MORAL SUASION

DEVELOPMENT OF THE

U.S. DIRECT SELLING ASSOCIATION

INDUSTRY CODE OF ETHICS

BY THOMAS R. WOTRUBA, PH. D.
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THOMAS R. WOTRUBA, PH. D.
The Direct Selling Education Foundation (DSEF) is a Washington, D.C. not-for-profit public educational organization. It is tax-exempt and contributions to it are tax-deductible.

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Moral Suasion: Development of the U.S. Direct Selling Association Industry Code of Ethics

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moral suasion: Persuasion exerted or acting through and upon the moral nature and sense.

"Who thought that moral suasion needed to be aided by legislation?"

- Sir Charles W. Dilke
  London, December 15, 1885
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FOREWORD

The past quarter century has witnessed a proliferation of codes of ethics written by individual corporations and associations of companies. In Moral Stasis, Professor Tom Wotruba calls this period and its plethora of codes an "ethical renaissance," but I am not quite as ready to so praise us business people. Having observed up close and ugly the tawdry doings of savings and loan operators in my home state, the reprehensible activities of Wall Street raiders of the '80s, and the seemingly endless parade of fraud allegations in business and government, I think we may still be a little shy of an "ethical renaissance." All this "bad" business has gone on despite the fact that it has been proven over and over that it is good business to always do the right thing.

As Professor Wotruba reminds us, the U.S. consumer movement was reawakened in the 1960s, creating woe to those companies and industries that did not heed the demands of consumer advocates and their calls for new consumer rights. We should also remember the fresh impetus given to developing codes of ethics from the discoveries beginning in 1973 by the Department of Justice, Internal Revenue Service, and the Securities and Exchange Commission of widespread corruption and bribery by leading U.S. corporations in their foreign dealings. The foreign corrupt trade practice laws that emanated from these revelations birthed many a new code of ethics, as does each newly uncovered bit of corporate misconduct.

Having said this, I believe the story of the evolution of a code of ethics for the direct selling industry as chronicled by Professor Wotruba to be one of the great, positive business stories of the 20th century. In the forty years I've made my living as a direct seller, I have seen the industry emerge from much reviled to much praised, thanks in large measure to a concentrated, deliberate, and continuous effort to establish and promote the highest ethical standards. In fact, these very words are used to describe the most critical imperative of the industry's strategy for growth, called "Plan 2000."

Sadly, while the U.S. Direct Selling Association, one of 41 DSAs around the world, was creating, improving, implementing, and amending its consumer code of ethics, certain direct selling companies (both members and non-members of the Association) were engaged in unethical recruiting practices in the United States and globally. In many cases, since no strong industry body existed in many nations outside the U.S. to promote self-regulation, these questionable operators sowed the seeds of consumer rage in many a market, inevitably leading to over-regulation, and a tarnished public image. I watched in horror, for example, as the markets I helped open as a member of Tupperware's European expansion team in the early 1960s were closed or nearly closed to direct selling as a result of the unethical business practices of a handful of unsavory operators. In the words of Herbert Spencer, "No one can be perfectly moral till all are moral."

Professor Wotruba's work illuminates what should be obvious: It takes decades to create the consumer environment of trust and acceptance in which direct selling thrives and the entrepreneurial skills of millions are unleashed. Decades. To achieve this requires what I call "generational thinking." Generational thinking is extremely difficult to practice in a business environment that
puts great pressure on immediate sales and profit gains. It is even more difficult to practice when you are a part of the governance body of an association of widely diverse and very entrepreneurial businesses, public and private, large and small.

As chairman of the U.S. DSA for two terms in the early 1990s, I was privileged to champion the work of our ethics task force as it moved to address U.S. industry recruiting practices. I described this effort to enhance our 20-year-old code of ethics as one in which we would “protect the consumers of our opportunity as we do the consumers of our products and services.” This amendment to the code has now been adopted, and debate still continues as to ways in which it can be improved and administered.

Fortuitously, the leadership of our global organization, the World Federation of Direct Selling Associations (WFDSA), has embraced the concept of a World Code of Ethics, to be ratified by all DSAs around the world in 1995. The intergenerational work of a far-seeking group of association leaders will now spread around the globe into more than 100 nations served by WFDSA companies. An agent for this will be the educational activities in the public interest of the U.S. based Direct Selling Education Foundation, a public, not a private, foundation. DSEF is, through generous grants by member companies, now extending its consumer and academic educational programs, a major thrust of which is to support government and nongovernmental consumer protection groups, to many other nations.

There is, of course, a caveat. The work of decades can still be unravelled in days by unprincipled, greedy business practitioners. The volunteer and professional leadership of all DSAs will need to be vigilant to the practices of their independent contractor sales forces, and open to further modifications and improvements to this World Code.

The work of today's WFDSA leadership cannot be fairly judged until 2020, when we would hope to ask Professor Tom Wotruba to write another chapter to Moral Suasion. For now, I would like to express on behalf of the 15 million active direct seller members and the 1,000+ corporations of the WFDSA, heartfelt thanks to Professor Wotruba for reminding us of our past and pointing the way to an ethical future course.

Dick Bartlett
Mary Kay Corporation
Dallas, Texas, March 1995
ACKNOWLEDGEMENT

The author gratefully acknowledges the encouragement of Richard C. Bartlett of Mary Kay Corporation as well as financial support from the latter to undertake this project. Many persons were most helpful in providing information and recollections upon which much of this historical case study is founded. Those persons are mentioned at the end of the References section. In addition, the encouragement and suggestions of Marlene W. Futterman of the Direct Selling Education Foundation are especially noted here, for she assisted many times in finding names, addresses, phone numbers, and suggested persons to contact. Everyone I approached in the Direct Selling Association was most cooperative in their time and effort in tracking down documents and other sources. In particular, my work was helped immensely by the assistance of Jay Hescoc, who always responded promptly to my questions and requests, and who truly is a fountain of knowledge about the history of DSA. To all, my sincere thanks.

Tom Wotruba
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Moral Suasion:

Development of the U.S. Direct Selling Association Industry Code of Ethics

INTRODUCTION

This is a narrative about how a code of ethics was developed and enacted for and by member companies in the U.S. Direct Selling Association (DSA). It is a documentation of the activities, attitudes, and aspirations that occurred to produce this code, a policy statement that made and continues to make a substantial impact on the collective behavior of companies making up the direct selling industry. The intention is not to provide a critical analysis of what was done, nor to build any theory or normative model based on this experience. Instead, the primary purpose is to relate the facts and circumstances in an impartial manner, thereby providing an historical case study as a vehicle for learning and analysis by others.

This code of ethics was instituted in 1970. Hindsight clearly confirms what was apparent to many at that time -- a substantial displeasure existed among many Americans about the practices of business and the treatment of the consumer. The beneficent premise of a market economy was being implicitly questioned if not explicitly disputed by many vocal critics and their followers, with ethical issues emerging as central to this maelstrom. As these reactions evolved and synthesized, they stimulated increased and threatened legislation, intensified government regulation, and substantial consumer activism. Business responded in various ways, including denial, rationalization, blaming others, and self-approbation, but also introspection and reform.

It was within this context that member companies of the DSA -- firms whose selling and distribution methods involve personal sales calls direct to consumers individually at their homes or at parties hosted by consumers -- constructed a code of ethics that mandated procedures for all Association members. Since many of the criticisms of business at that time related to its selling practices, this achievement represented a remarkable step for an industry whose life blood of revenues depended completely on the efforts of its salespeople. It is even more notable because the vast majority of salespeople for these direct selling firms were then and are today independent contractors. To commit to a code of ethics involving sales practices of independent contractors who have a great deal of autonomy in their business behavior was indeed accepting a risky responsibility, especially if the intention of these industry executives to abide by the code was genuine. Events subsequent to 1970 showed not only that the intention was genuine, but also that direct selling industry members actively strove to better the code through amendments in code content and administrative procedures along with active attempts to publicize the code among consumers of its
companies' products.

This story of the DSA Code of Ethics unfolds in four Parts. First is an overview of the events and conditions prior to 1970 that most likely had great influence on those executives in DSA member firms who devised, debated, and finally decreed the Code. Second is a chronicle of activities leading up to the formulation of the Code, along with the enactment event itself and a brief discussion of the content and character of the initial version of the Code affirmed in 1970. Third is a description of the events and trends that occurred in the marketplace and regulatory environments following the Code enactment, along with a discussion of DSA experiences in implementing and promoting the Code and the impact that it produced. Fourth is a presentation of Code amendments and administrative process modifications from its inception through 1993 along with brief comments about the future. A short post script notes some of the underlying dimensions or themes that permeate this narrative. Some informational appendices are included as well as a bibliography of referenced sources for those curious enough to pursue further reading.
PART ONE

PRE-CODE CONDITIONS AND EVENTS

The decade of the 1960s provides the setting within which the DSA Code of Ethics was conceived. As this decade progressed, various scenarios unfolded and some specific events occurred that compelled the attention of executives in direct selling firms and most other business organizations as well. Within the overall marketplace was the burgeoning of consumerism. Government officials were reacting to, and in some cases, leading the consumer movement with speeches, legislative proposals, and encouragement of tougher postures by regulatory agencies. Some hard-hitting articles appeared in law reviews aimed especially at direct selling practices. All these events stirred considerable debate among academicians and industry members concerning remedies for the problems posed, often focusing on the pros and cons of government regulation versus self-regulation. The aggregate impact of all these scenarios and events was an upsurge in overall sensitivity to matters of ethics in the marketplace and the business world.

Consumerism

The consumer movement was not a completely new phenomenon in the 1960s. Periods of consumer unrest also occurred in the early 1900s and again in the 1930s (Herrmann 1970). The first episode influenced the enactment of such legislation as the Pure Food and Drug Act of 1906 as well as the creation of the Federal Trade Commission (FTC) in 1914. The second episode, born out of the depression, kindled a strengthening of earlier legislation and an expansion of the FTC's regulatory authority against deceptive practices in the marketplace via the Wheeler-Lea Act of 1938. (Wagner 1971). But many observers called these two early periods "fads" as compared with the 1960s happenings (Kotler 1972). The consumer movement of the 1960s emerged against a backdrop of numerous popular books, such as Vance Packard's The Hidden Persuaders (1957) and The Waste Makers (1960), Rachel Carson's The Silent Spring (1962), David Caplovitz's The Poor Pay More (1963), Jessica Mitford's The American Way of Death (1963), and Ralph Nader's Unsafe at Any Speed (1965), and brought a profusion of advocacy groups and well-recognized individual movement leaders (Mayer 1989). Of particular relevance to direct selling was Pierre Berton's The Big Sell (1963), which was subtitled "An Introduction to the Black Arts of Door-to-Door Salesmanship & Other Techniques." In addition, a proliferation of scholarly papers and popular articles on consumerism began during this time and has continued even into the 1990s (Brobeck 1990). The enduring impact of the 1960s consumer movement was evidenced in a major 1976 study of the American public in which 74% of the respondents believed that consumers get a "better deal" because of the things the consumer movement has done (Louis Harris 1977).

Consumerism was not any single person's brainchild, but took shape and evolved through a multiplicity of events, attitudes, and reactions in a wide variety of locations and settings (Day and Aaker 1970). Its essence is captured in this definition: "Consumerism is a social movement seeking
to augment the rights and powers of buyers in relation to sellers" (Kotler 1972). Its underlying causes were many. Social and economic factors such as advancing education and income generated greater interest among consumers in new technologies. But the resulting product complexities, coupled with an increasingly impersonal marketplace and deceptive or unfathomable advertising and sales practices produced apprehensiveness and often frustration. Inflation and growing environmental problems reinforced these feelings of skepticism about the role and responsibility of business firms --especially their standards of conduct and concern for customers. As a consequence, a belief emerged among many consumers that the buyer side of the buyer-seller transaction needed more clout to gain fair treatment. One article accentuated this conclusion in its definition of consumerism as "the organized efforts of consumers seeking redress, restitution and remedy for dissatisfaction they have accumulated in the acquisition of their standard of living" (Buskirk and Rothe 1970, p. 62).

An indication of some specific issues and opinions prevalent at this time is provided by the results of a national sample of consumers taken in 1971 (Barksdale and Darden 1972). Table 1 presents a sample of findings from the seven sections of that study, showing what percent of consumers agreed or disagreed with each statement tested (the respondents who were "uncertain" are omitted from the table). Thus, in 1971 the majority of consumers felt that manufacturers did not have a consumer-oriented philosophy but rather were more interested in making profits. In addition, consumers who believed product quality had not improved outnumbered those who felt product quality had improved, and a two-thirds majority believed that advertising did not present a true picture of product advertised. Most disagreed that product repair and maintenance was getting better, and most did not agree that consumer problems were becoming less serious nor were they less important than other problems of families. Ralph Nader's work was positively rated by a majority of consumers, and an even larger majority favored greater government involvement in regulating marketing activities. As the study's authors noted, these results signaled considerable discontent, frustration, and even antagonism, all of which could lead to increased government control through legislation if not given effective attention by business.

Politicians and government officials were not inattentive to this consumer movement, but made some major impacts on its vitality. President John F. Kennedy was the first chief executive to actively support the consumer movement when, in his March 15, 1962 message to Congress on protecting the consumer interest, he asserted four consumer rights: (1) the right to safety; (2) the right to be heard; (3) the right to be informed; and (4) the right to choose. Six years later, President Lyndon B. Johnson presented a message on the American consumer to Congress in which he proposed an eight-point program:

1. Crackdown on fraud and deception in sales.
2. Launch a major study of automobile insurance.
3. Protect Americans against hazardous radiation from television sets and other electronic equipment.
4. Close gaps in our system of poultry inspection.
5. Guard the consumer's health against unwholesome fish.
6. Move to prevent death and accident on our waterways.
7. Add new meaning to warranties and guarantees, and seek ways to improve repair work and servicing.
8. Appoint a government lawyer to represent the consumer.

His first point was especially cogent for selling organizations, and he elaborated on it in his speech as follows:

Every spring, when families turn their thoughts to household improvements, the shady operator goes to work. His office may be a telephone booth, a briefcase which he carries from door to door, or a car which he drives from state to state. His sales brochure may be a catchy newspaper advertisement. With false and deceptive offers of attractive home repairs or items that are more promise than product, he preys most of all on those who are least able to protect themselves: the poor, the elderly, the ignorant. Too often -- and too late -- the victim discovers that he has been swindled: that he has paid too much, that he has received inferior work, and that he has mortgaged himself into long-term debt. Some even lose their homes. A recent report of the National Better Business Bureau estimates that deceptive practices in the home improvement field alone cost the consumer between $500 million and $1 billion yearly.

Sales rackets are not limited to home improvements. And sales rackets of all types are on the increase. As the law now stands, there is no effective way to stop these unscrupulous practices when they are discovered. The legal machinery may drag on for two or three years before the violator can be ordered to cease and desist. In the meantime, countless more Americans are cheated. In matters so flagrantly deceptive, the consumer and the honest businessman deserve greater -- and speedier -- protection (Johnson 1968).

President Richard M. Nixon likewise made special efforts to recognize and remedy consumer
problems in two messages to Congress, one in 1969 (October 30) and the next in 1971 (February 24). He proposed a Buyer's Bill of Rights that would incorporate the following provisions:

1. Create an Office of Consumer Affairs in the Executive Office of the President (done in 1971);
2. Establish a product safety program in the Department of Health, Education, and Welfare;
3. Propose a Consumer Fraud Prevention Act to be enforced by the Department of Justice and the Federal Trade Commission;
4. Ask interested private citizens to study the adequacy of existing procedures for the resolution of disputes arising out of consumer transactions;
5. Propose a Fair Warranty Disclosure Act;
6. Propose a Consumer Products Test Methods Act;
7. Resubmit the Drug Identification Act;
8. Establish a National Business Council to assist the business community in meeting its responsibilities to the consumer; and
9. Other reforms, such as a Consumer Fraud Clearinghouse in the Federal Trade Commission.

In his speech presenting this package of proposals, President Nixon emphasized that the success of our free enterprise system depends largely on the mutual trust and goodwill of those who consume and those who produce or provide (Nixon 1971).

A particularly powerful contribution to the consumerism movement was provided by Senator Warren G. Magnuson and Jean Carper in their book titled The Dark Side of the Marketplace: The Plight of the American Consumer (Magnuson and Carper 1968). This book, written when Senator Magnuson was Chairman of the Senate Commerce Committee, recounted numerous tales of woe regarding consumers' economic welfare in Part One of the book and health and safety issues in Part Two. Much of the material in Part One involves episodes of fraudulent or misleading behavior by door-to-door salesmen, and the authors note in the book's introduction that "We [presumably the Senate Commerce Committee] are now studying measures to curtail fraudulent door-to-door salesmen ..." Regardless of the extent to which the scenarios in this book represented typical or atypical business practices, a strong picture was painted of widespread consumer plight at the devious and unscrupulous hands of many who sell for a living. This picture undoubtedly made a convincing impression on many readers, influencing their perception of the image and character of
direct selling.

In addition to the authors and government officials cited, many additional consumer activists gained recognition during the era of the 1960s for their outspoken oratory and their leadership in watchdog groups. Perhaps most prominent was Ralph Nader who, assisted by his "Nader's Raiders," became the personification of the consumer movement to most Americans (Mueller 1969). Nader was directly or indirectly responsible for setting up dozens of public interest organizations such as the Center for the Study of Responsive Law, Center for Auto Safety, Public Interest Research Group, and the Center for Law and Social Policy (Buckhorn 1972; Gorey 1975; Marshall 1971; McCary 1972). Others of major note included Esther Peterson, who was the White House consumer adviser during the mid-1960s (Demkovich 1978) and Betty Furness, who became White House consumer advisor in the late 1960s and attained strong public recognition through her work as a television consumer reporter (Herman 1967). Table 2 lists these and other notable contributors to the consumer movement who gained attention from the public and the press during the 1960s and beyond.

Political-Legal Climate

One impact of the myriad efforts in consumerism was a direct impetus for much legislative activity. Senator Magnuson, both a powerful federal legislator and a prominent consumer activist, echoed the sentiments of many consumerists and their political supporters by stating:

The Government must work to make the consumer choice fully effective. The consumer must be protected against unsafe products, against misleading information, and against the deceitful practices of a few businessmen that can undermine the confidence in the vast majority of diligent and reputable firms (Magnuson and Carper 1968, p. xiii).

The plea for government action was tempered by acknowledging that these undesirable practices emanated from only "a few" businessmen, though elsewhere the same source intimated a more endemic ill by stating that "consumer deception is not merely a small hurt suffered by a gullible few and a minor irritant to legitimate business, it is a significant social problem (Magnuson and Carper, pp. 59-60; italics theirs).

When these statements were made, the pace of federal legislation was accelerating. A substantial number of regulatory achievements were already firmly in place since the 1890 Sherman Antitrust Act, the patriarch of this developing regulatory genealogy. Table 3 lists some of the major federal legislation aimed at promoting fair competition and protecting consumers that was passed prior to the 1970 enactment of the DSA Code of Ethics. But the regulatory proliferation continued beyond 1970. For example, 25 "additions to the arsenal of regulatory power" passed by Congress during 1974-1978 were listed by Weidenbaum (1979).
This tide of federal enactments did not go without protest. One writer, for example, noted that "the rising tide of regulation has become a major barrier to productive economic activity (Weidenbaum 1979, p. 6). Regulations were costly because they required enormous administrative processes involving paperwork, communications, inspections, and recordkeeping. Many of these costs were incurred by both the regulated (and ultimately their customers) and the regulators (and ultimately the taxpayer). Regulatory requirements caused changes in company procedures that were blamed for loss of productivity, adverse effects on employment, and a dampening of innovation. The dissenters to the regulatory surge were not opposed to all government intervention, but only to its excesses. They cautioned that if passing a law is considered the only way to handle every problem that emerges, we will encounter a condition deemed by another writer as "hyperlexis" -- a pathological condition caused by an overactive law-making gland, and a degree of legal pollution greater than the atmosphere can carry (Manning 1977).

Legislation also emerged at state and local levels of government. Many local communities adopted some version of a "Green River" law, so named because the first of these laws was passed in Green River, Wyoming, and survived its initial legal challenge there by the Fuller Brush Company in 1933 (Brittenham et al. 1969). These laws prohibited salespeople from selling door to door unless they were invited to do so by local residents. Intended originally to protect local citizens from high-pressure and unethical tactics of itinerant salespeople, the laws also helped insulate local merchants from outside competition. Numerous subsequent legal challenges caused many of these ordinances to be abandoned or modified in intent from prohibitive to regulatory, typically requiring the door-to-door seller to obtain a local license and pay a required fee.

The Uniform Commercial Code, its origins tracing back to the depression of the 1930s, was adopted in some form in all states except Louisiana by 1969. A key aspect of this code, detailed in Article 2, involves warranties, both express and implied, in buyer-seller transactions. Statements of fact or promise that form the basis of the purchase decision become express warranties, while statements of subjective value, opinion, vague superlatives, or general praise are deemed as " puffing" and do not create a warranty (Nordstrom 1970; Vaccaro 1987). An implied warranty always exists that the merchandise is fit for its intended purpose, especially if the buyer clearly demonstrates reliance on the seller to provide merchandise suitable for the buyer's specific need. Many states adopted a variety of other regulations involving unfair or deceptive sales and advertising practices. In fact, by late 1969, 28 states had adopted laws generally similar to the FTC Act (Wagner 1971).

Of particular interest at the state level were the "cooling-off" laws. These provided consumers with a period of time during which they could rescind a contract to purchase goods or services if the sale was made at some location other than the seller's place of business. Aimed largely at direct sellers, cooling-off laws were adopted in some form in 15 states by mid-1969 (Walker and Ford 1970). The cooling-off period varied from state to state. A one-business-day period was selected in Georgia, Massachusetts, Vermont, and Washington. Two business days was the standard in Indiana, New Jersey, and Pennsylvania. Three business days was most popular,
prevailing in the laws of Connecticut, Hawaii, Illinois, Maine, Oklahoma, Rhode Island, and Vermont. Four days was the period selected by New Hampshire. These cooling-off statutes were the precursors of federal cooling-off regulations that were to be promulgated by the FTC in the early 1970s, as discussed more in Part Three.

Regulatory Activities

The Antitrust Division of the Justice Department and the Federal Trade Commission share the enforcement responsibilities of the major regulatory legislation -- the Sherman Act, the Clayton Act, the Federal Trade Commission (FTC) Act, and their amendments. The FTC Act created the Federal Trade Commission, whose major responsibility was to enforce section 5 of the Act which prohibits "unfair methods of competition and unfair or deceptive acts or practices in commerce," The Sherman Act fell primarily under the aegis of the Antitrust Division, and both agencies are concerned with the Clayton Act depending on the circumstances of the case (Wagner 1971). It is the Federal Trade Commission (FTC), however, which is the key regulatory player in events impacting the direct selling industry, both before and after 1970.

The FTC Act produced a broad and general mandate to maintain competition and fairness in business relationships. To achieve this mandate, the FTC must first decide what conduct is unlawful. It does this through investigations and hearings, followed when appropriate by the issuance of a complaint, a cease-and-desist order, an industry guide, or a trade regulation rule. It also offers advisory opinions to businesses and trade associations on the legality of proposed actions such as a promotional program or a set of product standards. The power of the FTC is underscored by the fact that it plays all three roles of investigator, prosecutor, and judge. Its decisions can be appealed to the courts, but its orders will be sustained if they are supported by substantial evidence.

In its early years, the FTC focused primarily on business actions that affected other businesses -- the preservation of competition. Its focus broadened, however, in the mid-1950s to more actively and systematically reflect the views of consumers regarding issues of fair play in the marketplace. A particularly cogent episode in direct selling involved the Holland Furnace company, a major FTC pursuit between 1954 and 1965. Holland was the nation's leading furnace-replacement firm with 5,000 employees and 500 offices nationwide. Its sales approach was characterized as "tear and scare" whereby a salesman posing as a safety inspector would dismantle the furnace, condemn it as hazardous, and refuse to reassemble it. In one instance when a customer became suspicious, she called an inspector from the local gas company who pronounced the furnace perfectly safe and in good repair. A local Better Business representative with a hidden tape recorder was present when the salesman returned and captured the salesman's pitch:

... the flue pipe instead of taking all of the smoke and fumes up the flue, a good percentage of them are going up in the house. . . . See where she's burnt out over there . . . that's going right up into your house. . . . The warm air plenum is above here, which
means that the smoke and fumes go up in here, and then that fan turns on back there...

I'm not saying this to scare you, I'm just saying it to impress you. . . . This is worse than the raw gas, because the raw gas you can smell. This is carbon monoxide. . . . This is no different than if you took the exhaust pipe from your automobile and ran it in here. . . . I would actually be doing you a favor . . . by shutting your furnace off. . . . I'm not doing that to sell you a furnace, I'm just trying to be honest with you. . . . It's not healthy. I would replace it and I would do it now. . . . It's leaking. . . . We can allow you $28.50 as junk for that old furnace (Magnuson and Carper 1968, p. 23).

In one case, the Holland Furnace Company sold nine furnaces consecutively in six years to one woman in her seventies. The FTC requested that Holland stop these practices in 1954, but it produced no change. In 1958 the FTC issued a cease-and-desist order. The company appealed but the court upheld the FTC order. Still the company did not comply, so in 1962 the FTC filed a petition to cite the company for criminal contempt of court. In 1965 the court sentenced the company president to a six-month jail term, fined the company $100,000, and fined two former sales managers $500 each. The Supreme Court refused to consider the company's appeal of the monetary fines, and affirmed the conviction of the firm's president in 1966. When he went to jail, the company declared bankruptcy and the deceptive practices were terminated (Magnuson and Carper 1968; Wagner 1971).

By the end of the 1950s the consumer movement was building steam. In December 1959 the FTC held its first Conference on Public Deception with Commission Chairman Earl Kintner presiding. Among the topics on the agenda were direct selling practices, as well as fictitious pricing and bait advertising (Wagner 1971). Subsequently the FTC held numerous conferences in various cities and several state attorneys general called similar conferences to facilitate the exchange of views between their law enforcement agencies and consumer groups.

