

BBB NATIONAL PROGRAMS, INC.
The Direct Selling Self-Regulatory Council

Case Number: 26-2020 – NGO Inquiry – Counter Brands LLC d/b/a/ Beautycounter.

COMPANY DESCRIPTION

Counter Brands LLC d/b/a/ Beautycounter (“Beautycounter” or the “Company”) sells skin care and cosmetic products through a variety of channels, including direct sales through independent consultants, online, retail stores and retail partnerships. It is headquartered in Santa Monica, California. The Company was founded in 2013 and has over 44,000 independent consultants in the United States and Canada.

BASIS OF INQUIRY

The Direct Selling Self-Regulatory Council (“DSSRC”) is a national advertising self-regulation program administered by BBB National Programs, Inc. Pursuant to section D(II) of DSSRC’s Policies & Procedures, DSSRC may commence an inquiry regarding the marketing disseminated by a direct selling company and/or its salesforce where the subject claims were referred to DSSRC by the Administrator of the Direct Selling Association’s Code of Ethics, through media reports, or identified by other parties. Here, a nonprofit, non-governmental organization (NGO) dedicated to protecting consumers¹ identified certain earnings claims for Beautycounter that were brought to DSSRC’s attention. Specifically, the NGO brought to DSSRC’s attention certain earnings claims being disseminated on the social media pages of certain independent consultants and on the website of Beautycounter. It alleged that many of the representations at issue include both express and implied claims that the Beautycounter business opportunity will help individuals earn a minimum level of income and/or enjoy a lavish lifestyle. In the NGO’s initial written submission to DSSRC, it identified over 100 examples of such claims.

The representative earnings claims that were the subject of this inquiry are as follows:

- “What started out as a goal to be able to send her daughter to a private kindergarten has grown into a thriving business based out of her hometown in Whitby, Canada. A former barista with no prior experience in sales (and a fear of putting herself out there on social media) Christi-Ann pushed herself out of her comfort zone and is now a top #beautycounter boss.”
- “[My girlfriend] was making, in one month, how much it would take me three months to make working forty hours a week. My driving force to join Beautycounter was to literally make a thousand dollars a month. That was my big vision goal and dream when I joined. I hit director with the company, I matched my salary by just doing posts. Literally, I had zero experience, never done an online business before,

¹ Tina.org

never sold anything (except a killer latte) before, and I turned this business into a six-figure income.”

- “In three years of being with Beautycounter I have increased my income by 600 percent...” So right before I did this, I used to work for the government. I had a really nice cushy job, great benefits...But recently I’ve been able to replace that income, which makes me feel so proud of myself.”
- “For me, Beautycounter has given me financial freedom, it’s given me the flexibility to be present at home all the time, to also be happily married and present for my husband...”
- Instagram post with copy stating “A side hustle is more than just another stream of income, it’s also the new job security. More income means more options, more options equals freedom” and caption stating “Interested in earning money doing something you love and can fit in your everyday life?? DM me and I can give you more information about becoming a Beautycounter consultant!!”

COMPANY’S POSITION

Beautycounter noted its appreciation to DSSRC’s stated mission of monitoring marketing claims by direct selling companies and explained the Company’s commitment to conduct its business operations in compliance with applicable laws and regulations.

As an initial point, Beautycounter disputed the NGO’s allegations that the Company’s Income Disclosure Statement (IDS) was inaccurate because it only reflected earnings data for “active” Beautycounter consultants and that it excludes thousands of Beautycounter consultants “presumably” because they don’t earn money. The Company asserted that contrary to the NGO’s mischaracterization of the Company’s IDS, the data shown in Beautycounter’s IDS is for *all* Beautycounter consultants, not just “active” consultants. The Company called DSSRC’s attention to language in the IDS which states that “These figures include all Consultants, even if they had no sales and; therefore, earned no Commissions in a given month.” The Company stated that the NGO’s presentation of this flawed position in an article on its website demonstrated that the NGO was disingenuous in its characterization of the truth and accuracy of the Beautycounter’s summary of consultant earnings.²

The Company advised DSSRC that the subject inquiry led Beautycounter to initiate a top-to-bottom review of Company marketing materials, the process in which company materials are reviewed and approved, the Company’s process for monitoring consultant marketing material and the mechanism for enforcing compliant conduct by Beautycounter consultants.

² Beautycounter stated that the article relies heavily upon the flawed premise that the Beautycounter IDS intentionally omits non-earning Consultants to suggest that 50% of Beautycounter Consultants earn no money in 2019 and that Beautycounter and a number of Beautycounter Consultants have made in appropriate earnings claims as a result of the alleged flaw in the Beautycounter IDS.

Beautycounter advised DSSRC that its consultants are trained to present or refer to Beautycounter's IDS whenever discussing potential earnings as a Beautycounter consultant and the Company maintained that its 2019 IDS provides adequate disclosure of what a potential participant will generally expect to achieve as a Beautycounter consultant. The Company noted that, among other things, the 2019 income disclosure statement: a) presents earnings data, before expenses for all consultants, including those that did not earn any money; b) provides the average high and the average low earnings of consultants at different titles (including \$0 monthly earnings for participants in the bottom 25% of the consultant level; c) the percentage of consultants at each title/level; and d) a description of the known expenses typically incurred by consultants. In addition, the IDS provides average annual earnings of all consultants (including those that did not earn any income) as well as data showing the average earnings of consultants in the top 50%, 10% and 1%.

