

# Fortune, or misfortune? State looking into possible pyramid scheme

## State Attorney General investigating consumer complaints against Fortune Hi-Tech Marketing

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A company that says its goal is "achieving success with integrity" is being investigated by North Carolina Attorney General Roy Cooper after consumers charged that it operates a pyramid scheme with approximately 11,000 members across the state, including some in the Cape Fear region.

A spokeswoman for the attorney general, Noelle Talley, said investigators with the consumer protection division are concerned about Fortune Hi-Tech Marketing's operations in North Carolina. Investigators are reviewing more than a dozen consumer complaints to determine if the company's activities violate state laws, and the office was contacting other attorney generals to exchange information and review what kinds of complaints they had received, Talley said. The investigation began earlier this fall.

In a written response to questions, a Fortune spokeswoman, Brittney Mills, said the company would not comment about ongoing investigations. But in interviews, court documents and news reports, company officials and members have repeatedly disputed charges that Fortune is a pyramid scheme.

North Carolina's probe comes amid growing scrutiny of Fortune, which is also under investigation in Kentucky and Texas and has previously been ordered to stop conducting business in Montana and North Dakota. Both of those orders were later lifted after Fortune reached a settlement with the states.

Fortune, headquartered in Lexington, Ky., is part of the direct selling industry, which includes companies such as Amway, Mary Kay and Avon. These companies enroll independent representatives to sell products and services directly to consumers.

The industry, also known as network or relationship marketing, accounted for an estimated \$28.3 billion in nationwide sales in 2009 and directed 16.1 million salespeople, an increase of one million people over the year before, according to the Direct Selling Association, a trade group.

Mills said the company has about 100,000 members in the United States. The company also operates in Canada, Puerto Rico and the United Kingdom, according to its Web site.

Fortune enrolls "independent representatives" who earn sales commissions on a diverse array of product and service lines, including satellite television, cell phone service and vitamins, according to the company's Web site and interviews with

current company members. The reps get commissions on products they sell as well as items sold by salespeople they enroll, their recruits, and so on.

But salespeople are also rewarded for recruiting new members who also gather customers. Like a majority of direct selling companies, Fortune directs a multi-level compensation plan, which promotes salespeople for enrolling new members and selling products.

Sales commissions range from a quarter of one percent to 25 percent depending on the product and the level of the sale, according to an Oct. 1 e-mail announcement distributed to Fortune members, a copy of which was obtained by StarNews. In recent months, Fortune has dropped its entrance fees from \$299 to \$199 and most recently to \$99.

Other portions of its compensation plan, including bonus payments, have also been restructured.

But interviews with former Fortune members, state authorities and experts across the country, sketch a different picture of the lucrative business plan the company portrays. Some say it runs an endless recruitment chain, raising questions about whether the company is a legitimate business opportunity or a veiled pyramid scheme.

According to the attorney general's Web site, many companies that direct a multi-level or network marketing plan are pyramid schemes even though their promoters claim to sell a product or service.

"Fortune Hi-Tech Marketing will never be able to show you even one person who makes a sustainable profit selling products," said Robert FitzPatrick, the Charlotte-based president of the consumer advocacy group Pyramid Scheme Alert. "Anybody in that scheme who is making money is doing so by recruiting people under them."

Pyramid schemes have proliferated over the past decade, a product of federal deregulation over private-sector industry, FitzPatrick said. The common variety, and the hardest to spot, is the illegitimate multi-level marketing company, which often directs a highly elaborate compensation plan. Some of these companies seem to exist in a legal gray area, and are the subject of much debate.

### **Fortune comes under scrutiny**

Established in 2001, Fortune saw scrutiny of its operations suddenly escalate when the Montana Commissioner of Securities and Insurance on March 4 temporarily forbid Fortune from operating there after an investigation raised questions about the company's legality.

In the 34-page order, the commissioner, Monica Lindeen, alleges that Fortune is a "pyramid promotional scheme." The order also asserts that Fortune's sales ties with the brand name companies that its salespeople market were exaggerated, or in some cases, falsified.

Fortune, without admitting any wrongdoing, settled the claim by agreeing to pay nearly \$1 million in fines, contributions and reimbursements to Montana consumers. It also agreed to a sweeping overhaul in how it operated in Montana, including a \$75 cap on entrance fees and new reporting and disclosure requirements.

Asked why the company settled the claim, Mills said Fortune chose "to avoid the

delays and expenses of litigation."

"FHTM's (Fortune) acceptance of the settlement, which permitted FHTM to continue to do business in Montana and did not result in any finding that FHTM was an illegal pyramid scheme, was not an admission of liability on the part of FHTM and should not be construed that way," Mills said.

Part of the Montana order required Fortune to release an income disclosure statement, which showed that more than 28 percent of its sales force never received a payment between Jan. 23, 2009, and Jan. 20, 2010.

Of those who were paid, more than half averaged \$93 per month during that period. And another 40.5 percent got \$256 per month on average, the statement shows.

"Three out of 10 in Fortune never draw a paycheck but that's not the company's fault," said Darrell Mickel, a 54-year-old Fortune executive manager in Elkin, N.C. "A lot of people come and go and a lot of people quit, but that's just the way it is."

### **Fortune's members praise the company**

Successful members vehemently deny that Fortune operates a pyramid scheme.

For example, Michael Karpovich, of Caro, Mich., says the \$1,500 he averages in monthly income through Fortune saved him from bankruptcy. A motivational speaker who saw engagements slow along with the economy, Karpovich joined Fortune in 2007. He has since adopted it as a near full-time occupation.

"I really thought that God himself was offering this to me," he said by telephone.

Karpovich said he likes the fact that salespeople earn commissions on products with monthly recurring bills, and that he gets commissions off any product sold by anyone he has recruited or anyone they have recruited. He estimates that he is indirectly responsible for about 9,000 people enrolling in the business.

"I get paid to help you make money, and that's exciting," he said. "It's (Fortune) a marriage of network marketing and corporate America."

### **Class-action filed**

In early September, a group of former Fortune salespeople filed a lawsuit in a Kentucky federal court, and their attorneys are currently seeking class-action status.

The lawsuit lists nearly 40 Fortune executives and high-level sales managers – including those in Mooresville, Raleigh and Denton, N.C. It also names company President Paul Orberon and CEO Thomas Mills.

Kenyon Meyer, an attorney for Dinsmore&Shohl, the firm representing the four plaintiffs named in the suit, said the claim seeks an order from a federal judge to halt Fortune's business operations and reimburse its members across the country.

In response, Fortune has asked the judge to bring the case to arbitration. If Fortune's request is granted, it would hamstring efforts to give the case class-action status, Meyer said.

U.S. District Court Judge Karen Caldwell will likely rule on how the case moves forward in the next few months, Meyer said last week on Tuesday.

"This is what we expected," he said. "We're going to fight it."

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