Paul Rand Dixon became FTC Chairman in 1961. His intention was to make the FTC the servant of the legitimate business community as well as the servant of the consumer. He favored industry guidance, voluntary compliance, and self-regulation over legal action. Many years earlier, in 1938, an FTC official had testified in Congressional hearings that in most of the Commission's cases involving restraint of trade such as price fixing, a trade association was the prime mover (Wagner 1971). In fact, prior to 1969 the FTC had found in more than 200 cases that trade associations were the culprits in eliminating competition. Thus it was somewhat a surprise in 1967 that the Dixon FTC issued an advisory opinion sanctioning a Code of Ethics proposed by the Paid-During-Service Magazine Subscription industry to govern the practices of its member independent sales agencies and their salespeople. This action was subsequently recognized as a precedent for the Direct Selling Association, though the opinion was not held unanimously within the FTC. Commissioner Philip Elman offered a dissenting view that would challenge any upcoming attempts at developing similar codes. Elman stated:
With the best of intentions, a trade association has proposed, and the Commission now approves, the establishment of a Code which provides for the exercise of the powers of government by a private group.

It is one thing to encourage businessmen to promote voluntary compliance with the law. It is something else to approve a private scheme of law enforcement, where investigations are conducted by private "policemen" and where violations of privately-decreed "laws" are punished by fines and penalties imposed by private "judges" after privately-conducted "trials" (Advisory Opinion No. 128, June 1, 1967, as quoted in Krum and Greenhill 1972, p. 383).

In March 1968 the Consumer Subcommittee of the Senate Committee on Commerce was holding hearings on a proposed Senate bill dealing with door-to-door sales regulation ("Door-to-Door Sales Regulation" 1968). The bill, introduced by Senator Magnuson, called for a cooling-off period whereby a buyer from a door-to-door salesman can rescind a contract of $25 or more by notifying the seller within 24 hours of the agreement. In discussing his bill, Magnuson stated, "The unethical door-to-door seller preys upon the elderly, the poor, the ignorant. The most common variety is the one-shot hit-and-run salesman. He does not hesitate to play on sympathy, shame, or the buyer's conscience." Michael Pertschuk, then a subcommittee aide but destined to be FTC Chairman, added, "With a $25 minimum we're obviously not after the Fuller Brush Man or the Avon Lady. What we'd like to check is the dishonest seller of refrigerators, frozen food lockers, home improvements, and especially encyclopedias" ("Congress Probes Door-to-Door Selling" 1967).

The Magnuson bill was favorably reported out of the committee but was never acted upon by the Senate. Opposition to the bill was voiced by many, prominent among them being Lloyd E. Deilke, president of the National Association of Direct Selling Companies (NADSC), the predecessor organization of DSA. Deilke argued that his association's members, who were carefully screened and "absolutely legitimate," would suffer an unfair hardship from this bill because "the public gets the impression that all door-to-door selling is shady." He agreed, however, that "We'd be as happy as anyone to see the shyster outfits out of business" ("Congress Probes Door-to-Door Selling" 1967). Others representing direct sellers were also actively opposed to a cooling-off period for door-to-door sales at either the federal or state level, arguing that it singled out their industry in a discriminatory manner because it did not apply to in-store selling (Sher 1968).

In late 1968 the FTC held a nine-day series of hearings on consumer issues, with the goals of identifying the most pressing problems, determining what programs already existed to deal with these problems, identifying gaps in those existing programs, and formulating ways of strengthening the FTC's own programs or creating corrective actions to redress the problems (Jones 1988). Again, Lloyd Deilke of NADSC appeared as spokesperson for the direct selling industry to argue against a federal "cooling-off" remedy. Instead, he presented a draft of a consumer protection act that was
intended as a model for state legislation ("Direct Selling Group Proposes ..." 1968). The NADSC proposal would give consumers an unlimited right to contract cancellation and refund if any of 16 prohibited sales practices have been used. These prohibited sales practices were specifically named and described, and included bait-and-switch, false guarantees, and failure to fully disclose prices. The model act also called for enforcement by court action if necessary.

Deilke was one of 60 witnesses heard by the FTC over a nine-day period. Some suggested that consumers should be represented in government regulatory bodies that deal with their problems. Others called for more emphasis on self-regulation, for greater cooperation between business and government, and for the FTC to underwrite an independent research study to document the true state of consumer attitudes and problems. But a number of witnesses argued for more laws with stronger deterrents and penalties regarding deceptive sales practices.

Hearings on various consumer protection and direct selling issues continued in a number of agencies and committees through 1969. During this period, FTC Commissioner Philip Elman took the opportunity to call for criminal penalties in cases of consumer fraud, to "make the punishment fit the crime." Elman's statement of reasoning was particularly explicit: "The thief who burglarizes a home, and the door-to-door salesman who steals a family's savings and security by trickery and pretense, should both be treated as criminals" (quoted in Hasin 1987, p. 5).

Also in 1969 the FTC issued its first cooling-off order. Household Sewing Machine Company, a door-to-door seller, was directed to give customers a three-day period during which they may rescind their purchase contract. The company was engaged in bait and switch, initially presenting old and rusty machines to customers even though new machines at reduced prices were advertised. The salesperson then tried to switch the prospect to a new and much more expensive model. The cooling-off remedy was deemed appropriate because, in the words of one of the Commissioners, "the most effective protection is that which the consumer can provide for herself by taking a second look at the product to consider whether she can really afford it, to discuss the purchase with her husband -- all free from the influence of deceptive sales techniques" ("FTC Finds It Can Order ..." 1969).

In spite of these and other actions, the philosophy of the Dixon-led Commission provoked strong criticism among consumerists and others wishing for a more aggressive and proactive prosecutorial stance. In early 1969, a group of law student investigators affiliated with Ralph Nader (known as "Nader's Raiders") issued a 185-page scathing critique demanding a comprehensive overhaul of the FTC, the resignation of the Chairman, and greater use of the Commission's legal authority (Wagner 1971). Four months after the release of the Nader report, President Nixon requested the American Bar Association (ABA) to appoint a study group to examine the FTC. The ABA report, issued five months later, more politely but clearly endorsed the major points of the Nader report, and recommended that the FTC shift its main emphasis from reliance on voluntary procedures toward detection and eradication of frauds against the consumer.

Shortly after the ABA report was issued, President Nixon appointed Caspar Weinberger as
FTC Chairman with the charge to revitalize the Commission. Weinberger was active in focusing on consumer protection and proposing regulatory legislation on warranties and other areas. He remained only five months, however, being selected by Nixon to become the head of the new Office of Management and Budget. His successor was Miles Kirkpatrick, who had headed the ABA study group that examined the FTC.

This in summary form completes the pageant of the FTC up to 1970 -- the unfolding of the regulatory environment faced by the Direct Selling Association prior to adopting their ethics code. Clearly, there were ominous signs for the direct selling industry, portending possible major constraints on their operations and perhaps threatening the life of the industry altogether.

Views About Ethics and Self-Regulation

Public Opinion. Consumerism fostered legislative and regulatory activity focusing on deceptive and dishonest practices of business, though many critics and reporters of these practices acknowledged that the dishonest practices came from a small proportion of the business population. Regardless of the proportion involved, however, those practices were perceived as quite pervasive (as Table 1 has already demonstrated). Perhaps this result occurred because the press was (and still is) far more likely to report the deceptive and dishonest scenarios than the routine honest and ethical behavior, thus making the negative appear to far outweigh the positive in business activities. Or perhaps the negative did outweigh the positive.

In any case, the public's view of business during the 1960s was not laudatory. In a 2,000-interview survey by Louis Harris and Associates in 1966, 42 per cent felt that "most businessmen will do anything, honest or not, for a buck," and 77 per cent characterized business as a "dog-eat-dog proposition" ("What Americans Really Think ..." 1966). Two years later, the Gallup Poll questioned a cross-section of Americans about the state of honesty and the state of morals in the U.S. Regarding honesty, 61 per cent felt that "life is getting worse in terms of honesty," and 78 per cent felt that "life is getting worse in terms of morals" (Gallup Opinion Index 1968). While the Gallup results were not specifically related to business practices, they represent a general anxiety that certainly includes business relationships as well as other aspects of life.

Business Views of Ethics. Since this study concerns the development of a code of ethics by business executives, it is fitting to examine the views of businesspeople concerning ethics in their own activities. In 1968, Raymond Baumhart wrote a book covering this topic, based on a large survey research study of business executives in the 1960s (Baumhart 1968). After briefly describing some of the major unethical escapades of business during the preceding decade, such as the price-fixing conspiracy among twenty-nine electrical manufacturers, Baumhart observed:

The scandals, Congressional investigations, and antitrust prosecutions of the last
decade have revealed widespread confusion about ethics in business. This confusion extends to both what is being done by businessmen and what should be done. There have been substantial differences of opinion about the applicability of traditional ethical standards to current business practices. There has also been disagreement about the extent of the responsibility of educational and religious institutions for the business behavior of their graduates or members. These differences demonstrate the need for serious thought and discussion about business ethics (Baumhart 1968, p. 3).

Baumhart surveyed more than 1,700 business managers and executives (all men) from across the U.S. in order to gather information as the basis for the "serious thought and discussion" he proposed. His questions about what "ethical" means to the survey respondents elicited many shades of answer. Some representative statements included these:

"What society considers to be fair and honest."

"What is honest in my own mind."

"That which best serves my interests without hurting others."

"What my feelings tell me is right."

Other predominant findings included the belief by most participants that they were more ethical than others in business. and that it is difficult to live by ethical standards because of the pressures of competition. The majority felt there were unethical practices in business, and one way favored to deal with them was a written code of ethical practices. The development of an industry code of ethics was favored by 71 percent of study participants. But these same respondents were skeptical of the effectiveness of such codes; 57 percent agreed that people would violate the code whenever they thought they could avoid detection, and only 9 percent felt that an ethics code would be easy to enforce. By posing the questions in these surveys, eliciting the answers, and publishing the results, Baumhart undoubtedly elevated ethics to a more salient position of concern in American business.

**Industry Codes of Ethics and Self-Regulation.** A code of ethics defining proper behavior of member firms of an industry is a form of self-regulation. Rather than wait for some government body to impose standards of conduct, industry members might take proactive steps to proscribe improper actions and define acceptable practices. Some industry codes were in existence as early as 1920 (Heermance 1924), and one of the results of the ill-fated National Industrial Recovery Act (NIRA) of 1933 was the creation of more than 700 codes covering approximately 98 percent of American industry (Krum and Greenhill 1972). These codes, intended to control pricing and production practices so as to maintain fair competition within the industry, were typically devised and administered by industry trade associations, requiring only the approval of the President for
authorization. Within three years, however, the NIRA was declared unconstitutional on the basis that this code-making process involved an illegal delegation of Congressional legislative powers, and the codes were dissolved. Thirty years later FTC Commissioner Elman would make a similar argument in opposition to the code of ethics of the Magazine Publishers Association, as noted previously in this paper.

Considerable interest re-emerged during the 1960s regarding industry codes and self-regulation. This interest was conveyed in numerous articles written by attorneys, academics, and regulators, a sample of which is reported here. Van Cise, in an award-winning article in the Harvard Business Review, focused on whether it is government or business who is best able to deal with unfair practices and trade abuses (Van Cise 1966). Government bodies are hindered in this task in three ways: (1) by the lack of consensus about what is fair and unfair and the substantial time needed to insure due process in the proceedings to sort out this fairness-unfairness issue; (2) by their lack of funds causing severe limitations on the number of practices that can be investigated and the depth of those investigations; and (3) by their lack of know-how because of turnover in government personnel coupled with the rapid changes in business from new products, new industries, and complex commercial relationships such as vertical integration. On the other hand, business cannot agree either on what trade practices are fair and unfair, and business firms are prevented from joining with competitors to deal with even the agreed-upon unfair practices because of the antitrust implications stemming from such cooperative action. To emphasize the latter point, Van Cise stated:

The state of the law is such today that a government attorney who discovers a code of ethics as part of the operating papers of a trade association frequently believes that this alone justifies an antitrust investigation, and expects confidently that it will lead to the discovery of criminal antitrust violations (Van Cise 1966, p. 58).

Levin, in a lengthy and detailed law review article, discussed the antitrust implications of self-regulation. Based on a review of court cases to date, he stipulated four conditions of socially acceptable self-regulation (Levin 1967). These included (1) clear behavior standards widely accepted in the community; (2) safeguards against self-serving policies and procedures; (3) the need for joint action to forestall deterioration of products or services provided; and (4) the nonavailability of less restrictive remedies. Meeting these four conditions, in Levin's opinion, would be difficult since the industry members might differ in their goals and economic positions with any resulting code favoring dominant members and impairing competition.

The following year, Bodner presented a review of antitrust issues inherent in the operations of trade associations in general (Bodner 1968). His point was that if the exclusion of an individual or company from membership in an association produces a competitive disadvantage to that nonmember, an antitrust violation is likely. Thus, the greater the business advantage of membership in a trade association, the less limiting the association may be in defining membership requirements.
Part One: Pre-Code Conditions and Events

The same reasoning also applies to expulsion of a member from the association. While ethics codes were not mentioned directly in his article, Bochner's discussion intimated that requiring members to conform to an industry ethics code and expelling members who are accused of breaking the code might produce competitive disadvantage for those members and thus be illegal.

Perhaps one of the most specific discussions of the antitrust implications of industry self-regulation came from Hummel (1968), who delineated four particular kinds of restraints that might emanate from industry code agreements. These included (1) restraint of price competition (for example, prohibiting price advertising by association members); (2) hindering market access (for example, encouraging boycotts of association nonmembers); (3) impeding product improvement and innovation (for example, setting product or service standards that preclude new technologies); and (4) denial of reasonable product alternatives to consumers (for example, setting product or service standards that limit the variety of alternatives in product sizes, warranty terms, or service arrangements). Thus, if all firms in an industry association agreed to offer an identical and generous product warranty, does this constitute restraint of competition under the antitrust laws? Such questions were most cogent for those considering the development of industry codes of ethics as the decade of the 1960s ended.

The debate about self-regulation also prompted some suggested courses of action. For instance, Van Cise (1966) proposed three alternatives, each of which involved some degree of joint action by government and business. First, an industry group could propose and refine a statute that Congress would find acceptable and adopt into law. Second, an industry group might draft a guide or set of rules addressing (and condemning) the alleged unethical practices, submit this document to the FTC for consideration, hearings, and ultimately to be formulated as an industry guide. The industry guide is an interpretive statement by the FTC to instruct industry members on what they must do to avoid violating the law (Wagner 1971). Third, the industry might propose a voluntary program of self-regulation, submit it to the FTC, and apply for an advisory opinion. Advisory opinions are statements of the legality of the intended business behavior described, and will be offered by the FTC if the issue involved is not already under investigation and does not require extensive investigation. It was an FTC advisory opinion that endorsed the Magazine Publishers Association ethics code in 1967, as noted earlier in this case. While advisory opinions do not have the status of law and can be rescinded, Hoffman (1968) noted that the FTC would not proceed against an industry for conduct based upon a rescinded opinion without first granting the industry an opportunity to abandon the conduct in question.

As the decade of the 1960s drew to a close, an awareness of ethics and concern about methods of dealing with ethical problems became more pervasive throughout business organizations. As with most challenges to their business pursuits, executives began thinking in earnest about how to respond in a manner consistent with their business objectives and mission. Ethics codes and self-regulation were not completely new ideas to the direct selling industry, as the next section shows. But the shaping of such policies to adequately fit the social and political environment of the 1970s, if done at all, would require extreme care and attention to intricate legal and regulatory stipulations to avoid devising a cure more damaging than the condition it was to treat.
The Direct Selling Industry

The direct selling industry and various individual companies were the focus of many significant events prior to 1970. These included some specific regulatory activities, the development of a consumer relations code by the NADSC, and research studies of the market for direct sellers as well as examinations of sales force and company practices. Each of these is discussed in the following sections, after which is a summary look at the status of the industry and its trade association as 1970 approached.

Regulatory Activities. The FTC actions against Holland Furnace and Household Sewing Machine have already been noted. Other direct sellers, such as encyclopedia firms, also gained the FTC's attention. In 1947 the regulatory agency issued a cease-and-desist order against Americana Corporation to prohibit its salespeople from telling customers they had been specially selected to receive what were fictitious price reductions. The deceptive practices persisted, however, causing the FTC to take its case to a federal court in 1960 where Americana was found guilty (Smith 1962). Similar situations prompted the FTC to issue a complaint against Encyclopaedia Britannica and Basic Books, Incorporated (Universal World Reference Encyclopedia) in 1959 and Crowell-Collier (Collier's Encyclopedia) in 1960. Earlier the FTC issued a cease-and-desist order against Century Metaicraft Corporation, a house-to-house seller of kitchen utensils being touted as silver rather than aluminum and thereby possessing greater durability and providing improved health to the user. The 1939 order noted that the company's claims were grossly exaggerated, false, and misleading because the utensils were made primarily of aluminum and were not any more durable or health-giving than the products of their competitors (Lifshy 1948).

Prior to any of these regulatory actions, however, the FTC demonstrated its interest in the behavior of direct selling companies by holding a trade practice conference on house-to-house sales activity in 1929. Such conferences were held when the FTC wished to address industry-wide issues rather than deal with each company individually. Thus, a conference of FTC and direct selling industry representatives was held in Dayton, Ohio in October 1929, from which emanated a series of resolutions or trade practice rules. Three examples of rules promulgated by the FTC were as follows (quoted in Lifshy 1948, p. 15):

The making or causing or permitting to be made or published any false, untrue, or deceptive statement by way of advertisement or otherwise concerning the grade, size, or preparation of any product of the industry having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

All unfair methods of competition and particularly those that refer to direct selling
and the carrying out of which may bring discredit upon this industry and tend to harmfully affect or reduce the confidence of consumers in this method of sale and distribution are condemned by the industry.

All members of this industry shall protect the consumer not only as far as is required by law, but as required by good morals and the best ethics of business.

These rather general statements did not have the force of law, but were meant to demonstrate that the FTC was attentive to the possibility of deceptive practices in the subject industry. This point was reinforced when the same statement of trade practice rules was repromulgated by the FTC in April 1932, though no subsequent action occurred beyond that date. This FTC procedure of providing guidelines continues today, with the resulting statements being designated as industry guides (Wagner 1971).

**Consumer Relations Code.** Long before the 1970 Code of Ethics was even a consideration, and even before much of the FTC scrutiny of direct selling firms and the consumerism-driven turbulence about marketplace practices, the NADSC member companies met in Chicago at their annual convention in December 1940 and unanimously approved and adopted a Consumer Relations Code. The purpose of this Code, as stated in the publication itself, was to give concrete and unified voice to the high standards already maintained by the members of the National Association of Direct Selling Companies. The Code states in specific terms the principles of ethical business practice conducive to a high level of responsibility to the Consumer, and pledges the sponsoring companies to adhere to these principles (Consumer Relations Code 1940).

This Code appears in Appendix A. It was a voluntary code to which any NADSC member could subscribe. Those members choosing to sponsor the code signed a formal agreement of participation and were then allowed to use the code emblem and other promotional materials available to associate themselves with the code. Provisions existed to penalize code violators (see item 23 of the Code in Appendix A), though in fact a NADSC member intent upon some practice that would violate the code could simply choose not to subscribe. Whether this code made a significant impact on the industry or even on the member companies of the association is open to question, since major articles written about direct selling during this time period made no mention of the code, either directly or indirectly, in discussing industry problems of deceptive practices and misrepresentation (e.g., see Lifshey 1948; Buell 1954; Brittenham et al. 1969).

In addition to the Consumer Relations Code, each NADSC member pledged to support a
"Declaration of Principles" containing the following three provisions (Deilke 1967):

1. Salespersons, by creating demands for goods, help provide the American people with employment and the world's highest standard of living and those who devote their lives to selling are making important contributions to the welfare of our nation.

2. Salespersons in all fields must observe the highest standards of integrity, frankness and responsibility in dealing with consumers and in all selling:
   (a) Descriptions of products must be truthful, and terms of sale clearly stated;
   (b) Honesty is required in the approach to a sale; and
   (c) Courtesy to a prospective customer, and consideration of his needs, are prime essentials of all selling.

3. The National Association of Direct Selling Companies endorses and commends the efforts of all national, state and local organizations such as the National Better Business Bureau, the United States Chamber of Commerce, and local Better Business Bureaus, Chambers of Commerce, and Commercial Clubs to establish and maintain high standards of truth and fair practices in the sale of all merchandise.

This declaration was not as specific or detailed as the Consumer Relations Code, but was an acknowledgement of the importance of ethical issues and standards of behavior.

**Products and Markets.** The products sold and markets served by direct selling firms have always been very diverse. In that sense, direct selling is not a typical "industry" because many of its member companies do not compete with each other on the same product lines or for the same customer needs. A comprehensive article on door-to-door selling appearing in the *Harvard Business Review* in 1954 summarized this breadth of product offerings as follows (Buell 1954):

The variety of products sold door-to-door is impressive. One has only to take a look at the products sold by companies with membership in the National Association of Direct Selling Companies to get an idea of their multiplicity:

Included are chemical, foods, dietary supplements, hygienic products, medicinal articles, toilet articles, cosmetics, children's wear, dresses, foundation garments,
hosiery, jackets, knitwear, lingerie, neckties, raincoats, sanitary garments, shirts, shoes, sportswear, men's and women's suits and coats, uniforms, work garments, nursery stock (shrubs, plants, etc.), paints, books, greeting cards, cooking utensils, blankets, brushes, china, fire extinguishers, household furnishings, portraits and frames, roofing and siding, seeds, and vacuum cleaners.

For most of these products, the major competition faced by direct sellers was in-store sellers or retailers. Direct selling organizations were each other's direct competitors in another way, however. They all required large sales forces, and competed in the labor market to attract salespeople. Thus, not only were these organizations selling products to consumers, they were also selling income opportunities to market their products as independent contractors. The latter was a considerable challenge, as noted further in the next section.

What was the attitude in the marketplace toward direct selling as the 1960s drew to a close? A representative picture of these attitudes can be drawn from a major consumer survey research study was completed in 1968 in and around the area of Baltimore (Jolson 1970). Respondents were drawn from 200 households in areas designated by Baltimore direct selling firms as frequently solicited by their salespeople. Personal interviews were completed with 225 respondents, and a selection of the results appears in Table 4.

A concise summary of these findings is as follows:

Slightly more disagreed (51.6%) than agreed (42.5%) that most direct selling programs are ethical and devoid of misrepresentations.

Substantially more agreed (72.9%) than disagreed (27.1%) that direct selling firms would object strenuously to misrepresentation by their salesmen.

Respondents generally disagreed (73.8%) that they found much convenience and comfort in buying in their own home.

Slightly more agreed (53.8%) than disagreed (46.2%) that unsolicited calls or visits by salesmen are an invasion of privacy and should be illegal.

The vast majority (85.8%) would not consider employment in a position as a direct salesperson.

Thus, the job of direct salesperson and buying at home from door-to-door salespeople were viewed
with disfavor, while their ethical practices garnered only a slight negative view on balance, and cases of ethical breach were not typically blamed on the direct selling companies themselves but presumably attributed to the individual salesmen. It should be noted that these survey respondents reported slightly more than two purchases on average from direct-to-home salesmen, so they had personal experiences upon which to base their answers.

Company Practices. As already noted, marketplace success for any direct selling firm is based primarily on the effort of its legion of independent contractors, many of whom are part-time in their work effort. As discussed by both Buell (1954) and Jolson (1970), these firms generally have no sophisticated hiring process, but place continued efforts on recruiting. Turnover in the sales ranks is especially high, noted by Buell as up to 300% per year. Compensation is straight commission or more typically the margin between the cost of purchase and price charged the customer. Formal training programs, apart from company-supplied manuals and motivational newsletters, is often absent. Many who join a firm's ranks of independent contractors also have another job, or are between jobs, or have ventured into direct selling just to augment their income for a specific purpose (e.g., money for vacation, Christmas gifts) and will quit when their goal is reached. Of course, many discover that selling is not to their liking, they imagined the job as different from what they experienced, and their hopes or illusions did not come true.

The critical need for recruiting spawned a variety of strategies. One was the disguised (or "curiosity") approach, in which the true nature of the job opportunity was concealed or obscured in an attempt to entice prospects who presumably would be turned off if they knew it was a direct selling job. Berton (1963) described one such scenario created by an encyclopedia firm. Advertisements for summer jobs directed at college men promised a guaranteed monthly income with no mention of selling. In the words of one student:

I made an appointment and sat in a lecture for fifteen minutes and I still had no idea what was going on. I'd ask: "Who am I going to be working for? What am I going to be doing?" and they'd find ways of evading the question. It was like one of those movies about how spies were picked in wartime by British Army Intelligence.

Often the mystery about the job was maintained even to the end of the recruiting meeting and into the work environment itself. For instance, the encyclopedia company informed its applicants that they would be participants in a promotional campaign to "place" sets of the encyclopedia into "carefully selected homes" and would receive compensation for each set placed. The impression formed in the applicant's mind was that of becoming an advertising executive and not a salesman (Berton 1963, p. 118). Such practices of misrepresenting the nature of the job were often found in the same companies that fostered deceptive practices in consumer encounters.

A second and more legitimate recruiting strategy involved enticing the aid of active salespeople by paying them overrides or bonuses on sales of recruits they brought into the sales
organization. Thus, the independent contractor could not only earn money by selling the product, but could also gain earnings by recruiting others who sold the product and who recruited still others who sold and recruited, and so on. This was the genesis of the multi-level marketing operation (MLM), which continues to be popular today but which also is subject to close regulatory scrutiny because it can be manipulated by its founders into an illegal pyramid scheme (Ella 1973). The key illegality in a pyramid operation is that those at higher levels make money in ways other than from sales to consumers. For example, a substantial fee may be required just to join the ranks of the sales organization, or a large initial investment in inventory may be required that cannot be returned for refund if the new recruit is unsuccessful, unwilling, or unable to continue in the job. More will be said about pyramid schemes in Part Three of this case study.

**Industry Situation.** An article in *Retailing Daily* included in Lifshey (1948) estimated the number of businesses using house-to-house selling at 6,000 in 1944. In 1954, Buell reported that the number of companies using door-to-door methods was between 3,000 and 3,500. A 1971 estimate was also put at 3,000 ('The Awesome Potential of In-Home Selling ...' 1971). These estimates are certainly approximate at best since the exact definition of a door-to-door company was not clear. For instance, did it include a regular retailer that sent a representative to a customer's home to install an appliance or deal with some other problem? Did it include manufacturers who sold to other organizations who, in turn, sold door-to-door?

