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**A NETWORK MARKETING CASE STUDY UNDER THE
CONSUMER PROTECTION ACT, 2008: WORLDVENTURES**

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Declaration

I, Oriane Chetty, hereby declare that that this dissertation, unless specifically indicated otherwise, is my own work and that all references have been properly made. This dissertation has not been submitted to any other university in full or partial fulfilment of the academic requirements of any other degree or qualifications.



Oriane Chetty

10 July 2019

Abstract

Statutory law provides a framework for consumer protection and specifically, the regulation of prohibited schemes in South Africa. The prohibition against fraudulent schemes has its roots in the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (**Consumer Affairs Act**) and is now regulated under the Consumer Protection Act, 68 of 2008 (**CPA**). The CPA seeks to promote a sustainable marketplace for consumer goods and services and in an effort to protect consumers, it deals specifically with pyramid and related schemes. Despite the existence of statutory law prohibiting such schemes, there still exists a myriad of alleged prohibited schemes in South Africa, as is evident from bustling social media, newspaper and television reports.¹ Often, prohibited schemes operate under the guise of network marketing companies. There are serious implications that attach to the participation in prohibited schemes and there is a need to properly identify prohibited schemes so that authorities can act appropriately.

A pyramid scheme is one in which participants in the scheme receive compensation that is derived primarily from the recruitment of other persons as participants, as opposed to the sale of any goods or services. Products or services offered by pyramid schemes often have minimal value and the success of the scheme depends on the recruitment of more and more participants. The risk in pyramid schemes is that eventually the pool of possible participants will dry up and the scheme will collapse. Once a scheme collapses, investments cannot be recouped and this proves harmful to consumers. Furthermore, participants in prohibited schemes face substantial penalties for engaging in conduct prohibited by law, even in circumstances where they are unaware of the prohibited nature of the scheme.

Network Marketing however, is a legitimate practice in which an income is derived primarily from the sales of products. That being said, a product can be sold along with the marketing rights to further market the product i.e. the recruitment of an individual to on sell the product themselves. It can be distinguished from a pyramid scheme by assessing the merits and value of that product. Certain codes of ethics and

¹ Z Nhlapho 'We're Still Falling for Ponzi and Pyramid Schemes' *Huffpost* available at https://www.huffingtonpost.co.za/2018/03/09/were-still-falling-for-ponzi-and-pyramid-schemes_a_23381530/ and A Arde 'Pyramid Scams Thriving in SA' *IOL, Personal Finance* available at <https://www.iol.co.za/personal-finance/pyramid-scams-thriving-in-sa-1980769> accessed on 28 November 2018.

associations that govern the practice, further legitimise network marketing as a business model.

Nevertheless, there can be an overlap of elements between pyramid schemes and network marketing companies. The problem with this overlap is that consumers become involved in illegal schemes believing them to be legitimate. This leaves unassuming consumers at risk as to their financial wellbeing and the legal consequences of their participation in the scheme.

This mini-dissertation focuses on the critical analysis of the widely publicised company, WorldVentures Holdings, LLC operating in South Africa as WorldVentures Marketing South Africa (Pty) Ltd (**WorldVentures**), in order to establish the core elements of the company and to properly examine its business model. This analysis will clarify whether or not, taking into consideration the requirements of the CPA, WorldVentures can operate legally, as a network marketing company, under South African law.

Chapter One: Introduction

1.1 Introduction

In September 2015 it was reported by eNCA that the National Consumer Commission (NCC) was investigating a number of investment opportunities believed to be fraudulent schemes under South African law.² The publication *Cape Town Lately* indicated that the business venture, WorldVentures was under investigation by the NCC for being an alleged pyramid scheme.³ The acting head of the NCC announced that its probe resulted from enquiries by the Financial Services Board, now reconstituted as the Financial Sector Conduct Authority,⁴ and the Reserve Bank, concerning an influx of money into consumer accounts.⁵ It followed that upon the conclusion of its investigation, should the business be found to be an illegal scheme, persons involved may face charges regardless of their level of involvement.⁶ The promoters of WorldVentures have denied that the business is an illegal pyramid scheme and have argued that it is in fact a legitimate network marketing company.⁷

The investigation concerning WorldVentures has since been handed over to the commercial crimes unit of the South African Police Services⁸ and to date, no concluding reports have been released.⁹ At present WorldVentures continues to be promoted in South Africa despite the ambiguity regarding its legality.

By way of a case study to practically illustrate the distinguishing features between a legitimate business opportunity, such as network marketing and a pyramid scheme as regulated by the CPA, a specific focus of this research paper will be on the business model of WorldVentures; the way in which it operates; and the way in which it is marketed. This case study will be analysed against the backdrop of South African legislation in relation to pyramid schemes and, in order to identify relevant hallmarks

² 'Consumer Commission to Probe Alleged Ponzi Schemes' eNCA available at <https://www.enca.com/south-africa/consumer-commission-probe-alleged-ponzi-schemes> accessed on 20 April 2016 (last accessed on 4 July 2019).

³ G Duncan 'WorldVentures at Centre of Pyramid Scheme Investigation' *Cape Town Lately* 15 September 2015 available at <http://www.capetownlately.co.za/worldventures-at-centre-of-pyramid-scheme-investigation/> accessed on 20 October 2018.

⁴ Financial Sector Regulation Act, 9 of 2017. The Financial Sector Conduct Authority was established with effect from 1 April 2018.

⁵ 'Consumer Commission to Probe Alleged Ponzi Schemes' (note 2 supra) and M Mortlock 'NCC's Probe Into Suspected Ponzi Schemes Gets Public Support' *Eyewitness News* available at <https://ewn.co.za/2015/12/02/NCCs-probe-into-suspected-Ponzi-schemes-gets-public-support> accessed on 29 October 2018.

⁶ 'Consumer Commission to Probe Alleged Ponzi Schemes' (note 2 supra).

⁷ Duncan (note 3 supra).

⁸ The jurisdictions of regulatory bodies and the gaps that exist in legislation determining such issues will not be focused on in this research paper.

⁹ A Arde 'Pyramid Scams Thriving in South Africa' *The Independent, Personal Finance* 6 February 2016 at 17.

of pyramid schemes, a comparison of pyramid schemes and network marketing companies will be set out.

In essence, this study will show the difference between a pyramid scheme, which is premised around participants generating income through the recruitment of other representatives, and a network marketing scheme, which seeks to build the representatives' businesses along with the business of the company through the sale of legitimate consumer products or services from which commission is derived.¹⁰

When compensation is derived primarily from the recruitment of representatives as opposed to the sale of products, the business model of the company will fall into the category of a pyramid scheme.

1.2 Rationale for this study

WorldVentures is a business opportunity which is being promoted in South Africa as well as many other jurisdictions throughout the world.¹¹ In South Africa, it is alleged to be a pyramid scheme.¹² Under the CPA, section 43 declares pyramid schemes to be prohibited practices. Not only is it prohibited to promote the scheme, but also to become involved in the scheme as a consumer.¹³ Any person who participates in the business model could potentially be referred to the National Consumer Tribunal for a hearing into prohibited conduct and could face an administrative penalty of up to R1 million or 10 per cent of their annual turnover.¹⁴

WorldVentures itself and promoters of WorldVentures assert that their product has significant value to consumers and maintain that it is a legitimate business practice that operates through a direct selling model known as network marketing.¹⁵

Although the NCC has levelled allegations against the company, they have not, at this stage, taken the matter any further. This is problematic both for those who are involved

¹⁰ GN 1134 of GG 20169, 9/06/1999; Report No 76.

¹¹ 'WorldVentures Countries of Operations' available at <https://assets.wvholdings.com/1/PDF/GENERIC/countriesofoperation.pdf> accessed on 29 October 2018.

¹² Duncan (note 3 supra) and N Shaikh 'Crunch Time for WorldVentures' *IOL* available at <https://www.iol.co.za/news/crunch-time-for-worldventures-1977893> accessed on 29 October 2018.

¹³ T Woker 'Section 43' in Naude and Eiselen (eds) *Commentary on the Consumer Protection Act (2004)*, par 6.

¹⁴ Section 112(2) of the CPA.

¹⁵ 'WorldVentures: Championing travel entrepreneurs' *News24* available at https://www.news24.com/SouthAfrica/Local/Stanger-Weekly/worldventures-championing-travel-entrepreneurs-20161101?_sm_au_=iVVDvqPW1QrfJwkB accessed on 29 October 2018. Promoters of WorldVentures are independent representatives who market and sell travel memberships across 35 markets, including South Africa.

in promoting WorldVentures in South Africa and for consumers who simply make use of the travel membership because leaving the matter in limbo creates uncertainty.

In some instances, schemes may start out as legitimate business models but become prohibited schemes because of the manner in which they are being marketed by promoters. It may well be that WorldVentures is a legitimate network marketing business which is being promoted incorrectly in South Africa (hence the media allegations) and is therefore contravening South African law. This paper seeks to achieve clarity on the business practices of WorldVentures. This will allow for both participants and consumers to be aware of the true nature of the business. A proper understanding of South African law will also enable WorldVentures to respond appropriately to ensure that it does not contravene the law.

1.3 Aims and Objectives

The aim of this study is to critically examine the WorldVentures business model in order to ascertain whether it is a prohibited scheme under the CPA or whether it is being promoted in South Africa in such a manner that a legitimate business model is in fact operating illegally.

The overall objectives of this mini-dissertation are as follows:

- ◇ To set out the history of network marketing and determine the hallmarks of a legitimate network marketing company;
- ◇ To ascertain the elements of a pyramid scheme under South African law;
- ◇ To critically evaluate the business model of WorldVentures in order to determine whether it constitutes a legitimate network marketing scheme or a prohibited pyramid scheme; and
- ◇ To provide recommendations, after identifying the overlap of elements between network marketing and pyramid schemes, to cultivate a clear distinction between the two.

1.4 Research Methodology

In setting out the law to ascertain whether the business practices of WorldVentures are prohibited, the research conducted in this study will take the form of desktop research. This case study will be outlined by key legislation including the Harmful Business Practices Act, 73 of 1988, which was later renamed the Consumer Affairs Act,¹⁶ and the CPA, which will provide essential elements of prohibited schemes in South Africa.

Legal sources such as case law, government gazettes, journal articles and textbooks will be referenced. Literature in the form of books, video presentations, newspaper articles as well as online articles within South Africa and other jurisdictions will be used in this study.

Case studies of other network marketing companies that operate in similar jurisdictions as WorldVentures and are prevalent in South Africa, will be outlined as a means of comparison against the model of WorldVentures.

The policies and procedures, compensation plan and terms and conditions of WorldVentures that are in the public domain will be used to provide comprehensive insight into the company and its operations. A thorough analysis of the products offered by WorldVentures will be conducted to determine the merits of the product and services offered.

¹⁶ 'Consumer Affairs (Unfair Business Practices) Bill: Briefing' available at <https://pmg.org.za/committee-meeting/526/> accessed on 4 July 2019.

1.5 Structure of the Dissertation

Chapter one of this research paper serves as an introduction and a background to the study and covers the rationale and overall objectives of this mini dissertation. The research questions used to develop this dissertation has been set out in, and will be addressed through the objectives of this dissertation. The way in which the dissertation will unfold has been set out in the methodology.

Chapter two will focus on network marketing, which is the purported business model of WorldVentures. This chapter will set out the history of network marketing and how a legitimate network marketing business model operates. This will be done through a review of industry codes, well established principles and case studies. Elements of the network marketing business model that overlap with pyramid schemes will be introduced.

Chapter three will discuss prohibited schemes under the CPA and will focus specifically on pyramid schemes. It will outline the history of pyramid schemes in South Africa and establish the essential elements of such schemes. Examples of schemes which have been found to be pyramid schemes will also be discussed in order to provide context to our current legislation. This chapter will refer to government reports which discuss pyramid schemes in the context of the need to introduce consumer protection.

