

BBB NATIONAL PROGRAMS
THE DIRECT SELLING SELF-REGULATORY COUNCIL

Le-Vel Brands, LLC

Case No. 57-2021
Filed 1/6/22

COMPLIANCE REPORT

I. Company Description

Le-Vel Brands, LLC (“Le-Vel” or the “Company”) is a multi-level direct selling company headquartered in Frisco, Texas that was founded in 2012. The Company sells health and wellness products including dietary supplements containing vitamins, minerals, plant extracts, antioxidants, enzymes, probiotics, and amino acids.

II. Background

The Direct Selling Self-Regulatory Council (“DSSRC”) is a national advertising self-regulation program administered by BBB National Programs. In 2020, DSSRC resolved an inquiry regarding the dissemination of health-related claims and earnings claims communicated by Le-Vel and its salesforce members. Le-Vel did not attempt to provide substantiation for the earnings and health-related claims at issue in that inquiry and conceded that such claims should not have been disseminated. Accordingly, as a demonstration of its commitment to advertising self-regulation, Le-Vel removed a significant number of earnings claims and health-related claims that were disseminated by its salesforce members and the Company also used significant efforts to remove unauthorized statements from inactive or former salesforce members.

In response to the concerns raised by DSSRC, the Company stated that several social media posts were in the process of being addressed before the Company’s receipt of DSSRC’s inquiry. During the inquiry, Le-Vel removed most of the social media posts at issue. With respect to the social media posts that could not be removed through the Company’s efforts, Le-Vel provided DSSRC with detailed information regarding the good faith efforts that had been taken to reconcile such posts. More specifically, at the close of the 2020 inquiry, DSSRC was informed that 21 of the remaining 28 posts were removed or revised and of the Company’s enforcement actions, which included the suspension and termination of certain promoters’ accounts.

In addition, Le-Vel indicated to DSSRC that it had taken several significant steps to increase compliance training and the scope of its monitoring of the social media posts of

its consultants. The Company informed DSSRC that to become a Le-Vel salesforce member an individual must enter into a Le-Vel salesforce member agreement with the Company and agree to abide by the terms of the Le-Vel Policy Manual.

Regarding the Company's monitoring of its salesforce members, Le-Vel stated that it proactively monitors salesforce members for compliance with its policies and that it has procedures in place to respond to any actions by salesforce members that are in violation of applicable laws and regulations. Le-Vel stated that it monitors claims made about its products using automated search tools that notify Le-Vel when a disease or health-related condition is referenced in connection with the marketing of one of its products. When a claim of concern is found, either through the Company's compliance specialists' monitoring or by third-party notification, a specialist will initiate an investigation of the salesforce member's potential non-compliance by reviewing the salesforce member's websites, social media accounts, or other marketing materials. If the specialist determines that claims of concern are potentially being made by the salesforce member, the specialist will contact the salesforce member to notify them of the claims at issue and remind them that the promotion of Le-Vel products through non-compliant claims is a violation of the Company's Policy Manual.

DSSRC acknowledged that a considerable number of the earnings claims in the inquiry were removed and that the Company had provided DSSRC with a commitment that its compliance staff would continue to follow up to ensure compliance with Le-Vel's policies. Nonetheless, DSSRC recommended that any advertising materials (e.g., social media posts) disseminated by Le-Vel or its promoters regarding its auto bonus be accompanied by a clear and conspicuous disclosure indicating the percentage of active Company salesforce members who have achieved the award if such award would otherwise not be expected by a typical Le-Vel salesforce member. Finally, DSSRC recommended that the Company remove social media posts regarding the Company's Millionaire Award, and that any similar claims be discontinued.

With respect to any express or implied product performance claims that Le-Vel products may treat, cure, or prevent COVID-19, DSSRC acknowledged and appreciated the Company's proactive steps to warn its promoters not to make express or implied claims referencing COVID-19 or the current pandemic. DSSRC also acknowledged the Company's compliance updates that it provided to DSSRC making clear that any such claims regarding the current health crisis are prohibited by the Company and that such prohibition is an extension of Le-Vel's existing policies prohibiting disease treatment claims. As to the specific social media post identified in the inquiry, DSSRC acknowledged Le-Vel's prompt actions to have the social media post referencing COVID-19 removed and determined that removal of such post was necessary and appropriate.