Regardless of the correct number, it is clear that the vast majority did not belong to the NADSC. Lifshey reported that the number of member firms in the NADSC in 1947 was 138. Brittenham et al. (1969, p. 937) stated that "It is composed of approximately one hundred fifty of the leading direct selling companies in America," quoting Lloyd Deilke's testimony at the FTC hearings in December 1968. The 1970 membership roster of the Direct Selling Association listed 104 active members, though that number was somewhat inflated because several members were listed more than once under different names with different types of business operations. The size of the DSA membership has grown somewhat since that time, and Appendix B provides a listing of association membership for selected time periods since 1970.

The process for becoming a member of NADSC was spelled out in a bulletin from the association president (Deilke 1967). It is as follows:

At the time a prospective new member applies for membership in the NADSC a check-up letter is promptly sent to the following:

3. The State Better Business Bureau where the applicant has its main office.
4. The State Chamber, as above.
5. The Chamber of Commerce in the city where the applicant is located.

6. Other Industry contacts who would be likely to know of the company.

The above referred to check-up letter reports the name, address, and contact man for the new member applicant and asks for any information, on a strictly confidential basis, relating to the question as to whether or not the application should be accepted by the NADSC. When the check-up letters are in, they are reviewed by a Membership Qualifications Committee and a decision is made.

A plausible cause why so few direct selling companies became industry members is that their application might prompt bad reports in these check-up letters. Another deterrent to membership might have been the dues, which varied in proportion to the company's sales volume. Small local or regional firms might not wish to join because they perceived no benefit from doing so. In any case, the screening process clearly produced a high standard of membership and signified a history of good behavior for those admitted.

Finally, reports indicated that at least some industry members were experiencing substantial financial success during this period. Tupperware, for example, increased its sales five-fold between 1958 and 1965 and was making a significant profit contribution to Rexall, its parent company at that time ("Rexall Calling..." 1968). Companies such as Avon, Electrolux and Fuller Brush (subsidiaries of Consolidated Foods), Dart Industries (parent of Tupperware and Vanda Beauty Counselor), Fashion Two Twenty, Health-Mor, Beeline Fashions, and Stanley Home Products were being suggested as investment opportunities ("Ringing Up Sales" 1970). All of the latter were DSA members in 1970.

This completes a look at the circumstances and challenges facing member firms of the direct selling industry as they moved closer to 1970. The influence of consumerism, the impact of past and potential regulatory activity and legislation, the rising concern for ethics, the exploratory interest in industry self-regulatory codes, and the notoriety achieved by direct selling because of the past practices of a number of firms and salespeople all form a patchwork of allegations, omens, and apprehensions that would compel the industry to act.
PART TWO

ESTABLISHING THE CODE

Three major changes occurred in the late 1960s that, taken in tandem, spurred the quest for an ethics code by this association of direct selling companies. The association hired a new president, its headquarters were moved to a new geographic location, and a variety of policies were altered including a change in the association's name.¹

New Directions

Perhaps the fundamental impetus to the development of a code of ethics emerged from the hiring of J. Robert Brouse as president of the association in December 1968. Brouse came to the association (then still titled NADSC) with an impressive background and experience in association and consumer relations matters. Educated in journalism, he was described as a "tough-minded and experienced association executive with a Washington track record who saw the job as a unique challenge" (Lad 1991). Besides his several stints as an association executive, his background also included membership in the United States Chamber of Commerce Consumer Issues Committee, the American Society of Association Executives Government Relations Committee, the American Retail Federation Consumer Relations Committee, the Administrative Committee of the National Association of Manufacturers National Industrial Council, the Task Force on Crime in Retailing set up to advise the Senate Committee on Small Business, and the National Press Club.

Soon after coming on board, Brouse engineered the move of NADSC headquarters from Winona, Minnesota, to Washington D.C. He viewed this move as a signal to those both inside and outside the association that NADSC was a first class organization seeking proximity to "where the action was" in Washington so that improved industry-government relations could be more effectively pursued. Its Winona operations had a four-person staff geared primarily to lobbying against local and state regulations prohibiting or restricting door-to-door sales. That staff had little or no understanding of the workings of the federal government nor was it regarded by many of its member firms as an effective rallying point for their involvement and action. In fact, the record of NADSC on public relations was described as "leaves something to be desired" by a reporter who

¹The sources of information supporting this narrative in Parts Two, Three, and Four include personal interviews with key persons as listed in a separate section in the References, along with a review of documents such as minutes of DSA Board of Directors and Executive Committee meetings, internal memos of the association and member companies, newsletters, and other miscellaneous written materials all generally unavailable for public reference. Thus, citations to these sources are not given in the text. Three available sources were also helpful in documenting many of the events described, and these are O'Neill (1972), Offen (1976), and Lad (1991). Individual citations to these sources are also suppressed in the text of Parts Two, Three, and Four, however, except to document direct quotes.
made three attempts to gain an interview for a trade publication but was never invited or even acknowledged (Lifshey 1948). Thus, the move served to renew, energize, and unify the association to take on a task as momentous as creating a code of ethics. This move signified a new era in which the association was making a serious move into the "big leagues" of Washington to gain visibility, legitimacy, and even clout in the political arena.

To fill out this transition picture, Brouse guided a series of policy changes to accentuate and substantiate his intentions and mission. The most evident was the change in association name from the National Association of Direct Selling Companies (NADSC) to the more concise Direct Selling Association (DSA), ratified by the association members at their annual meeting in mid-1969. To reinforce the name change and the move as signalling a revitalized spirit in this association was the creation of a new logo. The logo incorporated a door-knocker symbol, and was the winning design in a competition among a number of advertising agencies of DSA member firms. Because funds were lacking, Brouse enticed these agencies to donate their ideas for a new logo, and the winning entry (from Avon's agency) was chosen by vote at a DSA Board meeting in 1969.

Other administrative policies were also nurtured into place. Brouse as President of DSA was a staff member, not affiliated with any DSA member firm, and therefore could not be the Board Chairman or even officially a Board member. He felt, however, that the top executives of DSA member firms should assume a more prominent and active role in association governance, so he worked to transform the composition of the Board to include more CEOs. In addition, he established the President's Council, an advisory group comprised of CEOs who did not sit on the Board.

Various standing committees were also established to garner involvement among additional top executives of association members and to give serious attention to various key issues. These included finance, government relations, long-range planning, membership, nominating, public relations, annual meeting, and international committees. Subcommittees of the Board were also created to address current problems. One was a Code of Ethics Subcommittee (which continues through 1992 as the Ethics Task Force). The Chairman of the Board in 1969 was Stephen Sheridan, Executive Vice-President of Electrolux, who would play a prominent role in the debate about the ethics code and whose term would extend through the annual meeting in 1970 when the ethics code was adopted.

Conceiving the Code of Ethics

Many of the events and pressures described in Part One of this case study provided a clear impetus to some type of action by DSA. The hiring of Brouse and the move to Washington signalled the association's intention to take on this challenge. What direction to take, and what strategy to employ were still unanswered questions in the minds of many association members, but Brouse had a plan.
Part Two: Establishing the Code

His plan was an affirmative one -- to create a code of ethics with the expert help of legal counsel whose background in association law and familiarity in dealing with the FTC augured well for success. He found that person in Gerald E. Gilbert, a man he knew from previous work involving other associations, who was a seasoned attorney and newly-joined partner in the prestigious law firm of Hogan and Hartson, DSA's general counsel, in Washington. Gilbert's first client in Hogan and Hartson was DSA, a relationship that has lasted for twenty-five years.

Gilbert set out to tackle the impending challenge with a careful review of four information sources. One was the dissenting opinion of FTC Commissioner Elman to the FTC Advisory Opinion sanctioning the ethics code of the Paid-During-Service Magazine Subscription industry (see "Regulatory Activities" in Part One). Elman's statement represented the most negative views that might emanate from the FTC regarding any proposed DSA ethics code. In essence, Elman was concerned that regulatory powers and law enforcement are the province of government and do not belong in the hands of private individuals or organizations that might not behave in accordance with legal due process. The second information source included articles written about self-regulation detailing the issues and challenges it poses (see "Industry Codes of Ethics and Self-Regulation" in Part One). One article in particular, written by a former Federal Trade Commission Chairman, spelled out the process used by the Paid-During-Service Magazine Subscription industry to develop its code and gain its approbation (Kintner and Harris 1968). The third source involved informal and "unofficial" discussions with FTC staff personnel, including William D. Dixon, an attorney in the Division of Advisory Opinions. These discussions were described as "an extremely helpful source of information" (O'Neill 1972). Finally, the Administrative Procedure Act, a 1946 federal law aimed at codifying fair procedures and methods for the administration of justice by government agencies, was carefully reviewed to clarify what procedural safeguards must be included in any enforcement aspects of the ethics code (Warren 1947).

Gilbert focused on crafting a code of ethics that did not violate antitrust laws and met the due process requirements. But the receptivity of DSA members to the imposition of any type of code of ethics was another matter. Brousse became the protagonist, encouraging discussion and thinking about the impact of having a code versus the consequences of not having one. These discussions centered around two themes: motivations for having a code (i.e., reasons for a code); and pros and cons as a result of the code (i.e., effects from having a code).

Motivations for a Code

While the motivations were expressed in various ways, they formed into two underlying categories. The first was to combat the threat of potentially debilitating government regulations. This was the motive driving those industry members who stated that a code of ethics was an "economic necessity" and was needed to "improve industry's relations with government" (Offen 1976). It was during this time of late 1969 that the FTC was considering "cooling-off" legislation, having just issued its first cooling-off order against Household Sewing Machine Company. Earlier
that year Nader's Raiders had released their devastating critique of the FTC that called for a magnum boost of intensity in regulatory action. The Magnuson bill on door-to-door sales regulation had already been actively debated in the Senate during the previous year, making the misdeeds of targeted industry members quite conspicuous to representatives in Congress.

While this had not yet culminated in any significant government action aimed broadside at direct selling, DSA members sensed that such was imminent. The National Consumer Law Center, an organization at Boston College, proposed that any customer buying from a direct salesperson must sign and mail a card affirming that the sale was valid. Brouse tagged it the "Anti-Sales Act," and DSA members pondered whether this or some similar incursion against their industry could become law. Brouse believed that DSA must create a code statement that would not only pre-empt government resolution of consumer problems with direct sellers but would actually help consumers defrauded or abused by industry members. This reasoning tied in the second motive behind the push for the code.

Motive two can be summarized as the desire to improve the direct selling industry's image in the eyes of consumers. The writings of consumerism, the publicity from government hearings, and court cases involving some notorious practices of a few direct sales firms all presented a rather one-sided and negative picture of direct selling (and selling in general) as a business activity. The mere mention of direct selling or selling of any kind conjured up images of disrepute, deviousness, and dishonor in the late 1960s (Ditz 1967). DSA members themselves lamented about this situation, stating "How should an industry that has a large fringe element of disreputable fly-by-night operators go about taking effective action to counter the negative image the fringe group brings to it" (Offen 1976)?

This negative image also helped local merchants in many communities to press successfully for banning or severely limiting direct selling activities in their areas and thus to protect them from outside competition. One industry spokesperson reminisced about his experiences in the late 1950s as a member of Tupperware's public relations department, when he was often called on to represent the entire direct selling industry and its association at city council hearings:

Direct selling, thanks to a group of companies I called the "fraudulent fringe" composed of disreputable fly-by-night outfits, had worked its way into the "top ten" of industries on the Council of Better Business Bureaus' worst offenders list. Faced with municipal councils composed mainly of local business persons armed with the BBB data, I usually had an interesting communication challenge (Bartlett 1994, p. xiii).

Some in DSA felt that simply countering a negative image was not enough, but that the action taken by this association had to send a strong signal that direct selling firms were changing completely
from being an adversary of consumers and consumer groups to being a friend, a partner, a protector.

**Concerns About a Code**

What would a code of ethics produce for DSA members? Pros and cons were often discussed, with the pros following mainly from the above two motivations -- it might pre-empt any serious legislative or regulatory invasion of the industry and it might reestablish the legitimacy of this business method in the eyes of consumers. The cons were, of course, the major concerns.

The thought of a code of ethics with administrative procedures and compliance mechanisms was distressing to some DSA members who had built their businesses from scratch, valued their independence, and wished to avoid interference from outsiders. A tacit belief in the fundamental philosophy of *caveat emptor* undoubtedly resided in the minds of a few. Some argued that problems with their customers were best kept within their own companies and handled in their own way. Some felt that they had sufficient safeguards, perhaps even their own ethics codes, to insure their own proper behavior. Many in this business were strongly entrepreneurial and thus disdainful of conforming to some broader and imposed industry standard. It is possible that some of these feelings also strongly implied a fear of getting caught up in internal industry politics. For example, could some other DSA member who was jealous or angry at my success make trouble for me by raising questions of my company's ethical behavior?

A second category of concerns involved legal issues. While it was possible that a strong ethics code might reduce or eliminate burdensome legislation, might it not also raise regulatory scrutiny regarding antitrust and restraint of trade issues? How strong must the code and its enforcement procedures be to give it sufficient "teeth" in the eyes of concerned regulatory bodies? Will a code strong enough to dissuade or punish improper practices need to be so strong as to intimate the likelihood of repressing competitors who are association members? And if it lacks sufficient "teeth" to avert or rectify the ills, of what value is it?

A third set of concerns centered around the independent contractor status of direct selling company salespeople. Because of their independent legal status, perhaps they would not abide by any ethics code anyway, especially those most prone to violate it. Even if a DSA member company were to make a sincere attempt to enforce the code, the time, effort, and cost necessary might be enormous. Further, since many companies recognized that they were really competing among themselves for good salespeople as much as or more than for customers, there was a fear that an ethics code and its associated implications and controls might drive away good salespeople from their firms. Conversely, some felt that this was precisely the reason why an ethics code was needed -- since a company has more direct control over its own employees and needs a mechanism such as this code to exert strong informal control over its independent contractors.

Finally, some industry members were troubled because they felt that the creation and
promotion of a code of ethics was an admission of past guilt. After all, by joining DSA a company was overtly declaring an association with the "good guys" and a separation from the "bad guys" in the direct selling business. Now the striving to designate DSA members as ethical organizations might cast doubt that such was the case in the past. Further, there were many more direct sellers who were not DSA members than those who were members, and the code of ethics would not necessarily be honored by those outsiders who would then continue to blemish the image of direct selling.

**Shaping the Code**

The challenge to Brouse and DSA was three-fold: to formulate a code of ethics that would (a) resolve differences among DSA members, (b) assuage the objections of government officials, and (c) eliminate consumer injustices or misunderstandings and overturn any that occur. Succeeding in this challenge required vigorous efforts on two fronts -- internally with members and externally with regulators.

**Internal Activities.** The underlying philosophy of association leaders regarding code discussions might be termed "inclusive," meaning that members on all sides of the issue, representing firms with and without ethical problems in their histories, be included in the deliberations. Opportunities for debate were frequent and open. At each quarterly Board meeting, for example, the Code of Ethics Subcommittee under the leadership of James Doyle of Watkins Products, Inc., made a progress report, sometimes offered motions, and always entertained discussion.

Prior to the September 1969 meeting, the initial draft of the code was sent to Board members. Following some slight revisions at the meeting, Doyle moved its adoption. This first official attempt to install a code of ethics failed to pass, but the message was clear that a code of ethics was in the offing.

As the discussion about a code of ethics became more prevalent at Board meetings as well as informally between members, three positions emerged. Those favoring the code for the various reasons already noted occupied the first position. The second position encompassed those rather adamantly opposed. A third position was somewhat a compromise, with its members alleging that other DSA documents and statements already existed that made any new code redundant and unneeded.

Those strongly opposed to the code as being developed were not opposed to a statement of ethical standards itself, but rather had serious concerns about its administration. In particular, there was deep concern about enforcement procedures and the damage that could happen to a member firm accused of a code violation. For instance, the requirement that facts or documents pertinent to the issue at hand must be obtained and disclosed in any hearings or proceedings -- the legal process
known as discovery -- might undermine a company's privacy or competitive position as well as prove embarrassing and even provide government agencies and regulators with ammunition for further legal pursuit. If sensitive facts or documents were not kept confidential, the subject firm might be placed in jeopardy.

Other negative feelings stemmed from the expected cost of administering a code. DSA members had recently seen a sizeable increase in dues because of the move, staff expansion, and other activities, and most were not sympathetic to a still larger dues payment to finance the administration of a serious code of ethics program. Perhaps these people felt that many instances of code violations would ensue, causing great travel costs, legal fees, and other administrative support costs. The opposition to that argument was simply that the presence of a code would reduce association expenses because its Washington lobbying effort could be reduced. A particularly troublesome point to some was the consequences to DSA if a member firm was accused and "convicted" of an ethics violation and subsequently decided to bring suit against DSA.

Many of these issues required careful treatment in the final administrative rules accompanying the code of ethics. Those representing the third position may have felt many of these same problems, but rather chose to build on existing statements inherited from NADSC. Some members in this latter group argued that DSA already had a statement of ethical behavior to which its members subscribed, and thus a new code of ethics was not needed. That statement was contained in a document titled "The Right Thing To Do," devised jointly by NADSC and the National Better Business Bureau in the very beginning of Brouse's tenure in early 1969. It was, in essence, a code of ethics, and treated many issues of salesperson-customer relations. The text of this document, found in Appendix C, was derived largely from the model consumer protection act proposed by the NADSC at the 1968 FTC hearings on consumer protection (see Part One).

Others taking this position suggested that the much shorter "Declaration of Principles," which was inherited from NADSC and reproduced in Part One, be used as the foundation of an ethics code and improved upon, if necessary. In fact, that declaration, renamed "Statement of Principles," was then currently circulating and attached to the DSA membership rosters, so it had not been forgotten as was the 1940 code shown in Appendix A. But neither "The Right Thing To Do" nor the "Statement of Principles" did what the emerging code of ethics was desired to do. The proposed code differed in two fundamental and critical ways by (a) making code compliance mandatory, not voluntary, and (b) providing detailed procedures for enforcing the code and dealing with complaints or accusations.

**External Activities.** Self-regulatory codes were not new, though most of those proposed previously by various associations did not maintain viability after FTC scrutiny. Gilbert was aware of this risk, having studied Commissioner Elman's statements and other FTC rulings. Gilbert sought the advice of William D. Dixon, formerly of the FTC Division of Advisory Opinions, for two good reasons. First, it was this FTC Division to which any DSA code would subsequently be presented for
evaluation and approval. Second, while in this FTC position, Dixon wrote an analysis of past FTC advisory opinions on the topic of self-regulation (Dixon 1968). Many interesting cases had been scrutinized, ranging from the Sugar Institute case in the 1930s in which the Supreme Court recognized the desirability of association self-regulation, to numerous code proposals in the 1960s. Among the associations and issues involved were the Fashion Originators Guild in 1941 and the question of suppression of competition, the Associated Press in 1945 and its uses of fines and expulsion of members, the New York Stock Exchange in 1963 and its problem with inadequate due process, and the ethics code devised by the Paid-During-Service Magazine Subscription industry in 1967. The latter case was of particular relevance to the DSA situation as already noted earlier and in Part One, and received detailed attention in Dixon’s analysis.

From a legal and regulatory perspective, it became clear that any DSA code must, if it were to gain FTC approval and serve as the desired deterrent to troublesome government regulation, pass three fundamental tests. It must (a) provide for due process; (b) not thwart competition as a result of imposing fines or other penalties for violations of code provisions; and (c) be sufficiently potent to make it meaningful to consumers and serious to association members.

These tests were carefully incorporated into the administrative policies and complaint procedures attached as integral parts of the code document. For instance, competition would be protected because the administration of the code and any complaints occurring would be handled by an independent code administrator, not affiliated with any DSA member company. To insure due process, if a complaint could not be resolved by discussions between the code administrator and the company involved, a hearing process would be instigated. Members of the hearing committee would be chosen so as to exclude any competitors of the accused firm, and the hearings would be confidential and closed to all outsiders including all other DSA members. No specific sanctions were to be administered, except that if a violation of federal or state law is deemed to have occurred, the administrator will, after properly notifying the accused, inform the federal or state government agency and cooperate in any further governmental investigation. The latter certainly offered a conspicuous degree of potency.

**Final Adoption of the Code**

The final adoption of the code of ethics occurred in three separate actions. The substantive provisions of the code were approved first at a Board meeting in March 1970. The procedural provisions gained approval at the next Board meeting in June. The entire code was then placed before the annual meeting of DSA later in June, where it was discussed and endorsed by a vote of the full membership.

**March 1970 Board Meeting.** On March 13, 1970, the Board of Directors of DSA met at the Barclay Hotel in New York City. Ethics Subcommittee chairman Doyle gave an initial report
summarizing the development of the code to that day and describing the code provisions. Because he wanted to participate actively in the discussion, Board Chairman Sheridan relinquished the gavel to Mr. E. Cabell Brand, a Board member from The Stuart McGuire Company, Inc. A lively discussion ensued.

Concerns expressed by Board members summarized and focused the concerns voiced in many earlier discussions. Sheridan started the discussion by noting the high costs necessary to administer the code, perhaps requiring an increase in member dues. He also expressed concern about the possibility of attracting government intervention if a code were proposed, and predicted that DSA would face litigation if a member company were expelled from the association because of a code violation. Others responded to his points, suggesting that costs now directed to various legislative programs might be reduced and that expulsion of a member was not provided for in the code.

Each Board member was then asked to express his views on the code. The points made are summarized as follows:

- The code would do much to prevent anti-direct-selling legislation;
- DSA must stand for something and say so;
- The code would be an asset in the promotion of increased membership;
- Worthwhile moves always carry a certain risk;
- "The Right Thing To Do" is sufficient and a code is not necessary;
- It would be better to improve the Statement of Principles and use it to expel violators.

In addition, it was reported that the President's Council strongly favored a code, and that it would be unwise not to give weight to the feelings of these company presidents. One Board member queried if all members had to subscribe to the code. Gilbert responded that technically they would not, but as a practical matter they should or else they could not require new members to subscribe to any code of conduct adopted by DSA. This issue would subsequently be clarified in the next Board meeting.

It should be noted that essentially no discussion related to the substantive provisions of the proposed code -- the standards of behavior that the code addressed. Codes of ethics spelling out behavioral standards were not new to DSA, as evidenced by "The Right Thing To Do" devised in 1969. The wording of the proposed code was more concise, however, as the result of rigorous legal analysis by Gilbert, knowing that it would have to satisfy the scrutiny of the FTC or other government agencies if it became a self-regulatory policy of DSA. How the code provisions were selected was noted in a 1972 memo written by Gilbert to Brouse documenting the history of the code of ethics. Gilbert stated:
The substantive provisions of the Code were drafted in light of the kinds of conduct that has been subject to criticism by the Federal Trade Commission and other state and federal law enforcement agencies.

There was no apparent disagreement that these standards, covering such issues as guarantees, full disclosure of terms of sale, and deceptive practices were important, necessary, and acceptable. Yet underlying much of the discussion at this meeting and previously in other settings were concerns about how the code would be enforced, reflecting an uneasiness in the minds of many members about their vulnerability to code violations.

No doubt much of this uneasiness stemmed from the use of independent contractors as salespeople, and the fact that the code called for DSA companies to assume voluntary responsibility for the actions of these independent contractors. This was an anomaly that the industry faced -- utilizing sales representatives who are independent businesspeople, not employees for whom the DSA firms are responsible, but at the same time being responsible for their proper and ethical behavior toward customers, behavior that reflects on the DSA firms and company reputations. Too much intrusion might drive these independent reps to sever their affiliation, but too little intrusion might be an implicit consent that "anything goes" in selling behavior.

When the discussion subsided, Acting Chairman Brand presented a motion that the code be adopted subject to preparation of administrative regulations by legal counsel. These regulations together with the code would be mailed to all members prior to the annual meeting in June, at which time a vote would be taken. Subcommittee Chairman Doyle seconded the motion and a vote was taken. Lingering concerns about the yet-to-be-completed regulations sections of the code caused four Board members to vote against the motion, while eleven voted to support it. Mr. Sheridan then resumed the chair and went on to further business.

**June 1970 Board Meeting.** The next meeting of the DSA Board of Directors was held on June 13, 1970 at the Broadmoor Hotel in Colorado Springs. Ethics Subcommittee Chairman Doyle was absent from that meeting, so Gilbert presented a review of the code, noting that it was approved at the previous Board meeting pending final statements of administrative regulations. He emphasized that the regulations now proposed allowed for substantial due-process safeguards. He also clarified

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that all members of DSA must abide by the code, if adopted, whether or not they overtly subscribed. Discussion then focused on some administrative provisions. Two amendments were made. One stated that any accused party should receive a copy of any written complaint that included the disclosure of the complainant. The other specified that the only documents that would be turned over to a government agency by the code administrator would be those necessary for prosecution. These amendments were seconded and passed. Again, no discussion was directed to any of the substantive portions of the code dealing with standards of behavior.

The motion was then made by Richard C. Polinsky (Minnesota Woolen Company) to accept the regulations to enforce the code, and the motion was seconded by H. Thomas McGrath (Avon Products, Inc.). The motion passed with only one dissenting vote, that of Board Chairman Sheridan. Apparently the clarification of administrative procedures since the previous Board meeting convinced three of the four previous opponents of the code to change their minds.

Following this vote, the Board approved a resolution requesting the principal officers of member companies to formally subscribe to the code by submitting a letter so stating from their board chairman. This resolution was not made a part of the code regulations themselves, however. A motion was also made and unanimously approved that the code be updated when necessary to constantly improve practices in the marketplace. This action confirmed that the entire Board membership favored the standards of behavior addressed in the code, and that any disagreements reflected in previous votes involved enforcement procedures.

A question was raised about why the Board action approving the code and its administrative regulations be ratified by the full membership at the annual meeting. DSA by-laws specified that Board approval was sufficient for adoption of an association regulation such as a code of ethics. Counselor Gilbert stated that a full membership vote was technically not needed, but was recommended because of the significance of this matter. He also stated that future changes in the code or its regulations would not require full membership ratification.

At this point, DSA had an officially-approved code of ethics complete with administrative regulations and enforcement procedures -- something this association or its predecessor had never achieved in its existence since 1910.

**June 1970 Annual Meeting.** Shortly after the Board meeting, the Annual Business Meeting of the Direct Selling Association took place on June 15 at the Broadmoor in Colorado Springs. To set the proper mood for considering the code of ethics, Brouse prepared large cardboard cutouts of "Mr. C" and "Mrs. C" (C for customer) who had "problems" with some direct selling experience, and placed them on the stage. When the time came to discuss the code, Gilbert addressed the membership, who had been supplied with copies of the code prior to arriving. He first explained the amendments approved by the Board two days earlier, and then reviewed the regulations section of the code in
some detail. Sheridan, who was chairing the meeting, then asked for any questions, and considerable discussion evolved, both on the substantive contents of the code as well as on its regulatory procedures. Some examples of the dialogue are as follows:

- Member: In the past we have had some general understanding in our code which goes to the attitudes of such things as soliciting and hiring of other member company personnel. Is this particular code silent on that or are we going to consider it in discussing our code of ethics?