In connection with the compliance review that Beautycounter initiated, the Company advised DSSRC that it would be updating the 2019 IDS and future income disclosure statements to provide even more transparency about what a potential consultant can generally be expected to achieve. In this regard, Beautycounter proposed including: a) the percentage of consultants that had no sales and earned no income; b) the percentage of consultants who earned more than \$500; c) the percentage of consultants who earned more than \$1,000 and d) the median earnings of the top 1% of all consultants. In addition, Beautycounter proposed to provide additional information about earnings achieved or not achieved by consultants during the first 6 months after joining Beautycounter, including: a) the median income (during the first 6 months) for new consultants; b) the percentage of new consultants who earn more than \$100; c) the percentage of new Consultants who earned more than \$500; and d) the percentage of new Consultants who earned more than \$1,000.

To ensure that the appropriate disclosure of atypical earnings claims are provided with the earnings representation, Beautycounter stated that it intends to: a) make available a downloadable PDF of the Company's IDS (ii) increase emphasis and training of Beautycounter consultants on the necessity of having a clear and conspicuous disclosure when making earnings claims; (iii) provide rigorous enforcement and disciplinary action against consultants who refuse to remove non-compliant advertising or earnings claims or persist in publishing non-compliant content.

Claims at Issue

Beautycounter stated that all of the company-generated marketing claims identified by the NGO's database were removed. At that point 98 out of 104 claims had been removed when Beautycounter received DSSRC's inquiry. Four consultants who refused to remove the posts were instructed to remove them or they would be terminated. One consultant could not be identified because the social media account was no longer available. The last post was unable to be removed because the consultant no longer had access to the account.

Beautycounter advised DSSRC that it has a compliance team that monitors and enforces compliant conduct by its independent consultants, including monitoring claims published by independent stylists on social media pages like Facebook. In addition, Beautycounter stated that it would be increasing surveillance of consultant social media activity by using a private company to monitor social media posts made by Beautycounter consultants.

Finally, Beautycounter explained that it has undertaken to perform a compliance audit of all Beautycounter-generated social media content, including but not limited to YouTube videos, podcasts, Instagram posts, Facebook posts, digital tools and audio files. Content that is deemed to be noncompliant has been removed and edited to remove the non-compliant content. To date, this audit has included the review of more than 20 hours of YouTube video footage, approximately 20 podcasts and review of hundreds of marketing materials. Beautycounter stated that this process is ongoing.

For any remaining or unedited posts, the consultants were notified that their employment would be terminated if the income claims in the post were not removed by 2 p.m. on the date of the letter.

CASE DISPOSITION

DSSRC appreciated the bonafide, good faith efforts of Beautycounter to adequately address the claims at issue and, more specifically, remove all of the posts that were brought to its attention during this inquiry.

As noted in DSSRC's Guidance for Earnings Claims in the Direct Selling Industry, one of the greatest challenges for direct selling companies is ensuring that the earnings claims communicated by their salesforce members comply with legal and self-regulatory standards.³ The Federal Trade Commission (FTC) has stated that representations about a business opportunity, including earnings claims, violate Section 5 of the FTC Act if they are false, misleading, or unsubstantiated and material to consumers.⁴ Express and implied earnings claims must be truthful and non-misleading to avoid being deceptive, which means that claims about the potential to achieve a wealthy lifestyle, career-level income, or significant income are false or misleading if business opportunity participants generally do not achieve such results. Even truthful testimonials from participants who do earn significant income or more will likely be misleading unless the advertising also makes clear the amount earned or lost by most participants.

DSSRC determined that the prospective measures outlined by Beautycounter demonstrated a genuine commitment to vigorously monitor the representations communicated by its salesforce members, provide them with additional compliance

³ https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/dssrc/dssrc_guidanceonearningsclaimsforthedirectsellingindustry_2020.pdf?sfvrsn=4ecfd36_6

⁴ 15 U.S.C. § 41 et seq.,

training and oversight and, when necessary, initiate necessary enforcement action to appropriately address uncooperative salesforce members who are unresponsive to the remedial requests of the Company.

DSSRC also confirmed that the allegation that Beautycounter did not include the earnings data for all salesforce members (i.e., active and inactive) in the Company's IDS was unfounded. DSSRC was particularly encouraged by Beautycounter's commitment to provide greater transparency in its revised IDS regarding earnings that Company consultants can generally be expected to achieve. DSSRC agreed that this revision will provide valuable and information that will assist prospective consultants in determining whether the Beautycounter business opportunity is appropriate for their purposes.

In conclusion, based upon the voluntary, good faith actions taken by Beautycounter to immediately and adequately address each and every claim brought to its attention by DSSRC and its bonafide commitment to revise and provide greater transparency and clarity in its IDS regarding the earnings for all of its salesforce members, DSSRC has administratively closed this matter pursuant to section III of the DSSRC Policy and Procedures.

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