

Herbalife: Media Materially Misstates FTC Outcome, Icahn Files Potentially Questionable Statement with SEC

- FTC Commissioner Ramirez stated during Friday's 10AM press conference that press reports claiming the "FTC confirmed Herbalife to not be a pyramid scheme" were inaccurate
- The misleading statement that "the FTC concluded Herbalife was not a pyramid scheme" was in an early morning Carl Icahn press release, subsequently filed with the SEC in a 13D/A
- MLM attorney and advocate for the industry Kevin Thompson stated that this settlement "does not represent the end of the FTC process with Herbalife"
- Adamant Herbalife long John Hempton noted on his blog and on Twitter that "If Herbalife is a pyramid scheme, the conditions imposed will cause it to collapse"
- Substantive risk remains as FTC and Pershing Square engage international jurisdictions with the agency's findings and the SEC concludes its investigation into the company

Matt Goldstein, New York Times: *"Did you review the language in that press release that sort of affirmatively said that they were not declared to be a pyramid scheme? Because they're sort of touting that as an outright victory."*

FTC Chairwoman Edith Ramirez: *"I do not agree with that statement. The word 'pyramid' does not appear in our complaint, that is true. But, again - the core facts that we've alleged, that we consider to be problematic with their compensation structure are set forth in detail in our complaint and again I will leave to readers to draw their own conclusions – but they were not determined not to have been a pyramid. That would be inaccurate."*

Matt Goldstein, New York Times: *"OK, so you don't endorse their statement in the press"*

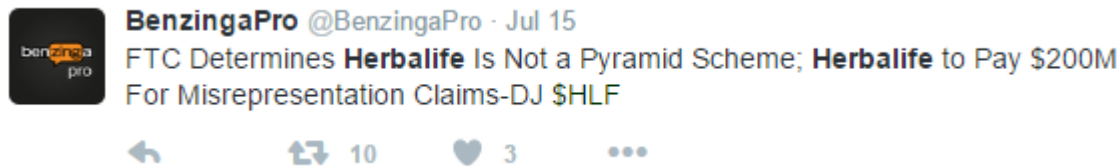
FTC Chairwoman Edith Ramirez: *"I do not endorse that statement."*

The Biggest PR Con Job I've Ever Seen

On the morning of Friday, July 15, at around 7:43AM EST, headlines that were later in the day proven to be misleading crossed the newswire courtesy of Dow Jones. When the initial headline broke, despite being retracted later in the morning, it was too late: the message had spread like wildfire – and it was downright "inaccurate" to use FTC Chairwoman Edith Ramirez's terms.

Dow Jones headlines claimed that the FTC had determined “Herbalife is not a pyramid scheme”. The headlines were then picked up by every news outlet in the world, and were disseminated similar to the way Benzinga and others pushed them onto their millions of Twitter followers and website visitors.

Here’s an example of what the narrative was at 7:43AM Friday morning:



Imagine the public’s surprise when FTC commissioner Edith Ramirez got in front of a room at a press conference at 10AM EST and, when confronted that the FTC complaint essentially defines a pyramid scheme, said that *“they were not determined not to have been a pyramid. That would be inaccurate.”*

Also imagine the surprise of those like myself, who actually read the [lawsuit](#) that was to be filed against Herbalife. While the lawsuit does not contain the words “pyramid scheme”, point 148 states:

22 148. In the absence of a viable retail-based business opportunity,
23 recruiting, rather than retail sales, is the natural focus of successful participants in
24 Defendants’ business opportunity.

Let's contrast that with the main point of the FTC's own [description](#) of a pyramid scheme:

Your income is based mainly on the number of people you recruit, and the money those new recruits pay to join the company — not on the sales of products to consumers.

And with the SEC’s first line of their “Fast Answer” on [what constitutes a pyramid scheme](#):

In the classic "pyramid" scheme, participants attempt to make money solely by recruiting new participants into the program. The hallmark of these schemes is the promise of sky-high returns in a short period of time for doing nothing other than handing over your money and getting others to do the same.