  Sheridan: The code is silent on that issue, correct Mr. Gilbert?

  Gilbert: Yes, sir.

- Member: I felt that the membership of this organization did not need a code, that those outside the organization were the ones that needed the code, and what was the thinking behind this code in regard to those who are not members; how will this affect them who do need a code but who are not members of this association?

  Sheridan: Jerry, do you want to respond?

  Gilbert: Well, perhaps ....

  Sheridan: (interposing) I will ask Tom McGrath to come up and make some comments.

  McGrath: I think it was the general feeling of the Board that this association existed for quite a number of years and member companies have upheld certain standards in the industry.

  As a matter of fact, the member companies have set the standards for the whole direct selling industry. We thought that this association should have a code of ethics that we could hold up to the world and say that as direct sellers here are the values we believe in.
As an association we have certain standards and there are companies outside the association that might want to join us and we don't have any provision to keep certain companies out of this association because we have no code of ethics. We felt that if companies wanted to join us we are delighted to have them if they are willing to subscribe to this code of ethics.

We cannot be responsible for people who are not members of our association. We would hope that our code of ethics for non-members would point the way to them to be able to live in this industry and preserve it.

We would hope that the standards that we ourselves set would become standards throughout all direct selling, whether they are members of this association or not.

In summary, I say again that we feel it is very important for this association to have ethical standards set before us that we can not only subscribe to but talk about and popularize. We feel that for the future this is vital and essential. I hope that answers your question.

Member: What happens if the Code of Ethics Committee and the Administrator after referring it to a governmental agency finds that there is a violation, do we expel the member or do we permit the member to operate and act within the membership?

Gilbert: What happens after we have referred the complaint to the government agency and it has been successfully prosecuted, what do we do?

Member: Right.

Gilbert: Nothing. The law is such today, the atmosphere and code of ethics of trade associations, that we really don’t have the legal authority to expel a member under that situation.

We have found that the legal position is that at this time we are not
ready for it, nor is the Federal Trade Commission ready for it. But we do feel we have gone as far as we can possibly go at this point, and I might add this does give us, from a legal point of view, something to base our actions on.

Member: Under this code, from whom will complaints be accepted by the Administrator?

Sheridan: From whom will the administrator accept complaints?

Gilbert: From anyone. I doubt very much that government officials really care about our code. If they have got a complaint, they have the necessary tools to deal with it. But as far as the member companies, the Administrator accepts complaints from anybody.

Member: Does that include your own member companies?

Gilbert: Yes.

Member: Anyone who wants to make a complaint can do so?

Gilbert: Yes.

Member: In the event that the entire procedure were followed and it was found necessary to turn it over to a state or federal agency and the member company was found innocent, would there be any grounds for that member company to sue the association or its members?

Gilbert: Two points to answer that question. One, the code and regulations as adopted by this membership as they are provide that there would be no liability under this code by anyone of the association; and secondly, if you read the regulations you will note that any proceeding under this code, not the code itself, but any proceeding under it and any complaint is to be kept confidential by anyone in the association involved in a proceeding under the
code; and even as I explained earlier in the filing of a complaint the only 
papers that would be filed are those papers, the minimum amount of papers, 
necessary for the filing of the complaint.

Member: I understand that, but at the same time the association has made 
complaint of the subject.

Gilbert: Let me go one step further, without this code anyone in this room has 
a right to make a complaint to a government agency. So long as you have 
something substantial you have no fear of liability.

When the questions subsided, Sheridan called for a motion to ratify and establish the code 
of ethics. After the motion was made and seconded, a member questioned having a vote at that time, 
but rather suggested having a mail vote after each company had an opportunity to review the code 
and its implications. That statement was taken as a motion, and it was seconded. No discussion was 
offered, and after an indeterminate voice vote, Sheridan called for members to vote again by 
standing. The motion to defer voting was defeated, with twelve standing to express favor and 
twenty standing to express opposition.

After a check to be sure a majority of DSA membership was present, a vote was taken on the 
original motion to ratify the code. Again, members were asked to stand to indicate their vote, and 
the result was thirty votes in favor and two votes against. Gilbert noted that he held four additional 
favorable votes as proxies, and that "some" members present were abstaining. (A subsequent 
recolletion of a DSA staff member noted that the final tally, after all proxies were counted and 
some undecideds changed their minds was 43 to 30 in favor.)

As a wrap-up to this part of the meeting's agenda, Chairman Sheridan offered these 
supportive comments:

Let me reassure you that any people who have misgivings, that there was a 
division over a period of a couple of years on this issue, and as a consequence of the 
division, Counsel and the Committee devoted long hours and the Board of Directors 
devoted many sessions to perfect an instrument, which we think will do credit to this 
association and to its member companies.

We don't expect any legislative good out of it. We do expect a great deal of 
public relations good and a great deal of cleaning up in the entire industry, outside
of our association as well as inside it.

If this were just a simple exercise of semantics and we published a code we
would be doing ourselves incomparable injury. However, there is every intention of
abiding by and enforcing this code of ethics.

These were welcome words from the Board member whose opposition to the newly established
Code of Ethics had been most protracted.

The Content and Character of the Code of Ethics

The official and complete statement of the Code of Ethics that was finally approved on June
15, 1970 appears in Appendix D. It contained three major sections: a preamble, a statement of the
substantive components of the code of ethics, and a statement of regulations for enforcement.

Code Content. The preamble was simply a declaration that DSA member companies will adhere
to the practices described, dealing with their responsibilities toward consumers.

The code section itself detailed in its first five parts the standards of behavior that the code
supported. First, product or service offerings shall be described in an accurate and truthful manner.
Second, guarantees shall be clearly stated and fulfilled. Third, the terms of sale and the
identification of the seller shall be clearly communicated in writing to the customer. Fourth, the
direct selling company shall be responsible for any improper conduct of its sales representatives; and
fifth, no DSA company shall engage in any deceptive or unlawful practices.

Part six of the code section detailed the administrative policies, noting that an independent
code administrator shall be appointed with authority to insure code compliance. This part also
reiterated that member companies are responsible for code violations by their representatives, and
that if a state or federal law has been violated, the administrator may inform the proper agency and
cooperate in whatever action is forthcoming from that agency. Part seven simply stated that code
amendments are possible with a two-thirds vote of the Board of Directors.

The section on enforcement regulations spelled out a five-step procedure for dealing with
a complaint:

Step 1: Complaint must be received in writing, and is forwarded to the accused
party. The administrator conducts an informal investigation.

Step 2: The administrator may (a) terminate action if the charges prove to be
insupportable or frivolous, or (b) ask the accused for a response if a violation appears
to have occurred; based on the response and/or subsequent action of the accused the
administrator may then terminate the charges or notify the accused that he has the
right to request a hearing by a special ethics committee.

Step 3: If a hearing is requested the administrator initiates action to form a special ethics committee, and procedures by that committee are carried out including a closed hearing and decision by secret ballot.

Step 4: If the special ethics committee finds that a code violation has occurred, the administrator consults with legal counsel to determine whether a violation of state or federal law is involved. If so, the accused is notified, as is the appropriate federal or state agency, as already noted in an earlier section.

Step 5: This is not really a separate step but rather some procedural stipulations, such as confidentiality of procedures, involvement of direct competitors of the accused, and limitations on what documents would be delivered to a federal or state agency if that became necessary.

**Code Character.** The focus of this code is consumer protection, reflecting the issues and concerns raised by consumerists in the various books, hearings, and regulatory actions noted in Part One. The Code gave no attention to relationships between the company and its sales representatives or ethical issues relating to sales representatives that do not involve consumers. The first dialogue presented above from the June 1970 annual meeting illustrates one of these issues -- companies hiring other company's salespeople. Later amendments, however, did address some of the problems reflecting company-salesperson relationships.

The Code is also positive in tone. It did not emphasize what not to do, but rather made positive statements -- the offer shall be accurate ... the terms of the guarantee shall be furnished to the buyer ... a written order or receipt shall be delivered to the customer ... etc. Even the statement concerning deceptive or unlawful trade practices is somewhat positive in tone, declaring that "No member company shall engage in these practices. A negative statement would read more like this: "Member companies shall not engage in such behavior." This overall positive tone helped avoid the impression that the Code was an attempt to make its member firms cease and desist from past unethical behaviors.

An important aspect of this code is its mandatory nature. While some association codes of conduct are voluntary (as were the predecessor codes of NADSC), this code required compliance by any firm desiring membership in DSA. A voluntary code often gives rise to the "free-rider" problem whereby a non-complying member shirks the responsibility while ostensibly retaining the affiliation with the ethical image of the industry association.

Finally, this code is strongly focused on supporting legal standards of behavior. Such codes can be characterized as "equilegal" implying that the ethical standards in the code are equivalent to legal standards. One aspect of the Code, however, is arguably above and beyond basic legal standards, or "supralegal." This occurs in the statements of member responsibility for the actions
of their independent contractor salespeople. Taking responsibility for the actions of these independent sales personnel was, as already discussed, a controversial issue as the Code evolved, but failure to take this position would certainly have weakened the Code greatly. The consequences of this rather bold step were, of course, yet to be seen.
PART THREE

FOLLOWING THE CODE

Gaining membership approval of the Code of Ethics was a monumental step for the Direct Selling Association, stemming from the combined efforts of DSA president Bourse, counselor Gilbert, directors Brand, Doyle, McGrath, and many others. But the real test of the wisdom of this action was still in the future: What would the code provoke and what would it prevent? Many of the trends described in Part One that were seen as threatening to this industry continued through the decade of the 1970s and beyond.

Thus, one focus of this Part, which is titled "following" the Code, is to review what pertinent events and trends in DSA's marketplace and regulatory environment occurred "following" the passage of the Code, along with their impact on the direct selling industry and especially on some DSA member firms. Of course, it is impossible to know what might have happened instead if the Code of Ethics had not been vigorously debated and approved by DSA members, but it is clear that the problems and issues that served as the genesis of the Code did not wane. The second focus of this part on "following" the Code is to report the DSA actions carried out to insure that the association was "following" the mandate of the Code and to note what activity occurred involving DSA members as the direct result of the Code's existence.

Events and Trends Following Code Enactment

Consumerism. The consumer movement in the 1970s clearly remained vigorous and influential. A major study of U.S. consumers in 1976 perhaps best summarized the state of consumerism in this decade, indicating what government officials were discerning from their constituencies. Based on personal at-home interviews of more than 1,500 respondents across the nation, the study produced some strong conclusions (Louis Harris 1977). Consumers wanted three different kinds of changes. The first was a change in attitudes and perceptions of business managers regarding the sincerity of consumer problems, the extent of their needs, and the high level of their expectations in the marketplace. The second involved specific areas of change, including safer products, better quality and service, better guarantees and warranties, and better complaint handling processes. The third was an improvement in communications with the public by business firms about the steps they are taking to be responsive to consumer problems. In fact, the primary complaint against business was the difficulty of getting complaints and problems corrected.

Other findings from that study were pertinent to issues of direct concern to DSA members. Nearly half (47%) of the consumers interviewed had actually complained at least once during the previous year to a seller about a product or service purchased. Almost the same portion of these
respondents (43%) were critical of the benefits they were supposedly receiving from government regulation, and most of these believed that regulation was more beneficial to business than to consumers. The majority (52%) favored creation of a new government agency devoted specifically to consumer advocacy. And finally, when asked their opinion on how effective industry self-regulation might be in comparison to regulatory efforts of the federal government or consumer activists, they gave poorest marks to the self-regulation option and had most confidence in consumer activists to solve their problems. But the full report of this study, which covered ninety pages, made no reference to direct selling, direct salespeople, or any specific direct selling practices.

Consumerism and selling were the subjects of a major *Fortune* magazine article a few years prior to the Sentry study (Burck 1972). It noted that "the art of salesmanship, particularly in its more persuasive and high-pressure forms, is up against the greatest challenge in its long history," and stated how the consumer movement pressured the FTC and other state and local regulatory agencies to intensify their activities in order "to scourge and abolish the abuses of persuasion." Among the specific activities mentioned were the FTC's proposed cooling-off rule (discussed later in this Part), as well as various cooling-off laws and door-opening ordinances passed by thirty-three states and ten cities. The article also noted that DSA, which represents the leading companies in the field, had produced a code of ethics for self-regulation and observed that "the FTC seems to think well" of the Code and related DSA activities to publicize the Code. This was an indirect but welcome indication that the DSA Code had indeed made a favorable impression on the federal regulators.

Direct selling as a business strategy was also making a favorable impression on consumers, as evidenced by its continued sales growth. A *Forbes* magazine article in mid-1971 detailed these growth trends for five large and publicly-held DSA members and quoted Brouse's observations on this trend ("Knock, Knock" 1971). Thus, while consumerism remained a conspicuous and potent force, it had not inhibited the energies of direct salespeople nor thwarted customer willingness to purchase from them.

**Regulatory Activities.** A number of changes occurred in the FTC in 1970 that would have an impact on this agency's focus and pursuits. Philip Elman, the outspoken advocate of increased regulation, departed as a Commissioner. At the same time, Miles Kirkpatrick replaced Caspar Weinberger as Chairman. Kirkpatrick was known for his strong consumer protection stance, having previously headed the American Bar Association study group in 1969 that reviewed the FTC after the appearance of the highly critical Nader report. That study group had endorsed a more vigorous proactive stance by the FTC instead of reliance on voluntary procedures of self-regulation by industry. As part of a general reorganization of the FTC, The Bureau of Consumer Protection was established and charged with the responsibility of creating trade regulation rules for the protection of the consumer (Hasin 1987). A trade regulation rule is a statement about a specific practice that the Commission views as unlawful, and is formulated and issued after executives in those businesses likely to be affected by the rule are given an opportunity to present their views at hearings. Such statements have the force of law for the industry in question.
The Director of this Bureau was Robert Pitofsky, who would later become an FTC Commissioner in 1978 and FTC Chairman in 1995. Brouse and Gilbert met with Pitofsky in early 1971 to get his reaction to the DSA Code. In a report on that discussion to the DSA Board of Directors meeting in June 1971, Gilbert conveyed that Pitofsky termed the Code an effective one and stated that his office would cooperate in its enforcement. The top priority of this Bureau under Pitofsky involved advertising practices, but a long-continuing concern about a cooling-off remedy for abuses in selling was to receive early attention.

Hearings on a trade regulation rule for a cooling-off period were begun in March 1971 under the direction of William D. Dixon. This was the same William Dixon who had earlier been consulted by DSA counsel Gilbert in the development of the DSA Code, and who was now the Assistant Director under Pitofsky in the Bureau of Consumer Protection. The issues addressed by this proposed rule were stated as follows ("Cooling-Off Period for Door-To-Door Sales" 1972):

The complaints of consumers regarding door-to-door salesmen fall within five basic headings. These are: (1) Deception by salesmen in getting inside the door; (2) high pressure sales tactics; (3) misrepresentation as to the quality, price, or characteristics of the product; (4) high prices for low-quality merchandise; and (5) the nuisance created by the visit to the home by the uninvited salesman.

Among the many persons testifying at the hearings, which took place over seven days at two locations (Washington D.C. and Chicago), were J. Robert Brouse of DSA, Stephen Sheridan of Electrolux, and representatives from such DSA member firms as Avon Products, Dart Industries, Field Enterprises Educational Corporation, Health-Mor, Mary Kay Cosmetics, and Southwestern Company. Many of the consumer complaints aired in these hearings were already addressed by the DSA Code, and most of the complaints seemed tied to non-DSA member firms. However the DSA Code did not contain an explicit statement about a cooling-off period.

Because the DSA had established a proactive stance with its Code of Ethics, the tenor of the comments by DSA members was somewhat favorable toward the proposed rule. To take an opposition stance would be awkward if not inconsistent with the underlying philosophy of their own Code. In addition, the proposed rule might help substantially in improving the practices of non-DSA member firms and thus raise the image of the entire industry. Two items of controversy came to light, however. One involved a type of discrimination -- the rule would apply to sales in the home but not to sales through other methods of retailing such as in a store or through the mail. The second related to the many state laws specifying a variety of cooling-off procedures (see "Political-Legal Climate" in Part One). Many of these laws differed, including different lengths of the cooling-off period, different minimum dollar purchase levels needed to invoke the rule, and different procedures and paperwork required to inform customers of their rights under the law. DSA generally supported the cooling-off idea, but sought to have all the state laws conform to whatever federal standards
emerged. The FTC apparently was not persuaded by the discrimination argument, noting that even if abuses occur in other types of retailing that did not justify failure to act in the case of door-to-door abuses. The problem of diverse state laws was also recognized by the Commission, but it noted that the FTC rule "does not exempt any seller from complying with the laws of any state ... except to the extent that such laws ... are directly inconsistent with the provisions of this [rule]."

On October 18, 1972, the FTC promulgated the trade regulation rule specifying a cooling-off period for door-to-door sales, and it became effective June 7, 1974. The essence of the rule stated that the seller must furnish to the buyer a statement that reads as follows:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

The notice had to be printed in 10-point bold face type with additional information about how to arrange for the return of the goods if the buyer cancels, and what is the buyer's responsibility for goods not picked up by the seller.

Some Specific Legal Actions. A number of direct selling firms were subject to FTC scrutiny and decisions as the decade of the 1970s progressed. Many also were involved in litigation in various states, and the consumer protection agencies or attorneys general of almost every state had, by mid-1972, initiated some kind of action against one of the firms discussed below. The following discussion briefly notes some of the main federal government actions.

Encyclopaedia Britannica. The FTC issued a preliminary complaint against Encyclopaedia Britannica (EB) in July 1972. The complaint alleged misrepresentations to customers regarding the purpose of the salesperson's visit (e.g., conducting surveys rather than selling) and the specifics of the sales offer (e.g., promising original research service to buyers). In addition, the complaints alleged misrepresentations to sales recruits promising availability of positions as management interns, public relations, or other non-selling fields, as well as inflated potential earnings estimates (Wagner 1972). After various hearings and appeals, the FTC issued a final cease-and-desist order in March 1976, requiring EB to deliver by registered mail a copy of the order to each person representing EB in a selling capacity.

Grolier. Based on alleged violations similar to those in the EB case, the FTC asked Grolier to sign a consent agreement requiring its salespeople to hand to their prospects a five-by-seven-inch

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3A lengthy footnote in Cochran 1972, pp. 688-689, itemizes many of these state actions or investigations.
card stating the name and company of the salesperson and sales purpose of the call. Further, the FTC directed that the salesperson subsequently obtain the prospect's signature on the card before entering the home and beginning the sales pitch ("FTC: Belling Salesmen" 1972). The need to get the signature was later recanted, based largely on persuasive communications from DSA. Other issues essentially similar to the EB case were also involved, and after numerous appeals and hearings a cease-and-desist order was issued by the FTC in March 1978.

**Holiday Magic.** The FTC issued a complaint against cosmetics marketer Holiday Magic in January 1971, alleging in part that this company (1) used an unfair and deceptive lottery-type, multi-level, endless chain merchandising program; (2) recruited distributors through misrepresentation; and (3) restrained trade by fixing its distributors' resale prices, allocating sales territories, and restricting types of outlets for resale. Item (1) in particular focused on the issue of an illegal pyramid operation wherein distributorships rather than products were being sold to produce the bulk of the income generated. The other charges were not central to the nature of a multi-level sales organization, though very much at issue under Section 5 of the FTC Act (DeJute, Myers, and Wedding 1973). During this same time Holiday Magic applied for membership in DSA, but because it was an alleged illegal pyramid operation, the DSA Board (which must approve new members) deferred its decision. Holiday Magic, frustrated in its desire to gain the respectability accorded by DSA membership, brought suit against DSA. The matter was settled in 1973 when Holiday Magic agreed to drop the case "with prejudice" which precluded that firm from ever bringing suit against DSA again. The pyramid complaint was upheld by the FTC in a final order a year later.

**Kosco Interplanetary.** The FTC formally charged Kosco, a marketer of cosmetics made from mink oil, as an illegal pyramid scheme evidenced by its concentration on sales of its distributorships rather than sales of its products. In this often-referenced case, the FTC prevailed with a final order in 1975.

**Bestline Products.** Bestline was founded by a Holiday Magic alumnus to sell cleaning products, and gained the attention of the FTC in the early 1970s. The company agreed to cease and desist via a consent agreement prohibiting headhunting fees (for the sale of distributorships), misrepresentation of earnings, and nonrefundable inventory loading in mid-1972. Consumer complaints against Bestline continued, however, and the company became a concern to DSA because it was a DSA member. A report to the DSA Executive Committee in April 1974 noted that Bestline had entered into various consent agreements with several states, and some state regulators had agreed to let DSA handle some of the complaints through its Code of Ethics administrative process. Bestline did not appear in the 1980 roster of DSA members.

**Dare-To-Be-Great, Inc.** Dare-To-Be-Great sold a series of four courses of motivational
lectures on cassette tapes. The courses were titled "adventures" and courses three and four emphasized the sale of Dare-To-Be-Great franchises. In May 1972 the Securities and Exchange Commission (SEC) brought action against this company based on securities law violation (A fascinating description of this operation is detailed in Cochran 1972.). In brief, the SEC believed that a security is being sold when the "investor" is not required to make significant efforts in the operation of the business to obtained the promised return. In essence, the SEC claimed that the purchaser of a Dare-To-Be-Great franchise was encouraged to recruit other franchisees, who in turn were encouraged to recruit still other franchisees, on and on. Once this chain began, the franchisee at the top of the pyramid would simply collect fees based on the numbers being recruited, and no further work was required. Other factors were involved as well, but the result was a successful suit by the SEC based on a charge of failure to comply with the securities laws.

Amway. In March 1975 the FTC issued a complaint against Amway involving five counts: (1) fixing resale prices to be charged by its independent distributors; (2) restricting the outlets through which its distributors may resell Amway products; (3) restrict advertising and promotional activities of distributors; (4) misrepresenting the amount of income potential available through "multiplication, duplication, and geometrical, unlimited or endless chain increases in the number of distributors or dealers recruited," and (5) falsely representing the ease of recruiting distributors and the amount of profits or earnings available from recruiting ("MBS Purchaser Under FTC Gun" 1977). The final cease-and-desist order was issued in May 1979. But this case was a landmark event regarding the definition of a pyramid operation, the focus of count four above. In this case, the FTC dismissed the allegations that Amway was a pyramid scheme based on the company rules requiring that its distributors make sales of Amway products to consumers and that every distributor must sell at least 70% of the total amount of products bought in a given month. The latter rule was established to prevent inventory loading, a characteristic of pyramid schemes whereby the distributor purchases quantities of products in order to qualify for bonuses or increased commissions but fails to sell the products to ultimate consumers, thus creating a storehouse of unsold inventory. The price fixing and trade restraint allegations were upheld, however, and were the subjects of the final cease-and-desist order.

DSA Actions Related to the Code

The adoption of the Code of Ethics imposed many responsibilities on its DSA guardians. There were administrative procedures to establish, such as the selection of a code administrator. There was a communication task to perform in order to inform various constituencies -- federal and local government officials, association member companies as well as nonmembers, direct salespeople in member and nonmember companies, and consumers and their representatives in consumer action organizations -- about the Code's existence and the benefits it offered. There was the hopeful expectation that this communication would markedly benefit the industry's image and
the association's status among all those constituencies. But there was the uneasy anticipation that complaints would be forthcoming under the Code, and serious concerns about how many there would be, and how the administrative procedures would really work to handle them. There was also the uncertainty about how the Code would affect the size of DSA membership and how enthusiastic its members would remain in support of the Code.

**Code Administrators.** The Code was to be administered by an independent code administrator, someone not affiliated with any DSA member firm. Since no person had been targeted for that position pending approval of the Code in mid-1970, the Board determined that J. Robert Brouse become the temporary code administrator until a proper search and selection procedure could be completed. Brouse was DSA President, but not affiliated with any member firm, and thus met the qualifications of the position (see Appendix D, section VI, part B).

At the DSA annual meeting in summer 1971 the appointment of Clarence Lundquist, a Washington D.C. attorney, was announced as the first permanent code administrator. Lundquist had served in the U.S. Department of Labor as Wage and Hour Administrator under the three administrations of Presidents Eisenhower, Kennedy, and Johnson. In discussing his appointment, a DSA executive stated, "Mr. Lundquist brought an impressive background to the position. His background, we felt, would emphasize the independent status of the administrator, as well as provide the consumer with the person-to-person communication so necessary for complaint handling" (O'Neill 1972, p. 47).

Following Lundquist as second code administrator was Kenneth A. Roberts, also an attorney and a former Alabama congressman who was an early supporter of Ralph Nader. His tenure began in early 1974 and he served to the end of 1977. In commenting on the DSA Code and its role in the regulatory process, Roberts stated, "It means that with proper attitude, industry can demonstrate that not only the customer is always right, but that it's better for the seller to voluntarily prove it than be forced by the government to do so" (Offen 1976, p. 267).

The third code administrator was Henry A. Robinson, who served less than one full year during 1978. He had previously been Chief Counsel of the U.S. House of Representatives Small Business Committee, and his detailed analysis of complaint history prompted him to offer numerous clarifying revisions and amendments to the Code (discussed in a later section).

Robinson was followed in the code administrator position by William W. Rogal, former head of the FTC Bureau of Deceptive Practices which became the Bureau of Consumer Protection after the 1970 FTC reorganization. Rogal also served as legal counsel to the American Advertising Federation (AAF), an organization with a long history of self-regulation (Wagner 1971). In its early years prior to the establishment of the FTC, the AAF had spearheaded a "crusade for truth" in advertising, subsequently proposing model truth-in-advertising statutes by both federal and state legislatures. The AAF developed its own self-regulation program, carried out through "vigilance
committees" that later evolved into the Better Business Bureaus. Rogal's appointment was approved in October 1978 and he continues through the date of this narrative.

**Promoting the Code.** The Code of Ethics Committee of the DSA Board remained in operation to monitor the Code's progress and assess suggestions for code amendments. But initial attention of the Board turned more to making the Code known and understood than to changing its content. At the June 1971 Board meeting, Brouse noted that only 25 complaints had been received during the Code's first year of existence, a small number indeed in light of the supposed deluge of misrepresentations and other undesirable practices attributed to door-to-door selling in the popular press. Even though this was a welcome report, Brouse concluded that lack of consumer awareness as well as lack of knowledge about how to use the Code might be major reasons why more complaints did not surface, and suggested that greater promotion was necessary to make the Code more meaningful to consumers.