Chapter four is an analysis of the core features and business model of WorldVentures. This will include a review of WorldVentures' policies, compensation plan and product offerings. The WorldVentures business model will be examined in order to establish clarity regarding the legality of its business practices in light of the hallmarks of network marketing companies and pyramid schemes that will be set out in Chapters' two and three.

Chapter five will conclude the research paper by providing an overall view on the business model carried out by WorldVentures. Recommendations will be made for measures that WorldVentures can implement to ensure its legality under the CPA.

Chapter Two: Network Marketing

2.1 Introduction

The direct selling industry provides an opportunity for individuals to generate income through sales, outside of a fixed sales establishment such as regular brick and mortar outlets, through a distribution channel known as network marketing.¹⁷ Network marketing is sometimes referred to as multilevel marketing but for purposes of this dissertation, the network marketing terminology will be used.¹⁸ Network marketing is a lawful type of direct selling that involves the direct seller/distributor- who is a product/service user of the company - on-selling the product or service offered by the network marketing company to a consumer.¹⁹ The consumer who purchases the product or service from the direct seller then has the opportunity, should he or she so wish, to become a direct seller and sell this product to other consumers, enabling him or her to generate a commission of his own through product sales and the product sales of individuals he or she recruits.²⁰ In essence, a network marketing company derives its revenue through the product sales of each direct seller and each direct seller's network.²¹

Network marketing is often referred to as a time-leveraging business²² and some authors have described this type of business model as similar to purchasing a personal franchise.²³ Through the network marketing structure, a direct seller is akin to an independent contractor building his/her own business with minimal overhead costs.²⁴ Network Marketing involves the sale of a product or service through word of mouth marketing. In a book entitled *The Unemployed Millionaire* the author, Matt Morris, illustrates this concept by using the example of a person who watches a great movie and then shares his views on the movie with his friends. Morris argues that the unfortunate part in this scenario is that the individual sharing his recommendation does not receive any compensation for recommending the movie to others who will then

¹⁷ 'Direct Selling/ Direct Selling Explained' available at http://www.dsasa.co.za/modules_fe/layout2/about_direct_selling_rm.asp#direct_selling_explained accessed on 29 October 2018.

¹⁸ GN 1349 of GG 18292, 17/09/1997, 8.

¹⁹ P J Vander Nat W Keep 'Marketing Fraud: An Approach for differentiating Multilevel Marketing from Pyramid Schemes' (2002) *Journal of Public Policy and Marketing*, 139.

²⁰ T, Naude S Eiselen, *Commentary on the Consumer Protection Act (2014)* 43-8 and 'Network Marketing' available at <https://www.entrepreneur.com/encyclopedia/network-marketing> accessed on 10 September 2016 (last accessed on 4 July 2019).

²¹ GN 1134 (note 10 supra).

²² M Morris *The Unemployed Millionaire* (2009) 119.

²³ R Kiyosaki *Rich Dad's CASHFLOW Quadrant* (2003) 113. Comparing network marketing to a personal franchise can be problematic and the franchise sector is opposed to this however, a full discussion of this issue is beyond the scope of this mini-dissertation.

²⁴ 'What is Direct Selling' available at <https://wfdsa.org/about-direct-selling/> accessed on 17 November 2018.

watch the movie based on his endorsement. How network marketing differs, is that the person referring the product is entitled to a commission when he recommends the movie and individuals act on his recommendation.²⁵ The commission generated by representatives is possible due to margins generated by the sale of the product. The margins allow for commission to be passed on to representatives because of the fact that network marketing companies have low fixed costs. This can be attributed to a reduced advertising budget as a result of word of mouth marketing and the reduced need for sales establishments and the expenses that come with such establishments.²⁶

On an international platform, network marketing has been a global success. The 2017 statistics by the Direct Selling Association revealed that in the United States of America (**USA**), over 18.6 million people were involved in the industry and retail sales alone reached \$34.9 billion in 2017.²⁷ Statistics in South Africa reveal that there are 34 member companies of the Direct Selling Association of South Africa (**DSASA**) with a total of 1.3 million independent business owners.²⁸ In 2017, the industry generated R12.9 billion in sales.²⁹

The statistics from the Direct Selling Association of South Africa, in comparison to the United States, as well as emerging viewpoints of many authors show that there is often a negative stigma that is attached to network marketing, more so in South Africa. It has been acknowledged that network marketing is a concept that many people frown upon because it is seen as different³⁰ or because people have encountered some unscrupulous network marketer that has failed to follow the policies and processes of the company they are marketing.³¹ The stigma also seems to arise from the fact that pyramid schemes disguise themselves as network marketing companies by simply adding a product, which has little to no value, into their business model.³² Due to people's experiences with unscrupulous marketers, it affords a negative connotation

²⁵ Morris (note 22 supra; 120).

²⁶ J Muncy, 'Ethical Issues in Multilevel Marketing: Is it a Legitimate Business or Just Another Pyramid Scheme?' *Marketing Education Review*, Volume 14, Number 3 (2004), 48.

²⁷ 'Direct Selling in the United States: 2017 Facts and Data' available at https://www.dsa.org/docs/default-source/research/dsa_2017_factsanddata_2018.pdf accessed on 30 October 2018.

²⁸ 'Direct Selling Industry Records 13.1% Growth' available at http://www.dsasa.co.za/modules_fe/layout2/industry_data.asp, accessed on 30 October 2018.

²⁹ 'Direct Selling Booming Amidst Downgraded Economy' available at http://www.dsasa.co.za/modules_fe/layout2/industry_data.asp accessed on 30 October 2018.

³⁰ Sabry, M 'The Network Marketing Industry' available at <https://www.youtube.com/watch?v=z7-idnPW1mA> accessed on 2 May 2016 (last accessed on 4 July 2019).

³¹ Muncy (note 26 supra).

³² TA Woker 'If it Sounds too Good to be True it Probably is – Pyramid Schemes and other Related Frauds' (2003) 15(2) *South African Mercantile Law Journal* 242.

to the industry.³³ Pyramid type schemes that disguise themselves as genuine network marketing companies often use misleading practices such as inviting people to meetings under false pretences and promising sky-high income for little or no effort.³⁴

Despite this negative stigma of network marketing which can be attributed to the overlap in characteristics with pyramid schemes, network marketing is regarded as a lawful and legitimate business model³⁵ supported by industry associations.³⁶ Self-regulatory associations such as, for example, the DSASA regulate the conduct of member network marketing companies through its published code of ethics.³⁷ Despite these industry associations providing guidelines, due to the similarity in the business structures between the schemes, it is imperative to properly identify what legally constitutes a network marketing company versus a pyramid scheme.³⁸

2.2 A Short History of Network Marketing

The origins and concept of network marketing can be traced back to the travelling salesmen of the 1860's.³⁹ Traveling salesmen were known initially as pedlars or hawkers.⁴⁰ These pedlars functioned by way of independently selling branded products from door to door.⁴¹ An example of one such individual was Henry Heinz, who sold ketchup through salesmen, much like pedlars, who assisted in the creation of the renowned Heinz brand.⁴² This method of sales allowed for products to be advertised via word of mouth marketing, a natural act for humans, and allowed for independent representatives to become a part of a sales organisation.⁴³ Companies were formed using this sales structure to market and sell their products and services. Network marketing was seen as a way to disseminate the necessary information to a greater audience in a way that conventional marketing could not reach consumers.⁴⁴ The use of demonstrations to a larger audience of people began to grow with an

³³ Muncy (note 26 supra).

³⁴ Morris (note 22 supra; 120-121).

³⁵ GN 1134 (note 10 supra).

³⁶ 'DSA Membership' <https://wfdsa.org/dsa-membership/> accessed on 30 October 2018 and 'Direct Selling Association of South Africa' available at http://www.dsasa.co.za/modules_fe/layout2/default.asp accessed on 30 October 2018.

³⁷ 'Direct Selling Industry Records 13.1% Growth' (note 28 supra).

³⁸ Vander Nat (note 19 supra; 140).

³⁹ T Sales 'The History of MLM' *First Class MLM* available at <https://firstclassmlm.com/the-history-of-mlm/> accessed on 17 April 2016 (last accessed on 4 July 2019).

⁴⁰ Sabry (note 30 supra).

⁴¹ 'Direct Selling, A Global Industry Empowering Millions in India' *KPMG and FICCI* available at <https://assets.kpmg.com/content/dam/kpmg/pdf/2014/12/Direct-Selling.pdf> accessed on 2 December 2018.

⁴² 'The History of Network Marketing' *Better Health Worx* available at <https://www.betterhealthworx.com/network-marketing-history.html> accessed on 30 October 2018.

⁴³ Sabry (note 30 supra).

⁴⁴ Muncy (note 26 supra; 49).

expected outcome of an increased sales volume.⁴⁵ This led to the introduction of what was labelled as the party plan concept of marketing.⁴⁶ This concept utilised the social networks of individuals gathered in a room as a target audience to increase sales and is presently used by various network marketing companies like, for example, Tupperware⁴⁷, a company known since the 1950's for its "Tupperware parties".⁴⁸

The first network marketing compensation plan was documented by a company called Nutrilite, a business that supplied vitamin supplements.⁴⁹ Through Nutrilite's compensation plan, a distributor would purchase the supplements at a reduced rate and through the distributor's own product sales he would earn a monthly bonus as an incentive to generate more product sales.⁵⁰ Once a definitive number of customers were reached, the distributor would earn a title (i.e. a promotion) which entitled the distributor to generate his/her own sales force and take on a role akin to what is sometimes described as a sales manager.⁵¹ This sales force would then purchase their products directly from the distributor and sell these products to other customers.⁵²

Examples of Network Marketing companies include the likes of Avon, Mary Kay and Tupperware which were formed from 1945 onwards.⁵³

⁴⁵ Vander Nat (note 19 supra; 140).

⁴⁶ Sales (note 39 supra).

⁴⁷ 'Host a Tupperware Party' available at <https://www.tupperware.co.za/tupperware-party/find-a-tupperware-event> accessed on 2 May 2019.

⁴⁸ J Swystun 'Party Plan Marketing: From Tupperware to Wine' *Hubspot* available at <https://blog.hubspot.com/agency/party-plan-marketing-from-tupperware-to-wine> accessed on 2 November 2018.

⁴⁹ Sales (note 39 supra).

⁵⁰ Muncy (note 26 supra; 49).

⁵¹ J. Ally *A Critical Examination of Herbalife's Business Model in Order to Determine Whether it is a Prohibited Scheme Under the Consumer Protection Act 68 of 2008* (published LLM thesis, University of KwaZulu-Natal, 2019) 13.

⁵² Sales (note 39 supra).

⁵³ Sales (note 39 supra) and 'Member Companies' available at http://www.dsasa.co.za/modules_fe/layout2/dsasa-member.asp accessed on 25 November 2018.

2.3 Applicable Law in South Africa

Network marketing in South Africa is governed by statutory law and the practice is regulated by industry codes. These principles establish operational guidelines for network marketing companies.

2.3.1 Applicable Legislation

Business practices that affect consumers in South Africa are governed by the CPA. The CPA regulates the direct marketing of goods and services to consumers.⁵⁴ The concept of direct marketing is defined in section 1 of the CPA as follows:

"to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of—

(a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or

(b) requesting the person to make a donation of any kind for any reason."

Network marketing falls under this definition of direct selling.

To allow for ethical direct marketing, section 11 of the CPA provides protection to consumers by providing them with the right to restrict unwanted direct marketing and by providing specific contact times within which a direct marketer can approach a consumer.⁵⁵ This right stems from the right to protect consumers' right to privacy, especially given the nature of network marketing i.e. in circumstances where consumers are solicited by sales persons as opposed to the consumer seeking products on his/her own accord. In accordance with this right to privacy, when a consumer is approached for purposes of direct marketing, he/she may refuse to accept or pre-emptively block communication from a direct marketer.⁵⁶ In circumstances where the consumer has already accepted the approach or communication, the consumer has a right to require the direct marketer to discontinue such communication and desist from initiating any further communication.⁵⁷

⁵⁴ Section 1 of the CPA.