But, like most news that goes out incorrectly, nobody noticed the retraction and nobody cared. Here’s what Dow Jones’ official retraction of the morning’s news looked like when it was issued later in the morning, with Herbalife stock already trading up nearly 15%:

DJ Correction to Herbalife Not a Pyramid Scheme

Headline

2016-07-15 13:52:02.192 GMT

The Federal Trade Commission didn't determine that Herbalife is or isn't a pyramid scheme. The headline "FTC Determines Herbalife Is Not a Pyramid Scheme--Sources" [at 7:43 a.m. EDT](#) said the commission determined Herbalife isn't one.

(END) Dow Jones Newswires

July 15, 2016 09:52 ET ([13:52 GMT](#))

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Did you notice the retraction when it came out on Friday? Neither did anyone else, and it didn't matter. Headlines like this one, complete with dancing canister of protein shake, had already hit mainstream financial outlets like Yahoo Finance:



Yahoo Finance @YahooFinance · Jul 15

Report: FTC has decided that Herbalife is not a pyramid scheme, **\$HLF** up 15%



The FTC has decided that Herbalife isn't a pyramid scheme and its ...

The Federal Trade Commission has concluded that Herbalife is not a pyramid scheme. In a release...

finance.yahoo.com



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Now think about this: the determination of the company being, or not being, a pyramid scheme is singlehandedly the most material finding that will be made in the company's history and it is extraordinarily important to make sure it is disseminated to the public accurately.

It wasn't disseminated accurately and I believe a large portion of that blame belongs with the media and on Herbalife's biggest shareholder, Carl Icahn, who holds more than 18% of the company's stock and has Directors on the Herbalife Board.

Did Carl Icahn Negligently or Recklessly Violate Securities Laws?

It is not often that reporters should be forced to give up their sources. However, in a case like this where Dow Jones' source may have clearly offered false and misleading information that materially affected the price of the company's stock, I believe that the SEC Enforcement division has a duty to investigate where this headline originally came from, and whether or not 18% owner Carl Icahn violated securities laws by [filing with the SEC](#) and releasing a [press release](#) to the public that stated:

Unlike many of those that "shorted" Herbalife, we did not rely on one or two research papers prepared by non-experts. As a result of our research, over three years ago we concluded that Herbalife was not a pyramid scheme. **The FTC settlement announced today, coming after a two-year investigation also concluded that Herbalife is not a pyramid scheme** – a conclusion that obviously vindicates our research and conviction.

I believe this is clearly misleading information and that it appears negligent and may possibly rise to the level of recklessness as relates to securities law and Icahn's ownership position in Herbalife-

This is a crucial concept because – again - the question of whether or not the company is a pyramid scheme is arguably the most material piece of information that will potentially come forth over the lifespan of the company. It is material and needs to be handled in a mindfully delicate and respectful manner, paying excruciating attention to the smallest of details. It is the lynchpin of the company's survival, not some random estimate or paraphrase that leaves room for interpretation.

I will be the first one to admit that over the course of the last three and a half years, I have paid attention to every microscopic detail about this saga. But the one detail that absolutely cannot be misconstrued or obfuscated are the FTC's findings about the company.

Reading the FTC complaint makes it clear that the commission sides with the assertions of those in the bear camp and those detailed in Bill Ackman's original presentation. The price of the stock, however, makes it clear that the market has yet to fall in line and agree with the same. On a factual basis, bears are winning. On a stock price basis, bears have not had success.

The FTC complaint and the stipulation entered into by both parties can be viewed [here](#). The complaint is a scathing review of the company's business practices and proves Ackman and critics of the company correct on almost any and all allegations they have made against the company.

The FTC did not clear the company of being a pyramid scheme and, in fact, the FTC's complaint is directly in line with those of past pyramid schemes it has prosecuted (People should read the Vemma Complaint side by side with the Herbalife Complaint).

