid=9550.

right away" or "Get money in 10 seconds." TikTok and Facebook also strictly prohibit advertisers from omitting information regarding advertised labour opportunities. Facebook claims that *Financial and insurance products and services* should "clearly provide sufficient disclosure regarding associated fees." Addressing MLMs tendency to exaggerate MLM positives while lacking transparency regarding distributor earnings and sales.



TikTok

Unacceptable Business Practices

- Promotion, sale, or solicitation of or facilitation of access to products or services that might be or are considered deceptive, misleading, or unlawful such as:
  - Unlawfully circumventing technical or other access restrictions to infringe intellectual or other property rights.
  - Identity theft or stealing of any personal information, including through the use of malware, spyware, or any unauthorized or unlawful means of obtaining information.
  - Document falsification, forgery, counterfeiting, or any of such.
  - Unwarranted claims, misinformation, including pricing/discount or promotion information inconsistency, missing T&C or privacy policy pages, or any of such.
  - Making deceptive claims, omitting information on fees, charges and tariffs, proposing harmful business models, or any of such.

Additional guidelines birthed from the necessity following COVID-19 address the increasingly relevant issue of deceptive business practice through misinformation. TikTok does so more generally, prohibiting the marketing of misleading products with misinformation or unwarranted claims. Facebook more directly addresses the rise in misinformation concerns notably within the COVID pandemic. Alluding to and condemning the sixteen MLMs that were warned by the FTC for violating consumer protection laws, as well as other actors that exploited COVID related uncertainty to market their products and services.

In line with the increased exploitative marketing during the pandemic, Facebook additionally outlines the prohibition of advertisements that are exploitative of users through the targeting of common vulnerabilities.[179] XIII. *Personal Health* prohibits advertisements that exploit negative self-perception to promote health related products. A phenomenon that greatly marked the pandemic, but is also relevant to a majority of MLMs that market wellness goods and services through the use of self-improvement themes that often rely on the depreciation of people's health to motivate a need for improvement through their products. Additionally, XI. *Personal Attributes* prohibits advertisements that "assert or imply personal attributes" such as health, physical

[179] Facebook, "Advertising Policies."

appearance, or background; further specifying that "vulnerable financial statuses" are also prohibited from being addressed within advertisements. Thus, preventing users being targeted for their vulnerable economic situations. This pertains to MLMs who seek out and target people's vulnerabilities in order to recruit or market them products or services. TikTok lacks similar guidelines, but they prohibited MLMs entirely to prevent this.

The respective prohibition and restriction of MLMs being advertised on the platforms reveal a disagreement with the prescription of MLMs as safe and non-deceptive business practices, highlighting their own apprehension with associating the platforms revenue stream with MLMs. This indicates a need for further regulation of MLMs, or at least additional research by the FTC into their risks and impacts on consumers.

