

STATEMENT OF MAUREEN MORRISSEY
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BEFORE THE COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES
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Good morning. My name is Maureen Morrissey. I am Assistant General Counsel for the Americas with Tupperware Brands Corporation. My testimony today focuses on the Federal Trade Commission's "Business Opportunity Rule," a proposed regulation published in April 2006. Specifically, I would like to address how the FTC has analyzed the impact of this regulation on small businesses pursuant to the Regulatory Flexibility Act. We and many others have significant concerns with the FTC's analysis.

Tupperware Brands Corporation is a publicly traded direct seller of premium innovative products headquartered in Orlando, FL and our

products are now sold in over 100 countries¹. In 2006, \$1.7 billion of Tupperware Brands products were sold by our sales force of over 1.9 million individuals around the world. For over 60 years, Tupperware has been one of the most well known brands in America and a leader in the direct selling industry. The term “Tupperware parties” has now entered the American lexicon due to their widespread popularity.

I want to make sure that the Committee fully understands why a company such as Tupperware Brands has a direct interest in the proper implementation of the Regulatory Flexibility Act. In the United States, our products include design-centric preparation, storage, and serving solutions for the kitchen and home through the Tupperware brand and beauty and personal care products through the BeautiControl brand. Our products are sold primarily through the “party plan” via a business model based upon direct sales to customers by our individual sales consultants, each of whom is a self-employed business owner. It is the direct impact of the FTC’s Business Opportunity Rule upon these small business owners that concerns Tupperware Brands because the requirements of the

¹ In addition to the Tupperware product line, Tupperware Brands includes Avroy Shlain, BeautiControl, Fuller, NaturCare, Nutrimerics, Nuvo, and SwissGarde.

Regulatory Flexibility Act should have led the FTC to conclude that these individual Tupperware and BeautiControl business owners would be impacted by the proposed Business Opportunity Rule.

Today, Tupperware Brands has more than 180,000 independent contractor sales consultants working in the United States. Through Tupperware Brands, these individuals are able to operate their own small businesses and earn significant incomes. For many, selling Tupperware or BeautiControl is a full-time job.

The FTC's Business Opportunity Rule proposes burdensome new requirements that must be met before individuals can enter into a new "business opportunity" that requires any level of up-front investment. The preamble to the regulation states that the objective is to target fraudulent schemes, including work-at-home arrangements that involve misrepresentations by the seller of the income-earning opportunity and other scams that result in financial harm to the individual buying into the opportunity. However, the true scope of the regulation is far broader. The new requirements also would apply to legitimate direct-selling opportunities, such as those

offered by Tupperware. By the way, the up-front investment for Tupperware consultants is currently either a \$69 or \$99 starter kit of Tupperware products whose retail value is \$300 and \$450, respectively. For BeautiControl consultants, the current cost of the full starter kit is \$179, which includes BeautiControl products with a retail value of nearly \$400. Both Tupperware and BeautiControl extend a generous return policy with regard to these starter kits, thereby providing further safeguards for these entrepreneurs.

The proposed requirements of the Business Opportunity Rule are indeed onerous. Of greatest concern, the regulation would require business opportunity sellers to furnish a prospective buyer with detailed written disclosures at least seven days before a buyer can enter into a new business opportunity. Today, the direct selling business is marked by ease of entry and speed to market.

Obstacles to entry or delays in earning income would adversely impact these small entrepreneurs. If the Business Opportunity Rule were finalized in its current form, it would fundamentally alter the way direct selling operates. In practice, fewer recruits would become sales consultants and thus successful small business owners. And,

those who do endure the waiting-period process may earn less income.

Tupperware Brands recognizes that unscrupulous companies and individuals have taken advantage of the public by offering get-rich-quick schemes that operate under a “work from home” framework masked as a legitimate direct selling opportunity. Under these types of fraudulent schemes, consumers are typically encouraged to invest their money upfront to stuff envelopes, assemble products, purchase worthless goods for resale, etc. The reality is that the only business occurring is that the fraudster is making money through outright fraud. Tupperware Brands condemns those individuals and companies who market fraudulent business opportunities, and we encourage local, state, and federal law enforcement to crack down on them to the greatest extent permitted by law.