In fact, here's a summary of the FTC's allegations against Herbalife from its [complaint](#):

- Defendants' Promotional and Marketing Activities Are Misleading
- Misleading Income Representations
- Misleading Representations Regarding Income from Retail Sales
- **Defendants Do Not Offer a Viable Retail-Based Business Opportunity**
- **Defendants' Business Opportunity is Based on Recruitment**
- Few Business Opportunity Participants Earn Recruiting Rewards
- **To Confuse Participants and the Public About Distributors' Poor Financial Outcomes, Defendants Understate the Percentage of Distributors Who Are Pursuing the Business Opportunity**
- Defendants' Compensation Plan Incentivizes Recruiting
- Defendants' Compensation Plan Incentivizes Wholesale Product Purchases
- Product Purchases Are Required to Advance to Higher Levels
- Monthly Product Purchases Are Required to Qualify for Reward Checks

They conclude by saying:

In the absence of a viable retail-based business opportunity, recruiting, rather than retail sales, is the natural focus of successful participants in Defendants' business opportunity. Thus, participants' wholesale purchases from Herbalife are primarily a payment to participate in a business opportunity that rewards recruiting at the expense of retail sales. *[QTR: This is the definition of a pyramid scheme]*

Here is a summary of the conclusion they drew in the recent Vemma [complaint](#), where they did allege the company was a pyramid scheme:

COUNT I

Illegal Pyramid

66. As alleged above, Defendants promote participation in Vemma, which has a compensation program based primarily on providing payments to participants for the recruitment of new participants, not on the retail sale of products or services, thereby resulting in a substantial percentage of participants losing money.

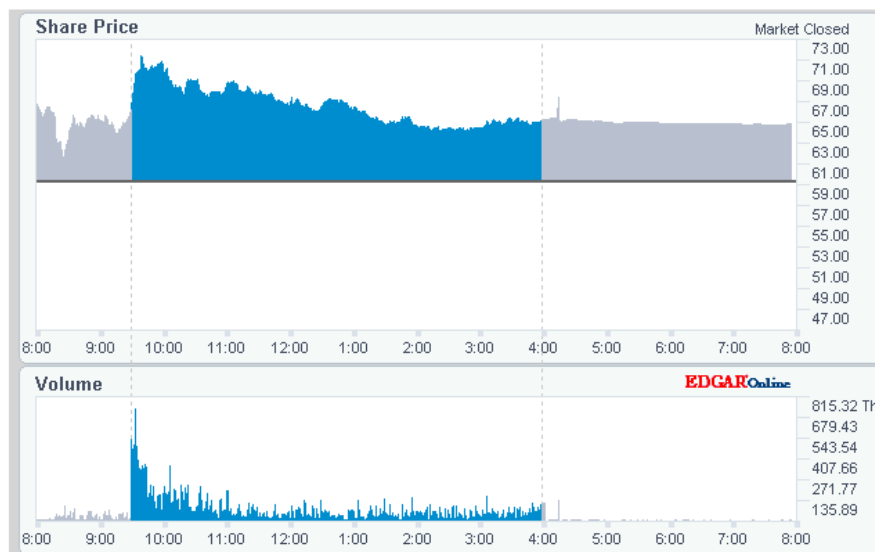
67. Defendants' promotion of this type of scheme, often referred to as a pyramid scheme, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

The “Illegal Pyramid” count of the Vemma complaint sounds just like many of the allegations set forth in the Herbalife complaint.

It was *wildly inaccurate* and in my opinion, frankly reckless for Carl Icahn to come out and say that the FTC concluded the company was not a pyramid scheme. Reporters “worth their salt” may wish to ask the SEC whether his press release could be construed as market manipulation (as described by the [SEC’s website](#))

Manipulation is intentional conduct designed to deceive investors by controlling or artificially affecting the market for a security. Manipulation can involve a number of techniques to affect the supply of, or demand for, a stock. They include: **spreading false or misleading information about a company**; improperly limiting the number of publicly-available shares; or rigging quotes, prices or trades to create a false or deceptive picture of the demand for a security. Those who engage in manipulation are subject to various civil and criminal sanctions.

Further, I wonder if it rises to the level of securities fraud for the company, or anyone else, to come out and tip off a reporter stating the same. The fact remains, false and misleading statements seemed to cause the price of the security to jump substantially Friday morning.