⁵⁵ This section is subject to regulation 4 of GN 293 of GG 34180, 1/04/2011.

⁵⁶ Section 11(1) of the CPA.

⁵⁷ Section 11(2) of the CPA.

To give effect to this right held by consumers, direct marketers or direct marketing companies must cater for and ensure compliance with the receipt of requests by consumers to cease communication.⁵⁸

As additional protection to consumers, a cooling-off period is provided in terms of section 16 of the CPA. This cooling-off period entitles a consumer to rescind a transaction in writing within five business days of having concluded the transaction or receiving the goods, without having to provide a reason and without being penalised for such cancellation.

In the event that a transaction is concluded electronically, section 44 of the Electronic Communications and Transactions Act⁵⁹ (**ECTA**) allows for a cooling-off period to be invoked within seven days.⁶⁰

This right to a cooling-off period exists in addition to the rights that a consumer may already have in place in terms of a contract or any other law that exists and consumers must be informed of this right by the direct marketer.⁶¹

In line with the purport of the CPA, consumers have the right to fair and responsible marketing as well as the right to fair and honest dealing.⁶² This requires the direct marketer to ensure that he or she does not market any goods or services in a manner that is reasonably likely to imply a false or misleading representation of the goods or services and prohibits direct sellers from engaging in deceptive conduct.⁶³ No person who markets goods or services may do so via the use of unconscionable conduct, which includes pressure, harassment or similar conduct.⁶⁴

⁵⁸ C Gladwin A Civin 'The Consumer Protection Act: Direct Marketing' (2014) *De Rebus* available at <http://www.derebus.org.za/consumer-protection-act-direct-marketing/> accessed on 2 May 2019.

⁵⁹ 25 of 2002.

⁶⁰ This is subject to Section 42 of ECTA.

⁶¹ Section 32 of the CPA.

⁶² Part E and Part F of the CPA.

⁶³ Section 29 and Section 41 of the CPA.

⁶⁴ Section 40 of the CPA.

2.3.2 Self-Regulation and Industry Codes

In South Africa, what is useful is the existence of industry associations that aim to ensure that the business practices of network marketing companies are lawful and within ethical boundaries.

There are a number of self-regulatory associations, which seek to regulate direct marketing in South Africa. These include the:

- DSASA; and
- Direct Marketing Association of Southern Africa (**DMASA**).

2.3.2.1 The DSASA

The DSASA, which was touched on in the introduction to chapter two, is a national association that represents direct selling companies who have assented to becoming members of the DSASA.⁶⁵ By virtue of voluntary continued membership, the DSASA's Code of Ethics (the **DSASA Code**) binds each member and every individual direct seller of member companies.⁶⁶ The DSASA Code has been developed in line with ethical business practices and consumer protection requirements as emphasised by the World Federation of Direct Selling Associations (**WFDSA**),⁶⁷ of which the DSASA is a member.⁶⁸ The DSASA Code provides more stringent requirements than the local laws of South Africa⁶⁹ and utilises, the provisions of the WFDSA Code of Ethics.⁷⁰ The DSASA Code is administered by the DSASA Code administrator, who is an independent person elected by the DSASA to monitor compliance.⁷¹

The WFDSA Code of Ethics and accordingly, the DSASA Code, regulates conduct between consumers, direct sellers and direct selling companies by ensuring that there is transparency from the start of each introduction, presentation, transaction and after

⁶⁵ Note that this association does not represent all direct selling companies and the conduct of direct selling companies are only subject to regulation by the association should companies voluntarily ascribe to become members.

⁶⁶ The DSASA website indicates that this policy is currently being aligned with the Consumer Protection Act where after it will be registered with the Department of Trade and Industry.

⁶⁷ The WFDSA is a non-governmental organization representing the direct selling industry worldwide. 'About Us' available at <https://wfdsa.org/about-us/> last accessed on 5 July 2019.

⁶⁸ 'DSA in SA' available at www.dsasa.co.za/modules_fe/layout2/who_we_are_rm.asp#who accessed on 17 November 2018.

⁶⁹ 'Code of Ethics' available at http://www.dsasa.co.za/Modules_BE/AdminConsole/Contentmanager/data/file/DSA%20website%20-%20New%20DSA%20Code%20of%20Conduct_DSASA_May%202018.pdf accessed on 20 November 2018, 4 and 'Direct Selling Association Challenges Commonly Held Assumptions' available at http://www.dsasa.co.za/modules_fe/layout2/pressoffice.asp accessed on 5 January 2019.

⁷⁰ 'Direct Selling Code of Ethics' available at https://wfdsa.org/download/resources/resources_for_dsas_and_member_companies/Code-of-Ethics-Booklet-2017.pdf accessed on 5 July 2019.

⁷¹ 'Code of Ethics' (note 69 supra).

sales services.⁷² In keeping with element of transparency and as an underlining caveat to all interactions between consumers, direct sellers and direct selling companies, all statements made by direct selling companies and direct sellers themselves must be substantiated.⁷³

The DSASA Code permits the promotion of products and services, including intangible products or services, through direct selling.⁷⁴

Not only does it regulate, but the DSASA Code strictly prohibits misleading, deceptive and unfair sales practices. It emphasises the right of consumers to make fully informed decisions by providing all information in plain and understandable language, as is required in terms of the CPA.⁷⁵ Interactions with consumers must not only be honest and fair, but must be carried out in a manner that avoids intrusiveness.⁷⁶

Additional to the general business practices that companies are required to adhere to, it is commonplace that network marketing companies often provide testimonials of members who have benefitted from its products or services and achieved success. These testimonials and any other form of advertising directed at the network marketing company must accord with the standards set out by advertising authorities in South Africa.⁷⁷ These advertising codes seek to ensure that any and all advertising does not mislead consumers through untrue, outdated or unauthorised information.⁷⁸

Importantly, in attempting to ascertain the legitimate hallmarks of network marketing, the DSASA Code states that:

*"Companies and Direct Sellers shall not induce a person to purchase goods or services based upon the representation that a Consumer can reduce or recover the purchase price by referring prospective customers to the Direct Sellers for similar purchases, if such reductions or recovery are contingent upon some uncertain future event."*⁷⁹

⁷² 'Direct Selling Code of Ethics' (note 70 supra; 5 and 6).

⁷³ 'Code of Ethics' (note 69 supra; 7 and 8).

⁷⁴ 'Code of Ethics' (note 69 supra).

⁷⁵ Section 22 of the CPA and 'Code of Ethics' (note 69 supra; 5).

⁷⁶ 'Code of Ethics' (note 69 supra; 7).

⁷⁷ The Advertising Standards Authority of South Africa used to regulate advertising, prior to its liquidation. There is now an attempt to regulate the marketing and media industries through the Advertising Regulatory Board. 'Welcome to the Advertising Regulatory Board' available at <http://arb.org.za/> accessed on 7 July 2019.

⁷⁸ Advertising Regulatory Board 'Code of Advertising Practice, General Principles' available at <http://arb.org.za/assets/section-ii.pdf> accessed on 7 July 2019 and 'Code of Ethics' (note 69 supra; 6).

⁷⁹ 'Code of Ethics' (note 69 supra; 7).

Further, the DSASA Code clearly articulates that a direct seller's earnings shall be derived from sales of products or services:

1. to consumers; and/or
2. from each direct seller's network of personally enrolled representatives and those sponsored by their personally enrolled representatives (i.e. **Downline**).⁸⁰

Essentially, earnings derived from the recruitment of representatives is specifically prohibited (save for minimal incentives that are allowed). Bearing in mind this prohibition, the enticement to recoup investments and make profits through recruitment is what makes schemes illegitimate.

Network marketing companies are required to have cancellation and refund policies in place, which policies should stipulate that any fees required to remain a direct seller or fees for additional services paid 30 days prior to termination by the direct seller, must be refundable.⁸¹

Lastly, most network marketing companies have a vast number of direct sellers and are required, in accordance with the DSASA, to provide adequate training so that direct sellers are *au fait* with the requirements of direct selling and the law. Consequently, network marketing companies are permitted to charge reasonable fees for *inter alia*, trainings.⁸²

2.3.2.2 The DMASA

Another industry association that plays a role in ensuring that direct sellers maintain high standards of ethical business conduct is the DMASA,⁸³ a member of the Global Alliance of Data-Driven Marketing Associations (**GDMA**) (a global industry association).⁸⁴ It operates much like the DSASA in that it is an independent body whose member companies opt-in and remain bound by its code of practice (**Code of Practice**) by way of voluntary membership, renewed on an annual basis.⁸⁵

The DMASA is a source of information and training in the direct selling industry and the Code of Practice accords with emerging legal developments in South Africa.⁸⁶ A

⁸⁰ 'Code of Ethics' (note 69 supra; 8).

⁸¹ Ibid.

⁸² 'Code of Ethics' (note 69 supra; 9).

⁸³ 'Direct Marketing Association of South Africa' available at <https://www.dmasa.org/> accessed on 28 November 2018.

⁸⁴ 'About GDMA' available at <https://www.dmasa.org/node/230> accessed on 15 November 2018.

⁸⁵ 'Code of Ethics' (note 69 supra; 13).

⁸⁶ 'Why Join' available at <https://www.dmasa.org/> accessed on 28 November 2018.

new Code of Practice has been published for comment⁸⁷ but, as it stands, the current Code of Practice remains in force.

Direct sellers are directed to apply the Code of Practice, in conjunction with the CPA and other relevant legislation.⁸⁸ The DMSA consequently promotes honesty, truth, accuracy, fairness and professionalism in business dealings and outright prohibits sales and referrals by way of deception and aggressive sales tactics.⁸⁹

Regardless of the industry in which a member company operates its business and in addition to ensuring lawful earning capabilities, member companies must adhere to universal marketing practices such as:

- requiring permission for automatically billed products or services, like continuing membership fees, provided the consumer is fully informed and consents to any material changes of terms;
- providing clear provisions regarding cancellations/delays/guarantees;
- delivering full and substantiated disclosures to enable informed consent by consumers who engage in the operations of the company, inclusive of reciprocal obligations and relevant product policies;
- ensuring easily readable and accurate pricing information in line with the CPA;
- affirming the use of genuine testimonials when marketing products; and
- reinforcing accuracy and clarity of representations.⁹⁰

In addition to the general requirements of day to day business operations, the Code of Practice reinforces legislation by regulating consent to marketing and the protection of consumers' personal information, in accordance with what is now articulated in the Protection of Personal Information Act (**POPI**).⁹¹

In line with the spirit of consumer protection, the Code of Practice goes further and stipulates the conduct required by direct sellers when marketing to children and

⁸⁷ The draft code focuses on principled and responsible relationships and the adoption of good universal practices. As an emphasized aim, the draft code caters for consumers to be respected in their dealings with marketers and lastly for dispute resolution by the DMSA. 'DMSA Code on Principled Marketing' available at <https://www.dmasa.org/page/code-ethics> accessed on 18 November 2018.

⁸⁸ 'DMSA Code of Ethics and Standards of Practice' available at https://www.dmasa.org/sites/dmasa.org/files/dmasa_codes_of_practice_2018.pdf accessed on 18 November 2018, page 11.

⁸⁹ 'DMSA Code of Ethics and Standards of Practice' (note 88 supra; 11, 14 and 24).

⁹⁰ 'DMSA Code of Ethics and Standards of Practice' (note 88 supra; 14-18).