**Action Program.** In 1971 the DSA Board formed a Code of Ethics Implementation Subcommittee chaired by Jack Hamilton of Wear-Ever Aluminum. Its task was to devise an action program to enliven the understanding and use of the Code among DSA member firms and their salespeople. In January 1972 each DSA member firm received in the mail the product of this subcommittee's work -- a guidebook (called "Using DSA: A 'How To' Action Program") on how to make best use of that company's DSA membership, with strong emphasis on the Code of Ethics. The guidebook contained numerous promotional tools including a feature news article for company publications, a script for use at sales meetings, a press release for local community and state newspapers, and a variety of suggested letters for the company's CEO to communicate with its management and staff, with its field sales force, and with its state legislators and local councilmen. In addition, a new brochure was devised, with the title "The Direct Selling Association Opens the Door to Consumer Protection," highlighting for consumers the key factors in the Code of Ethics and other suggestions about buying in a direct selling transaction. Avon funded the initial printing of one million of these brochures, and each DSA member firm received 200 copies free, with additional quantities available at a nominal cost. A small booklet containing the DSA Code of Ethics and Regulations was also printed and made available to member companies at ten cents each.

As part of this program, the Implementation Subcommittee solicited examples from DSA member companies of how they used the guidebook materials, the brochure, the Code booklet, and of any other promotional activities related to the Code of Ethics. The Kirby Company purchased more than 500,000 copies of the brochure in 1972 for its salespeople to pass along to their customers and prospects, and eventually purchased and distributed more than one million copies. At least thirty other DSA member firms purchased additional copies of the brochure, and a dozen or more purchased copies of the Code and Regulations booklet.

Many companies provided examples of their own promotional efforts to be shared with the
DSA membership. For example, Hanover Shoe featured a discussion of the DSA Code of Ethics in its employee publication "Winner's Circle" and Mary Kay provided a detailed commentary about the DSA Code along with its own Code of Ethics for its beauty consultants. Mason Shoe included articles about DSA and the DSA Code in two of its issues of "Mason Shoe Dealer News" sent to its sales representatives. Shaklee distributed the "Opens the Door" brochure to all of its salespeople along with a cover letter, and reinforced the message with a feature article in its "Sales Survey" publication sent to its sales force. Sarah Coventry sent a number of messages to its sales representatives (hostesses) regarding the DSA and its Code, and one example distributed in February 1972 appears in Table 5.

Sarah Coventry also devised a special research study among its hostesses in Los Angeles County, to gain their reactions to the "Opens the Door" brochure. After the mailing of the brochure and an accompanying detailed description of its contents, a follow-up survey was conducted in March 1973 containing a half-dozen questions. Los Angeles was chosen because, in the words of company management, "Allegedly it has a higher incidence of consumer remorse caused by direct sellers." Of those who remembered receiving the brochure, 64% affirmed that it supplied them with useful information, and 48% stated that they were not aware of the Direct Selling Association prior to receiving the brochure.

Concluding comments on the results of this survey were printed in the final report as follows:

The D.S.A. Code of Ethics does have meaning for consumers and broader promotion may result in many more people taking advantage of it. Most respondents indicated they would contact Sarah Coventry if any problem occurred. They clearly attributed their positive feeling about the Direct Selling Association to Sarah Coventry since the brochure was provided by us.

Unquestionably the act of sending such a brochure was a good-will gesture. The respondents seemed to appreciate receiving this information. Inquiries and complaints should, however, be sent to D.S.A. not Sarah Coventry. For this to happen the code must be promoted by the Association. It would be expensive and the directors must determine whether or not they want a working code of ethics or a sales tool.

The Sarah Coventry survey highlighted a major issue limiting the enthusiasm of some company executives regarding the Code. Will promoting the Code bring more harm than good? Will it induce more complaints than it will garner good will? This nagging issue was undoubtedly a reason why a number of DSA member firms were reluctant to participate in the Code Action Program.
That, in turn, was troublesome to the DSA Board, who in October 1972 authorized President Brouse to contact ten member companies that were not participating in the Code Action Program to try to convince them to implement the program (or to find out why they would not). Feedback from this sample of ten would then better detail the issues and challenges that needed addressing.

The Sarah Coventry survey also pointed out a key challenge for DSA. To what extent should the association carry out a full-blown promotional campaign about the Code of Ethics and the Association itself among consumers? The answer to this question, if there was a clear answer at all, would depend somewhat on another promotional program in force at the same time -- the Wisconsin Project.

The Pilot Program in Wisconsin. The Wisconsin Project was the creation of the DSA Board Public Relations Committee chaired by Al Winfrey of Sarah Coventry. Its purpose was to test the market reaction to a consumer assistance program designed around the Code of Ethics, and to determine the best methods of promoting the Code nationwide. A single state was selected to minimize cost and staff time needed, and Wisconsin was chosen as the test state because it had an active statewide consumer protection program and offered a good cross-section of urban, suburban, and rural populations. Answers were sought to a number of questions. For instance, what did consumers think about this assistance program? Would they write in requesting information and names of companies that pledged to follow the Code? Could DSA spokespersons get air time on television and radio, especially in call-in talk shows? Would the print media consider this program newsworthy enough to provide it with space? The program began in May 1972 and was scheduled to run until the end of July.

Letters, press releases, and copies of the "Opens the Door" brochure were sent to many Wisconsin media and public service agencies. For instance, 88 Wisconsin Extension Home Economists were contacted, as were 244 Wisconsin Chambers of Commerce, 23 Wisconsin Better Business Bureaus, and daily and weekly newspapers in the state with attention to their editorial page writers and consumer affairs editors. DSA President Brouse made a number of appearances on radio and television programs, in some cases on panels with the Wisconsin Attorney General. He also appeared on the nationally-broadcast Bess Myerson (New York City Commissioner of Consumer Affairs) television show, "What Every Woman Wants to Know" as well as on a segment of a five-part consumer series on door-to-door selling emanating from Washington, DC and as a panelist along with a consumer columnist and FTC staff member on an NBC "Consumer" program.

The Wisconsin Project and the action program by the Implementation Subcommittee were mutually reinforcing, and considerable press publicity was generated. Hamilton, the chairman of the Implementation Subcommittee, noted in the October 1972 DSA Board meeting that the Wisconsin program was successful, but the results were not entirely conclusive. To carry out another test or a full-scale national program would have required a special assessment from each association member because the cost and personal staff effort needed to elicit publicity was
extensive. Instead, the focus shifted from a broad-based publicity effort to encouraging each member company and its salespeople to communicate directly with their consumers. Reaching the market that way was deemed a more efficient method for the industry and more effective to the overall success of Code promotion. Ironically, those companies that did an effective communication job with their consumers were the same ones that experienced increasing numbers of complaints. While the rising number of complaints was good evidence that these companies were doing their promotional job, the results were also making other member firms wary of giving Code promotion an all-out effort.

Other Promotional Activities. A direct follow-up to the Wisconsin Project was not forthcoming, but instead a number of other efforts were devised as part of a more continuing campaign at promoting the Code and DSA in general. For instance, consumer relations workshops were scheduled at the DSA annual meetings. A new member service publication was initiated in October 1972 titled "Overview: Techniques for Developing a Sound Consumer Relations Program," and contained descriptions of member company programs and activities to promote the Code of Ethics and a strong consumer orientation. The first two issues of this publication featured the experiences of Wear-Ever Aluminum and Grolier. DSA produced a 60-second public service announcement in 1973 to tell consumers about DSA member companies and the code of ethics they have pledged to uphold. It was sent to 200 television stations in conjunction with Consumer Information Week, the first week of May, under the sponsorship of the Council of Better Business Bureaus. Shortly thereafter in early 1974, DSA produced a Code of Ethics slide presentation with a coordinated tape-recorded narrative to be made available to any public group. This 80-slide presentation openly addressed the problems attributed to direct selling in the past, and provided a detailed look at the DSA Code of Ethics and the administrative process whereby consumers could file complaints and get them resolved. Appendix E reproduces some of the slides and brief quotes from the narrative.

The leaders of DSA member firms began to look for other ways to bring awareness and understanding of legitimate direct selling to the marketplace. From various individual and Board discussions came the idea of forming the Direct Selling Education Foundation (DSEF), with the purposes of educating consumers, government agencies, consumer protection groups, and the general public through adult education programs, films, pamphlets, youth activities, scholarships, and research undertakings. DSEF was incorporated in late 1973 as a not-for-profit public educational organization and has since sponsored many consumer conferences, academic seminars, research projects, and exchange programs between direct selling executives and college professors, as well as many publications and information sources. The history of DSEF is, however, another story, and is not further elaborated in this narrative.

Communications With Government and Regulatory Officials. While getting the DSA ethics
story to consumers and salespeople for direct selling firms was proving a challenge, the story was reaching government and regulatory officials with some effectiveness. President Nixon, who in October 1969 and again in February 1971 sent messages to Congress about consumer problems and buyer's rights, sent his greetings to the assembled attendees at the DSA annual meeting in 1970, noting:

    You have done much to further the development of self-regulatory business practices that are among the most prized aspects of our free enterprise system.

Representative Louis C. Wyman of New Hampshire was quoted on October 14, 1970 in the Congressional Record as follows:

    When the subject of industry and business is raised many consumers frequently react negatively and we are told of the indifferent attitude of the retailer toward the buying public. Companies are now beginning to do something about this. One such organization is the Direct Selling Association with headquarters in Washington whose membership reflects the proud tradition of our free enterprise system. This association is reacting positively to counteract the increasing negativism among today's shoppers and at the same time taking steps to correct existing abuses and assure customer satisfaction from member companies.

He then inserted into the Record a laudatory article from a New Hampshire newspaper describing the DSA Code of Ethics. A few months later, on February 17, 1971, Representative Charles H. Wilson of California, spoke favorably on the House floor about employment opportunities provided by direct selling, and then noted that the DSA

    ... is keenly aware of its responsibilities to the consumer and seeks to take positive action to insure that deceptive and unethical practices are, as far as practicable, eliminated. Recently, the DSA promulgated a code of ethics and regulations which sets forth the fair and ethical principles and practices to which all member companies must adhere. In addition, the mechanisms for implementing the code have also been established and the association is mandatorily required to initiate appropriate action with State or Federal enforcement agencies to right a wrong that has come to light. Ralph Nader recently held a seminar on what he termed "corporate whistle-blowing."
The Direct Selling Association has built this concept into its rules of procedure and has insured that unremedied violations of their code of ethics will result in the offender being turned over to the proper Government agency for prosecution.

Government and regulatory officials were one of the target groups receiving communications in the action program of the DSA Board's Ethics Implementation Subcommittee. Many of these communications were acknowledged. For instance, the Washington D.C. Regional Director of the FTC responded on February 9, 1972, requesting additional copies of the Code of Ethics and other brochures so that his office could distribute them to consumer groups. Acknowledgement letters were also received from other FTC Regional Directors in New York and Chicago as well as from individuals in other government agencies. Virginia Knauer, Special Assistant to President Nixon for Consumer Affairs, responded by noting in one of her syndicated newspaper columns that DSA promotes consumer awareness of how to distinguish the honest operator from the dishonest one and enforces a code of ethics whereby association members pledge themselves to deal fairly with consumers.

Even Ella, in his detailed critical analysis of pyramid schemes among direct selling firms, praised the DSA Code of Ethics and noted that the DSA members utilizing a multi-level form of direct selling appear not to be guilty of the pyramid abuses he discussed (Ella 1973, p. 392).

A particularly proactive communication effort initiated by DSA officials in 1973 involved the development of code exemption programs. As noted in Part One, ordinances restricting direct selling in local communities or requiring the direct salesperson to obtain expensive licenses began appearing in the 1930s. DSA actively opposed such ordinances as discriminatory against its method of retailing, discouraging to prospective direct salespeople, and often ineffective in controlling those who intend to be unethical anyway. W. Alan Luce, then a member of the DSA legal staff, conceived the idea that these ordinances incorporate the language of the DSA Code of Ethics, including administrative procedures, with the stipulation that salespeople from DSA member companies be exempt from such ordinances because they already are subject to the Code of Ethics. This idea was developed further by the DSA Government Relations Committee, chaired by Joseph Gannon of Electrolux, and efforts were planned to propose this program in "test" areas where local ordinances were then being considered. Luce drafted the appropriate language for incorporation into the licensing ordinance, and its first test in Lansing Michigan was successful. As a result, the Government Relations Committee pursued the same strategy in other local areas, and attained code exemption clauses in many, such as Bloomington Indiana, Forsyth County North Carolina, Prince Georges County Maryland, Downers Grove Illinois, and several smaller communities. Attempts were also made to convince state government officials to use the DSA Code as a model for state legislation, but these efforts did not prove successful.
Complaints Resulting Under the Code. A nagging fear of many in DSA member companies was the number of complaints that would be stimulated just because a Code of Ethics existed. They believed that the Code was like an invitation, a reminder, perhaps even an encouragement to express dissatisfaction. But the anxiety about these expectations was not deserved, as only 25 complaints were filed during the first full year the Code was in effect. In fact, as already noted earlier, this very small number implied to some association officials that awareness and knowledge of the Code were far below desired levels if the Code was to be a meaningful factor in bettering the image of the industry.

But even after the various promotional and public relations efforts just described, the level of complaints activated by the Code remained very small. While detailed records were never kept in a regular reporting format, various reports to the DSA Board as well as interview recollections by association executives produce this scorecard:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Complaints Involving DSA Member Companies</th>
<th>Number of Complaints Involving Non-Member Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970-71</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>1974</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>1976</td>
<td>49</td>
<td>118</td>
</tr>
<tr>
<td>1977</td>
<td>42</td>
<td>74</td>
</tr>
<tr>
<td>1979-84</td>
<td>40 (average per year)</td>
<td></td>
</tr>
</tbody>
</table>

A precise number of complaints is difficult to specify because the existence of the Code and its regulatory procedures most likely prompted individual companies to take swift action on many complaints in order to prevent the issue from finding its way to the Code Administrator. In some cases, these companies devised their own formal procedures patterned after the DSA Code and its regulations. Others developed different complaint programs as discussed further on.

Other information about the complaints is sketchy, but some patterns were observed over those years. For instance, the above data indicates that complaints about non-DSA direct sellers outnumbered the complaints about member firms nearly two to one. The topic of the complaints fell into one of three general categories. About one-half involved dissatisfaction with the product or service and a request for refund. Next in number were complaints about billing problems, and a small proportion of about ten percent involved merchandise delivery problems. High-ticket products generated more discontent that did low-ticket items, and as the makeup of DSA evolved toward a higher proportion of companies selling low-ticket items, the incidence of complaints declined as well. By 1980 a sizeable portion of the complaints involved salespeople's relationships with their company, equalling or exceeding the portion emanating from ultimate customers. And not all complaints were judged to be legitimate -- about one in ten were determined to be unjustified.
Part Three: Following the Code

retrospect, the initial anxiety about a potential flood of complaints was clearly mitigated. Even up to 1992, no alleged code violation ever resulted in a DSA member expulsion or a case being transmitted to any court or government regulatory agency.

One particular complaint program developed during the early years of the Code was the Zero Complaint Program. This was instigated by Stanley Home Products, and supported by DSA, with the objective of rewarding salespeople whose customers bring no consumer complaints against them to DSA or to their company. In its second year of operation, nearly fifty percent of Stanley dealers qualified for the award. Wear-Ever also participated in the Zero Complaint Program where it likewise generated an enthusiastic reception and produced a zero complaint award for 61 of the company's field staff. The underlying intention of this program was to motivate the salespeople to handle customer complaints in a timely and effective manner before they came to the attention of higher company officials or DSA. The zero complaint award recipient received recognition as one with a high standard of ethical conduct. Unfortunately, DSA soon realized that one way for a salesperson to avoid complaints was to fail to publicize the Code to his or her customers in the first place, a potentially counter-productive result, and the association ended its support and the award program in 1980.

Another complaint program that was initiated by association members was the "cool line"--a direct access telephone line to someone with authority to solve a problem. Grolier initiated this service in early 1972, printing the telephone number on every contract and indicating that customers can call collect with any questions or concerns. In one month (September 1972), for example, Grolier accepted 233 calls on the "cool line" from the more than 6,300 customers purchasing that month. Of the accepted calls, 58 were requests to cancel the contract while the remainder involved questions about the merchandise or payment arrangements. Thus, about 3.5% of its buyers used this telephone service and of these about one-fourth canceled their contract, a cancellation rate of less than 1%.

Wear-Ever launched a test of a similar program, called "Action Line," in one of its six market areas in late 1971. In its analysis of the results from 288 calls over one year, this company noted that the telephone was only half as costly as communicating with the callers by letter, and the sense of urgency and courtesy communicated to customers in answering their questions and correcting any problems with this method averted any order cancellations. Based on this test, Wear-Ever expanded its "Action Line" to a national program in late 1972.

**Effects on DSA Membership.** The existence of a meaningful code, with serious enforcement intentions, could have produced a number of reactions on existing and potential members. In terms of number of members, the Code might have hindered some prospects from joining either because their history or policies did not square with the intentions of the Code and thus they did not apply or because their application, once received, was not acted upon favorably after DSA scrutiny. This scrutiny consisted of a one-year period of review from the time of application before acceptance as
a member. As noted earlier, Holiday Magic never did survive this scrutiny. On the other hand, the Code and DSA membership provided a mark of legitimacy, and that might be enticing enough to attract members who otherwise would not see enough benefits in joining the association. Complaints filed against nonmembers gave the Code Administrator an opportunity to contact those companies and perhaps suggest that they consider joining and thus pledging to abide by the Code’s conditions. On balance, it was the feeling of association executives that the Code attracted about as many new members as it discouraged.

The year-long screening process of applicants had a qualitative impact as well, since it allowed DSA officials to identify aspects of the applicant's policies and practices that presented ethical or legal questions and that could be revised to fall in line with Code standards. Thus, some applicants with questionable behavior at time of application were able to upgrade their ways in time to gain membership. Furthermore, the Code that had gained at least tacit approval by the FTC gave DSA officials some solid criteria for this screening, criteria that had legal substance.

The Code affected the membership in other ways as well. For instance, it represented a serious stance on ethical priorities, and this stance became the foundation for effective peer pressure to improve ethical behavior among all DSA members. Member companies were encouraged to devise their own ethics codes and to use their own codes or the DSA Code as a tool for attracting desirable sales recruits. The Code became a major factor in supporting the association's philosophy on regulation. Prior to having this Code, for instance, DSA was generally opposed to any and all attempts at regulation at the federal, state, or local levels. But as the Code was being developed, debated, and deployed, the association gained a new perspective on the need for and value of regulation in its competitive and marketplace environment, and moved to a more supportive position as in the case of the FTC's trade regulation rule on the cooling-off period. In general, there was certainly pride from successfully establishing this Code as well as satisfaction from the good experiences (and unfounded anxieties) resulting under the Code. Perhaps these feelings helped restore and support the a strong confidence among DSA members that their mode of business -- personal selling direct to consumers -- was in fact a most proper as well as enticing challenge and opportunity as they had believed and hoped in the past.
PART FOUR
ADVANCING THE CODE

Many codes of ethics are formed like edicts, recorded on parchment, and displayed to decorate the walls of offices and reception rooms. Once in place, such codes often serve ceremoniously as a monument signifying that some important declaration or event occurred in the past. Most monuments are built to be permanent, unchanging, and symbolic, and eventually blend into their surroundings without evoking much attention, interest, or dispute. Codes of ethics like these have little meaning in their organizations. A meaningful code gains the attention of those whose behavior it purports to influence because it nurtures that behavior. Nurturing is providing for needs, and must include adjusting the provisions as needs evolve and emerge. As long as ethical issues are deemed significant to address, ethics codes must remain viable and open to enhancement. A viable code is one that prompts ongoing reference, reaffirmation, reflection, review, and revision.

The DSA Code was not destined to be a monument. Once passed, it was not considered a finished task, but rather the beginning of a mission. In nearly every DSA Board and also Executive Committee meeting following the Code's passage, some agenda item or other discussion occurred relating to the Code. The Code of Ethics Committee of the DSA Board remained active and the charge given to the Code Administrator included making suggestions for "new regulations, definitions, or other implementations to more fully give full effect" to the Code. As noted in the following sections, the Code Administrators responded to this charge a number of times, and many amendments and changes in the Code were forthcoming from the Committee as well. We now look at these changes in both the Code and its Regulations, organized by major chronological period from its inception in 1970 through the major amendments in 1992.

The First Amendment in 1974

The first amendment to the Code involved pyramid sales schemes. Impetus for this action no doubt stemmed from various FTC actions discussed earlier regarding the alleged pyramid operations of Holiday Magic, Koscot, Bestline, Dare-To-Be-Great, and others. As already noted, DSA never did act on Holiday Magic's application for association membership, leading to a lawsuit that was settled in 1973. Thus, the matter of pyramid operations was very much an industry issue in the early 1970s.

Incorporating a statement into the Code regarding pyramid schemes was a tricky thing, however, since the Code focused on consumer relationships and pyramids had more to do with the internal structure of the distribution system. Relationships between the direct selling company and its salespeople were not explicitly covered by the Code, and yet it was that type of relationship that pyramid schemes involved. In the Executive Committee meeting of July 23, 1973, the kinds of transactions to which the Code of Ethics applied was the focus of discussion, with specific attention
to the meaning of the term "consumer transaction." If pyramid schemes were to fall under the purview of the Code, the Code Administrator must have the authority to review the salient facts regarding the alleged offense, and thus far these offenses came in the form of consumer complaints. A pyramid scheme, however, might not be brought to light through a consumer complaint, but rather would be best identified by a review of the questionable firm's compensation plan -- did it pay a salesperson for recruiting others regardless of whether any consumer sales volume was involved?

The Executive Committee discussion led to the conclusion that pyramid schemes should be defined as deceptive consumer practices, unfair to consumers because income was being generated for some in the sales hierarchy who were not participating in a bona fide sales transaction. Individuals victimized by such schemes, by having to pay for the privilege of becoming a salesperson or distributor, were deemed to fall under the purview of the Code Administrator and became actionable as consumer complaints. The proposed amendment was then written in a highly descriptive manner as follows:

The term "pyramid sales scheme" includes any plan or operation for the sale or distribution of goods, services, or other property which contains any provision for increasing participation in the plan through a chain process, whereby a participant pays a valuable consideration for the right, privilege, license, chance, or opportunity

(a) to receive compensation for introducing one or more additional persons into participation in the plan, each of whom receives the same or similar right, privilege, license, chance, or opportunity; or

(b) to receive compensation when a person introduced by the participant introduces one or more additional persons into participation into the plan, each of whom receives the same or similar right, privilege, license, chance or opportunity.

Between the date of this Executive Committee meeting and the Board of Directors meeting at which the amendment was to be voted for approval, the wording of the amendment was substantially changed by the recommendation of the Government Relations Committee to be much less descriptive (and hence much less limiting). At the Board meeting of November 14, 1974, the following rewritten amendment was approved as the first official change in the Ethics Code:

VIII. Amendments

Amendment 1. For the purpose of this Code, pyramid or endless chain schemes shall be considered consumer transactions actionable under this Code.

The Code
Administrator shall determine whether such pyramid or endless chain schemes constitute a violation of this Code in accordance with applicable Federal, state and/or local law or regulation.

Administrative Changes, 1974-1978

The Code as originally approved required that any complaint must be submitted in writing to the Code Administrator before Code procedures could be invoked. In addition, some discussion took place in a 1972 Board meeting about the meaning of the term "trade" practice in Code item V. A subcommittee had been established to define this term and to review and clarify administrative procedures under the Code. This activity preceded the already-noted 1973 discussion about the meaning of what constituted a "consumer transaction." Thus, the precise meaning of various Code statements was being fine-tuned, and issues were appearing that would eventually lead to adjustments in wording.

One issue emerging at this time concerned what, if anything, to do should one member company initiate a complaint against another member company. Such situations were not interpreted as falling within the purview of the Code if they did not constitute consumer complaints, and the subcommittee recommended that those situations should be handled "informally" without spelling out any exact procedures or recommendations to modify the Code.

In late 1974, Code Administrator Roberts proposed to the Board that a specific statement be placed into the Code Regulations concerning an informal investigation procedure consisting of a hearing to gather evidence and take testimony. Following the hearing, Roberts proposed that the Administrator draw a conclusion and communicate the evidence and his decision to the interested parties, though the decision emanating from this informal investigation would not be binding on any party that was dissatisfied with the result, and in such cases the formal procedures would be carried forth. The Board approved this addition to the Code, and the informal investigation stage remains a part of the Code Regulations today though modified somewhat in procedure.

A series of changes in the Code occurred in 1975, many of which were designed to speed up the process so that complaints could be resolved more quickly. For instance, the accused member firm was now asked to provide any response to an initial complaint within seven days of being notified by the Code Administrator. Prior to this, no time period was specified. In the section on Post-Investigative Procedure (now Section 3 following the Informal Investigation section), the thirty days allowed for the accused firm to rebut the complaint or take corrective action was reduced to fifteen. In the next section involving the hearing procedure, the ten-day period for providing outlines by the Administrator and accused firm was reduced to five days, and the thirty days notice to the accused member of the hearing date was reduced to fifteen. Other events in this procedure for which no time periods had been specified now were tied to a maximum time span.
In 1975 Congress enacted the Magnuson-Moss FTC Improvement Act (Public Law 93-637) which strengthened the FTC as a consumer protection agency (Udell and Fischer 1977). Among its many provisions and implications was the requirement that warranty terms be disclosed to consumers in clear and easily-understood language. To reflect the relevance of this new legislation, item II in the Code regarding guarantees was rewritten to refer specifically to Public Law 93-637 instead of the previous wording that referenced the "Deceptive Advertising Guidelines" of the FTC.

A difficult and controversial issue since the inception of the Code concerned the independent contractor status of the sales representatives working for the vast majority of direct selling firms. The direct selling firm has no direct legal control over the behavior of these independent contractors, and thus could attempt to refuse responsibility for their unethical or illegal practices. While that rationale might be expedient to excuse some deceptive practices in the marketplace, it did not relieve the industry of the image problems created by such practices. Thus, Code item VI Part C was incorporated to place the responsibility for the actions of these independent contractors that violate the Code squarely on their employing principals, even if the latter could claim no knowledge of the violations.