The euphoria of the news was short lived, however. To the disbelief of bulls and bears alike, the company traded an astounding 35 million shares in one session, about 16 times its normal volume.

A lot of this volume seemed to be selling, especially as facts began to permeate the news cycle toward the middle of the day. The blue portion of the stock chart shows trading during normal hours. It is easy to see the stock sold off much lower on significant volume.

Herbalife shares hit \$72 per share before 10 AM EST, and the rest of the day HLF sold off and came down almost \$8 from its highs. It went from \$72 in the morning to \$65 at the close, a nearly 10% reduction in the company’s market cap during the day. This was on heavy volume and it says to me that

once the correct facts of the case were further disseminated to the public as the day progressed, the market priced the security at almost \$8 less than what it had opened at.

So much for the mother of all short squeezes.

On Friday, both the company and Carl Icahn were happy to tell the world that Carl is now able to increase his stake from 25% to 35% in the company. This would be material if Carl Icahn owned 25% of the company, which he does not. Carl Icahn only owns 18%, and until he moves his 18% up to 25%, I don't think we should be worried about him moving it to 35%. (Securities Law issues here once again may present themselves due to deceptively incomplete statements)

Judging by the trading on Friday, it seems far more likely that large shareholders were selling stock instead of buying it. We will have to watch the action in trading this week, and Icahn does remain a strong caveat for on the short side.

As has been what I believe to be the case with Herbalife over the last year, the American public and investors had once again been duped by either the company's PR machine or the financial media's stunning inability to do their jobs correctly. If there is one thing we give Herbalife an immense amount of credit for, it is their handling of the public relations spin of everything that has happened.

Obfuscations, Violations and Capitulations

Adding to the obfuscation of Friday's events was the Herbalife PR machine putting out [statements](#) like:

"The settlements are an acknowledgment that our business model is sound"

While at the very same time that the FTC was putting out [statements](#) like:

"This settlement will require Herbalife to fundamentally restructure its business..."

Once again, the first question I wound up asking myself is "Who's lying?"

Even noted Herbalife bull and [QTR-hater](#) John Hempton was [quick to point out](#) that the company and the FTC had significantly different takes on what the settlement meant:

The company states this:

The terms of the settlement do not change Herbalife's business model as a direct selling company and set new standards for the industry. With the settlement agreement announced today, the FTC's investigation of Herbalife is complete

The FTC state[s] something almost the opposite - stating in their title of their release that "Herbalife Will Restructure Its Multi-level Marketing Operations". They also put out a particularly aggressive press release that stated "[it's no longer business as usual at Herbalife](#)".

The company claimed on its website and through its press release that the business model is sound and that this settlement doesn't change Herbalife's model as a direct selling company, but the FTC made it extremely clear that there are going to be significant changes to the company's business model.

On top of that, frequently consulted multilevel marketing attorney Kevin Thompson, who has been an advocate for the industry, released [analysis on Friday in video form](#) where he states the following,

"I want to start off with an old adage that I heard recently. Think about this. A good matador doesn't go after a fresh bull. He sticks him, makes him bleed a little bit, and then he goes for the kill. And that might be what's happening here.

I'm not suggesting that Herbalife is done long term, but I am saying that the FTC is not letting this go. This does not represent the end of the FTC process with Herbalife and I'll explain why."

I encourage you to watch the full video and the corresponding analysis.

You may remember Mr. Thompson as being the source to one of Barclay's sell side analyst Meredith Adler's notes in April 2014. She praised Mr. Thompson's opinion and issued an "Overweight" rating on Herbalife with a \$94 price target. While her target was obviously misguided, Mr. Thompson's conclusions in the note were quite accurate.

I followed this note with my critically acclaimed rebuttal, "[Barclay's Beefs Its Herbalife Analysis](#)".

To now see Mr. Thompson in a situation where it sounds like he is accepting a negative reality to come may be a point that bulls want to consider. As a multilevel marketing attorney, Mr. Thompson has great visibility into the intricacies of these companies that are otherwise lockboxes and that the public does not have access to. His analysis and his take that this "does not represent the end of the FTC process" should be taken extremely seriously.