TikTok and Facebook on MLMs

TikTok and Facebook's community and advertising guidelines vary in structure and application of their regulatory stances regarding deceptive practices and MLMs. Both platforms cite, regulate and condemn a variety of behaviour that are included under the FTC classifications of illegal MLM practices, therefore protecting their users from specific deceptive behaviour without correlating it to MLMs directly. This reflects an understanding from both platforms, on the various structures, practices, and services that different MLMs adopt, as well as an understanding that not all MLMs are deceptive. Such details ensure that users can be protected from specific deceptive practices, regardless of the legal and technical loopholes that MLMs might use to obscure themselves and their responsibility. TikTok's Community and Ad Guidelines share a direct approach towards regulating MLM content and activity on the platform, outright banning it. They have supplemented the FTC's minimal MLM regulation with additional regulation by the private company via their terms and conditions, reflecting TikTok's belief that MLMs are not only a liability for TikTok's revenue, but also unsuitable for their users. Facebook has done the same albeit less outright than TikTok, by restricting MLMs from advertising on Facebook and distancing Facebook's revenue from being associated with MLMs. Community standards don't explicitly disallow MLMs from the platform which allows Facebook to sustain its user base and capitalise off ad revenue from platform interactions that may or may not be related to MLMs, while shielding itself from the liability of allowing MLMs to officially advertise on the platform, as dictated in their advertising policies. These regulations reveal that despite existing MLM federal regulation, private businesses perceive an associated risk with MLM activity, and choose to lessen their liability via further regulations. The platforms were incentivised to increase platform regulations following COVID-19 which contextualised consumer harm from health and financial fraud perspectives that could not be ignored, thus illustrating how private companies are only moved to take regulatory action when required to or when the liability risk in not doing so is high. This highlights the importance of the FTC as an institution that regulates without external incentive, but reveals that they have been idle in ensuring consumer protection and shifted the regulatory burden onto private companies and effectively privatised consumer protection regulation. MLMs being perceived as risky enough to need additional regulation by the platforms proves that federal regulation should be centralised to protect consumers beyond private platforms. It also proves that consumers and the FTC could benefit from a revision of existing MLM law. Though most importantly, the case study reveals that as a result of laissez faire regulatory action from the FTC, social media have navigated consumer protection regulation by doing their own consumer harm research and implementing their own consumer protection regulation guidelines; thus contributing to the privatisation of consumer protection regulation regarding digital labour markets.

Inversely, this case study also reveals a benefit in laissez-faire regulation. When urged, private regulations have specialised and well researched approaches to regulating, at their own costs. The advertising and consumer guidelines offer detailed and comprehensive outline of deceptive behaviours with examples and recourse. While regulatory non-interference can have its benefits in allowing for innovation through the lack of legal restrictions, consumers are increasingly vulnerable to consumer harm in a world that is rapidly adapting to new forms of labour, business, networking and consumption. And while people should be free to self-actualise through independence and non-traditional employment, it is important that regulatory responsibility isn’t completely shifted to private companies, but also standardised through comprehensive federal regulation so that consumers are protected more generally.

Conclusion

Chapter one conducted a brief overview of the FTC's history, evolution towards legitimacy and consumer harm responsibilities, its subsequent structure and criticisms. The FTC's structural economic bias built on a comparative dominance of economists in comparison to consumer protection specialists, was uncovered. A glaring gap was identified between antitrust discourse and consumer harm interest within the FTC's employee body, their structural disposition, and their research procedures was All of which are skewed to prioritise antitrust research and regulation over that of consumer protection, creating a knowledge gap between the two and contextualising why consumer protection regulation lacks behind antitrust regulation. However, upon looking at the current economic landscape, the chapter noted high consolidation of markets as a result of the FTC's preference for laissez-faire regulation. So, despite a prioritisation of antitrust regulation, the FTC still proves ineffective in their attempts of fulfilling their mission of antitrust and consumer protection regulation. This was further proven with an investigation of MLMs history, whose structural similarities with pyramid schemes pointed to a pattern of laissez-faire regulation by the FTC. Their choice of non-interference would legitimise MLMs and for decades to come at the expense of devastated communities and the 99% of distributors who lose money upon participating in MLMs. Similarly laissez-faire regulation is seen in their reliance of financial punitive action against MLMs has shown to be consistently ineffective at deterring future deceptive practices as FTC Act violations regularly persist to date. The 1937 Nutrilite deaths exemplified one way in which MLM deceptive and unchecked practice relies on the avoidance of liability through the independent work status of their distributors. This was fatal for their consumers, though 100 child deaths did no more than result in fines and product seizures, and the subsequent legalisation of the company that absorbed them. This history of harmfully advertised MLM products was contrasted against the rampant deceptive and harmful advertising of MLM products during the COVID-19 pandemic, critiques of the FTC's ineffectiveness and inability to improve their consumer harm regulation after 40 years of unchanging MLM deception ring true. COVID-19 showed how MLMs use deception and falsities in the advertisement of their products, while embellishment within marketing is not rare for any business, however, doing so within the context of COVID reveals the lengths at which MLMs have grown comfortable the FTC's regulatory methods and are not deterred from engaging in deceptive nor harmful practices. Unlike traditional stores which are bound by physical stores and employees, MLMs and their independent distributors are more flexible to spread blame among independent actors for deceptive practices, distance the MLM from past violations, and readapt the MLMs image for a new generation of distributors. This parallels contemporary discussions surrounding the lack of regulation and corporate liability within the gig economy, and prompts inquiry of why MLMs, despite their seniority and similar criticisms, have not been as researched as the gig economy.