DSSRC also agreed that, in addition to Le-Vel prohibiting its distributors from representing that the Company's products are similar to drug products, its salesforce members should also be advised that they should not disseminate claims indicating that Le-Vel products can treat, prevent, or alleviate the symptoms of developing diseases and

disorders. Lastly, DSSRC encouraged the Company to reinforce with its salesforce members that any representations made at events with a select audience or on a platform that is limited to Le-Vel's top sales leaders should not be repurposed and/or disseminated in a different context or platform or to a different audience. Likewise, DSSRC recommended that the Le-Vel promoter's social media post regarding the Millionaire Award, and any similar claims, be discontinued.

At the conclusion of the initial inquiry, DSSRC issued a written decision and noted that it would continue to monitor the messages disseminated by the Company's salesforce members and would initiate a compliance inquiry should it identify an ongoing proliferation of unsupported product or income claims being disseminated by Le-Vel and/or its salesforce members.

In its Company Statement, Le-Vel stated that it would engage its compliance program for its salesforce members by: (i) actively monitoring and removing salesforce member non-compliant claims from the marketplace; (ii) using appropriate intellectual property rights and remedies to address salesforce member and former salesforce member non-compliant claims; and (iii) employing contractual enforcement mechanisms to help salesforce members be compliant.

III. Compliance Inquiry

As part of its compliance process, DSSRC will independently review advertising that has been the subject of previous inquiries and determine if the direct selling company has made a good faith effort to abide by DSSRC's recommendations and adhere to the commitment expressed in its Company Statement. DSSRC recently identified 12 social media posts through its monitoring that communicated a message that the Le-Vel's products can relieve health-related conditions including, but not limited to, anxiety, stress, viruses, and headaches. Additionally, DSSRC also identified two social media posts that referred to the significant income that can be earned from the Le-Vel business opportunity.

DSSRC contacted Le-Vel and asked the Company to provide an update on the actions it had taken to adhere to the Company's commitment to comply with the recommendations made by DSSRC in its decision. DSSRC also inquired about the newly identified social media posts that were disseminated by salesforce members that included similar health-related claims to those that were the subject of the initial DSSRC inquiry as well as recent social media posts which communicated unsupported earnings claims. More specifically, the social media posts at issue in this compliance inquiry included, but were not limited to, the following claims disseminated on social media:

- "I am so excited to start my new journey with Thrive by Le-Vel! It has helped so many people I know, especially those who have cancer and diabetes to feel more energized, lose weight, == and also improve overall health and nutrition."
- "I use Chill to help my anxiety and C-PTSD."
- "Come join thrive Both men and women can do thrive – depression/anxiety."

- “... helps with your anxiety”
- “I suffer from a lot of health issues. One of the major ones is rheumatoid arthritis... I have had the most effective results from this and my pain is not as excruciating as it was...”
- “Rheumatoid arthritis!! Diabetes!! Hypertension!! Asthma!! - these are some of conditions that help you control the nutrition of Le-vel Thrive”
- It’s helping him with is Diabetes and back problems...”
- “Level Thrive Million Dollar Leader
- Arthritis is 70% gone
- If you have ...arthritis, lupus, fibromyalgia, MA, need mental clarity – then you NEED this THRIVE experience!...”
- Have an income that provides for our family. Within 8 months... we replaced not only my entire salary but it almost doubled it.”

IV. Company’s Position

In its response to DSSRC’s compliance inquiry, Le-Vel reaffirmed its commitment to industry self-regulation and pledged to continue to actively monitor and remove non-compliant claims from the marketplace.

In its review of the social media posts that DSSRC brought to the Company’s attention during this compliance inquiry, Le-Vel informed DSSRC that its compliance specialists attempted to contact each of the eleven salesforce members and the one wholesale customer responsible for the posts.¹ Le-Vel informed DSSRC that it had taken corrective action on eight of the 12 posts before it received DSSRC’s compliance inquiry as its monitoring team had previously identified such claims. The Company stated that it was in the process of removing those posts prior to receiving DSSRC’s compliance inquiry.

More specifically, seven of the 12 posts identified by DSSRC were disseminated by salesforce members to whom the Company sent compliance notices and ultimately terminated months before receiving DSSRC’s compliance inquiry. According to Le-Vel, the terminated salesforce members failed to correct or remove their posts and, in many cases, Facebook or other internet service providers denied the Company’s requests to take down the posts on the grounds that they did not violate the platform’s terms of service.