One of my peers even thinks that the company's actions in describing the settlement could further subject it to jeopardy from the FTC almost immediately. I received this e-mail on Saturday morning from someone far more intimately familiar with the legal inner workings of this case than I am:

I do believe Ramirez will be looking to put the attack dogs on HLF as soon as the judge enters the order. I suspect the games they have played and breaches from both the CEO and numerous distributors are really burning her ass. She [could be] realizing very fast she does not have a party on the other side acting in good faith. She could make a statement in that regard and/or seek to amend the order prior to the judge reviewing and entering it into the Court record.

That leads to the next obvious question: Will the FTC uphold these new terms or will this be yet another empty gesture from a government agency that allows the company to flourish for 30 more years fleecing people?

Herbalife has stomped on and ignored injunctions in the past. One look at the [1986 California injunction](#), which was in my opinion the greatest failure of enforcement involved with Herbalife over the last 30

years, gives you an indication that that the company may already have methods of finding its way around these rules. I do not think this is the case, as I think the FTC knows they're in the limelight and they made it very clear that a violation of this order will result in the company winding up in court. In an article by Michelle Celarier [published](#) in New York Magazine late in the day on Friday, FTC Head of Marketing Practices Lois Greisman affirmed that the agency is going to voraciously hold the company's feet to the fire:

"Here's what matters," Lois Greisman, who heads the division of marketing practices at the FTC and worked on the Herbalife investigation, told *New York*. "As soon as the judge enters the order, we will be all over the company. If they are not in compliance with the order, we will take action. We will not tolerate what has gone on."

Enforcement is important, because as John Hempton himself said in this weekend's [blog post](#):

The FTC decision is now made and the arbitrary government decision risk is removed. If this is a pyramid scheme then the conditions imposed will cause it to collapse.

In the United States, he is right. When the FTC or Pershing Square lobbies international governments to do the same, it could be a total company collapse.


If that does not have you thinking that there are going to be immediate effects within the company, here is a copy of an email I received on Saturday morning from a person who claimed to be a relative of an Herbalife Chairman's club member. I happen to believe they are who they say they are, because of information they were able to provide to me in a subsequent email. They stated to me,

"I am the relative of an Herbalife chairman's club member. So, if you want to advance in the marketing plan to Millionaire Team, that is 80K in organizational [volume] for 3 consecutive months in a row under Herbalife['s] sales and marketing plan, and according to MLM attorney Kevin Thompson yesterday, 80% of your organizational volume must be from legitimate retail customers. So, that is 64K of your 80K to qualify for Millionaire Team. 64K must, for 3 consecutive months in a row, come for legitimate retail customers, of which you will be required to enter into an Herbalife database, their name, address, phone number, [and] email address so the compliance officer appointed by the FTC can call your customer and verify they are legitimate customers outside the [business opportunity], just ordering products.

Talk to any, Millionaire Team, Presidents Team, [or] Chairman's Club member, and they don't even have 10K in organizational volume from true legitimate retail customers. And you think you're going to be a "winner" in Herbalife and get to Millionaire Team under these new rules? DREAM ON!"

Finally, how long do think it's going to take for the company to again rattle the cage of the FTC when the nephew of Board Member John Tartol is already taking to social media posting insanely inaccurate bilge like this? "SCORE!"

**Zachary Tartol**

So whenever the FTC does investigation there's always a chargeback fee for that investigation. Perfect example General Electric just had the fee by the FTC like ours. The amount of the fee is dependent upon whether or not their violations being done and also how bad the violations are. This was the absolute best case scenario for us that's why our stock soared when the FTC announced. So percentagewise 200 million is kind a like somebody making \$100,000 year paying back the government \$2000. It's nothing we're writing one check and we're done with it and we've already moved on. We're doing close to \$10 billion. The accusations that Herbalife was a pyramid were 100% proven false. How the FTC wrote the report is they used it as a template for all other MLM companies. So now the FTC is going to start looking at the other companies and using our agreements to regulate them. This is an ideal situation for us because we designed the regulations around Herbalife. SCORE  The hearing was not just regarding Herbalife it was regarding all multilevel marketing companies operating with in the United States.