⁹¹ 4 of 2013.

emphasises the type of responsibility imposed when addressing their impressionable audience.⁹²

Any Code of Practice violations can be reported to the DMASA. The DMASA will facilitate dispute resolution procedures as postulated and are authorised to proscribe corrective action or expel the member organisation and make a public announcement regarding the conduct complained off.⁹³

It is vital that along with the overt elements that constitute network marketing, i.e. a viable product and the generation of commissions from the sale of products as articulated in section 2.1, there is adherence to the above articulated acceptable conduct and requirements. This is to ensure that the company and its products and services are promoted in a regulated manner that doesn't amount to an illegitimate scheme.

2.4 Characteristics of Network Marketing Companies Prevalent in South Africa

There are a variety of multinational network marketing companies that operate viably in South Africa.⁹⁴ For the sake of providing practical examples, this section will provide a high level overview of the nature of network marketing companies through information in the public domain. This section will highlight that despite what this chapter has outlined as the framework for and elements of network marketing; it is not always cut and dried.

AMC Classic (Proprietary) Limited, trading as AMC Cookware (**AMC**)⁹⁵, a member of the DSASA, was introduced in South Africa in 1968, after being in operation internationally.⁹⁶ AMC is centred around the sale of superior cookware products, coupled with the opportunity for consumers to become business owners who market, promote and sell AMC products.⁹⁷

⁹² 'DMSA Code of Ethics and Standards of Practice' (note 88 supra; 20-23).

⁹³ 'DMSA Code of Ethics and Standards of Practice' (note 88 supra; 29).

⁹⁴ 'About DSA| Who We Are | Member Companies' available at http://www.dsasa.co.za/modules_fe/layout2/dsasa-member.asp accessed on 15 November 2018.

⁹⁵ Registration Number 1969/014299/07.

⁹⁶ 'History' available at <https://www.amcsa.co.za/en/about-amc/our-company/history/> accessed on 25 May 2019.

⁹⁷ Ibid and 'Independent Contractor Agreement' available at <https://www.amcsa.co.za/docs/2972/INDEPENDENT%20CONTRACTOR%20AGREEMENT%20-%20Copy.pdf> accessed on 25 May 2019.

In becoming an AMC consultant, one is entitled to earn commission based on the value of the product sale and to a certain extent, recruitment.⁹⁸ AMC boasts an earning potential to consumers that is based on the effort that are willing to put in as well as the provision of training to equip consultants and recruiters.⁹⁹ Like most network marketing companies, in an attempt to grow the business, AMC provides incentives to its top consultants, recruiters and managers.¹⁰⁰

Much like the Tupperware parties mentioned in section 2.1, AMC encourages a similar type of group demonstration and incentivises the host gathering the crowd as well as individuals providing referrals by providing them with gifts and rewards.¹⁰¹

As controversial as it may be to state that incentives and commission are dependant and can be garnered through a representative's downline, Avon, a network marketing company in the cosmetic industry in South Africa further demonstrates that this is not prohibited.¹⁰² In fact, Avon is structured in a manner that allows for progression of recruiters based on the growth of their downline.¹⁰³ Similarly, Tuppaware - a network marketing company in the homeware industry - allows for commission to be derived from personal sales, team sales, group sales and organisation sales.

The purported controversy is easily explained by understanding that no commission is received from the actual recruitment of representatives and consequently the growth of one's downline, but rather, a percentage of each personal product/service sale within the downline generates commission.

⁹⁸ 'Sign Up as a Consultant' available at <https://www.amcsa.co.za/en/amc-consultants/sign-up-as-a-consultant/> accessed on 25 May 2019.

⁹⁹ 'What is an AMC Consultant' available at <https://www.amcsa.co.za/en/amc-consultants/what-is-an-amc-consultant/> accessed on 25 May 2019.

¹⁰⁰ '2019 Travel Incentive' available at <https://www.amcsa.co.za/en/amc-consultants/sales-blog/2019-travel-incentive/> accessed on 25 May 2019.

¹⁰¹ 'Hosting and Referral Gifts' available at <https://www.amcsa.co.za/en/amc-consultants/sales-blog/hosting-referral-gifts/> accessed on 25 May 2019.

¹⁰² Ally (note 51 supra; 14).

¹⁰³ Ally (note 51 supra;15).

2.5 Conclusion

This chapter demonstrates overt elements of network marketing, such as the requirement of a viable product/service and generation of compensation primarily from product/service sale. It elaborates on the legal day-to-day requirements of ethical network marketing business models.

Where a company operates from a network marketing business model and has a product that is of significant value, it is deemed to be a legitimate business.¹⁰⁴ The motivation behind the sale must be the value that the product/service holds and not the amount of income that can be earned through recruitment.¹⁰⁵ To ensure that product sales are encouraged, the compensation structure should be structured in such a manner that it provides maximum selling motivation to representatives.¹⁰⁶

In compliance with laws and regulations, network marketing companies are prohibited from making false and misleading income claims. The DSASA explains that the amount of money that an individual can make participating in Network Marketing is simply dependent on the time and effort that they are willing to dedicate to pursuing their business.¹⁰⁷ In other words, the more money you want to make, the harder you will have to work. This is the crux of network marketing and should be the only claim being made in terms of income. In other words, the earning potential within a company may certainly be great, but not easy to achieve i.e. what you get out is what you put in.¹⁰⁸ Nevertheless, when the potential to excel is there, rewarding and recognising individuals for their earnings is not a foreign concept to Network Marketing either.¹⁰⁹

Viable businesses in this industry have readily available resources and product information to ensure that all concerns and queries are addressed accurately and appropriately. Network marketers who encourage you to sign within a short space of time in high-pressure situations (i.e. aggressive sales tactics) should raise a red flag

¹⁰⁴ Woker (note 32 supra; 242).

¹⁰⁵ 'Direct Selling Code of Ethics' (note 70 supra; 7).

¹⁰⁶ Vander Nat (note 19 supra; 140).

¹⁰⁷ 'How Successful Can You Be - How Much Money' available at www.dsasa.co.za/modules_fe/layout2/how_successful.asp accessed on 16 November 2018.

¹⁰⁸ 'Why Become a Consultant' available at <https://www.amcsa.co.za/en/amc-consultants/why-become-a-consultant/> accessed on 25 May 2019.

¹⁰⁹ 'How Successful Can You Be - How Much Money' (note 107 supra).

to those considering an opportunity. The industry itself promotes steady and well-informed decision making for consumers.¹¹⁰

When purchasing products or services from a direct selling company or when signing an agreement to become a distributor/representative, an order form must be completed, either in hard copy or online. This order form should detail all terms and conditions and serve as a receipt to the consumer.¹¹¹ When carrying out the business, statements of commission earned and all other relevant account information must be provided to each direct seller.¹¹²

In accordance with the CPA¹¹³ and the industry code of conduct, the applicable cooling off period should apply to all products and services¹¹⁴

It is common for network marketing companies to provide training to members to ensure compliance with company policies, regulations and legislation and not to mention, due to the fact that sales, is hard!¹¹⁵

Given that direct selling is not particularly easy, it is not uncommon for companies to lose 'sales people', i.e. representatives, on a regular and continuous basis.¹¹⁶ This does not raise red flags.

Notwithstanding the fact that most academic writing on network marketing companies stress that any revenue received by a direct seller must be derived solely from the sale of products and services and not the recruitment of individuals,¹¹⁷ it has been acknowledged that *'legitimate multilevel marketers sometimes earn commission for introducing new recruits.'*¹¹⁸ This may be the case only in so far as, the product or service could be purchased by consumers even if commissions were not earned through recruitment.¹¹⁹

Furthermore, deriving a residual income, as a result of reaching certain ranks by virtue of the growth of a downline, should be funded out of actual retail sales within the

¹¹⁰ 'Choosing an Opportunity in Direct Selling' available at <https://wfdsa.org/choosing-an-opportunity-in-direct-selling/> accessed on 17 November 2018.

¹¹¹ 'Direct Selling Code of Ethics' (note 70 supra; 4).

¹¹² 'Code of Ethics' (note 69 supra; 8).

¹¹³ Section 16 of the CPA.

¹¹⁴ 'Direct Selling Code of Ethics' (note 70 supra; 6).

¹¹⁵ Vander Nat (note 19 supra; 140).

¹¹⁶ Vander Nat (note 19 supra; 140).

¹¹⁷ 'Direct Selling Code of Ethics' (note 70 supra; 8) and Woker (note 32 supra; 242).

¹¹⁸ Woker (note 13 supra; par 21).

¹¹⁹ Woker (note 13 supra; par 20).

organisation for it to constitute legitimate forms of commission.¹²⁰ Deriving commission from recruitment is prohibited if it amounts to new recruits funding existing representatives i.e. people at the bottom paying people at the top.¹²¹ This once again makes it very difficult to generalise and create an exhaustive list of elements of network marketing companies due to grey areas. Undoubtedly, as will be seen from the following chapter, certain elements of network marketing companies can be found in pyramid schemes and vice versa, regardless of how many cases are studied or companies are analysed. Nevertheless, the following chapter will set out red flags when identifying pyramid schemes to use as a general guideline when assessing opportunities.

¹²⁰ Vander Nat (note 19 supra; 146).

¹²¹ N Majola and T Dini 'All that glitters: an exploration of the Pyramid Scheme and Ponzi Scheme phenomena and what the law is doing to protect consumers' *Lexology* available at <https://www.lexology.com/library/detail.aspx?g=c62b13a4-d053-48d5-bef2-3b1ac7a85351&l=86K6423> accessed on 20 November 2018.

Chapter Three: Pyramid Schemes Under the Consumer Protection Act

3.1 Introduction

Pyramid and other illegal schemes were not always clearly documented.¹²² The first instance of consumer regulation concerning pyramid schemes, albeit impractical and unenforced, was seen in the 1980's (**1980 Regulations**).¹²³ The 1980 Regulations were followed by the Harmful Business Practices Act. 79 of 1988 (**Harmful Business Practices Act**) which established the Business Practice Committee (**Committee**). The Committee made notable strides in investigating what was then referred to as harmful business practices in relation to consumers.¹²⁴ The Harmful Business Practices Act was later renamed the Consumer Affairs (Unfair Business Practices) Act (**Consumer Affairs Act**) and dealt with unfair business practices, that had the effect of prejudicing, deceiving or unfairly affecting consumers, through a committee referred to as the Consumer Affairs Committee (**CAFCOM**).¹²⁵ CAFCOM was tasked providing recommendations to the Minister of Trade and Industry following investigations into business practices in instances where CAFCOM concluded that such practices were not justified in the public interest.¹²⁶ Notwithstanding the fact that CAFCOM carried out investigations into specific pyramid, money multiplication and chain letter schemes which informed subsequent legislation, the Consumer Affairs Act itself did not make provision for specific types of unfair business practices, like pyramid schemes, but instead made use of a more general approach to unfair business practices.¹²⁷

The Consumer Affairs Act was later repealed by the CPA. The CPA is currently in force and is symbolic of substantial consumer protection developments as is evident from the clear guidelines and warning signs in respect of schemes that could prejudice consumers.¹²⁸ Business operations are no longer investigated only on the basis that they are unfair to consumers but rather, clearly defined prohibited schemes are

¹²² D Krige 'Fields of Dreams, Fields of Schemed: Ponzi Finance and Multilevel Marketing in South Africa' (2012) *International African Institute* 82 (1) 71.

¹²³ GN 1134 (note 10 supra; 13).

¹²⁴ Woker (note 32 supra; 238).

¹²⁵ GN 1349 (note 18 supra; 8).

¹²⁶ Section 10 of the Consumer Affairs Act.

¹²⁷ Section 8 of the Consumer Affairs Act and GN 1349 (note 18 supra; 8).