Two changes were made in this section of the Code to reinforce and clarify its intention. One involved replacing the term "grossly" with "culpably" in "culpably negligent by failing to establish procedures whereby the member would be kept informed of the activity of its solicitors and representatives." The term "culpable" has clear and strong connotations of being guilty or morally faulty, thus implying that lack of attention to the behavior of its salespeople is tantamount to irresponsibility.

The second change was the addition of a statement again confronting the independent contractor issue but making clear that the legal independent status of such persons was not being negated. Its purpose was to reinforce the tone of responsibility in what was already stated in this section but also to reaffirm that the independent status of its sales reps was fully recognized. This statement, which was approved in May 1975, read as follows:

For the purposes of this code, in the interest of fostering consumer protection, companies shall voluntarily not raise the independent contractor status of salespersons distributing their products or services as a defense against code violation allegations and such action shall not be construed to be a waiver of the companies' right to raise such defense under any other circumstance.

Code Administrator Henry Robinson offered a series of recommended minor changes in early 1978 as the result of his review of complaints from the previous year. One issue involved giving the Administrator authority to initiate action when he finds a pattern of violations by the same
member company even though restitution has been made in those individual cases brought by others to his attention. Another change was the deletion of part C under item III, Terms of Sale, since an FTC ruling made that disclosure no longer necessary. Other small changes were likewise recommended and enacted, though many of these were eventually further amended in later years. Once again, however, these actions demonstrated that the Code Administrators showed concern for their mission and were vigilant in seeking improvements in Code effectiveness.

Major Code Revisions, 1978-1979

The Chairman of the DSA Board in 1978 was Robert H. King of Time-Life Libraries, Inc. In the interim period between Code Administrators Robinson and Rogal, King appointed a study committee to revise the Code. That committee included the chairmen of the Government Affairs and Consumer Relations Committees as well as the chairman of the Lawyers Council, which included attorneys from association member firms and the DSA staff. The first discussion of recommended changes from this study committee was made in an October 1978 Executive Committee meeting, and covered such topics as the elimination of the special code of ethics investigation committee, an increase in authority of the Code Administrator, and the creation of some specific new sanctions that the Code Administrator would be empowered to impose.

In December 1978 Rogal was introduced to the Board as the new Code Administrator and in March 1979 the new Code amendments were presented to the Board and passed. In essence, the special ethics committee, which was heretofore assembled from Board members to officiate at a formal hearing described in Regulation 4 of the initial Code, was no longer part of the process, and instead the complainant and the accused company would present their case in a formal hearing to the Administrator. After hearing the evidence, the Administrator could do one or more of the following:

1. request complete monetary restitution to the consumer for the products in question;
2. request the replacement or repair of products;
3. request the accused to make a voluntary contribution to a fund for publicizing the Code; and
4. request the accused to submit a written commitment to abide by the Code and diligently avoid future practices that produced the complaint at hand.

A new section in the Code statement, called "Powers of the Administrator," was written to incorporate the above new sanctions. Following that was another new section, called "Appeal to Outside Arbitrator," that described how an accused member may appeal the Administrator's decision to an independent arbitrator and what particular steps to follow in that process.

A few other small changes in wording and structure of the Code also occurred. For instance, what was section V of the original Code on "Deceptive or Unlawful Trade Practices" became item
1 titled "Deceptive or Unlawful Consumer Practices." Amendment I dealing with pyramid schemes became item 5 within the Code itself, and what was previously Code section IV on "Responsibility" was now shifted to a new major section B titled "Responsibilities and Duties."

**Changes in 1980s**

After eighteen months as Code Administrator, Rogal sent some written suggestions to James Preston of Avon Products, Inc., the Chairman of the DSA Board in 1980. His letter thoughtfully delineated some recommended changes and the reasoning supporting the changes. For instance, Rogal stated his belief that the Administrator should be able to initiate a preliminary investigation when he has reason to believe that a member has violated the Code, even though no complaining party has put the complaint in writing. Earlier discussions in 1972 and 1973 had also touched on this issue. Rogal noted that

It would be very distressing to have to tell an Action Line reporter, BBB official, state regulator, or an illiterate that I could not proceed in the absence of a written complaint. The Administrator should be free to determine the *bona fides* of a complaint and to exercise discretion and good judgment as to whether to proceed.

Another point in his letter concerned the lack of authority granted to the Administrator with respect to minor violations that do not merit a formal hearing procedure. He noted that "by far the greatest number of complaints fall into this category," and urged that the Administrator be given the authority to remedy such alleged violations through informal oral or written communication with the accused member company.

Rogal proposed some specific amendments to the Code to incorporate these and a few other small suggested changes. Then he concluded his letter by urging the Board to consider a "substantive amendment which would clearly provide that a member who refuses to abide by the Code or to cooperate in its enforcement would be dropped from membership." He noted that the antitrust laws do not prohibit such a code provision, but that the grounds leading to expulsion must be strong enough to withstand a possible court challenge, including such things as practices that are "illegal, unconscionable or otherwise morally indefensible."

The recommended amendments in Rogal's letter were approved by the Board on December 11, 1980, though the issue of expulsion was not yet acted upon. The discussion of these procedural amendments led to further conversation of the need to more actively promote the Code to association members and inform them of the role of the Code Administrator. The Consumer Affairs Committee was charged with developing a plan to increase awareness of the Code among all current and new members. These Board discussions about Code awareness among association members had occurred periodically in the past, and the reiteration of this same issue now suggested that perhaps
the DSA Code of Ethics was not of paramount interest to some association member firms or perhaps was still not understood as a benefit to their success.

In the January 1981 Executive Committee meeting, a discussion focused on the launching of a Code reimbursement fund. This would involve establishing a funding source from which the Administrator could make cash refunds to customers whose complaints appeared justified, and subsequently reimburse the fund by collecting the amount from the errant company. One question concerned the maximum amount that could be refunded to any one customer at the discretion of the Administrator. At the next meeting of this Committee in May, a motion was approved that authorized the DSA Code Administrator to refund money to aggrieved consumers before resolution of complaints when the Administrator deemed the complaint was justified and that the best interests of the industry be served by immediate refund. The Administrator is authorized to make individual refunds up to an amount of $200 and seek restitution from the company after the fact.

An amount of $7,500 from DSA's general operating revenues was authorized as the basis for this fund.

Over the next few years, no major Code amendments occurred. But in 1985 some old issues re-emerged in both Executive Committee and Board meetings. These issues involved strengthening the sanctions within the Code, including the possibility of expulsion from membership, and improving awareness of the Code especially among the field sales personnel of association members. Paul Greenberg of Shaklee Corporation was appointed as chair of a Code of Ethics Revision Committee to consider various possible amendments in cooperation with Code Administrator Rogal.

In a follow-up to his suggestion in his 1980 letter, Rogal wrote a detailed letter to the J. Stanley Fredrick of Cameo Coutures, Inc., the DSA Board Chairman in 1986. This letter expanded on Rogal's concern about members who refuse to abide by the Code or cooperate in its enforcement. He noted that the Code does permit the Administrator to refer any probable law violations by noncooperative member firms to government agencies. But he also noted this was not a satisfactory solution in cases of refusal to cooperate because the dockets of courts and other government agencies are crowded and the reported problem might not be investigated for a long time, if ever. Under those conditions, the suspected violation might continue, and the authority of the Code would be greatly weakened if not completely impugned. He went on to say:

In my opinion, a refusal to cooperate with the investigative requests of the Administrator is a greater offense against the Code than conducting a pyramid
scheme or engaging in some other unfair consumer practice. Without authority, the Code Administrator is a figurehead and the Code is, at best, a mere recital of ethical principles. I am sure that the board, our officers, and the great majority of the membership would not want that to happen.

Therefore, we need a solution other than referral and the only solution I can think of is to remove the offender from membership. I believe that membership can be canceled without fear of successful legal reprisal as long as the member is afforded an opportunity to appear and defend itself. I suggest that the procedure would commence with a letter from the Code Administrator affording the member an opportunity to appear before the Board of Directors (or a committee) to show cause why his membership should not be discontinued for refusal to cooperate with an investigation. In such a proceeding the substance of the consumer complainant's allegations would not be an issue. Without an investigation the Administrator would be unable to prove that an unfair act or practice had taken place and, indeed, the Board should never be asked to rule on questions of that type.

On December 3, 1986, Rogel's recommendation was placed before the Board in the form of an amendment to be included under the section "Regulations for Enforcement of DSA Code of Ethics." After some discussion, the amendment was approved as follows:

In the event a member refuses to cooperate with the Administrator and refuses to supply necessary information, documentation and explanatory comment, the Administrator shall serve upon the member, by registered mail, a notice affording the member an opportunity to appear before the Board of Directors on a certain date to show cause why its membership in the Direct Selling Association should not be terminated. In the event the member refuses to appear before the Board or refuses to comply with the Board's decision, the Board may terminate the offender's membership without further notice or proceedings.
Changes in the 1990s

The next round of major Code amendments began in December 1990 with the appointment of W. Alan Luce of Tupperware to chair an Ethics Task Force. Its charge was to deal with such issues as exaggerated earnings claims in recruiting salespeople, inventory loading, and other aspects dealing with multi-level marketing, a type of direct selling organization already discussed that was increasing rapidly in popularity. The increase in number of multi-level marketing companies was worrisome because this type of organization structure can harbor the characteristics of an illegal pyramid scheme unless it is very carefully designed and controlled. The Direct Selling Association was desirous of representing all ethical firms that utilize the direct selling channel, but did not want to sanction any firm with DSA membership that, knowingly or unknowingly, followed pyramid practices. In fact, the issue was significant enough that the legal staff of the Direct Selling Association authored a legal primer on multi-level marketing for its members and others interested in this topic (Brossi and Mariano 1991). The Amway case, discussed briefly in Part Three, established some criteria applying to a pyramid operation, including the presence of inventory loading and highly exaggerated earnings claims. These issues had not been dealt with in the DSA Code, however, because they were not directly related to ethical problems of misrepresentation in consumer transactions.

Luce's task force was thus covering new ground in looking at relationships between companies and their salespeople. While the first amendment to the Code had dealt with pyramid schemes in a broad, general manner by declaring pyramid schemes as consumer transactions, that amendment or any succeeding changes in the Code did not confront any of the specific criteria used to identify a pyramid scheme. To do so would have gone beyond the bounds of consumer transactions. But it was now to be done.

After a number of task force reports and written communications to Board members, the task force efforts produced the successful passage of three amendments in March 1992. The first amendment concerned earnings representations:

No member company shall misrepresent the actual or potential earnings of its independent salespeople. Any earnings or sales representations that are made by member companies shall be based on documented facts.

The second amendment modified an already-existing statement in the Code to apply to recruiting practices as well as consumer practices. It read:

No member company of the Association shall engage in any deceptive, unlawful, or unethical consumer or recruiting practice.

The third amendment added further to the powers of the Administrator and the Association
regarding suspension or expulsion of a member who refuses to comply with the Code. It states:

... when the Administrator, after consulting with independent legal counsel, determines that a violation of state or federal law or the Code has occurred and the member continues to refuse to comply, he may recommend to the Board that the member be suspended or terminated from Association membership. The Administrator shall serve upon the member, by registered mail, a notice affording the member the opportunity to appear before the Board of Directors or a designated part thereof to show cause why its membership in the Association should not be suspended or terminated. A suspended member, after at least 90 days, and a terminated member, after at least one year, may request the opportunity to appear before the Board of Directors or a designated part thereof, to show why its membership should be reinstated.

Note the similarity between this statement and that recommended by Rogal in 1986 in dealing with members who do not cooperate in an investigation. This amendment now afforded DSA the same power in disciplining members who do not cooperate in upholding the Code as the previous amendment did with members refusing to cooperate in an investigation.

One last major amendment was still to be approved. This involved one meaningful remedy for the problem of inventory loading. The amendment offered protection for those who join a direct selling firm, buy an inventory of products to sell, but soon realize that they are unable or unwilling to carry through this job responsibility. After substantial discussion and negotiation among members, the inventory buyback amendment was passed in June 1992, and reads as follows:

Any member company with a marketing plan that involves selling products directly or indirectly to independent salespeople shall clearly state, in its recruiting literature or contract with the independent salespeople, that the company will repurchase on reasonable commercial terms currently marketable inventory in the possession of that salesperson and purchased by that salesperson for resale prior to the termination of that salesperson's business relationship with the company or its independent salespeople. For purposes of this Code, "reasonable commercial terms" shall include the repurchase of marketable inventory within 12 months from the salesperson's date of purchase at not less than 90% of the salesperson's original net cost less appropriate
set-offs and legal claims, if any. For purposes of this Code, products shall not be considered "currently marketable" if returned for repurchase after the products' commercially reasonable usable or shelf-life period has passed; nor shall products be considered "currently marketable" if the company clearly discloses to salespeople prior to purchase that the products are seasonal, discontinued, or special promotion products and are not subject to the repurchase obligation.

Code Administrator Rogal congratulated the Board and the task force for its work in this last round of amendments, and once again voiced the recurring request that these amendments be suitably promoted to the membership. Since these amendments required some specific actions by member firms, such as placing statements in recruiting literature and contract forms, compliance depended on awareness of the amendments by each member company. Earlier, a survey questionnaire had been sent to all members in 1973 regarding their compliance with guarantee policies as spelled out by the Code at that time, though not all companies returned the questionnaire. Now, following the 1992 amendments, another compliance survey of all member companies was undertaken focusing on the buy-back provisions. Results verified that the member firms were aware of these requirements and had either attained compliance or were actively proceeding toward compliance.

The most recent version of the DSA Code of Ethics, incorporating all the amendments and changes as noted here, appears in Appendix F. In its first 22 years of life, the Code has been changed substantially, both in content and in organization. Additional provisions have extended Code coverage from consumer transactions to relationships between company and salesperson, the latter termed "consumers of the opportunity" by industry members because direct selling gives them the opportunity for success as entrepreneurs in their independent contractor status. The powers of the Administrator and the Association itself have been strengthened, and the Code is viewed by DSA members as a working and evolving tool.

The Future

How will the Code change in the future? There are still issues to be tackled that might produce Code amendments. One is the issue of proselyting, the "stealing" of one company's salesperson by another. The Direct Selling Association in the U.K. has a provision in its code of ethics dealing with this issue as follows: "A Member company shall neither promote nor endorse any direct or indirect recruitment activity offering employment or self employment to persons known to be working with another Member company and shall actively dissuade its salespeople from making such approaches."

Another issue is the internationalization of many DSA member firms, and the complexities
this produces from working under a variety of national regulations and legal structures. A substantial attempt to meet this challenge is the development of a World Code of Ethics under the auspices of the World Federation of Direct Selling Associations, a multinational organization whose members are direct selling associations in 40 countries as of 1994.

Still other changes are occurring in the industry, such as the increased use of telephone and direct mail as adjuncts to the direct selling method of distribution. The future holds many challenges for DSA members and its Association Executives in general as direct selling changes to accommodate the changing needs and behaviors in the marketplace, and it seems certain that the Code of Ethics and its accompanying regulations will continue to evolve in content to produce greater effectiveness and broader coverage of ethical issues and procedures as they become apparent.
POST SCRIPT

The development of the Direct Selling Association Code of Ethics is a story of many dimensions. One of these is the demonstration of how powerful is the marketplace and the business environment in general on corporate action and planning. Consumerism and its influence through private citizen action groups and government regulatory and legislative agencies were a major impetus to launch this Code of Ethics.

Another dimension involves the history of selling itself, and the multitude of image problems and shady stories that accompany it. Selling is the driving force of capitalism, and perhaps because of its essential role in business success it has been subject to much abuse (both real and imagined). Our society has evolved substantially from a caveat emptor to a caveat vendor orientation, giving buyers preferential treatment to sellers in many ways within the buying-selling exchange relationship. This evolution, whether perceived clearly or only felt intuitively, was and still is most likely bothersome to many in DSA who hold a strong belief in selling as a driving force of free enterprise.

A third dimension is legal. The nature of competition and the purposes of regulation to protect competition became clarified or at least more clearly interpreted during the time period covered by this history. This clarification was particularly pertinent to associations and their activities, as the boundaries of proper association cooperation, membership qualifications and sanctions became better defined and internal association political stresses and coalitions all came into play in reaction to these developments.

A fourth and obviously important dimension is ethical. Our society and particularly the business community began an ethical renaissance during the mid-twentieth century that has emerged beyond the talking stage to substantive actions in many cases, the DSA being one of them. Ethics is a hot topic as the 1990s roll on, but for many the action implications of ethical responsibility remain in a discussion state. What DSA did in this regard showed clearly that ethical actions can be beneficial to business success. In fact, when a demonstrated concern for ethics is coupled with a strong focus on selling as the central core of a business operation, the resulting partnership is a robust recipe for prosperity in business and society.

Finally, and perhaps most crucial, is the dimension of the people involved in this history. Leadership was essential to make the Code of Ethics come into being in this (or any) industry, and further leadership was necessary to make it a viable Code, one that truly impacted the actions and values of those it governed. Leadership is still evidenced today as the Code is practiced, debated, and revised, and its administration strengthened. DSA was blessed with strong leaders in its member companies, its association organization, and in its Code Administrators. They are undoubtedly the major key to its success.
Table 1. Findings From 1971 Study of Consumer Attitudes

<table>
<thead>
<tr>
<th>Question</th>
<th>Percent of Respondents Who Agree</th>
<th>Percent of Respondents Who Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most manufacturers operate on the philosophy that the &quot;consumer&quot; is always right:</td>
<td>23.5%</td>
<td>60.8%</td>
</tr>
<tr>
<td>Most manufacturers are more interested in making profits than in serving consumers:</td>
<td>74.1</td>
<td>14.1</td>
</tr>
<tr>
<td>Over the past several years, the quality of most products has not improved:</td>
<td>50.0</td>
<td>37.8</td>
</tr>
<tr>
<td>Manufacturers' advertisements usually present a true picture of the products advertised:</td>
<td>20.3</td>
<td>66.9</td>
</tr>
<tr>
<td>In general, the quality of repair and maintenance service provided by manufacturers and dealers is getting better:</td>
<td>20.9</td>
<td>59.0</td>
</tr>
<tr>
<td>The problems of consumers are less serious now than in the past:</td>
<td>20.4</td>
<td>63.0</td>
</tr>
<tr>
<td>The problems of consumers are relatively less important when compared with the other questions and issues faced by the average family:</td>
<td>26.0</td>
<td>60.5</td>
</tr>
<tr>
<td>Ralph Nader and the work he has done on behalf of consumers has been an important force in changing the practices of business:</td>
<td>61.0</td>
<td>10.2</td>
</tr>
<tr>
<td>The government should exercise more responsibility for regulating the advertising, sales, and marketing activities of manufacturers:</td>
<td>68.3</td>
<td>19.2</td>
</tr>
</tbody>
</table>

Note: There were 40 statements in total in this study. Responses of "strongly agree" and "agree" are combined, as are responses of "strongly disagree" and "disagree". Respondents answering "uncertain" are omitted from this table.

Source: Barksdale and Darden (1972).
<table>
<thead>
<tr>
<th>Prominent Individuals in the Consumer Movement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claybrook, Joan: one of Nader's Raiders.</td>
</tr>
<tr>
<td>Denenberg, Herbert: critic of insurance industry in the 1970s.</td>
</tr>
<tr>
<td>Ditlow, Clarence: one of Nader's Raiders.</td>
</tr>
<tr>
<td>Furness, Betty: White House consumer advisor, late 1960s, and television commentator.</td>
</tr>
<tr>
<td>Green, Mark: one of Nader's Raiders.</td>
</tr>
<tr>
<td>Jacobson, Michael: one of Nader's Raiders.</td>
</tr>
<tr>
<td>Karpatkin, Rhoda: Executive Director of Consumers Union in 1970s.</td>
</tr>
<tr>
<td>Magnuson, Warren: Chairman of Senate Commerce Committee in 1960s.</td>
</tr>
<tr>
<td>Morrison, Alan: director of Public Citizen Litigation Group in 1970s.</td>
</tr>
<tr>
<td>Myerson, Bess: Commissioner of Consumer Affairs, New York City, late 1960s.</td>
</tr>
<tr>
<td>Nader, Ralph: founder of many public interest organizations.</td>
</tr>
<tr>
<td>Pertschuk, Michael: chief counsel of the Senate Commerce Committee, chairman of the FTC in 1977.</td>
</tr>
<tr>
<td>Peterson, Esther: White House consumer advisor, mid-1960s.</td>
</tr>
<tr>
<td>Warne, Colston: founder of Consumers Union in 1936; subsequently helped found the International Organization of Consumers Unions and the American Council on Consumer Interests.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date</th>
<th>Act</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1890</td>
<td>Sherman Antitrust Act</td>
<td>To protect trade and commerce against unlawful restraints and monopolies, allowing the offenders to be prosecuted by federal government officials.</td>
</tr>
<tr>
<td>1906</td>
<td>Food, Drug, and Cosmetics Act</td>
<td>To prohibit adulteration and misbranding of food sold in interstate commerce.</td>
</tr>
<tr>
<td>1907</td>
<td>Meat Inspection Act</td>
<td>To inspect facilities that ship meat in interstate commerce; to destroy diseased meat and to stamp pure meat &quot;U.S. Government Inspected&quot;.</td>
</tr>
<tr>
<td>1914</td>
<td>Clayton Act</td>
<td>To supplement the Sherman Act with specific provisions against price discrimination, tying and exclusive dealing contracts, and other specific illegal practices.</td>
</tr>
<tr>
<td>1914</td>
<td>Federal Trade Commission Act</td>
<td>To prohibit unfair methods of competition, and to establish the Federal Trade Commission to administer this act.</td>
</tr>
<tr>
<td>1918</td>
<td>Webb-Pomerene Act</td>
<td>To exempt export trade associations from the antitrust laws.</td>
</tr>
<tr>
<td>1927</td>
<td>Caustic Poison Act</td>
<td>To alleviate the problem of child consumption of dangerous products.</td>
</tr>
<tr>
<td>1934</td>
<td>Securities and Exchange Act</td>
<td>To regulate stock sales, and to establish the Securities and Exchange Commission to administer this act.</td>
</tr>
<tr>
<td>1936</td>
<td>Robinson-Patman Act</td>
<td>To amend the Clayton Act to prohibit certain types of price discrimination.</td>
</tr>
<tr>
<td>1937</td>
<td>Miller-Tydings Act</td>
<td>To amend the Sherman Act to allow sellers to abide by the terms of state fair trade laws.</td>
</tr>
<tr>
<td>Date</td>
<td>Act</td>
<td>Purpose</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1938</td>
<td>Wheeler-Lea Act</td>
<td>To amend the Federal Trade Commission Act to extend protection to consumers from unfair or deceptive practices.</td>
</tr>
<tr>
<td>1938</td>
<td>Food, Drug, and Cosmetics Act</td>
<td>To amend the 1906 Act to clarify and strengthen the definitions of adulteration and misbranding.</td>
</tr>
<tr>
<td>1939</td>
<td>Wool Products Labeling Act</td>
<td>To protect manufacturers, merchants, and consumers against deception and unfair competition regarding articles made of wool.</td>
</tr>
<tr>
<td>1946</td>
<td>Lanham Act</td>
<td>To protect the rights of first users of brands or trademarks in interstate commerce.</td>
</tr>
<tr>
<td>1950</td>
<td>Celler-Kefauver Act</td>
<td>To amend the Clayton Act to restrict monopolies created by purchase of assets other than stock of another firm.</td>
</tr>
<tr>
<td>1950</td>
<td>Oleomargarine Act</td>
<td>To prohibit the advertising of colored margarine that implied it was a dairy product.</td>
</tr>
<tr>
<td>1951</td>
<td>Fur Products Labeling Act</td>
<td>To protect consumers and industry members against false advertising and false invoicing of furs and fur products in interstate commerce.</td>
</tr>
<tr>
<td>1952</td>
<td>McGuire Act</td>
<td>To amend the Miller-Tydings Act to allow sellers in fair trade states to set resale prices for all resellers regardless of whether they signed an agreement to do so.</td>
</tr>
<tr>
<td>1953</td>
<td>Flammable Fabrics Act</td>
<td>To control the manufacturing, importing, or transporting for sale any wearing apparel that is highly flammable and dangerous when worn.</td>
</tr>
<tr>
<td>1956</td>
<td>Refrigerator Safety Act</td>
<td>To mandate refrigerator design to prevent children from becoming locked inside refrigerators.</td>
</tr>
<tr>
<td>Date</td>
<td>Act</td>
<td>Purpose</td>
</tr>
<tr>
<td>------</td>
<td>-----</td>
<td>---------</td>
</tr>
<tr>
<td>1957</td>
<td>Poultry Products Inspection Act</td>
<td>To provide for government supervision of poultry processing and inspection of poultry sold in interstate commerce.</td>
</tr>
<tr>
<td>1958</td>
<td>Textile Fiber Identification Act</td>
<td>To require disclosure on labels and advertising of all textile fibers not requiring labels under the Wool Act.</td>
</tr>
<tr>
<td>1958</td>
<td>Automobile Information Disclosure Act</td>
<td>To require automobile manufacturers to post suggested retail prices on all new passenger vehicles.</td>
</tr>
<tr>
<td>1960</td>
<td>Hazardous Substances Labeling Act</td>
<td>To require warnings on labels of all household products deemed hazardous by the Food and Drug Administration.</td>
</tr>
<tr>
<td>1966</td>
<td>Child Protection Act</td>
<td>To prevent the marketing of potentially harmful toys and articles intended for children.</td>
</tr>
<tr>
<td>1966</td>
<td>Cigarette Labeling and Advertising Act</td>
<td>To require a warning statement on the package of cigarettes sold in interstate commerce; and to eliminate the advertising of cigarettes on television.</td>
</tr>
<tr>
<td>1966</td>
<td>Fair Packaging and Labeling Act</td>
<td>To require on kitchen and bathroom products a label describing the nature and net quantity of contents, and the name and location of the producer.</td>
</tr>
<tr>
<td>1967</td>
<td>Flammable Fabrics Act</td>
<td>To amend the 1953 law to include interior furnishings, fabrics, and materials not previously covered.</td>
</tr>
</tbody>
</table>

continued

<table>
<thead>
<tr>
<th>Date</th>
<th>Act</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>Consumer Credit Protection Act</td>
<td>To require disclosure of credit terms, finance charges in dollars and percentage rates; to penalize for exorbitant credit charges.</td>
</tr>
<tr>
<td>1969</td>
<td>Fire Research and Safety Act</td>
<td>To cooperate with and assist public and private agencies in fire research and safety programs.</td>
</tr>
<tr>
<td>1969</td>
<td>Child Protection and Toy Safety Act</td>
<td>To amend the 1966 Act to require warning labels on potentially hazardous toys.</td>
</tr>
</tbody>
</table>

Sources: Murray 1973; Stern and Eovaldi 1984; Wagner 1971; Weidenbaum 1979; Welch 1980.
Table 4. Findings From 1968 Study of Consumer Attitudes Toward Direct Selling in the Baltimore Area

Percent of Respondents Who Answered:

<table>
<thead>
<tr>
<th>Statement</th>
<th>Agree:</th>
<th></th>
<th>Disagree:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly</td>
<td>Somewhat</td>
<td>Mildly</td>
<td>Strongly</td>
</tr>
<tr>
<td>Most direct selling programs are ethical and devoid of mis-representations or irregularities.</td>
<td>8.7</td>
<td>11.6</td>
<td>22.2</td>
</tr>
<tr>
<td>In most cases of mis-representation or misconduct by the salesman, the firm he represents would object strenuously to such behavior on his part</td>
<td>26.7</td>
<td>20.0</td>
<td>26.2</td>
</tr>
<tr>
<td>I find much convenience and comfort in buying in my own home.</td>
<td>4.0</td>
<td>7.1</td>
<td>14.2</td>
</tr>
<tr>
<td>Any unsolicited phone call or visit from an uninvited salesman is an invasion of my privacy and should be against the law.</td>
<td>29.8</td>
<td>10.2</td>
<td>13.8</td>
</tr>
<tr>
<td>Assuming I were available for employment, under the proper circumstances I would consider a position as a direct salesperson.</td>
<td>4.0</td>
<td>3.1</td>
<td>6.7</td>
</tr>
</tbody>
</table>

Note: When the total of the percentages added across a row do not reach 100%, the difference reflects respondents who did not answer this question.