FTC Rules Can Go International & the SEC Hasn't Ruled Yet

I believe the trouble has just begun for the company. In addition to consenting to this order, the FTC now has an obligation to provide this complaint and their conclusions to international regulators. The FTC has in place numerous [International Competition and Consumer Protection Cooperation Agreements](#) that they must abide by.

For instance, [this](#) "MEMORANDUM OF UNDERSTANDING ON MUTUAL ASSISTANCE IN CONSUMER PROTECTION MATTERS BETWEEN THE FEDERAL TRADE COMMISSION OF THE UNITED STATES OF AMERICA AND THE OFFICE OF THE FEDERAL ATTORNEY FOR CONSUMER PROTECTION OF THE UNITED MEXICAN STATES" is a document I would know by heart if I were an Herbalife long, especially seeing as how Herbalife is already having tax disagreements with Mexico, as indicated by the company's 10-K.

The FTC has similar agreements with some of the biggest locales that Herbalife operates in, including Korea, China, Germany, Australia and the United Kingdom.

Those that don't believe the FTC is going to be in contact with international regulators should consult the agency for comment, or simply read their statements about it on the commission's website:

The FTC works with more than 100 foreign competition and consumer protection authorities around the world, and cooperates with foreign authorities on enforcement and policy matters

through formal and informal agreements. In the area of consumer protection enforcement, the FTC relies on 4 key tools: (1) information sharing; (2) investigative assistance; (3) cross-border jurisdictional authority; and (4) enforcement relationships. The [US SAFE WEB Act](#) enables these international consumer protection tools.

If international regulators implement the same set of rules that the United States is implementing for the company, it will be a total and complete collapse.

You can also likely bet that Pershing Square is going to be providing the same documentation to international regulators (if they haven't already) that they have to the FTC.

Longs need to be on notice that aside from potential international regulation, there are still some extremely risky pieces of this puzzle that need to be considered.

As Tim Ramey said in his own note on Friday, the SEC is "ongoing".

The SEC looks at very different things than the FTC. For instance, the SEC might take exception with several of the things Herbalife has said publicly over the last three years that may not have been true, like the amount of sales outside of the network that CEO Johnson talked about in 2012, or the misstated "Active New Members" metric the company overstated just this year.

The SEC may also be interested in the way that the company handled this headline on Friday. Regardless, the company's biggest cheerleader who I already once [proved wrong](#) on an SEC investigation, has again acknowledged that it is open and outstanding.

We also learned that former senior economist at the FTC and pyramid scheme expert Peter J. Vander Nat happens to be [currently working](#) as a "DOJ/SEC Consultant".

I wonder what he is working on.

My guess is that, for better or worse, this information is only going to strengthen Ackman's conviction in his short thesis.

His statement released on Friday indicates the same:

Under *Koscot*, *Omnitrition*, *Vemma* and other key FTC pyramid scheme cases, the above findings constitute a pyramid scheme. While it appears that Herbalife negotiated away the words "pyramid scheme" from the settlement agreement, the FTC's findings are clear.

As part of the settlement, Herbalife can only compensate distributors for "Profitable Retail Sales," a genuine sale made at a price above the distributor's average total cost for the product. In light of the fact that the FTC found that Herbalife distributors make little or no profit, or even lose money from retailing Herbalife products, there are no longer any meaningful incentives to become or remain an Herbalife distributor.

The settlement also requires Herbalife to eliminate minimum purchase requirements and other inventory loading incentives. Furthermore, in order to maintain eligibility or advance in the plan,

distributor requirements must be met through “Profitable Retail Sales” or sales to “Preferred Customers,” who are not buying product to participate in the business opportunity.

We expect that once Herbalife’s business restructuring is fully implemented, these fundamental structural changes will cause the pyramid to collapse as top distributors and others take their downlines elsewhere or otherwise quit the business.

The FTC complaint and settlement provide a roadmap for regulators in 90 other countries around the world to enforce similar requirements. We intend to work with these regulators to ensure that no future victims are harmed whether in the U.S. or otherwise.