¹²⁸ Chapter 2 of the CPA.

introduced.¹²⁹ The CPA established the NCC, the body which is tasked with and has undertaken investigations that form the subject matter of this mini dissertation.¹³⁰

3.2 The Development of Consumer Protection in respect of Pyramid Schemes

3.2.1 Schemes under the Consumer Affairs Act

Under the Consumer Affairs Act, CAFCOM undertook formal investigations into, amongst others, Rainbow Business Club and Newport Business Club which it found to be pyramid schemes.¹³¹ The classification of pyramid schemes developed from the 1980 Regulations through these types of investigations.

Pyramid schemes were seen as schemes in which participants would pay an upfront investment to join the operation and have the opportunity to recruit other participants who would pay the same investment to join. The upfront investment in such schemes was allocated to pay commission to the persons who recruited the individual and the remainder, to fund operations of the scheme.¹³² This type of operation structure was evidenced in the Newport Business Club investigation (**Newport**) whereby each new member paid an upfront amount of R14 000 of which R5300 was paid out in the form of commissions to individuals higher up the hierarchy.¹³³

Members of the Newport scheme were promised high returns based on commission from members they recruited and members that their recruits recruited.¹³⁴ In other words, the only benefit to members was the right to recruit others. This is a finite benefit that will almost certainly result in certain members being unreasonably prejudiced due to not being able to recoup their investments if no new members join.¹³⁵

This type of scheme (i.e. Newport) was also declared unlawful in respect of Rainbow Business Club.¹³⁶

¹²⁹ GN 1349 (note 18 supra; 8).

¹³⁰ 'NCC Concludes Preliminary Probe into 9 Suspected Pyramid Schemes' available at <https://ewn.co.za/2016/01/29/NCC-finalises-suspected-pyramid-schemes-probe> accessed on 29 November 2018.

¹³¹ GN 1134 (note 10 supra).

¹³² Woker (note 32 supra; 240).

¹³³ GN 1349 (note 18 supra).

¹³⁴ GN 1349 (note 18 supra; 13).

¹³⁵ GN 1349 (note 18 supra; 39).

¹³⁶ GN 1959 of GG 18531, 12/12/1997, 40.

Another type of pyramid scheme is one in which a product may be introduced. Where a product is introduced into the business plan, but money related benefits still stem from the members participation in recruitment, this may be deemed to be unlawful.¹³⁷

Following Newport being declared illegal, persons involved in the running of Newport transferred all assets to a company called Marketing for Success (Pty) Ltd. Marketing for Success (Pty) Ltd traded as Alpha Club and was marketed as 'a holiday club with a difference'.¹³⁸ Alpha Club offered cost effective travel benefits at varying membership levels as well as the opportunity to become representatives and market the travel memberships which offered accommodation sourced from hotel, apartment and resort developers.¹³⁹ Under this business model, Alpha Club specified that the level of income was dependent on the diligence of the representatives themselves.¹⁴⁰ During the investigations, Alpha Club asserted that they provided a *'product worth the cost of the membership and provided the infrastructure for each member to operate his/her business'*.¹⁴¹

Notwithstanding various benefits to the South African economy that may have stemmed from this scheme e.g. the creation of jobs and payment of tax,¹⁴² the resultant effect was that the operations and commission structure was the same as in Newport, save for the introduction of the product.¹⁴³ Given what we know about the hallmarks of network marketing companies set out in chapter two, and the confirmation that commission is paid as a result of the "sale of memberships", this investigation also turned on the viability of the product.

Alpha Club claimed to have a contract with RCI for the provision of timeshare as part of its travel benefits offered. RCI themselves indicated that the Alpha Club business operations in South Africa had no such contract and indicated that they would not supply accommodation to any Alpha Club member unless the member him/herself was a timeshare owner at RCI. ¹⁴⁴

¹³⁷ Woker (note 32 supra; 242).

¹³⁸ GN 1145 of GG 20185, 14/06/1999, 5.

¹³⁹ GN 1145 (note 138 supra; 10).

¹⁴⁰ GN 1145 (note 138 supra; 5).

¹⁴¹ GN 1145 (note 138 supra; 10).

¹⁴² GN 1145 (note 138 supra; 6-7).

¹⁴³ GN 1145 (note 138 supra; 11).

¹⁴⁴ GN 1145 of GG 20185, 14/06/1999, 12.

In fact, it became known that Alpha Club was operating timeshare with a voucher scheme which was solely dependent on availability as the company had no stock emanating from the voucher scheme itself and these were simply vouchers that were readily available in the industry and not exclusive to Alpha Club in any way.¹⁴⁵ In other words, the timeshare offered as part of the travel benefits were solely dependent on what vouchers in circulation Alpha Club could get their hands on, and no additional agreement existed with RCI to utilise their benefits. Fundamentally, due to there being no value in the product (evidenced from the fact that 0.1% of 8300 members made use of the 'product' benefits), no benefit existed aside from commissions earned through new members joining the scheme.¹⁴⁶ Alpha Club tried to reason that payment of commissions to its representatives at varying ranks operated in the same way as any other network marketing company.¹⁴⁷ In seeking to come to an arrangement, it was recommended that Alpha Club cease remunerating existing members and management for canvassing new members. Alpha club was not agreeable in respect of this recommendation and chose instead to discontinue the sale of Alpha Club memberships in South Africa.¹⁴⁸ Nevertheless, it was recommended that due to the unreasonable prejudice that consumers could face, it be declared a harmful business practice much like the Newport scheme.

3.2.2 Pyramid Schemes under the CPA

This section provides an overview of the most fundamental principles of pyramid schemes under the CPA.¹⁴⁹ Certain elements of a pyramid scheme under legislation that preceded the CPA were obvious from the multitude of investigations carried out (a handful of which are described above). The development of these elements culminated in Section 43 of the CPA.¹⁵⁰

Well before the introduction of pyramid schemes to statutes in South Africa, was the existence of pyramid schemes attempting to fall under the guise of network marketing companies by creatively including products in its business plan.¹⁵¹

¹⁴⁵ GN 1145 (note 138 supra; 12).

¹⁴⁶ GN 1145 (note 138 supra; 15).

¹⁴⁷ Ibid.

¹⁴⁸ GN 1145 (note 138 supra; 20).

¹⁴⁹ For a more in depth review of the CPA and pyramid schemes, readers are referred to Ally (note 51 supra).

¹⁵⁰ Section 43 of the CPA.

¹⁵¹ Woker (note 32 supra; 242).

The CPA encapsulates this and defines a pyramid scheme as follows:

- '(4) An arrangement, agreement, practice or scheme is a pyramid scheme if—*
- (a) participants in the scheme receive compensation derived primarily from their respective recruitment of other persons as participants, rather than from the sale of any goods or services; or*
 - (b) the emphasis in the promotion of the scheme indicates an arrangement or practice contemplated in paragraph (a).'^{152'}*

The definition in the CPA formalises the elements of a pyramid scheme by spelling it out and ensuring that consumers are aware that there is an outright prohibition regarding this and related conduct in accordance with section 43(2) of the CPA.¹⁵³

What the CPA makes clear is that a scheme may still be declared a pyramid scheme even if a seemingly viable product exists, in the event that the scheme is marketed in a manner that entices recruitment through commission payments.¹⁵⁴ Where the emphasis is on recruitment, then commission will be derived 'primarily' from recruitment, which smacks of a pyramid scheme.¹⁵⁵

As was the position under the now repealed consumer protection legislation, the CPA endows the NCC (the committee replacing CAFCOM) the power to investigate schemes and provide recommendations to the Minister. The Minister is entitled to prohibit such conduct, even if it does not fall strictly within the realms of 'pyramid' schemes so long as it still constitutes a business practice that is unreasonably prejudicial to consumers.¹⁵⁶ This is allowed by virtue of the fact that the Minister can provide an order not only in respect of pyramid schemes but also any other related scheme.

The above classifications are exceedingly relevant because founders and promoters of pyramid schemes may be liable for to a fine or imprisonment for a period not

¹⁵² Section 4 of the CPA.

¹⁵³ Woker (note 13 supra; par 2).

¹⁵⁴ Woker (note 13 supra; par 15).

¹⁵⁵ Section 43(4)(a) of the CPA.

¹⁵⁶ Woker (note 13 supra; par 8).

exceeding 12 months, or to both a fine and imprisonment.¹⁵⁷ In some instances, persons could be charged with the common law account of fraud.¹⁵⁸

Sections in the CPA that govern unfair, misleading, deceptive and unconscionable conduct were discussed in chapter two. These concepts were used to demonstrate that network marketing should not operate within these bounds in order to operate legitimately. In the same fashion, if companies do operate using these concepts, it should raise red flags to consumers as this prohibited conduct is a clear sign of foul play and used by most promoters of pyramid schemes.

3.3 Red Flags for Identifying Pyramid Schemes

There are a few distinct features that would undoubtedly result in a scheme being classified as a pyramid scheme.

When a consumer is approached with the promise of generating 'too good' sums of money over a truncated period of time, it is advisable that the consumer approach this opportunity with caution and consider where exactly this money comes from.¹⁵⁹ More often than not, if substantial commission is the promise being used to entice consumers, they are dealing with a pyramid scheme in that the only reason for joining the scheme is for money and not the value of any product/service that they may be purchasing.¹⁶⁰ In some blatant cases, the only product is money itself.¹⁶¹

On that note, when it is clear that the emphasis is not on the value of the product, it is more likely that representatives will spend less time providing details on the product and more time painting irresistible scenarios that make prospective members seem crazy to pass up on and crazier to ask questions about.¹⁶² This lack of explanation of realistic odds is another distinguishing feature¹⁶³ as network marketing companies should and will provide detailed information on everything a consumer would need to know to make an informed decision.¹⁶⁴ In a pyramid scheme, the time spent recruiting will be significantly more than the time spent selling the product.¹⁶⁵

¹⁵⁷ Section 111 of the CPA.

¹⁵⁸ Ally (note 51 supra; 37).

¹⁵⁹ Woker (note 32 supra; 237).

¹⁶⁰ GN 1134 (note 10 supra; 15).

¹⁶¹ GN 1349 (note 18 supra; 33).

¹⁶² GN 1134 (note 10 supra; 12).

¹⁶³ Vander Nat (note 19 supra; 140).

¹⁶⁴ 'Direct Selling | Income/Entrepreneurial Opportunities' available at http://www.dsasa.co.za/modules_fe/layout2/income_entrepreneurial.asp#opportunities accessed on 28 November 2018.

¹⁶⁵ Vander Nat (note 19 supra; 139).

In light of the overt features of pyramid schemes becoming known over time, certain schemes have elected to introduce products into their business structure to mimic the likes of network marketing companies in an attempt to seem legitimate.¹⁶⁶ This is where the lines blur between what actually constitutes network marketing companies and what constitutes pyramid schemes.

In light of this and as touched on in chapter two, the merit of the product marketed is crucial and is the reason why 'schemes' will need to be assessed on a case by case basis depending on the product offered. Companies that claim to be network marketing companies but place little to no emphasis on the marketing and sales of its products should raise a red flag simply due to the fact that it is highly likely that the emphasis is still on recruitment and not the product sale to the consumer.¹⁶⁷

To put it plainly, if the generation of income and the continuity of the scheme is dependent on the number of new representatives constantly joining,¹⁶⁸ effort by representatives will be harnessed towards recruitment which is a key element of a pyramid scheme.¹⁶⁹

After having assessed hallmarks of both network marketing companies and pyramid schemes, aside from glaringly obvious differences between the two (which is rarely the case now that unscrupulous opportunists are more informed), there still remains overlap and lines are sometimes no less blurry. A company's operations can only be addressed by an assessment of the scheme in question, its operations, the motivation behind representatives building their business and the way in which the scheme is marketed.¹⁷⁰

¹⁶⁶ GN 1134 (note 10 supra; 12).

¹⁶⁷ Ibid.

¹⁶⁸ GN 1349 (note 18 supra; 33).

¹⁶⁹ GN 1134 (note 10 supra; 11).