Source: Jolson 1970.
Table 5.
Communication from Sarah Coventry to Its Sales Representatives in 1972 — An Example of How One Direct Selling Company Promoted the DSA Code of Ethics.

Sarah Coventry and
The Direct Selling Association

Sarah Coventry has long been a member of the Direct Selling Association. This group of leading direct-selling companies was originally founded for the purpose of combating unfavorable legislation, but as the industry grew, membership in the Association became a symbol of quality, service, ethics, progress and opportunity. Today, this organization is setting quality and service standards for its own members and for many outside industries. The D.S.A. "Code of Ethics" raises to a new high level the goals, the service and the ethics which are to be "guideposts" in dealing with the consumer.

Today, when a consumer opens her door to a direct seller — the D.S.A. is right there with her. It stands at her elbow with a code of ethics adopted by member companies to help keep the doorstep clear of unfair selling methods. In effect, the code is a guarantee to the consumer that members, all of whom sell goods or services direct to the home, are honor-bound to conduct business fairly and squarely, and will take steps to correct any improper practices that are brought to their attention.

Briefly, the code promises the consumer —

1. That products and services are accurately represented by such standards as price, grade, quality, make, value and performance.

2. That any guarantee that accompanies a sale is in writing, clearly spells out its provisions, and binds the seller to live up to its terms.

3. That a written receipt or order copy be given at the time of purchase or delivery specifying how much the customer must pay and giving the name and address of the salesperson or the firm whose products are being sold.

4. That the Code of Ethics doesn't just "pay lip service" to the consumer. So, if any member company, or any of its salespersons engages in any unlawful or deceptive selling tactics, it is reported to the D.S.A. You will note that the Code provides the means to deal with the problem quickly and effectively.

5. That a member company promptly investigate any consumer complaint of improper presentation of its goods or services and take appropriate action to correct the situation.

6. That the Direct Selling Association itself, through an independent Code Administrator appointed by the Board of Directors, act on reported violations by member companies to correct actual violations. If such violations are substantiated, the complaint will be remedied and, where appropriate, violations are referred to government agency.

In a nutshell, this is the Sarah Coventry "Code of Ethics" and enclosed is your personal copy.

AL WINFREY
Executive Vice President
APPENDIX A

CONSUMER RELATIONS CODE OF THE
NATIONAL ASSOCIATION OF DIRECT SELLING COMPANIES
(Adopted December 13, 1940)

Preamble

The first and most important contribution and function of any type of system of marketing is the furnishing of satisfaction to the consuming or using customer. Consumer satisfaction and confidence is proof of the marketing function well performed.

In a system of marketing where there is an absence of personal contacts and relationships between the consumer and the merchandising concern, the satisfaction and confidence of the consumer is doubly important.

The National Association of Direct Selling Companies, believing that the direct-selling method of distribution imposes a special responsibility for the maintenance of a high standard of relations with consumers, has approved and will sponsor the following code:

1. Interpretation

The provisions of this code shall be interpreted in the furtherance of its spirit and purposes, having in mind the importance of consumer satisfaction, confidence and good will.

2. Definitions

(a) Direct Selling Operator. For the purposes of this Code a direct selling company or a direct selling operator is a person, firm or corporation dealing at any marketing level or levels in merchandise intended ultimately to reach the consumer through an "in person" sales contact, and direct selling operators as above defined shall be classed as hereinafter stated.

(b) Salesperson Type Operator. An operator of this type sells merchandise direct to the consumer at the retail level and occupies with the consumer the relation of buyer and seller.

(c) Dealer Type Operator. In case of operators of this type the consumer acquires the merchandise involved from a dealer trading on his own account, with which dealer the consumer occupies the relation of buyer and seller.

(d) Dealer. The word "dealer" means the person who, trading on his own account, makes the sale to the consumer in the case of the dealer type operation defined above.
Appendix A

(e) Salesperson. The word "salesperson" means the person who takes the order from the consumer in the case of a salesperson type operation as defined above, but when used in this code shall include dealers unless otherwise specifically provided or otherwise indicated by the context.

(f) Association. The word "Association" where used in this code means the National Association of Direct Selling Companies (Incorporated).

(g) Board of Directors. Whenever the word "board" or the expression "Board of Directors" is used in this code, it shall mean the Board of Directors of the Association.

(h) Emblem. Except where the context otherwise clearly indicates, the word "emblem" shall mean and include the emblem or seal adopted and used in connection with the carrying out of the purposes of this code.

(i) Consumer. Consumer means a person bona fide purchasing merchandise through house-to-house personal contact methods for consumption or use and not for resale. It does not include salespersons or prospective salespersons purchasing sample or other merchandise for their own use, nor does it cover mail order purchase transactions.

(j) Member. When the word "member" is used in this code, it shall mean any concern participating in the benefits and obligations thereof.

3. Code Emblem

The Association shall adopt an emblem or seal for use in identifying the user as a signatory to this code.

4. Protection of Emblem

The Association shall take effective action and proceed against the misuse of unauthorized use of the code emblem.

5. Consumers' Bureau

The authority for the administration of this code is vested in the Board of Directors, which shall act through a Consumers' Bureau to be established by it. The Board shall appoint a manager of the Bureau, who shall be responsible only to the Board.
6. Appeals

In carrying out its duties and functions under this code, the Consumers' Bureau shall, at all times, be subject to the supervision, control and approval of the Board. Members disagreeing with determinations of the Consumers' Bureau may appeal to the Board. The Board shall establish machinery and procedures for the prompt handling of such appeals.

7. Documents For Consumers

Salesperson type operators shall furnish or cause to be furnished for the consumer a copy of the order or receipt which shall set forth the terms of the sales transactions and such document shall bear, among other things, the full name and address of the member and make provision for the signature and address of the salesperson and shall contain conspicuous notice to the purchaser of such limitations as may exist as to the salesperson's authority and any other information which the consumer would be entitled to ignore if not stated herein.

EXCEPTION: The provisions (or any part thereof) of this section may be waived by the Consumers' Bureau when deemed unnecessary to achieve and promote the spirit and purposes of this code.

8. Documents Consistent With Code Purpose

Orders, receipts or similar documents, furnished by salesperson type operators, representing transactions with consumers, shall contain no limitation of consumers' rights which is inconsistent with the terms or spirit of this code.

9. Warranties and Filing Thereof

Each member shall have some form of written warranty of its commodity or commodities. The full context of such warranty shall be on file with the Consumers' Bureau. If any change is made therein, the member shall promptly furnish the exact language of such change to the Consumers' Bureau.

The warranty given to consumers shall conform to the highest trade practice of warrantor's commodity group.

10. Character of Warranties

In all warranties to consumers, the complete conditions thereof shall be stated conspicuously as a direct part thereof and all terms shall be fair, simple, clear and free from ambiguity; and such warranties shall meet the standards of the Consumers' Bureau.
11. Adjustments

Members are expected to adjust their own complaints in accord with the spirit and purpose of this code whenever possible.

Where the Consumers' Bureau receives a complaint it shall immediately refer the same to the member for adjustment by the member as aforesaid. The member upon request of the Consumers' Bureau shall furnish to the bureau copies of adjustment correspondence passing between member and consumer.

Whenever a complaint cannot be adjusted pursuant to the above procedure, the complaint shall then be handled directly for adjustment with consumer by the Consumers' Bureau.

Member shall thereupon abide by the terms of whatever adjustment is determined by the Consumers' Bureau.

When a member puts into the hands of salespersons receipts which may be used fraudulently, the member shall assume responsibility for misuse of the same within the terms of the receipt.

Upon a proper determination that a consumer is entitled to an adjustment or a refund, and the member involved fails or refuses to make such adjustment or refund, the Consumers' Bureau is hereby empowered to make the appropriate refund and such member is obligated to promptly make reimbursement to the Consumers' Bureau to cover such outlay.

For the purpose of adjustments, a member warranty may be deemed as non-complied with where there is an unreasonable delay in delivery or offer to delivery to the consumer of ordered merchandise.

In the case of any consumer complaint which involves any question of breach of warranty, the Consumers' Bureau is hereby empowered to determine whether or not a breach has occurred.

Adjustment of complaints shall be made without delay whether handled by members or the Consumers' Bureau.

Nothing in this section shall be deemed to require a dealer type operator to assume the adjustment burden rightfully belonging to the dealer.

12. Adjustment Supervision and Instruction to Employees

Members shall establish and maintain a definite consumer adjustment policy consistent with the requirements of this code. This policy shall be set up in writing and kept before employees handling consumer complaints; and owners shall periodically check to see that their policy is being followed. A copy of this policy in writing shall be furnished to the Consumers' Bureau.

13. Complaints Against Non-Members

All complaints received by the Association or the Consumers' Bureau against non-members shall be handled by the Consumers' Bureau for adjustment pursuant to the policies of this code insofar as possible. For the general good of the entire industry, the Consumers' Bureau shall make
every effort to encourage non-members to make adjustments on the basis of this code.

14. Refunds

When a customer is entitled to a refund, it shall be made in full and shall include the entire amount paid for the merchandise and any shipping and transportation expense by way of freight, express or postal charges.

15. Filling of Orders

Salesperson type operators shall promptly fill consumer orders in exact accord with their terms. When a substitution is made, the merchandise so substituted must be of at least equal value to that ordered. Notice must be given to the customer that if he is not completely satisfied with the substitution, an exchange or refund will be made at his option and prompt request. EXCEPTION. Where the right of substitution is reserved and is clearly stated as part of the order and/or consumer's order copy or receipt, the provision in the preceding paragraph requiring the giving of notice shall not apply.

16. Representations

Representations by members concerning merchandise which tend to mislead or deceive the customer in any material particular as to its use, content, quality, terms, price, or in any other manner is an unfair trade practice and when resulting in consumer dissatisfaction or loss of confidence, shall constitute a violation of this code and the Consumers' Bureau will then be empowered to take corrective action.

17. Publicizing Code Membership

Members shall within their respective available facilities publicize to their consumers and salespersons their connection with and policy of adherence to this code in some such means as stuffers in merchandise packages, or by advertising, literature, forms, documents or papers going to salespersons and consumers, or in any other manner satisfactory to the Consumers' Bureau.

18. Reporting Undesirables

Members shall report promptly to the Consumers' Bureau the names of their salespersons who have perpetrated any act detrimental to the maintenance of the full confidence of the consumer, and such reports shall also state the nature of the wrongful act.
19. Control of Undesirables

To further enhance the consumer's confidence in direct selling, members shall cooperate with the Association and the Consumers' Bureau in exploring all possible means and methods of apprehending and eliminating undesirable salespeople.

20. Rewards for Arrest and Conviction

The Consumers' Bureau shall at its discretion offer, and pay, a reward for the apprehension and conviction of salespersons victimizing consumers or members.

21. Code Participation

Code participation shall be limited to active members of the National Association of Direct Selling Companies.

All members, under similar circumstances, shall have equal rights, privileges and obligations under the code.

22. Code Support by Members

A policy of code violation will promptly deprive it of its value and convert it into a trap for the consumer and a distinct disadvantage to members. Each member, therefore, hereby earnestly pledges its whole-hearted support and its firm intention to zealously refrain from, and assist in preventing, violations.

23. Penalty for Code Violations

Serious, substantial, or repeated violations of the code by a member shall be cause for termination of the right of participation in the code in any way. Termination of membership in such case shall be effected by a two-thirds vote of the Board, upon charges filed with the Board by the Consumers' Bureau, a copy of such charges being at the same time transmitted in the due course of the mails to the member involved. The accused shall be entitled to a hearing, the date of which shall be not less than ten days from the mailing of the charges, and the notice of the charges, as and when filed with the Board and transmitted to the accused, shall state the exact date and place of such hearing. The hearing shall be held before any one or more Directors appointed for that purpose by the President. The Consumers' Bureau and the accused may be represented at such hearing in person or in writing. Upon failure of the accused to appear, the Board may consider the charges as proven subject to such additional evidence or information as the Board may require.
In the case of any hearing which is not held before a majority of the Board, the Directors hearing the testimony shall promptly report their findings to the full Board, whereupon the members of the Board shall promptly vote for or against termination of membership. If the required majority of the Board votes in favor of termination, notice of such vote shall be forthwith given to the accused member and termination of membership shall occur on the third day after the mailing of such notice to the accused.

Charges shall not be filed against a member hereunder without the Consumers' Bureau having first obtained the consent of two or more members of the Executive Committee of the Association or three or more members of the Board.

The President of the Association, a majority of the Executive Committee, or three or more members of the Board may direct the Consumers' Bureau to file charges, and in such event, the procedure after filing charges pursuant hereto shall be the same as in the case of charges initiated by the Consumers' Bureau.

24. Establishment of Exceptions

Nothing contained in this code shall prohibit the making of exceptions to specific code requirements to meet the necessities and business requirements of the various commodity or type groups in the Association, where such exceptions do not tend to defeat the purposes of the code; provided, however, that such exceptions must be definitely established, codified and approved by the Board of Directors before becoming effective. Commodity and type groups shall assist the Consumers' Bureau and the Board of Directors in putting this provision into effect.

No provision of this code properly applicable to one type of operation shall be improperly applied to another type of operation. This question of application shall be determined by differences in the facts and circumstances existing in the different types and by the lack of necessity of application due to such differences.

Where advance deposits are received from the consumer as common practice, any provisions of this code applicable or pertinent to that subject matter shall be applied without regard to the type of operation of the member company involved.

25. Member-Consumer Relations

It is the express and declared understanding and purpose of the members participating in this code that the code deals exclusively with relations between members and consumers or users of merchandise dealt in; that any action by members in the adjustment of complaints with consumers shall be negotiated and handled directly by the member with the consumer with or without the aid or functioning of the Consumers' Bureau; that the code is not intended to nor shall operate as any character or measure of control of salespersons by members nor shall this code impose any
obligations upon salespersons; and that this code is not intended nor shall operate as a control in any way over salespersons or to establish or alter the nature of any relationship which may exist between members and their salespersons.

26. Amendments

This code may be amended by the same method and vote as is required to pass or adopt motions or resolutions by members of the Association in convention assembled or by mail vote, except that after the code has been formally put into effect and operation amendment of the same may be made by a majority vote or assent of code members.

27. Adoption

This code shall be and become adopted and effective as to participating members by their written consent expressed either to the Consumers' Bureau or the Commissioner of the Association; or by signed approval of a copy of the code delivered to either of the above.

Sponsorship

The National Association of Direct Selling Companies, at its convention held December 13, 1940, Palmer House, Chicago, Illinois, by resolution unanimously adopted, approved the foregoing code for those of its members who desire to participate in its benefits and obligations and by resolution unanimously adopted, assumed its sponsorship and support of its administration and maintenance.
## APPENDIX B

### COMPANIES INCLUDED IN MEMBERSHIP
### LISTS OF THE DIRECT SELLING ASSOCIATION
### FOR SELECTED YEARS, 1970-1993

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93
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<td>National Book, Inc.</td>
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<td>National Photographers Album Company</td>
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<td>Naturalife International</td>
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<td>Con-Stan Industries, Inc.]</td>
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<td>Olde Worlde Products, Inc.</td>
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<td>Omnitrition International, Inc.</td>
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<td>Packard Shirt Manufacturing Corporation</td>
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<td>Passeport</td>
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<td>Pathway Products Corporation</td>
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<td>The Pennyrich Corporation</td>
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<td>Perfume Originals, Inc.</td>
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<td>Personal Resource System, Inc.</td>
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<td>Petra Fashions, Inc.</td>
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<td>Pieroth Brothers, Inc.</td>
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<td>PlantMinder, Inc.</td>
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<td>The Playhouse Company, Inc.</td>
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<td>Pola U.S.A., Inc.</td>
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<td>Positive Living Products</td>
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<td>Premier Designs, Inc.</td>
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<td>Pro-Ag Inc.</td>
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<td>The Process Corporation</td>
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<td>PRO-MA Systems (U.S.A.), Inc.</td>
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<td>Pure Life Systems, Inc.</td>
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<td>The Puro Co., Inc.</td>
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<td>Queen's-Way to Fashion, Inc.</td>
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<td>RACHAel Cosmetics, Inc.</td>
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<tr>
<td>The W.T. Rawleigh Company</td>
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<tr>
<td>[see also: golden Pride]</td>
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<td>Realsilk, Inc.</td>
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101
### Appendix B

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<th>Company</th>
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<td>Regal Ware, Inc.</td>
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<td>Reliv', Inc.</td>
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<td>Renn Enterprises, Ltd.</td>
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<td>Rexair, Inc.</td>
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<td>Rickshaw Imports</td>
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<td>Rose Marie Collection Group, Inc.</td>
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<td>[formerly WeCare Distributors]</td>
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<td>Royal American Food Company</td>
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<td>Royal Bodycare, Inc.</td>
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<td>Royal Designs, Inc.</td>
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<td>Rubbermaid Party Plan, Inc.</td>
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<td>Saladmaster</td>
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<td>Sarah Coventry, Inc.</td>
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<td>The Southwestern Company</td>
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<tr>
<td>[see also: Winning Edge]</td>
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<td>The Sovera Company</td>
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<td>Spencer Incorporated</td>
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<td>Steelco Stainless Steel, Inc.</td>
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<td>STEP's Adventures with the 3R's</td>
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<td>Sterling Health Services Corp.</td>
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<td>Stonegate China Company</td>
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<td>C.H. Stuart &amp; Co., Inc.</td>
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<td>[see also: Artcraft Concepts; Caroline Emmons: Nobility-Prestige Co.; and Sarah Coventry, Inc.]</td>
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<td>The Stuart McGuire Company, Inc.</td>
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<td>Studio Girl Cosmetics, Inc.</td>
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<td>Sunasu International, Inc.</td>
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<td>United Laboratories of America, Inc.</td>
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<td>United Safety &amp; Security, Inc.</td>
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<td>Usborne Books at Home</td>
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<td>Viviane Woodard Corporation</td>
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<td>Wear-Ever Aluminum, Inc.</td>
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<td>[see also: Alcas Cutlery Corp.-CUTCO; CUTCO-Alcas Corp.]</td>
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<td>The West Bend Company</td>
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<td>Winning Edge</td>
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<td>Youunique Creations</td>
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<td>Zondervan Book of Life</td>
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### Annual Membership Totals:

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### Notes:

1. The **Annual Membership Totals** reflect that two or more company names may be listed under one membership.

2. References to "see also" reflect multiple company names sharing one membership and/or changed names of the same company.
APPENDIX C

THE RIGHT THING TO DO: A CREDO OF BUSINESS RESPONSIBILITY

(Developed jointly by the National Better Business Bureau, Inc.
and the National Association of Direct Selling Companies, 1969)

Voluntary adherence to high ethical standards preserves integrity and fairness in the direct selling industry, its manufacturers, distributors, and salesmen. Faithful compliance with these standards will increase public confidence in the direct selling industry and thereby help to protect the consumer and legitimate business from unfair and deceptive practices.

Direct selling includes all persons, firms, corporations and organizations engaged in the sale or offering for sale of any kind of product by direct personal contact with consumer-purchasers, or prospective consumer-purchasers at their home or other places not on the premises of the suppliers or sellers. It excludes those retail establishments that distribute primarily through stores, but also employ in-home selling techniques.

The National Association of Direct Selling Companies and the National Better Business Bureau jointly endorse this program of standards and urge others engaged in direct selling to adhere to them.

Scope

These standards apply to oral representations made for the purpose of selling or including the sale of commodities or services marketed by the direct selling process. They also apply to advertisements and advertising promotion in any form.

Accuracy

1. All statements, written or oral, by industry members, shall be accurate, free of the capacity to mislead or deceive the consumer and shall reveal material facts, the concealment of which might cause customers to be mislead.

Competition

2. All statements, whether written or oral, by industry members, shall offer merchandise or service on its merits and refrain from attacking competitors or disparaging their products, services or method of doing business.
Guarantees

3. Guarantees and warranties offered by industry members shall be in writing and adequately and completely disclose their exact scope, limitations, and conditions and shall make clear who is responsible for their fulfillment. Guarantees shall not conceal in time the useful life expectancy of a product. Lifetime guarantees shall be avoided. All sales or promotional references to guarantees shall state in immediate conjunction therewith all material conditions and limitations and the name of the guarantor.

Sales Pricing

4. Any price saving claims, whether oral or in writing, shall make clear whether the saving is from:
   a. The seller's usual and customary price for the article in the recent regular course of business; or
   b. The current going price of the same articles in the market area; or
   c. The current going price of comparable articles in the market area.

No product shall be "pre-ticketed" with any price figure which exceeds the price at which it is regularly and usually sold. The use of "list" prices, which are not the usual and customary retail prices, shall be avoided.

Free Offers

5. If the word "free" is used to describe an item available to the public with the purchase of some other article during a limited time period, the purchased article must be sold at its usual and customary price in exactly the same form as to size, quality and quantity. Any item or service which is regularly and continuously sold in combination with another item for a stated price shall not be represented as "free."

Bona Fide Offers

6. All offers shall be bona fide and the merchandise offered must be available promptly in reasonably adequate quantities, freely shown and sold without disparagement at the featured price to any customer responding to the offer.

Superlative Factual Claims

7. Members of the industry shall avoid the use of superlative claims, such as "world's smallest unit" or "rated number one," unless based on fact, and sellers must be prepared to substantiate with facts their use of such claims.
Contracts in Blank

8. No member of the industry shall induce a buyer to sign an order form or contract in blank regardless of the reason given for so doing. A completed copy of the contract should always be provided to the buyer.

Negotiable Instruments

9. Members of the industry should state, if such be the fact, that a contract or a negotiable instrument signed by the customer in connection therewith, may be sold or assigned to a financial institution.

Written Orders

10. All members of the industry must deliver to the customer at the time of sale a written order or receipt setting forth the name and address of the seller and all of the terms and conditions of the sale which shall be stated in clear and unambiguous language and in readable type comparable in size with all other type thereon.

Recruiting Advertisements

11. An industry member may not use any advertisement which is false, misleading, or deceptive concerning:
   a. the salary, commission, income, earnings, profits, or other remuneration which sales-contact personnel receive or may expect to receive; or
   b. the chances or opportunities for such remuneration.

Any reference to the amount of compensation should be based on actual, typical earnings.

Illustrations

12. Illustrations of advertised merchandise shall conform without exaggeration or essential difference to the appearance of the merchandise actually on sale, or being offered for sale. Any featured price used in proximity to an illustration shall be the price of the illustrated unit.

Chain Referral Selling

13. No industry member shall use an illegal chain referral sales plan or other scheme for the distribution of prizes, premiums, or gifts by illegal lottery.

Multi-Level Sales Plans
14. All multi-level sales plans shall conform to existing laws and avoid exaggerated earnings possibilities.

Cancellation of Contracts

15. Upon receipt of evidence of fraud, misrepresentation, or undue influence, members of the industry shall cancel contracts and refund deposits.

Deceptive Offers

16. No member of the industry shall make misleading or deceptive statements to induce a purchase by representing that the prospect receives “something for nothing”; that a survey or quiz is being conducted; that, because of the standing of the prospect in the community, the person is to receive special gifts or price considerations; that the prospect was unknowingly entered in a contest and won a prize; or that the prospect will receive benefits in price, quantity, quality, gifts, services, or guarantees without disclosing and clearly explaining full details.

The National Association of Direct Selling Companies, together with its individual members, pledge to seek full compliance with these ethical standards by all engaged in direct selling.

The National Better Business Bureau pledges continuing review of advertising and selling practices in the direct selling industry to the end that conformity to these standards may be perfected throughout the entire industry. The National Better Business Bureau pledges its full facilities to implement these standards through a continuing program of review and eliminating through persuasion and cooperation all violations of this code.
APPENDIX D

CODE OF ETHICS AND REGULATIONS,
DIRECT SELLING ASSOCIATION
(Adopted June 15, 1970)

Preamble

The Direct Selling Association, recognizing that companies engaged in direct selling assume certain responsibilities toward consumers arising out of the personal-contact method of distribution of their products and services, hereby sets forth the basic fair and ethical principles and practices to which member companies of the association will continue to adhere in the conduct of their business.

Code of Ethics

I. Products or Services

The offer of products or services for sale by member companies of the Association shall be accurate and truthful as to price, grade, quality, make, value, performance, quantity, currency of model, and availability.

II. Guarantee

The terms of any guarantee offered by the seller in connection with the sale shall be furnished to the buyer in writing at the time of the sale or delivery and shall clearly state the nature and extent of said guarantee. The seller shall fully and promptly perform in accordance with terms of such guarantee.