I think we will get far more color on Ackman’s point of view this Wednesday on his [quarterly conference call](#) at 11AM.

I do not think Bill Ackman is going anywhere, and I think the next move in his playbook is going to be to lobby international regulators for the same type of action that has occurred here in the United States. This could lead down a road that is extremely treacherous for the company. Armed with a complaint that justifies his argument and confirms his thesis seven ways from Sunday, my guess is Ackman is going to feel far more empowered now that he did prior to this ruling.

The company is also going to have to deal with the residual press effects of this settlement. While the headline that they “avoided the pyramid scheme tag” may appear to be positive, the fact that they are paying \$200 million to settle allegations that they are operating a false and misleading business is not going to do any favors for the company's popularity.

It is again bringing to the public this story of why Herbalife as a company should not be trusted. The Federal Trade Commission [Facebook video](#) of the press conference has over 10,000 views and comments already, and threads like [this one](#) on Reddit are popping up with over 2200 up-votes and a lengthy conversation about the company taking place in the comments.

We expect that the ripple effect from the settlement makes its way through the media in the week to come. We also expect that once the facts are able to be sorted out, the media will put a negative tone on this event versus the positive tone it put on it on Friday.

Don’t Take It From Me, I Guess

But if you don't want to take it for me, tune in to CNBC’s [interview](#) from Friday with Pivotal Research analyst Tim Ramey. Ramey gave an interview where he talked to Scott Wapner, who incorrectly stated that he has been “right about this all along”, despite:

- not one of his price targets being hit
- being wrong about Icahn’s recent statements

- being wrong about when the case was going to be settled
- being wrong about the SEC closing its action when it concluded its comment letters
- being wrong about the FTC clearing the company
- being wrong that the company has done nothing wrong

among a much longer list of items that Ramey has gotten wrong.

When you listen to the interview, Ramey does sound a bit dejected but lobbies his case that this will be a positive for the company in years to come. Ramey states,

- “this is roughly in line with what we expected”
- “there’s going to be some hurdle for them to get over for sure, this 80% rule”
- “this applied only to the U.S.”
- “the biggest thing has always been these nutrition clubs; how do you document those sales?”

Wapner then [brought on](#) Bob Chapman, who had formerly put a \$300 price target on the company in 2013 and now has come around to reality. Chapman made the following alarming statements,

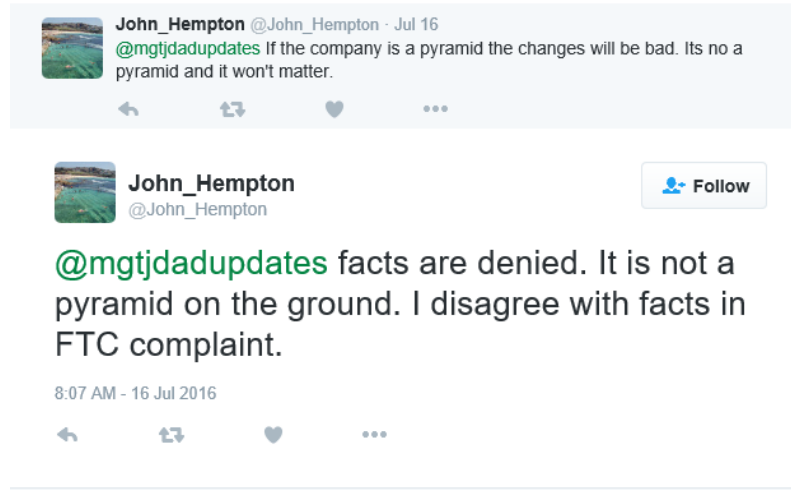
- “the FTC essentially agreed with Pershing Square and Bill Ackman – there were no punches pulled”
- “I think it’s very much a stock to be avoided”
- “we don’t really know what’s going to happen in the U.S.”
- “if international regulators replicate what the U.S. has done...then you have risk to the global business as well”

Later in the afternoon, longtime Herbalife skeptic Herb Greenberg also [gave his take](#) on the settlement:

- “this is now a company, within the U.S., a broken business model”
- “it’s very clear it’s a broken business model”
- “they’re making changes and you have to ask yourself why they’re making changes”

Bulls claimed victory early on, but it was evident through some of the apparent social media reaction and eventual media coverage later in the day that bulls were less than happy with the result.