Following this understanding of how MLMs enable consumer harm through the deceptive advertisement of their products and services, chapter two explored the psychology of MLM participation and found the multidimensional ways in which MLMs socialise their distributors and create an unchallenging loyalty to MLMs even at the face of financial loss. The chapter used anthropology and socio-linguistics research to decipher how MLMs borrow perceived trust, solidarity and legitimacy through the exploitation of established communities in order to recruit, maintain and profit off their distributors after deceiving and exaggerating the possibility of MLM success. Following this, an analysis of MLMs nomination identified that MLMs borrow legitimacy from traditional forms of marketing wherein, unlike MLMs, workers are protected by labour laws. Although, by evolving with the contemporary shift towards gig and platform economy trends, MLMs benefit from the normalisation of businesses shifting liability onto independent workers. Together the combination of the garnered trust, strong community foundations, perceived legitimacy and normalcy of MLMs in addition to minimal FTC regulation bolster faith in MLMs that have been at the foundation of their survival and growth as a successful, yet harmful, business structure. Upon demonstrating the skilfulness at which MLMs are able to routinely adjust their structure, targets and language use to new markets and mediums, the chapter contextualised the difficulty that investigating and regulating MLMs entails. It also illustrated the speed at which people and MLMs are relying on online platforms as a dominant form of contemporary communication, community building, and entrepreneurship; cementing the need for the FTC to adapt accordingly in order to better regulate contemporary consumer harm. The examination of the psychology of MLMs and how community and trust are used to envelop distributors within it and fall vulnerable to the high statistical chances of financial loss. This problematises MLMs, raising the question of the FTC's capacity to regulate such a large, dynamic, and influential business practice; as well as the question of how investigations on consumers can be carried out given the intimate and non-transparent way in which MLMs operate. Thus, problematising the legality of MLMs. Should something be legal if you cannot logistically monitor violations?

Chapter 3 applied the multi-dimensional methods outlined in the psychology of MLMs chapter to social media platforms, delving deeper into the logistics of how MLMs operate online. MLMs contemporary shift from door-to-door selling towards online marketing is a multidimensional example of proficient network individualism in action. Primarily, this was seen within upline and downline networks who regularly communicate and rely on each other for training, motivational, emotional, and financial support needs. Additionally, distributors' formation of loose online networks of sellers and fellow distributors also illustrate the closeness of online networks, especially when they are bound by common interest in everything MLMs and social values communicated through social media content. MLMs have shown they are able to understand the interaction between people and social media, by strengthening networks with offline events and routine meetings that foster trust and MLM loyalty. MLMs proved that large groups can adapt to social media and changing network formation and community building challenges exacerbated by the shift toward online communication. Following this, the case study delved deeper into how MLM behaviour has been regulated by TikTok and Facebook who have seen first-hand, the impact and reach of MLMs adaptability.