Now I would like to turn to the Regulatory Flexibility Act. Congress enacted the RFA in 1980 to ensure that when planning new regulations, federal agencies consider the needs of small businesses and other small entities like small nonprofits. This law was a

response to the creation of numerous new federal agencies in the 1970s such as the Environmental Protection Agency, Occupational Safety and Health Administration, and the National Highway Traffic Safety Administration and the enactment of new laws that imposed a wide variety of new regulatory requirements on small businesses, such as the Clean Air Act, Clean Water Act, Occupational Safety and Health Act, and the Employee Retirement Income Security Act.

In the RFA, Congress declared that its purpose was “to establish as a principle of regulatory issuance that agencies shall endeavor...to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” For the RFA to work as intended, agencies must make sure that they analyze properly the potential impact on small entities and that they do not minimize the universe of affected parties in such a way that it appears that there is no significant economic impact on a substantial number of small entities.

As you know, the RFA requires agencies to prepare an Initial Regulatory Flexibility Analysis when proposing a new rule with a

potentially significant impact on small entities. The FTC also stated in the preamble to the regulation that it did not expect that the Business Opportunity Rule would have a significant economic impact on a substantial number of small entities. However, the FTC nevertheless prepared an IRFA for the regulation, and in doing so concluded that the regulation would affect only 3,200 small businesses, including 2,500 vending machine, rack display, and related opportunity sellers; 550 work-at-home opportunity sellers; and 150 multilevel marketing companies.

Nowhere is there any mention or consideration of the impact of the proposed regulation on individual sales consultants whose income-earning opportunities would be restricted by the rule. Yet the impact of the regulation on these independent small businesses should have been readily apparent. As I discussed, the proposed waiting period requirement under the regulation would mean fewer recruits will become consultants. And for those recruits that do eventually become consultants, the waiting period would significantly dampen their enthusiasm at the time of first recruiting contact, which would mean these individuals would end up being less successful. This

would mean not only less income for the recruits but also for the individual sales consultants who recruit them and earn commissions on “downstream” sales. Not only should these independent sales consultants have been treated by the FTC as small businesses for purposes of the Regulatory Flexibility Act, the FTC should have concluded that the economic impact on these entities was substantial.

It is telling that the FTC received approximately 17,000 comments on the proposed Business Opportunity rule. Most were submitted by individual sales consultants harshly critical of the impact of the regulation on their ability to earn income. Tupperware sales consultants were among those voicing their strong concerns. These are the small business owners whom the RFA is supposed to protect and whose livelihoods are the subject of this Committee’s jurisdiction.

Business opportunity sellers also voiced strong concerns about the impact of the Business Opportunity Rule. We flatly contest the FTC’s Reg Flex analysis that the economic impact of the proposed regulation would be minimal. Business opportunity sellers may lose

revenues as individual sales consultants make fewer sales. We also would have to make substantial expenditures to build the recordkeeping and computer systems necessary to produce disclosure documents that would be required by the Business Opportunity Rule.

I am not here to provide a detailed legal analysis of the FTC's compliance with the Regulatory Flexibility Act. However, I strongly believe that in the case of the Business Opportunity Rule, the agency has not met the underlying objectives of the Act. An agency is not meeting the Act's objectives when it disregards the impact of a rule on the types of small businesses that have been established by Tupperware sales consultants and the hundreds of thousands of other selling products offered by the Pampered Chef, Avon, Longaberger, and other direct sellers. The impact is real. My phone is still ringing with complaints from our sales consultants who are worried about their futures.

The Regulatory Flexibility Act needs to protect their interests. Either the FTC did not comply with the Act in issuing the Business

Opportunity Rule or the Act itself needs to be strengthened to ensure these types of small businesses are not overlooked.

I understand that the FTC is currently evaluating how to proceed on Business Opportunity Rule. I am hopeful the FTC will recognize the true impact of the proposed regulation on direct selling consultants and consider alternatives that would not restrict the valuable income-earning opportunities offered by companies like Tupperware. We would greatly appreciate any assistance that the Committee may be able to offer in this regard and also in ensuring that the requirements of the Regulatory Flexibility Act are observed both in letter and in spirit.

Thank you for your allowing me to testify today. I'd be happy to answer any questions you may have.