¹⁷⁰ Section 43(4) of the CPA.

Chapter Four: WorldVentures

4.1 Introduction

The discussion in the proceedings chapters established that network marketing is a growing legal industry in South Africa. This chapter constitutes the 'case by case' analysis that is necessary due to the overlapping characteristics of pyramid and network marketing operations. Using the principles set out in the previous two chapters, this Chapter seeks to identify hallmarks of WorldVentures to ascertain whether its business practices are in line with the CPA.

Network Marketing has evolved over time and is no longer carried out only by companies selling pills/potions or lotions or even tangible products. As with time and the evolution of business, network marketing companies can also be a vehicle for innovation.¹⁷¹ WorldVentures portrays itself as a pioneer in the social travel industry.¹⁷²

At the core of Worldventures' business, is the sale of DreamTrips (**DreamTrips**), a travel and lifestyle membership that can be classified as an intangible product in accordance with the DSASA Code. In addition to its product offerings, WorldVentures offers an opportunity to become a representative and market these travel and lifestyle memberships to consumers.¹⁷³

Again, after having determined that the most obvious distinguishing features between pyramid schemes and network marketing companies are the viability of the product and the origin of commissions, this chapter will review the WorldVentures business model in light of these findings.

4.2 The History of WorldVentures

WorldVentures is a privately held company that was founded in 2005 in Plano, Texas¹⁷⁴ and now operates in 35 different markets.¹⁷⁵ WorldVentures is operated through a team consisting of its founder, chief of business development, chief

¹⁷¹ Muncy (note 26 supra; 48).

¹⁷² WorldVentures 'The Road To Fun, Freedom And Fulfillment' available at <https://www.worldventures.com/en-us> accessed on 2 July 2019.

¹⁷³ Ibid.

¹⁷⁴ WorldVentures 'Our Story: Where we Come From' available at <https://www.worldventures.com/en-us/about> accessed on 25 November 2018.

¹⁷⁵ 'WorldVentures Countries of Operations' (note 11 supra).

executive officer, chief financial officer, president and chief strategy officer, chief technology officer, vice president of communications and corporate employees.¹⁷⁶

WorldVentures' main corporate office is based in Plano, Texas and it encourages consumers and representatives to schedule tours of its corporate offices and learn more about the company.¹⁷⁷ In South Africa, WorldVentures' regional Africa office is based in Cresta Junction, Johannesburg.¹⁷⁸ The opening of its Africa office was intended to symbolise its commitment to growth of the company in South Africa and its support to African representatives.¹⁷⁹ Along with its growth in South Africa came an increase in the allegations levelled against WorldVentures.

4.3 Allegations Levelled Against WorldVentures

In an online article published on the *Behind MLM* website,¹⁸⁰ it was levelled that:

- *'WorldVentures' business model sees affiliates pay hundreds of dollars to qualify to recruit new affiliates who do the same';*
- *'WorldVentures also runs a strong recruitment drive, which is recognised as its main income generator. Members are encouraged to recruit friends and family in order to earn commissions and rewards, including financial bonuses paid in American dollars.'*

It was suggested that WorldVentures' representatives generate commission when travel bookings are made on the website but that in fact, commission generated because of recruitment is significantly higher.¹⁸¹

¹⁷⁶ WorldVentures 'Meet the Team' available at <https://www.worldventures.com/en-us/about> accessed on 25 November 2018.

¹⁷⁷ WorldVentures 'Come See Us' available at <https://www.worldventures.com/en-us/about> accessed on 25 November 2018.

¹⁷⁸ 'WorldVentures Opens Office in SA, Encourages Entrepreneurship' *Bizcommunity* 25 October 2016 available at <http://www.bizcommunity.com/Article/196/533/152748.html> accessed on 25 November 2018 and 'Policies and Procedures' available at https://assets.wvholdings.com/1/PDF/southafrica_za/policiesandprocedures_za.pdf accessed on 26 November 2018.

¹⁷⁹ 'WorldVentures Opens Office in SA, Encourages Entrepreneurship' (note 178 supra).

¹⁸⁰ 'WorldVentures under fraud investigation in South Africa' *Behind MLM* 24 September 2015 available at <https://behindmlm.com/companies/world-ventures/world-ventures-under-fraud-investigation-in-south-africa/> accessed on 25 November 2018.

¹⁸¹ *Ibid.*

In another online article published on *Cape Town Lately's* website,¹⁸² it was alleged that:

- *'WorldVentures has been a hot topic in Cape Town in recent months, mostly because of its notable growth among locals despite its unethical business measures and high-failure rate'*
- *'Norway recently declared WorldVentures as an illegal business because it makes more than 50% of its income via recruitments. This is expected to be the same reason why it is likely to be declared illegal in South Africa.'*

The above allegations sum up what was alleged against WorldVentures in numerous media articles and the reasons as to why investigations were initiated.¹⁸³ The remainder of this chapter will unpack the business operations of WorldVentures to ascertain whether there is any truth to the accusations that WorldVentures operates a scheme driven by recruitment and through illegal and unethical practices.

4.4 The Business Operations of WorldVentures

4.4.1 The Legitimacy of DreamTrips

In order to have a legitimate network marketing business, there must be merit in the product, which in this case, is DreamTrips. The difficulty with finding little to no merit in the product is that an automatic red flag will be raised, indicating that the company is a pyramid scheme.

Whilst most individuals may not be familiar with WorldVentures, an exceeding number of persons are familiar with the blue and white 'You Should Be Here' sign that has appeared in breath-taking pictures capturing moments of individuals while on vacation.¹⁸⁴ This sign is used as a marketing tool and is linked to the product offering of WorldVentures, DreamTrips.¹⁸⁵ DreamTrips is marketed using its carefully curated trips which are said to provide members with an experience created to embody the culture and values of the company in creating fun, freedom and fulfilment.¹⁸⁶

¹⁸² Duncan (note 3 supra).

¹⁸³ W Lubuulwa 'Pyramid scheme? South Africa investigating WorldVentures as firm gets entrenched in Uganda' *PML Daily* available at <http://www.pmldaily.com/news/2019/03/pyramid-scheme-south-africa-investigating-worldventures-as-firm-gets-entrenched-in-uganda.html> accessed on 7 July 2019 and N Shaikh 'WorldVentures sued for millions by reps' *IOL* available at <https://www.iol.co.za/sunday-tribune/news/worldventures-sued-for-millions-by-reps-16636860> accessed on 7 July 2019.

¹⁸⁴ 'You Should be Here' available at http://youshouldbehere.com/chute.php?album_id=2500700.

¹⁸⁵ WorldVentures (note 172 supra).

¹⁸⁶ DreamTrips 'You've Gotta See This' available at <https://www.dreamtrips.com/> and <https://www.dreamtrips.com/refer# video> accessed on 25 November 2018.

The product offering can be compared to the scheme operated by Alpha Club, as described in chapter three. At this point, unless it is established that there is value in DreamTrips, it may well be identical to Alpha Club.

In fully assessing DreamTrips, it is important to point out that DreamTrips purchases accommodation from resorts and cruise lines; tickets from theme parks, ticket vendors etc. and curates unique experiences, on the general terms and conditions stipulated by transacting parties.¹⁸⁷

WorldVentures markets the affordability of DreamTrips through use of the concept of bulk-buying. This allows these carefully curated trips to be offered exclusively to members at wholesale prices.¹⁸⁸ WorldVentures claims that its wholesale prices make it possible for 'anyone on any budget to experience more'.¹⁸⁹ Members are able to take time for themselves, to share first time experiences with loved ones, experience new cultures and engage in bucket-list activities as these experiences are at heavily discounted rates.¹⁹⁰ Not only do members get access to exclusive affordable prices, but DreamTrips offers VIP treatment inclusive of a private host, private check-ins and exclusive parties, to name a few.¹⁹¹

To add to the value of the product, DreamTrips offers what it calls the DreamPrice Promise.¹⁹² This is essentially a price guarantee stating that, should a member find the exact trip at a cheaper price within seven days, WorldVentures will refund one hundred percent of the purchase price and undertakes to send the member on the cheaper trip free.¹⁹³

There are varying DreamTrips memberships that a consumer can choose to purchase.¹⁹⁴ Membership entails a consumer paying an initial fee as well as a monthly membership fee to ensure continued membership. In keeping with the legal requirements of the CPA, the relevant cooling off period is applicable and upon a membership application being made and approved, membership can be cancelled

¹⁸⁷ WorldVentures 'Membership Terms and Conditions' available at https://assets.wvholdings.com/1/PDF/southafrica_za/productterms_za.pdf accessed on 25 November 2018, clause 10.

¹⁸⁸ DreamTrips 'Dreamtrips referral video' available at <https://www.dreamtrips.com/refer#video> accessed on 25 November 2018.

¹⁸⁹ Ibid.

¹⁹⁰ DreamTrips (note 186 supra).

¹⁹¹ Ibid.

¹⁹² DreamTrips 'Become a member' available at <https://www.dreamtrips.com/Marketing/becomemember> accessed on 20 June 2019.

¹⁹³ Dreamtrips (note 188 supra).

¹⁹⁴ WorldVentures 'Membership Product Matrix' available at http://assets.wvholdings.com/1/PDF/MemBenefits/MemBenefits_EMEA_EN.pdf accessed on 25 November 2018.

within fourteen days with a full refund being afforded to the member.¹⁹⁵ Following any cooling-off period, cancellation can occur on notice by the member or WorldVentures.¹⁹⁶

Members have access to DreamTrips products and services which benefits extend to his/her spouse and all children under the age of 18.¹⁹⁷ Upon acceptance as a member, a member will automatically receive access to his/her own personal website that he/she can use to make use of DreamTrips' products and services.¹⁹⁸

In addition and based on the membership that is purchased, the initial purchase price is provided back to the member in the form of rewards points which can be used to further discount the already discounted vacation packages (i.e. DreamTrips). The monthly membership fee is also accumulated and paid back to the member as reward points.¹⁹⁹

The perks that a member can expect to receive is dependent on the membership that he or she purchases. Factored into DreamTrips Gold is a concierge service and a travel booking engine for ad hoc travel.²⁰⁰ When purchasing flights and hotels separate from a curated DreamTrip, members have access to a booking engine called Rovia. Using this engine, members have access to an innovative technology known as rateshrinker. Should a member make a flight or hotel booking on Rovia and should the price drop between the times that they book and the time of their flight or stay, rateshrinker allows members to obtain a refund of the difference in price.²⁰¹

In addition to all of the benefits of DreamTrips Gold, DreamTrips Platinum includes exclusive DreamTrips for platinum members, trip upgrades, complimentary excursions, spa discounts, resort credits and emergency evacuation benefits.²⁰²

Members are encouraged to make use of the product and experience its benefits for themselves. To provide members with the opportunity to divulge in the product, new

¹⁹⁵ Section 16 of the CPA and WorldVentures (note 187 supra; clause 5).

¹⁹⁶ WorldVentures 'Representative Terms and Conditions' available at https://backoffice.worldventures.biz/crm/resource_library/r/103/a/504/c/106 accessed on 25 June 2019.

¹⁹⁷ WorldVentures (note 187 supra). Children who still live at home and are studying (up to the age of 25) or are disabled, also have access to membership benefits.

¹⁹⁸ WorldVentures (note 194 supra).

¹⁹⁹ Dreamtrips (note 188 supra).

²⁰⁰ WorldVentures (note 194 supra). Dreamtrips gold costs US\$199.99 once off and US\$49.99 per month.

²⁰¹ Dreamtrips (note 188 supra)

²⁰² WorldVentures (note 194 supra). Dreamtrips Platinum costs US\$299.99 once of and a monthly fee of US\$99.99 is charged.

members have access to local 'welcome DreamTrips' that are offered to members at a set rate so that they can start making use of the product benefits immediately.²⁰³

Essentially, WorldVentures' product offering is simply one of a lifestyle membership that offers curated travel at discounted rates with the opportunity to further discount these trips using rewards points that are automatically earned by virtue of paying membership fees.