The case study analysis revealed that both TikTok and Facebook had taken additional measures to privately regulate MLM activity on their platforms. TikTok was seen to be curter in their ban of MLMs both within their consumer and advertising guidelines, revealing an unflinching perception of MLMs as a fraudulent business practice. Similarly, Facebook also includes limitations of MLMs within their consumer guidelines, through which fraudulent and deceptive actions associated with MLMs are directly regulated with no outright ban of MLMs. However, Facebook joins TikTok in distancing themselves and their revenue from any MLM related liability, by banning MLM advertisement on the platforms. Discrepancies between the platform guidelines and FTC regulation proved that the regulatory responsibility of consumer protection has shifted to private businesses as a result of the FTC's avoidance and failure to adequately deter MLMs from violating consumer protection laws. Platform regulations were introduced following incentivation from COVID-19 developments that propelled MLM sales and recruitment, as well as consumer harm practices online. TikTok and Facebook in particular were criticised for the overt wealth of fake news, deceptive claims and misinformation on their platforms. Such developments actively prompted national concern over platforms' ability to regulate themselves and prevent consumer harm from a health perspective during a pandemic, but also encouraged the platforms to reinforce their liability protections. Differences between TikTok and Facebook's guidelines alone are an example for the lack of standardisation of regulation when private companies are encouraged to regulate at their discretion, causing a disparity of regulatory implementation among varying sites and platforms. This not only highlights a burden for private companies to gather the time and resources to draft regulation in the fact of insufficient federal regulation, but also burdens consumers with having to differentiate between regulations which requires time and literacy that people are unlikely to invest in learning, therefore leaving consumers vulnerable as a result of a lacking understanding of how they are protected. So, while it is honourable that private companies took regulatory action in times of increased consumer harm and deceptive practices, the case study reveals private companies are primarily motivated to regulate when they are at risk of liability. Private companies being motivated by financial incentives to do socially impactful things is not a ground-breaking concept, however this points to the importance of the FTC stepping up and fulfilling their regulatory responsibility as to create a strong foundation of standardised consumer protection that consumers can enjoy even when it's not within the scope of interest of private companies.

Nevertheless, a positive by-product that has emerged as a result of the ideological, structural, and regulatory actions of the FTC, are the specialised applications of regulation done by private companies. In the face of minimal federal regulation of MLMs and motivated by the context of MLM growth during COVID-19, TikTok and Facebook were forced to address, research, and enforce regulations in efforts to effectively curtail the risk of consumer harm presence on their platforms. With access to extensive user data on their platforms, they are best positioned to obtain an in-depth understanding of the impact, behaviour, structure and harm exemplified within MLM activity on social media. A luxury that the federal government might not have due to the limited resources and funding structures of U.S. regulatory systems, as well as privacy law limitations. While it is positive that these prominent private companies have protected their platform users by regulating MLMs on their platforms, even if as a by-product of liability avoidance, the responsibility and mission of the FTC remains to prevent consumer harm. Facebook and TikTok regulating MLMs on their platforms do not protect consumers from being vulnerable to them on other sites or other mediums. Consumers would be more protected if consumer harm regulations were centralised through stronger, clear, contemporarily relevant regulations that are bolstered by an understanding of modern technologies and the fraud that can emerge from them. The chapters have shown the speed and ease at which MLMs are able to evolve the business practice according to market behaviour. The FTC needs to be equipped with a similar, if not greater, adaptability in order to keep up with new consumer harm practices. Their laissez-faire approach has allowed for consumer harm to evolve beyond FTC understanding and aptitude, and has created a pattern where the FTC must retroactively regulate after consumers have fallen victim to harm.