Here's [a tweet](#) thread where Australian hedge fund manager John Hempton simply tells the FTC they got it wrong and again admits that if the company is a pyramid, these new constraints will cause collapse:



Then there's this comment on an FTC blog, which is not confirmed to be John Hempton but reads like him. It appears that, if this is Hempton, he calls the FTC racists.

John Hempton | July 15, 2016 | [reply](#)

The Herbalife short thesis has born no resemblance to reality on the ground since day dot. Instead it is that all these poor ill-educated Hispanics are stupid and that me, rich handsome New York hedge fund manager has come to rescue them.

With this settlement the FTC has become a tool of racist hedge fund managers.

You should be ashamed of yourself.

John H

Whether through his verified Twitter account, his blog post or other mediums, it certainly doesn't seem like Mr. Hempton is taking a victory lap – and this certainly doesn't agree with his take and arguably misleading Twitter post from April of 2015 where he claimed the "FTC effectively announces that Herbalife will be cleared".



My Two Cents on Media, Caveats and My Final Take

This leads me to my two cents about media coverage, which I want to address before wrapping up.

I realize that it is not fashionable to put me on financial media because I am taking a very aggressive stance against the company and because I have not been on mainstream financial media before. I know news networks always are wary of putting on "wild card" guests.

With that said I am currently employed as a professional equity analyst, I have two Masters degrees, and I am probably more intimately familiar with this company and this case than all of the sell side put together. I am confident that my work is read by both regulators and those on both sides of the trade, and the emails and phone calls I get from fund managers and journalists around the world asking me questions about this company dictate to me that I am a considerable presence in this debate.

I want to thank those who take the time to read this analysis under the assumption that my commitment in this case is only to seek out the truth.

As an investment, I will continue to stay short Herbalife.

There are significant caveats now, with the FTC overhang removed. Mr. Icahn could do something stupid like take the company private or roll it up with other companies to smooth out the effect of the business being impacted negatively. There are a number of options that Herbalife executives now have to try and diversify the company and remove some of the risk of being a multilevel marketing company. It's likely that these moves would not be shareholder friendly, but would keep the company in business long enough for it to be considered by the same type of questionable private equity firm that took companies like Green Mountain Coffee private.

As Mr. Thompson says in his video, the effects on the industry from this are going to be profound, and my guess is that the multilevel marketing industry will start to primarily become a private industry.

To wrap up, the FTC and bears scored a huge victory in their 80% retail sales requirement from the company. If they enforce it stringently, I expect that Herbalife North American operations will cripple.

In sum, here's a final wrap up of what we learned from the FTC on Friday that I compiled with the help of [Connor Davidson](#):

- FTC lays bare the fact that management has repeatedly lied or exaggerated to investors
- FTC confirmed that Herbalife is promoting a fake business opportunity
- The complaint confirms, by numerous definitions, that Herbalife is a pyramid scheme
- Internal statistics obtained by FTC show most product is sold to distributors and not customers
- FTC seems to agree that clubs are for recruitment and that the retail sales opportunity does not exist
- Points 79 and 80 in the complaint seem to show that Herbalife is barely growing and just replaying the churn
- The Mark Hughes bonus (or equivalent) pool seems like it will be cut
- Intermediate level guys will make way more money at other companies that still operate as pyramid schemes
- Upline profit per recruit has been slashed
- Part F of the order destroys the supervisor program
- Part F3 destroys the Herbalife Advantage Program
- You can only move up the marketing plan through **profitable** retail sales and preferred customers. You can't buy your way up the chain or move up because others do so.
- Royalty override points appear to be banned
- Implementing these changes will be expensive

With the FTC out of the way but the SEC and international regulators still looming, this is now closer to being a level playing field, but the facts are now that Herbalife is an extraordinarily different company and is going to face all new unique difficulties moving forward from here.

Stay skeptical, my friends.