Furthermore, WorldVentures has partnered with the WorldVentures Foundation.²⁰⁴ WorldVentures' members are free to participate in its foundation initiatives. Included in these initiatives are what WorldVentures calls 'Voluntours'. Voluntours consist of trips that allow members to travel whilst participating hands on in initiatives throughout the world, including the building of bottle schools in remote areas.²⁰⁵

Additionally and in keeping with DreamTrips being a travel and lifestyle membership, DreamTrips members get access to DreamTrips local, which allows members to earn rewards to use on DreamTrips through dining or enjoying entertainment with certain participating merchants.²⁰⁶ Basically, members earn points based on the amount of their restaurant/entertainment bills to use towards further discounting their DreamTrips.²⁰⁷

DreamTrips provides members with access to a DreamTrips App (**App**) to book their hotels, flights and DreamTrips and moreover, it allows members the opportunity to access all necessary business tools on this App.²⁰⁸

In Alpha Club it was apparent that the product itself was almost never used by members. As an indication of the usage of DreamTrips, WorldVentures' members post images and testimonials on its website portraying their genuine experiences and their views on the value of WorldVentures.²⁰⁹

From member testimonials, it seems as though there is value in DreamTrips which comes with guaranteed travel benefits.²¹⁰ Moreover, WorldVentures members in

²⁰³ DreamTrips (note 188 supra).

²⁰⁴ The WorldVentures Foundation is funded by contributions that are taken out of each members membership fees.

²⁰⁵ Dreamtrips (note 188 supra).

²⁰⁶ DreamTrips 'DreamTrips Local' available at <https://www.dreamtrips.com/local> accessed on 25 June 2019.

²⁰⁷ Dreamtrips (note 206 supra).

²⁰⁸ WorldVentures 'Tools/Solutions' available at <https://www.worldventures.com/en-us/start-a-business> accessed on 30 November 2018 and 'Download the DreamTrips App' available at <https://www.dreamtrips.com/local> accessed on 25 June 2019.

²⁰⁹ 'For Members by Members' available at <http://youshouldbehere.com/> and 'Our Global Family' available at <http://www.worldventures.biz/> accessed on 20 November 2018.

²¹⁰ Through the use of the DreamPrice Promise and rateshrinker.

South Africa are bound by its terms and conditions which are in line with the CPA which requires a legitimate product to be marketed.²¹¹

4.4.2 The Business Model

WorldVentures gives individuals the opportunity to market its products and services by becoming representatives.²¹² Upon acceptance of the consumer's representative application and payment of an initial business fee and first monthly business fee,²¹³ the new representative is bound by the terms and conditions of the business as well as company's policies and procedures.

Becoming a representative in WorldVentures is a process much like the movie referral analogy used in chapter two. A representative is encouraged to experience the product and services offered by WorldVentures and to market it by sharing those experiences with those around them. WorldVentures regulates marketing by its representatives, in accordance with section 12 of the CPA²¹⁴, which prescribes certain times in which to contact individuals and strictly prohibits the harassment of any individual in an attempt to recruit them.²¹⁵

Once an individual decides that he or she would like to benefit from the products and services offered by WorldVentures, a representative is able to enrol the consumer as a customer (i.e. a purchaser of WorldVentures products and services) and/or a representative (i.e. an individual who purchases the rights to market WorldVentures products and services).²¹⁶ Since we have assessed the viability of the product, the focus here is on the representative business and the way in which representatives derive commission.

²¹¹ WorldVentures (note 187 supra; clause 16).

²¹² 'Representative Agreement' available at https://assets.wvholdings.com/1/PDF/southafrica_zarepagreement_za.pdf accessed on 26 November 2018.

²¹³ The initial fee is equivalent to US\$114.94. In addition to this, a monthly representative fee of US\$22.99 will be charged.

²¹⁴ Read with Regulation 4 of the CPA; Notice on Prohibited Time For Contacting Consumers under the CPA and C Gladwin, A Civil 'The Consumer Protection Act: Direct Marketing' (2014) *De Rebus* available at <http://www.derebus.org.za/consumer-protection-act-direct-marketing/> accessed on 2 May 2019.

²¹⁵ WorldVentures 'A Representatives Guide to Doing Business in South Africa' available at https://assets.wvholdings.com/1/PDF/southafrica_zadoingbusinessin_za.pdf accessed on 26 November 2018, 3 and 'Policies and Procedures' (note 178 supra; section 5.11).

²¹⁶ 'Policies and Procedures' (note 178 supra; section 3.1).

New representatives form part of the enrolling representative's downline.²¹⁷ When a new customer is enrolled as a representative,²¹⁸ the enrolling representative has a duty to teach the new representative how to run a sustainable and ethical business.²¹⁹

Essentially, each member has access to a personal business back office (in addition to the App) which is a website containing all technology, reports and documents necessary to operate their representative business.²²⁰ This back office also contains an illustration of the representative's binary organisation which consists of personally enrolled representatives and all other Downline (**Binary**). For illustrative purposes, this can be explained by describing each representative as having two separate legs on which newly enrolled representatives are placed.²²¹ This may result in representatives having other representatives' personally enrolled members form part of their Binary.²²²

4.4.3 The Derivation of Commission

The compensation plan for WorldVentures stipulates that no commission is received by members from the recruitment of representatives.²²³ It sets out what percentage of a product sale is paid to representatives in the form of commission.²²⁴ In defining the hallmarks of a network marketing company, this is typically a best case scenario and usually the anchor of establishing a legitimate network marketing company.²²⁵

To expand, the different ways in which representatives are paid are as follows:²²⁶

- **Direct Commission:**
Commission is earned on the sale of certain products and paid upon enrolment of a new customer (NB. not representative).

²¹⁷ 'Policies and Procedures' (note 178 supra; 6).

²¹⁸ Given the nature of information obtained by representatives, WorldVentures urges individual representatives to ensure that they are compliant with privacy laws in South Africa. 'Representative Agreement' (note 212 supra; clause 17).

²¹⁹ 'Representative Agreement' (note 212 supra; clause 1) and 'Policies and Procedures' (note 178 supra; section 3.2).

²²⁰ 'Compensation Plan' available at https://assets.wvholdings.com/1/PDF/southafrica_za/detailedcompplan_za.pdf accessed on 27 November 2018, 4.

²²¹ 'Compensation Plan' (note 220 supra; 5).

²²² Ibid.

²²³ 'Compensation Plan' (note 220 supra; 4).

²²⁴ 'Products and Commissions Chart South Africa' available at https://assets.wvholdings.com/1/loc/za/en/wvbiz/products_commissions_chart_za_en.pdf accessed on 27 November 2018.

²²⁵ Muncy (note 26 supra; 49).

²²⁶ 'Compensation Plan' (note 220 supra; 6-9).

- **Personal Sales Bonuses:**
This bonus is generated each time a representative enrolls three new DreamTrips customers (i.e. sells three new products).²²⁷

- **Wings Bonus:**
A wings bonus is generated each time a representative enrolls four new customers and is paid in the form of Rovia Bucks which can be redeemed when booking flights and accommodation on Rovia.²²⁸

- **Wings and Wheels Lifestyle Bonus:**
This bonus enables representatives to earn commission in US dollars at three varying amounts based on personal sales and the sales volume within the representative's downline organisation, generated within a calendar month. The sales volume is calculated based on the sale of new DreamTrips memberships as well as monthly membership fees that are being paid within the downline organisation.

- **Weekly Team Bonuses:**
This bonus is paid out upon the occurrence of a cycle. A cycle can be described as three product sales on the right leg and three corresponding product sales on the left leg of the Binary. This may happen repetitively for every cycle that occurs within the 28 day period.²²⁹

- **Residual Commissions:**
Once your Binary grows to the extent that there are a specified equal number of representatives on each Binary leg, a representative has the opportunity to start earning a residual income on a monthly basis which is generated from a percentage of the monthly membership fees that each customer within your Binary pays. The amount of residual that can be paid out to representatives

²²⁷ This also entitles you to earn training dollars to use towards one of the representative training events to the value of USD50. Commission is based on the sale of products within a 28 day period.

²²⁸ Commission is based on the sale of products within a 28 day period.

²²⁹ The payout is capped at 65% of the sales volume.

based on their ranks are capped at a maximum amount to ensure the viability of the compensation system.²³⁰

- Dream Home and Dream Car Bonus;

Once a representative reaches a certain rank in the company, i.e. based on the number of representatives within the Binary, a representative may be entitled to a set monthly home and car allowance.

Customers who are not representatives do not appear in a representative's Binary. Nevertheless, the sales credit available from customers who are not representatives are allocated to the necessary leg on the Binary to balance out the remaining credits and to enable a cycle to occur or residual to be paid out.²³¹

A warning sign of a pyramid scheme, as described in chapter three, is high returns derived from the recruitment of representatives. The WorldVentures compensation plan provides for increased commission and bonuses depending on the volume of representatives within a Binary, but only in the sense that the more representatives in a Binary, the more product sales and monthly membership fees are generated. If a representative were to recruit one hundred representatives only (i.e. make no product sales), he or she would earn approximately zero rand.²³²

The recruitment of individuals allows for increased revenue, as is allowed in legitimate network marketing, but the revenue generated from new representatives does not necessarily pay representatives at the top of the structure. Commission is only paid to individuals who are able to generate sales within their Binary in accordance with the commissions and bonuses in the compensation plan. In other words if A is at the top of the structure and B is below A, but B generates more sales within his or her Binary, then B will make more money than A, even though A is above B in the Binary.

It is clear that various types of bonuses and commissions can allow individuals to generate a substantial income. Nevertheless, when concluding the representative agreement, each representative is required to acknowledge that WorldVentures does

²³⁰ The payout is capped at 65% of the sales volume.

²³¹ 'Compensation Plan' (note 220 supra; 9).

²³² 'Compensation Plan' (note 220 supra; 4).

not make any guarantees in respect of profit or success, which can only be derived from the effort of the representative him or herself.²³³

In so far as ethical, clear, transparent and compliant conduct is concerned, WorldVentures members are obligated to adhere to its policy that is very much in line with the WFDSA, the DSASA and the DMASA.²³⁴

One of the red flags regarding pyramid schemes is the high pressure recruiting techniques and the misrepresentation of opportunities in an attempt to allure consumers. These techniques are specifically prohibited in WorldVentures policies that record that this behaviour is not a representation of the company and representatives risk termination should they engage in such techniques.²³⁵

Representatives implicitly and expressly acknowledge that they are prohibited from making/implying false or misleading representations regarding products, services and income claims.²³⁶ This includes the use on social media of claims to get rich/get paid to travel.²³⁷ Claims of this nature to promote a company is certainly a red flag.²³⁸ No representative is permitted to display copies of commission statements to entice individuals into becoming representatives. WorldVentures and the law in South Africa regard this practice as illegal enticement.²³⁹

That being said, within the confines of WorldVentures guidelines, the promotion of WorldVentures products and services on social media is encouraged.²⁴⁰ Due to the nature of DreamTrips, social media is seen an effective way for representatives to share content on the product, through photos and videos depicting DreamTrips. This type of marketing is encouraged by WorldVentures as a means to start a conversation with consumers rather than to sell on social media (which is prohibited).²⁴¹ The use of testimonials, which can be provided over social media, are said to be a powerful marketing tool provided the testimonial is only made by representatives concerning

²³³ 'Representative Terms and Conditions' (note 196 supra; clause 15).

²³⁴ 'Policies and Procedures' (note 178 supra; section 3.2.1 and section 5).

²³⁵ 'Policies and Procedures' (note 178 supra; section 5.10).

²³⁶ 'Policies and Procedures' (note 178 supra; section 3.2).