With respect to the remaining posts, Le-Vel agreed that four of the posts violated the Company’s guidelines and it attempted to contact the salesforce members responsible for the posts following its receipt of the compliance inquiry. As a result of the Company’s

¹ Le-Vel provided a detailed spread sheet to DSSRC, which listed each social media post at issue, the name of the salesforce member responsible for the post, the date and specific actions taken by Le-Vel to address DSSRC’s concerns, the responsiveness of the salesforce member, and the enforcement measures taken by the Company to address the conduct of the salesforce members.

efforts, all four of those posts were removed following the Company's issuance of compliance notices to the salesforce members who disseminated the posts.²

V. Compliance Determination

DSSRC recognized and appreciated that Le-Vel had taken actions to address several of the posts at issue before this compliance inquiry was commenced and took immediate steps to contact the salesforce members responsible for the remaining social media posts. Le-Vel did not attempt to substantiate the health-related claims or the earnings claims posts at issue and acknowledged that the claims disseminated by the Le-Vel salesforce members did not adhere to the Company's Policy and Procedures. While the Company was able to effectuate the removal of four of the posts, it also demonstrated that it had attempted to contact the salesforce members who were responsible for the remaining posts and, when it did not receive a response, contacted the social media platforms where the claims were disseminated to have them remove the posts that were still publicly accessible. Le-Vel also advised DSSRC that it terminated the accounts of all eight salesforce members that did not respond to the Company's request to remove the posts.

When a direct selling company is made aware of improper product (or income) claims that were made by an individual that was not within its geographical control or who was an active salesforce member when such claim was made but that has since become an inactive salesforce member of the company, DSSRC acknowledges that the direct selling company may not be able to require such salesforce members to remove a social media post. In that instance, DSSRC nonetheless recommends that the direct selling company make a bona fide good faith effort to have the improper claim removed.³

With respect to the health-related posts that were identified by DSSRC, It is well established that the evidentiary burden for health-related claims is competent and reliable scientific evidence.⁴ Competent and reliable scientific evidence, as defined by the Federal Trade Commission (FTC), includes, "tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner, by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results."⁵ Accordingly, in the absence of reliable evidence supporting the message that

² Le-Vel advised DSSRC that that one social media identified by DSSRC did not pertain to a Le-Vel product or service.

³ Gano Excel USA, Inc. (Case #30-2020); Daxen, Inc. (Case #52-2021).

⁴ VGH Solutions Inc. (Dr. Ho's Circulation Promoter), Report #6404, NAD/CARU Case Reports (September 2020); Molekule Inc. (Molekule MH1 Air Purifier), Report #6314, NAD/CARU Case Reports (October 2019); Triumph Pharmaceuticals Inc. (SmartMouth Dry Mouth Products), Report #6190, NAD/CARU Case Reports (June 2018); Good Health Naturally, LLC (Serranol Supplements), Report # 5441, NAD/CARU Case Reports (March 2012); Nature's Cure, Inc. (2 -Part Acne Treatment), Report #4797, NAD/CARU Case Reports (February 2008).

⁵ FTC Guide, Dietary Supplements: An Advertising Guide for Industry, www.business.ftc.gov/documents/bus09-dietary-supplements-advertising-guide-industry;

the stated results can be generally expected by consumers, DSSRC agreed with Le-Vel that the health-related claims were inappropriate in the context in which they were communicated by salesforce members. Similarly, with respect to earnings claims, the FTC has noted that some business opportunities may present themselves as a way for participants to get rich or lead a wealthy lifestyle and if participants generally do not achieve such results, these representations likely would be false or misleading to current or prospective participants.⁶

DSSRC expressed its appreciation to the Company for its prompt attention to this matter and determined that the good faith actions taken by Le-Vel to remove the product performance and earnings claims were necessary and appropriate.

DSSRC will continue to monitor the online and social media advertising for the Company's products as well as claims made regarding the Le-Vel business opportunity to ensure that the dissemination of unsupported product and earnings claims is not a systemic issue.

VI. Conclusion

DSSRC recognized the good faith actions taken by Le-Vel in the spirit of voluntary self-regulation and the appropriate and prompt steps resulting in the discontinuation of the several of the social media posts at issue and the termination of salesforce members that failed to abide with its request to remove unauthorized posts. DSSRC also noted that it will continue to monitor the online and social media advertising for the Le-Vel's products and the claims made regarding the Le-Vel business opportunity to assure that the Company will uphold its commitment to providing increased compliance oversight of Le-Vel salesforce members.

(Case No. 57-2022, PCM closed on 01/05/22)

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Molekule Inc. (Molekule MH1 Air Purifier), Report #6314, NAD/CARU Case Reports (October 2019).

⁶ <https://www.ftc.gov/tips-advice/business-center/guidance/business-guidance-concerning-multi-level-marketing>. Section 13, bullet point #2.