This thesis aimed to discover how the FTC, MLMs and social media have navigated consumer protection regulation amid the digitalisation of labour markets. This research shows that in the face of digitalising labour markets the FTC embraced and continues to engage in a laissez faire approach to consumer protection regulation, in part due to their structural origins in neoliberal economic practices but also due to the limited staff and resources available to them to enforce consumer protection regulation against multi-million dollar MLM businesses more actively. The razor thin differentiation between MLMs and pyramid schemes which allowed for MLM legalisation has proven to be the foible that would impede FTC regulation of MLM consumer harm for decades to come. MLM history, structure, methods, and propensity for FTC violations are representative of the consequences that arise as a result of FTC's shortcomings as a regulatory body. The FTC's structural bias and imbalance between antitrust and consumer protection prioritisation resulted in controversial rulings and the legalisation built on minute technicalities that do not consider the consumer harm that can emerge as a consequence. The FTC's limited staffing and resources mean that they are unable to address violations efficiently, and must investigate violations on a case-by-case basis which is an unfavourable and unrealistic foundation for thorough and forward thinking regulatory action. In a nation plagued with significant market consolidation across various sectors. The FTC's small staff also contextualises their laissez faire approach, as it is quite optimistic to expect 1,160 employees backed by an annual budget of $332 million to track both consumer harm and antitrust violations within the million existing businesses in the US.[180] Additionally, their preference for financial punitive action has shown not to be enough of a deterrent for consumer harm violation; understandably so, as MLMs are a multi-billion dollar industry and have more time and resources to endure a prosecution than the FTC has to prosecute, and their growth has been unaffected by their reputation or FTC entanglements. MLMs in turn have benefitted from this, as it has given MLMs the space to adapt their practices in ways that nuance and obscure the harm within their advertising, recruiting and everyday practices, making such harm hard to regulate within the limited pedantry of the FTC act. MLMs constant adaptation to consumer and market changes have kept them at the forefront of regulation, and their expertise in social media significantly surpasses that of the FTC's. MLMs therefore benefit from the FTC's lacking understanding of social media and the digital labour market, using the FTC's knowledge gap to adapt their practices to avoid FTC regulation. Nevertheless, as a result of the FTC's laissez faire regulatory approach and MLMs' subsequent skillful adaptation to social media and digital resources, social media platforms navigated consumer protection in the digital age with self regulation on their own platforms,guided by the interests of their revenue and their shareholders. Their guidelines illustrate that the burden of consumer protection is shared with private companies, meaning consumer protection regulation is essentially privatised.

The world is adapting to new forms of communication and labour market practices, and new economies; the FTC should too if they wish to maintain their mission of consumer protection. Digitalisation needs adequate consumer protection regulation. MLMs and the gig economy's reliance on independent workers has expanded the role of the consumer as someone who can more than just buy products, but can also offer flexible services. Worker flexibility comes at the cost of labour protections, and allowing for consumer harm to take newer shapes that are increasingly difficult to identify and regulate. Consumers therefore need the FTC, now more than ever, to be skilled in consumer protection and well versed in consumer harm to keep pace with evolving harmful and deceptive business practices in a digital world.

[180] "FTC 2021 Agency Financial Report - Federal Trade Commission," Federal Trade Commission, 2021, https://www.ftc.gov/system/files/documents/reports/agency-financial-report-fy2021/ftc_fy2021_agency_financial_final.pdf.

MLMs are a complex business structure equipped with a complex history, the boundaries of a master's thesis are restrictive on the amount of detail and nuance one can highlight, as do the limited pool of academic research on MLMs. However, despite these shortcomings, this thesis highlights a need for more research in a variety of subjects. Namely: research on MLMs, the impact of FTC regulation on citizens, the privatisation of regulation, the popularisation and implication of new economies, as well as fraudulent behaviour and its evolution on social media. The consideration of MLMs and other popular non-traditional influences in the emerging gig and platform economy would also contribute to a better understanding of how consumer relations are developing, and how the economy is adapting to modern technologies. This would allow for an understanding of the potential harmful practices that could arise from existing regulatory gaps, and could be shared with regulatory institutions. Additionally, the FTC would benefit from enforcing more transparency from MLMs, urging them to share their distributor's earnings would allow for a better and more digestible understanding of why they are harmful, and would better equip consumers with the necessary information to decide whether they want to participate in an MLM without being deceived. Federal social programmes to support people who have experienced losses from such MLMs and other deceptive practices need to be implemented to offset the cost and impact of consumer harm. Lastly, the FTC has made increasing efforts to train vulnerable communities to detect fraudulent practices, which is positive, however systemic efforts to equip citizens with financial and social literacy from a young age needs to be made so that people can have ingrained decision-making systems that allow them to identify risks no matter how they might be adapted to changing behaviour. This of course would necessitate more financial and logistical resources towards the FTC and other federal institutions, though this is a necessity as the maintenance of a fair and competitive market is worth investing in. The world is changing fast, private businesses and consumers are adapting alongside it. The FTC also needs to embrace the changes of a digitalised labour market in order to remain an important gatekeeper of a fair and competitive economy in this everchanging world.

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