²³⁷ 'Policies and Procedures' (note 178; supra 26).

²³⁸ Woker (note 32 supra; 237).

²³⁹ 'Policies and Procedures' (note 178 supra; section 6).

²⁴⁰ 'Compliance and Social Media' available at https://assets.vvholdings.com/1/PDF/GENERIC/Social_Media_Quick_Guide.pdf accessed on 25 November 2018.

²⁴¹ *Ibid.*

their genuine experience and sharing only transparent information about the company.²⁴²

WorldVentures has indicated that it provides training on its product and the business of a representative.²⁴³ Trainings are centred on teaching representatives about the operations of the business. As noted in the network marketing chapter, direct sales are not easy and trainings are recommended.

In light of the opportunity to generate income in the form of commissions and bonuses, WorldVentures' representative agreement stipulates that each representative is bound by the laws of South Africa, including the tax laws applicable to the earned revenue. Compliance with tax requirements are the sole responsibility of the representative.²⁴⁴ Representatives are not regarded as WorldVentures' employees but rather as self-employed individuals and are required to register with the South African Revenue Service upon becoming a representative.²⁴⁵ The applicable laws relating to Value Added Tax are also applicable.²⁴⁶

4.5 The Marketing of WorldVentures

The law is clear on the fact that any scheme that is promoted in a manner akin to a pyramid scheme is prohibited.²⁴⁷ Despite the fact that a review of WorldVentures terms and conditions appear to be in line with the CPA and industry codes, this analysis turns on whether the terms and conditions are enforced.

In circumstances where representatives do not abide by the terms and conditions stipulated by WorldVentures, WorldVentures reserves the right to cancel a membership and revoke access to a representative's back office to ensure that the representative meets the compliance standards.²⁴⁸ In addition to representatives agreeing to abide by the specific terms, conditions, policies and procedures, WorldVentures provides South African representatives with a guide to carrying on their

²⁴² WorldVentures 'How to Use Testimonials in Direct Sales' available at <https://www.worldventures.com/int/my/my/en-us/membership/blog/how-to-use-testimonials-in-direct-sales> accessed on 28 November 2018.

²⁴³ 'Compensation Plan' (note 220 supra; 6).

²⁴⁴ 'Representative Agreement' (note 212 supra; 2).

²⁴⁵ 'Policies and Procedures' (note 178 supra; section 4.1).

²⁴⁶ 'A Representatives Guide to Doing Business in South Africa' (note 215 supra; 3).

²⁴⁷ Section 43(4) of the CPA.

²⁴⁸ WorldVentures (note 187 supra; clause 21).

business within the confines of relevant statutory laws, like the CPA, and specifically notes its compliance in respect of all its business in South Africa.²⁴⁹

This notwithstanding, members of WorldVentures in South Africa have been seen to be promoting recruitment as opposed to the value of the product, which poses serious risk for WorldVentures which could result in WorldVentures being declared a prohibited scheme.²⁵⁰

4.6 WorldVentures' Accolades and Affiliations

Aside from the policies and terms and conditions that seem compliant with South African legal principles, the following accolades and affiliations attained by WorldVentures further supports the notion of WorldVentures being a network marketing company:

- During the period of April 2017 to April 2018, WorldVentures maintained membership in the DMASA²⁵¹ and is currently listed as a member of the DMASA;²⁵²
- WorldVentures was ranked number 25 on the Direct Selling News Global 100 list in 2017.²⁵³ This list expands on the top direct selling companies in the world;
- In 2019, WorldVentures maintained its ranking on the Direct Selling News Global 100 list but shifted to number 38 of 100 companies;²⁵⁴
- DreamTrips by Rovia was announced the World's Leading Travel Club in 2018,²⁵⁵ and DreamTrips has been awarded this accolade in the years 2013, 2014, 2016 and 2017.

These affiliations and rankings, to name a few, provide further evidence that the nature of the scheme (even in other jurisdictions) is a direct selling company. That being said, cautionary measures can always be further implemented to ensure compliance. These recommendations are set out in chapter five.

²⁴⁹ 'A Representatives Guide to Doing Business in South Africa' (note 215 supra; 2).

²⁵⁰ Duncan (note 3 supra).

²⁵¹ 'Certificate of Membership' available at http://assets.vvholdings.com/1/ASSETS/DirectMarketingAssociation_WorldVentures.pdf accessed on 28 November 2018.

²⁵² DMASA 'Member Directory' available at <https://www.dmasa.org/member-directory?page=5> accessed on 25 June 2019.

²⁵³ 'We're Just Getting Started' available at <https://www.worldventures.com/en-us/about> and 'DSN Announces the 2017 Global 100' available at <https://www.directsellingnews.com/dsn-announces-the-2017-global-100/> accessed on 25 November 2018.

²⁵⁴ 'Direct Selling News tonight announced its Global 100 list of top direct selling companies in the world' available at <https://www.directsellingnews.com/dsn-announces-the-2019-global-100/> accessed on 25 June 2019.

²⁵⁵ 'World Travel Awards' available at <https://www.worldtravelawards.com/award-worlds-leading-travel-club-2018> accessed on 25 June 2019.

Chapter Five: Conclusion and Recommendations

5.1 Introduction

The purpose of this mini dissertation was to take an objective look at the business model and operations of WorldVentures to holistically determine whether it is a network marketing company or a pyramid scheme under the CPA. Even though WorldVentures' policies appear to be in line with the law, it must be accepted that individual representatives or even an organisation of representatives may, through their marketing of the company, engage in practices that fall foul of legislation.²⁵⁶ These practices can easily be attributed to WorldVentures and attract the attention of authorities as has been the case.²⁵⁷

From the analysis in Chapter four, it is evident that DreamTrips is a product that has substantial merit, merit that is in fact guaranteed through various price promises and advanced technology. It is clear that not only are the benefits readily available and worthwhile to consumers, but it is widely used and has allowed people from all walks of life to experience more.

Wholesale prices, retail commissions, rewards programmes and other incentives are not a foreign concept to network marketing companies and does not affect the viability of WorldVentures' business, more so because all commissions and bonuses stem from product sales and not recruitment.

Its policies and compensation plan is largely in line with legislation and industry standards. The compensation plan of WorldVentures is clear in providing that commission paid to representatives is generated as a result of product sales and not recruitment.

From what is evidenced on paper and online, if people stopped joining WorldVentures, members would still derive a benefit from the product and it would not be a case of representatives not recouping their investment as their investment would have been used to have purchased something that they would have purchased in any event.

The above clarifications and WorldVentures' direct selling affiliations and accolades clearly bring WorldVentures within the realm of a direct selling company.

²⁵⁶ Muncy (note 26 supra; 47).

²⁵⁷ 'Consumer Commission to Probe Alleged Ponzi Schemes' (note 2 supra).

That being said however, the similarity between WorldVentures and schemes like the Alpha Club cannot be ignored. It is highly likely that with the wrong step, WorldVentures could very well be operating as a pyramid scheme in practice, regardless of what is on paper. The following recommendations under section 5.2 are made to ensure that WorldVentures does not toe the line of a pyramid scheme.

5.2 Recommendations

5.2.1 Industry Regulation is Key

WorldVentures internal conduct requirements aligns with both the requirements of the DMASA and the DSASA but WorldVentures is only a member of the DMASA. Industry association affiliation further legitimises the operations of the company. Despite this, membership in the DSASA is voluntary and it is not a requirement that WorldVentures apply to join the DSASA. Membership will however assist regulatory authorities in their investigations given that WorldVentures would be vetted and would have to endure a full screening and audit process.

WorldVentures has been elected as a prospective member of the Direct Selling Association UK (a market in which they operate) and are awaiting a compliance audit to attain full membership.²⁵⁸ If this is an indication that the company is making strides towards becoming members of the DSASA, no harm can come off this and it will strengthen the legal standing of the company in South Africa.

5.2.2 Official Company Trainings are of Significant Value

Of great importance is the trainings provided by WorldVentures to its representatives. These trainings should place a pronounced emphasis on the adherence to WorldVentures policies and procedures. Regardless of the fact that representative adherence is required by its agreements, the importance of this cannot be emphasised enough purely due to the fact that even though WorldVentures may be a legitimate company, it can easily be classified as a prohibited scheme if the emphasis by representatives is placed on recruitment to make money. It cannot be ruled out that a company can so easily be viewed as illegitimate simply because of the overlaps that already exist between the two schemes. Representatives should be enlightened about

²⁵⁸ 'Prospective Member Directory' available at <https://dsa.org.uk/prospective-member-directory/> accessed on 25 November 2018.

this fact and trainings should emphasize the importance of marketing the value of the product over and above the possible earning potential that is based on each individual's effort.

Bearing in mind that training is not compulsory and not all representatives will attend training, WorldVentures should make it a priority to allocate sufficient resources in monitoring representatives and ensuring that appropriate measures are taken in respect of conduct that is contrary to policy, especially considering the risk of unlawful classification to WorldVentures.

5.2.3 Operations through the Promotion of DreamTrips

Needless to say, most marketing evidenced by representatives' personal social media accounts shows great use of DreamTrips offerings but at the same time there are certainly personal accounts of representatives in South Africa (that are publically available)²⁵⁹ that show a shift in the emphasis away from DreamTrip benefits and towards the recruitment of individuals and building of teams. It almost appears as though money is motivated through building teams and not product sales. Caution must be taken regarding this type of marketing to bring it in line with WorldVentures' policies. In other words, WorldVentures policies seem aligned with the CPA but the execution of the business by representatives must be controlled to the greatest degree possible.

5.2.4 General Red Flags to be Aware off

When providing information on the company in the form of a presentation, an introduction or even a testimonial, representatives must ensure that they are transparent and truthful.²⁶⁰

To avoid raising a red flag in situations where there does not need to be one, WorldVentures must ensure that prospective consumers and representatives are continuously updated and well informed. Representatives should avoid creating the illusion of a dodgy deal simply because he or she would prefer not to share information that he or she may deem irrelevant.²⁶¹

²⁵⁹ Through the use of social media and hashtags, it is easy to identify WorldVentures representatives and view the way in which they market WorldVentures.

²⁶⁰ 'Direct Selling Code of Ethics' (note 70 supra; 6); 'Code of Ethics' (note 69 supra; 5); Section 22 of the CPA; and 'DMSA Code of Ethics and Standards of Practice' (note 88 supra; 14-18).

²⁶¹ 'DMSA Code of Ethics and Standards of Practice' (note 88 supra; 11).

It is no secret that most South Africans cringe at the thought of answering a call from/being approached by a network marketer. If WorldVentures representatives adhere to policy regarding being respectful and mindful to consumers, they reduce the risk of attaching a stigma to the company's name and reputation. Representatives must be mindful of the fact that consumers are able to opt out of being contacted and harassment is strictly prohibited in terms of the company's policies as well as legislation and industry codes.²⁶² There is a manner in which sales can be conducted that is not illegal or unethical and this should be every representative's business goal.²⁶³

5.3 Concluding Remarks

WorldVentures has made positive impacts economically, by virtue of representatives earning an extra income and countries generating tourism revenue through the hosting of WorldVentures events and DreamTrips.

On a social platform the WorldVentures Foundation appears to have greatly impacted children and communities in need throughout the world and has significantly touched the lives of its own representatives through social initiatives.

In addition to the general positive effects, WorldVentures' policies ensure that the company will run as a direct selling company. It cannot however be overstated that members and representatives should not shift the focus away from company policies. The risk WorldVentures faces if it disregards the abovementioned regulations and recommendations is that it may be declared a scheme akin to a pyramid scheme by virtue of the way in which it is marketed and face the same repercussions as though it were a pyramid scheme.²⁶⁴

²⁶² Section 11 of the CPA.

²⁶³ Muncy (note 26 supra; 47).

²⁶⁴ Section 112(2) of the CPA.

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