III. Terms of the Sale

A written order or receipt shall be delivered to the customer at the time of sale, which sets forth in language that is clear and free of ambiguity:

A. All the terms and conditions of sale, with specification of the total amount customer will be required to pay, including all interest, service charges and fees, and other costs and expenses;

B. The name and address of the salesperson or the member firm represented;

C. That the contract or negotiable instrument signed by the customer in connection with
the sale may be sold or assigned by the seller to a third party, if such is the fact.

IV. Responsibility

In the event that any consumer shall complain that the salesperson or representative offering for sale the products or service of a member company has engaged in any improper course of conduct pertaining to the sales presentation of its goods or services, the member company shall promptly investigate the complaint and shall take such steps as it may find appropriate and necessary under the circumstances to cause the redress of any wrongs which its investigation discloses to have been committed.

V. Deceptive or Unlawful Trade Practices

No member company of the Association shall engage in any deceptive or unlawful trade practice.

VI. Administration

A. Interpretation and Execution. The Board of Directors of the Direct Selling Association shall appoint a Code Administrator to serve, subject to the will of the Board, on an annual basis and will provide such Code Administrator with the authority necessary and proper to enable him to discharge the responsibilities entrusted to him in this Code. The Administrator will be responsible directly and solely to the Board. The Board of Directors will establish all regulations necessary to administer the provisions of this Code.

B. Code Administrator. The Administrator shall be a person of recognized integrity, knowledgeable in the industry, and of a stature that will command respect by the industry and from the public. He shall appoint a staff adequate and competent to assist him in the discharge of his duties. During his term of office, neither the Administrator nor any member of his staff shall be an officer, director, employee, or substantial stockholder in any member or affiliate of the DSA. The Administrator, in accordance with the regulations established by the Board of Directors as provided herein, shall hear and determine all charges against members subscribing hereto, affording such members or persons an opportunity to be heard fully. The Administrator shall have the power to originate any proceedings, and shall at all times have the full cooperation of all members.

C. Member Responsibility. Member companies will be considered responsible for Code violations by their solicitors and representatives where the Administrator finds, after considering all the facts, that a violation of the Code has occurred and the member has either authorized such practice found to be violative, condoned it, or in any other way supported it. A member shall be considered responsible for a Code violation by its solicitors or representatives, although it had no knowledge of such violation, if the Administrator finds that the member was grossly negligent by failing to establish procedures whereby the member would be kept informed of the activity of its
solicitors and representatives.

D. **Procedure.** If it is determined by the Administrator or by a special ethics committee, in accordance with the regulations of this Code, that a violation of the Code has occurred, the Administrator may then consult with independent legal counsel to determine whether the facts that have been ascertained amount to a violation of state or Federal law. If the Administrator believes that such a violation has occurred, the Administrator may advise the appropriate Federal or local agency of his conclusion and offer to cooperate with such agency in any feasible way toward the removal or correction of such violation for the mutual benefit of the public and the Association.

E. **Additional Functions of Administrator.** The Administrator shall answer as promptly as possible all queries posed by members relating to the Code and its application, and, when appropriate, may suggest, for consideration by the Board of Directors, new regulations, definitions, or other implementations to more fully give effect hereto.

The administrator shall undertake through his office to maintain and improve all relations with better business bureaus and other organizations, both private and public, with a view toward improving the industry's relations with the public and receiving information from such organizations relating to the industry's sales activities.

F. **Duties of Members.** The members subscribing to this Code recognize that its success will require diligence in creating an awareness among agents or distributors of the member's obligations under the Code. No subscribing party shall in any way attempt to persuade, induce, or coerce another party to breach this Code, and the subscribers hereto agree that the inducing of the breach of this Code is considered a violation of the Code.

**VII. Amendments**

This Code may be amended by vote of two thirds of the Board of Directors.

**Regulations For Enforcement of DSA Code of Ethics**

1. **Receipt of Complaint**

Upon receipt of a complaint that a member has violated the Code of Ethics, the Administrator shall request that the complaining party reduce the complaint to writing. If no written statement of the charges is received from the complaining party within ten days, no further action will be taken by the Administrator. Once a written complaint is received, the Administrator shall forward a copy of the complaint to the member against whom the charges have been made, with a notification that a preliminary investigation is being conducted and that the member will be informed of the results. During the investigation, the accused member may be asked to comment orally or in writing.
Appendix D

All notices and requests made in accordance with these regulations shall be provided by registered mail, return receipt requested, and the term "days," when used in connection with such notice and requests, shall encompass only business days.

2. Post-Investigation Procedure

If, after his investigation, the Administrator believes the charges are unsupportable or frivolous, the Administrator shall terminate action on the charges. Such decision shall be made known to the member in question and to the complaining party who initiated the charges.

If, however, the Administrator believes after his investigation that a violation of the Code may have occurred and that further action should be taken, the Administrator shall so notify the accused member. The member shall have the opportunity to comment on the findings on or before the tenth day after the notice is mailed.

After the accused member has submitted his comments to the Administrator, if the Administrator is satisfied that the facts revealed by his investigation are sufficiently rebutted or that the situation that formed the basis for the complaint has been corrected, he shall terminate action on the charges and shall notify the complaining and accused parties of his action. If the Administrator, however, is of the belief that the facts are not sufficiently rebutted or that the situation has not been corrected within thirty days from the time he sent notice of his findings to the accused member, he shall so notify the accused member. The accused member, upon receipt of such notice, shall have the right, within fifteen days, to request a hearing by a special ethics committee. The request for such a hearing must be in writing to the Administrator on or before the 15th day after the aforementioned notice from the Administrator is received.

3. Ethics Committee and Hearing Procedure

(a) If a hearing is requested by an accused member, the Administrator shall notify the chairman of the Board of Directors of that fact, and the chairman shall appoint a special ethics committee to be comprised of seven persons who are members of the Board of Directors, none of whom shall be a competitor of the accused member. The chairman of the Board shall also select the chairman of the special ethics committee.

(b) The chairman of the special ethics committee shall request the Administrator and the accused member to supply him within ten days a brief outline of their respective positions concerning the pending allegations. Upon receipt of these outlines, the chairman shall disseminate same to the members of his ethics committee, and within ten days of the receipt of those outlines, the chairman shall poll the members of his committee to determine whether a majority of the committee is in favor of terminating all further action by the Administrator concerning the charges or whether a hearing should be held. In the case of the former, the chairman shall notify the Administrator and the accused party of the committee's decision and the Administrator shall in turn inform the complaining witness that no further action will be taken. If the committee decides that a hearing should be held, the chairman shall select a date for the hearing.
(c) The accused member shall be given thirty days' notice of the date of the hearing. At the hearing, the accused member shall have an opportunity to be represented by counsel and to refute the charges against him. He will also have an opportunity to hear the evidence and confront and cross-examine witnesses against him. He will further have the opportunity to present witnesses for his position, which witnesses also shall be subject to confrontation and cross-examination by the Administrator. All witnesses and the Administrator shall be subject to questioning by the members of the committee. In order to avoid prolonged hearings, the Administrator shall not be represented by counsel. No transcript will be made of the hearings unless the accused member, at his expense, provides for the making of a transcript.

(d) The decision by the ethics committee will be made upon a secret ballot after the committee has had an opportunity to discuss the charges and the evidence presented during the hearing. The violation or nonviolation of the Code will be determined in all hearings by a majority vote of the ethics committee. The committee will determine either that no further action shall be taken or that the Administrator may proceed in accordance with the provisions of the Code.

(e) The hearings shall be closed to all persons except the hearing committee, the Administrator, the charged member, and any necessary witnesses.

4. Action by the Association

If the Administrator or the special ethics committee has determined that a violation of the Code has taken place in accordance with the procedures provided in part 2 herein, the Administrator may then consult with independent legal counsel to determine whether the facts that have been ascertained amount to a violation of state or Federal law. If the Administrator believes that a violation of state or Federal law has occurred, he shall so notify the accused member by registered mail, return receipt requested, and after ten days following such notice the Administrator shall advise the appropriate Federal or local agency of his conclusion and offer to cooperate with such agency in any feasible way toward the removal or correction of such violation for the mutual benefit of the public and the Association.

5. Restrictions

(a) At no time during the investigation or the hearing of charges against a member shall the Administrator or any member of a special ethics committee confer with anyone at any time concerning any alleged violation of the Code, except as provided herein and as may be necessary to conduct the investigation and hold a hearing. Any information ascertained during an investigation or hearing shall be treated as confidential. At no time during the investigation or the hearing of charges shall the Administrator or any member of a special ethics committee confer with a competitor of the member alleged to be in violation of the Code, except when it may be necessary to call a competitor as a witness to the facts, in which case the competitor shall be used only for the purpose of testifying as to the facts. At no time shall a competitor participate in the Administrator's
or in a special ethics committee's disposition of a complaint.

(b) Upon request by the Administrator to any member, all documents directly relating to an alleged violation shall be delivered to the Administrator. Any such information obtained by the Administrator shall be held in confidence in accord with the terms of these regulations and the Code. Whenever the Administrator, either by his own determination or pursuant to a decision by a special ethics committee, terminates an action which was begun under the Code, a record of the member accused shall be wiped clean and all documents, memoranda or other written material shall either be destroyed or returned as may be deemed appropriate by the Administrator, except for those prosecutorial necessary for the filing of a complaint with a state or Federal agency. At no time during proceedings under these regulations or under the Code shall the Administrator or any member of a special ethics committee issue a press release concerning allegations or findings of a violation of the Code unless specifically authorized to do so by the Board of Directors. Further, the Administrator and members of special ethics committees shall at all times strive to keep such proceedings confidential and to avoid publicity concerning them, except as may be otherwise provided herein.
APPENDIX E

SELECTED CONTENTS OF THE CODE OF ETHICS SLIDE PRESENTATION, 1974

"DSA is working to make today's marketplace more ethical."
"... These headlines promise a 'something extra' from personal service ..."
"The association retains an independent code administrator. He's on call to handle all complaints ... and promptly conducts an investigation." [Kenneh A. Roberts pictured]
"The code provides guidelines for salespeople as well."
"Today's personal sellers are in step with the times and leading the march because they put you on a pedestal."
FOR MORE INFORMATION ABOUT THE CODE OF ETHICS, WRITE:

direct
selling
association

This is the final slide in the show.
APPENDIX F

CODE OF ETHICS OF THE
DIRECT SELLING ASSOCIATION
(as amended through October 20, 1992)

PREAMBLE

The Direct Selling Association, recognizing that companies engaged in direct selling assume certain responsibilities toward consumers arising out of the personal-contact method of distribution of their products and services, hereby sets forth the basic fair and ethical principles and practices to which member companies of the association will continue to adhere in the conduct of their business.

A. CODE OF CONDUCT

1. Deceptive or Unlawful Consumer Practices

No member company of the Association shall engage in any deceptive, unlawful, or unethical consumer or recruiting practice.

2. Products or Services

The offer of products or services for sale by member companies of the Association shall be accurate and truthful as to price, grade, quality, make, value, performance, quantity, currency of model, and availability.

3. Terms of the Sale

A written order or receipt shall be delivered to the customer at the time of sale, which sets forth in language that is clear and free of ambiguity:

A. All the terms and conditions of sale, with specification of the total amount the customer will be required to pay, including all interest, service charges and fees, and other costs and expenses as required by federal and state law;

B. The name and address of the salesperson or the member firm represented.

4. Warranties and Guarantees

The terms of any warranty or guarantee offered by the seller in connection with the sale
shall be furnished to the buyer in a manner that fully conforms to federal and state warranty and guarantee laws and regulations.

The manufacturer, distributor and/or seller shall fully and promptly perform in accordance with terms of all warranties and guarantees offered to consumers.

5. Pyramid Schemes

For purposes of this Code, pyramid or endless chain schemes shall be considered consumer transactions actionable under this Code. The Code Administrator shall determine whether such pyramid or endless chain schemes constitute a violation of this Code in accordance with applicable federal, state and/or local law or regulation.

6. Inventory Repurchase

Any member company with a marketing plan that involves selling products directly or indirectly to independent salespeople shall clearly state, in its recruiting literature or contract with the independent salespeople, that the company will repurchase on reasonable commercial terms currently marketable inventory in the possession of that salesperson and purchased by that salesperson for resale prior to termination of the salesperson’s business relationship with the company or its independent salespeople. For purposes of this Code, “reasonable commercial terms” shall include the repurchase of marketable inventory within 12 months from the salesperson’s date of purchase at not less than 90% of the salesperson’s original net cost less appropriate set-offs and legal claims, if any. For purposes of this Code, products shall not be considered “currently marketable” if returned for repurchase after the products’ commercially reasonable usable or shelf-life period has passed; nor shall products be considered “currently marketable” if the company clearly discloses to salespeople prior to purchase that the products are seasonal, discontinued, or special promotion products and are not subject to the repurchase obligation.

7. Earnings Representations

No member company shall misrepresent the actual or potential sales or earnings of its independent salespeople. Any earnings or sales representations that are made by member companies shall be based on documented facts.

B. RESPONSIBILITIES AND DUTIES

In the event any consumer shall complain that the salesperson or representative offering for sale the products or services of a member company has engaged in any improper course of conduct pertaining to the sales presentation of its goods or services, the member company shall promptly investigate the complaint and shall take such steps as it may find appropriate and nec-
ecessary under the circumstances to cause the redress of any wrongs which its investigation discloses to have been committed.

Member companies will be considered responsible for Code violations by their solicitors and representatives where the Administrator finds, after considering all the facts, that a violation of the Code has occurred and the member has either authorized such practice found to be violative, condoned it, or in any other way supported it. A member shall be considered responsible for a Code violation by its solicitors or representatives, although it had no knowledge of such violation, if the Administrator finds that the member was culpably negligent by failing to establish procedures whereby the member would be kept informed of the activity of its solicitors and representatives. For purposes of this Code, in the interest of fostering consumer protection, companies shall voluntarily not raise the independent contractor status of salespersons distributing their products or services under its trademark or trade name as a defense against Code violation allegations and such action shall not be construed to be a waiver of the companies’ right to raise such defense under any other circumstances.

The members subscribing to this Code recognize that its success will require diligence in creating an awareness among their employees and/or the independent wholesalers and retailers marketing the member’s products or services of the member’s obligations under the Code. No subscribing party shall in any way attempt to persuade, induce or coerce another party to breach this Code, and the subscribers hereto agree that the inducing of the breach of this Code is considered a violation of the Code.

C. ADMINISTRATION

1. Interpretation and Execution

The Board of Directors of the Direct Selling Association shall appoint a Code Administrator to serve for a fixed term to be set by the Board prior to appointment. The Board shall have the authority to discharge the Administrator for cause only. The Board shall provide sufficient authority to enable the Administrator to properly discharge the responsibilities entrusted to the Administrator under this Code.

The Administrator will be responsible directly and solely to the Board. The Board of Directors will establish all regulations necessary to administer the provisions of this Code.

2. Code Administrator

The Administrator shall be a person of recognized integrity, knowledgeable in the industry, and of a stature that will command respect by the industry and from the public. He shall appoint a staff adequate and competent to assist him in the discharge of his duties.
term of office, neither the Administrator nor any member of his staff shall be an officer, director, employee, or substantial stockholder in any member or affiliate of the DSA. The Administrator shall disclose all holdings of stock in any member company prior to appointment and shall also disclose any subsequent purchases of such stock to the Board of Directors. The Administrator shall also have the same rights of indemnification as the Directors and Officers have under the bylaws of the Direct Selling Association.

The Administrator, in accordance with the regulations established by the Board of Directors as provided herein, shall hear and determine all charges against members subscribing hereto, affording such members or persons an opportunity to be heard fully. The Administrator shall have the power to originate any proceedings, and shall at all times have the full cooperation of all members.

3. Procedure

The Administrator shall determine whether a violation of the Code has occurred in accordance with the regulations promulgated hereunder. The Administrator shall answer as promptly as possible all queries posed by members relating to the Code and its application, and, when appropriate, may suggest, for consideration by the Board of Directors, new regulations, definitions, or other implementations to make the Code more effective. The Administrator shall undertake through his office to maintain and improve all relations with better business bureaus and other organizations, both private and public, with a view toward improving the industry’s relations with the public and receiving information from such organizations relating to the industry’s sales activities.

D. REGULATIONS FOR ENFORCEMENT OF DSA CODE OF ETHICS

1. Receipt of Complaint

Upon receipt of a complaint from a bona fide consumer or where the Administrator has reason to believe that a member has violated the Code of Ethics, the Administrator shall forward a copy of the complaint, if any, to the accused member together with a letter notifying the member that a preliminary investigation of a specified possible violation pursuant to Section 3 is being conducted and requesting the member’s cooperation in supplying necessary information, documentation and explanatory comment. If a written complaint is not the basis of the Administrator’s investigation, then the Administrator shall provide written notice as to the basis of his reason to believe that a violation has occurred. Further, the Code Administrator shall honor any requests for confidential treatment of the identity of the complaining party made by that party.

2. Cooperation with the Code Administrator
In the event a member refuses to cooperate with the Administrator and refuses to supply necessary information, documentation and explanatory comment, the Administrator shall serve upon the member, by registered mail, a notice affording the member an opportunity to appear before the Board of Directors on a certain date to show cause why its membership in the Direct Selling Association should not be terminated. In the event that the member refuses to appear before the Board or refuses to comply with the Board’s decision, the Board may terminate the offender’s membership without further notice or proceedings.

3. Informal Investigation and Disposition Procedure

The Administrator shall conduct a preliminary investigation, making such investigative contacts as are necessary to reach an informed decision as to the alleged Code violation. If the Administrator determines, after the informal investigation, that there is no need for further action or that the Code violation allegation lacks merit, further investigation and administrative action shall terminate and the complaining party shall be so notified.

The Administrator may, in his discretion, remedy an alleged Code violation through informal, oral and written communication with the accused member company.

If the Administrator determines that the allegation has sufficient merit, in that the apparent violations are of such a nature, scope or frequency so as to require remedial action pursuant to Part E and that the best interests of consumers, the Association and the direct selling industry require remedial action, he shall notify the member of his decision, the reasoning and facts which produced it, and the nature of the remedy he believes should be effected. The Administrator’s notice shall offer the member an opportunity to voluntarily consent to accept the suggested remedies without the necessity of a Section 4 hearing. If the member desires to dispose of the matter in this informal manner it will, within 20 days, advise the Administrator, in writing, of its willingness to consent. The letter to the Administrator may state that the member’s willingness does not constitute an admission or belief that the Code has been violated.

4. Formal Hearing Procedure

If a hearing is requested by an accused member or in the opinion of the Administrator, the informal procedure provided in Part D 3 above does not provide adequate remedy for the consumer, or, if in his opinion, the alleged violations of the Code are of such a nature, scope or frequency so as to support a reasonable belief by the Administrator that an evidentiary hearing is necessary to determine whether or not the allegations of Code misconduct warrant the implementation of the remedial sanctions of Part E, the Administrator may call for a formal hearing. The purpose of such a hearing is to gather evidence and take testimony surrounding the Code of Ethics complaint.

The Administrator shall notify, in writing, the accused member of his intent to hold a hear-
ing, and shall specify in such notification the nature and substance of the consumer complaint to be heard at the hearing. The Administrator shall make reasonable attempts to arrange a mutually convenient place and time for the hearing to occur. Such notification shall precede by at least 20 days any proposed date for an evidentiary hearing concerning the allegations of the Code of Ethics misconduct. Hearings may be rescheduled for good cause shown.

The accused member shall have the right to submit any data deemed relevant to the proceeding, to appear in person or through counsel, and rebut the charges against it. Both parties shall have the right to call witnesses, and the accused party shall have the right to call and confront the complaining party, providing the calling party shall bear any costs involved in calling the complaining party or any witness. Both parties shall also have the right to cross-examine any witnesses who are called. The Administrator shall determine, based on evidence presented by the company and evidence submitted by the complainant, whether a Code violation has occurred. The Decision by the Administrator shall be issued no later than ten days from the date of the hearing and shall be forthwith sent to the accused member, the President and Chairman of the Board of DSA, and the complainant. The decision will include the remedial measures, if any, that the Administrator has invoked pursuant to Part E. The member shall then have ten days from date of receipt to comment to the Administrator, in writing, on the findings contained in the decision, or to request a special arbitration procedure as described in Part F.

E. POWERS OF THE ADMINISTRATOR

If, pursuant to the hearing provided for in Part D 4, the Administrator determines that the accused member has committed a Code of Ethics violation or violations, the Administrator is hereby empowered to impose the following remedies, either individually or concurrently, upon the accused member:

(1) request complete restitution to the consumer of monies paid for the accused member’s products which were the subject of the Code complaint;

(2) request the replacement or repair of any accused member’s product, the sale of which was the source of the Code complaint;

(3) request the payment of a voluntary contribution to a special assessment fund which shall be used for purposes of publicizing and disseminating the Code and related information. The contribution may range up to $500 per violation of the Code.

(4) request the accused member to submit to the Administrator a written commitment to abide by the DSA Code of Ethics in future transactions and to exercise due diligence to assure there will be no recurrence of the practice leading to the subject Code complaint. If the Administrator determines that there has been compliance with all imposed remedies
in a particular case, he shall terminate the matter.

In the event that a member refuses to voluntarily comply with any remedy imposed by the Administrator within 30 days, the Administrator may then consult with independent legal counsel to determine whether the facts that have been ascertained amount to a violation of state or federal law. If the Administrator believes that a violation of state or Federal law has occurred, he shall so notify the accused member by certified or registered mail, return receipt requested, and after ten days following such notice the Administrator shall submit the relevant data concerning the complaint to the appropriate federal or local agency.

Additionally, when the Administrator, after consulting with independent legal counsel, determines that a violation of state or federal law or the Code has occurred and the member continues to refuse to comply, he may recommend to the Board that the member be suspended or terminated from Association membership. The Administrator shall serve upon the member, by registered mail, a notice affording the member the opportunity to appear before the Board of Directors or a designated part thereof to show cause why its membership in the Association should not be suspended or terminated. A suspended member, after at least 90 days, and a terminated member, after at least one year, may request the opportunity to appear before the Board or Directors or a designated part thereof, to show why its membership should be reinstated.

F. APPEAL TO OUTSIDE ARBITRATOR

Following a final decision by the Administrator that a Code violation has occurred, the accused member may appeal the decision by the Administrator to an independent arbitrator. The request by the accused member must be in a written statement to the Administrator no later than ten days after receipt of the Administrator’s final decision. Upon receipt of such request, the Administrator shall set a date for an arbitration hearing within a reasonable period of time not to exceed 60 days from the date of the request. If such an appeal is filed, any sanctions imposed under Section E shall be stayed until the conclusion of arbitration. The choice of said arbitrator shall be made by the accused company from a list provided by an existing arbitration organization such as the American Association of Arbitrators. All attendant costs of such an arbitration, including witness fees and travel expenses, but not including any expenses related to the time and travel of the Administrator and DSA staff, shall be borne by the requesting member.

The arbitrator shall receive, at least five days prior to the hearing date, submissions from the Administrator and the accused member outlining their respective positions concerning the allegations of Code violations. The accused member shall be given 15 days’ notice of the date of the hearing. At the hearing, the accused member shall have an opportunity to be represented by counsel, to refute the charges against it, and to hear the evidence and confront and cross-examine witnesses against it. The member will further have the opportunity to present witnesses for its position, which witnesses shall also be subject to confrontation and cross-examination by the
Administrator. All witnesses and the Administrator shall be subject to questioning by the arbitrator. The Administrator also may be represented by counsel.

A transcript may be made of the hearing at the request and expense of the accused member, or at the expense of the Association if the Administrator determines that a transcript is necessary to protect the integrity of the Association and/or the rights of the complaining witnesses. If a transcript is so requested, or if the Administrator determines that a record of the hearing is necessary, a tape recording of the hearing may be made in lieu of a transcript if all parties agree.

The decision of the arbitrator is final and is binding upon both the Administrator and the member. The arbitrator may, upon completion of the hearing, affirm, modify, or reverse the original finding of the Administrator. The arbitrator shall, within ten days of the hearing, issue his decision in writing to the Administrator, the accused company, and the President and Chairman of the Board of DSA.

G. RESTRICTIONS

(1) At no time during the investigation or the hearing of charges against a member shall the Administrator or outside arbitrator confer with anyone at any time concerning any alleged violation of the Code, except as provided herein and as may be necessary to conduct the investigation and hold a hearing. Any information ascertained during an investigation or hearing shall be treated as confidential, except in cases where the accused member has been determined to have violated federal, state or local statutes. At no time during the investigation or the hearing of charges shall the Administrator or outside arbitrator confer with a competitor of the member alleged to be in violation of the Code, except when it may be necessary to call a competitor as a witness to the facts, in which case the competitor shall be used only for the purpose of testifying as to the facts. At no time shall a competitor participate in the Administrator’s or in the outside arbitrator’s disposition of a complaint.

(2) Upon request by the Administrator to any member, all documents directly relating to an alleged violation shall be delivered to the Administrator. Any such information obtained by the Administrator shall be held in confidence in accord with the terms of these regulations and the Code. Whenever the Administrator, either by his own determination or pursuant to a decision by an outside arbitrator, terminates an action which was begun under the Code, a record of the member accused shall be wiped clean and all documents, memoranda or other written material shall either be destroyed or returned, as may be deemed appropriate by the Administrator, except to the extent necessary for submitting relevant data concerning a complaint to a local, state, or federal agency. At no time during proceedings under this Code regulation or under the Code shall the Administrator or outside arbitrator either unilaterally or through the DSA issue a press release concerning allegations or findings of a violation of the Code unless specifically authorized to do so by the Board of Directors.
H. RESIGNATION

Resignation from the Association by an accused company prior to completion of any proceedings constituted under this Code shall not be grounds for termination of said proceedings, and a determination as to the Code violation shall be rendered by the Administrator and/or arbitrator, irrespective of the accused company’s continued membership in the Association or participation in the complaint resolution proceedings.

I. AMENDMENTS

This Code may be amended by vote of two-thirds of the Board of Directors.
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Richard Bartlett, Mary Kay Corporation
J. Robert Brouse, formerly of DSA
William D. Dixon, formerly of FTC Division of Advisory Opinions
Tony Duke, formerly of Omnitrition
Gerald Gilbert, Hogan & Hartson
George Hescock, DSA
Lawrence Lad, Butler University
Erick Laine, CUTCO-Vector
W. Alan Luce, Dorling Kindersley
Joseph Mariano, DSA
Brent Mickum, FTC Staff
Neil Offen, DSA
Eileen O’Neill, DSA
James Preston, Avon
William Rogal, Code Administrator, DSA
Herb Rotfeld, Auburn University
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