

Memorandum

TO: Janet Ammerman, Brad Winter
Federal Trade Commission
Washington, DC

Page | 1

FROM: Adonis Hoffman, Chairman
Business in the Public Interest

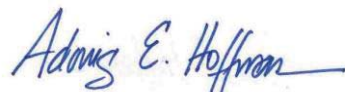
RE: Herbalife ICA Application

DATE: August 29, 2016

I appreciate the opportunity to submit the following application for your consideration regarding the role of Herbalife Independent Compliance Monitor.

We appreciate your consideration and look forward to next steps.

Thank you,



A. Executive Summary:

Business in the Public Interest was established to assist corporations to address the growing demands and expectations of public interest considerations on legal, regulatory and compliance matters. It was originally founded as a not-for-profit education organization, but has functioned primarily as a research and advisory consultancy.

The chairman and CEO of Business in the Public Interest is Adonis Hoffman, Esq., a seasoned attorney and advisory counsel with considerable legislative (Congressional) and regulatory (FCC, FTC) experience. Mr. Hoffman also has significant experience in the advertising and marketing industry, having served for over a decade as senior vice president and counsel for the American Association of Advertising Agencies (the 4As), which is the industry trade association. Hoffman also has direct experience in the network marketing industry, having served as an independent representative for two direct sales companies, and as a legal commentator on regulations affecting the network marketing industry. He is an adjunct professor of Communication, Culture & Technology at Georgetown University, where he teaches courses on Marketing, Advertising and Public Policy, and Corporate Responsibility. He is a former member of the National Advertising Review Board (NARB) and is the author of *Doing Good—the New Rules of Corporate Responsibility, Conscience and Character*.

As the principal independent compliance auditor, Mr. Hoffman will lead a small team of experienced attorneys to monitor Herbalife's compliance with the court's decree. The biographies of the attorneys appear below, but their highlights include the following:

- Original member of the District of Columbia Board of Ethics
- A former Maryland States Attorney
- An experienced litigation management attorney with complex litigation experience

Under Hoffman's leadership, this team will systematically monitor the activities of Herbalife over the next 84 months.

[REDACTED]

[REDACTED] We plan to actively engage the executives, managers, supervisors and administration of Herbalife. Perhaps most importantly, we will have extensive interaction with Herbalife's top independent representatives and distributors (and their organizations) throughout the country.

Organizing and promotional events are important to the ongoing existence of independent representatives in organizations such as Herbalife. Whether regional or national conferences, these events draw prospects and provide a platform for awards and commendations of high-performing independent representatives. Our team will be an ever-present force at these events, monitoring for compliance and responsible adherence to the rules of the road for marketing representations and business opportunities.

Herbalife ICA Application
BUSINESS IN THE PUBLIC INTEREST

Finally, we are keenly aware of the special appeal of the MLM industry to people of color for a variety of reasons. Our diverse team brings a special sensitivity and insight to this dynamic of the network marketing industry, which is often overlooked and shielded from debate.

In summary, we believe that our combination of legal, regulatory, marketing, and corporate responsibility experience will allow us to perform the duty of independent compliance auditor with fairness, integrity, ethics and efficiency.

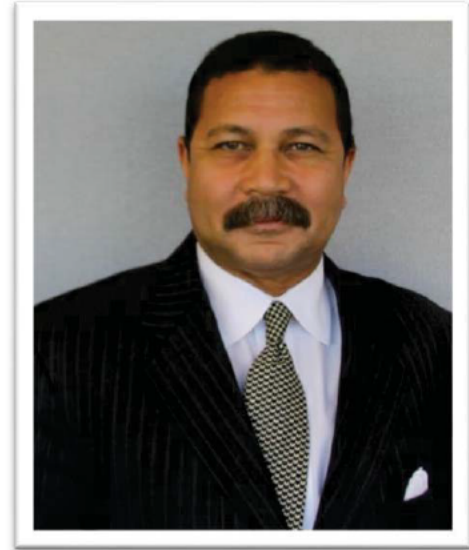
Page | 3

B. Personnel and C. Qualifications

Adonis E. Hoffman, Esq., Principal ICA

Page | 4

[Adonis Hoffman](#) is a recognized media, technology, marketing, advertising and public policy expert with over 30 years of high-level policy, international and communications experience. As a lawyer, business advisor and communications strategist, Hoffman has worked with CEOs, corporate boards, U.S. policymakers, regulatory agencies, foreign leaders, trade associations, institutional investors, and international organizations on a range of legal, regulatory, legislative and public policy issues. He recently completed service as Chief of Staff and Senior Legal Advisor at the Federal Communications Commission (FCC), working with Commissioners and senior staff on some of the most important communications policy matters of the day, including the Open Internet / Net Neutrality ruling; media ownership rules; broadcast and wireless spectrum; auctions; privacy enforcement; consumer protection, TCPA, and several billion dollar mergers in the media, broadband and internet sectors. He currently serves as Chairman & CEO of Business in the Public Interest and Adjunct Professor at Georgetown University, where he teaches courses on marketing, advertising and public policy. He is the author of [Doing Good: The New Rules of Corporate Responsibility, Conscience and Character](#).



Mr. Hoffman is an expert on the network marketing / direct sales industry, having been associated with two companies in that industry. He has [written](#) and [spoken](#) on regulatory developments affecting direct sales companies, and was [recognized as one of 500 VIPs](#) in the network marketing industry for his outstanding commentary and analysis. Relevant to this application, Mr. Hoffman is among the very few attorneys who have the combination of direct legal, industry, regulatory and academic experience to perform credibly as an Independent Compliance Auditor.

For 10 years, Hoffman served as senior vice president and counsel at the American Association of Advertising Agencies (the 4As), where he advised advertising and media companies on legislative, regulatory and legal matters, and represented the advertising industry before Congress, the FTC, FDA and federal courts. Hoffman was highly involved in the advertising and marketing industry's self-regulatory initiatives, including food marketing, advertising to children, and direct marketing reforms, where he had extensive interface with leadership of the Federal Trade Commission (FTC). Hoffman also was asked to lead the advertising industry's initiative and compliance regime on diversity and inclusion, following an investigation and consent decree by the New York City Human Rights Commission.

Mr. Hoffman served in the U.S. House of Representatives in senior legal and policy positions, including committee counsel and subcommittee staff director for the House Foreign Affairs Committee, and counselor to the chairman of the Congressional Black Caucus. In private law practice, he provided a wide range of strategic and government relations counsel to *Fortune* corporations, trade associations, embassies and foreign governments from Africa, Asia, Europe and the Middle East. He was resident at two of the country's leading think tanks—the *Carnegie Endowment for International Peace* and the *World Policy Institute*—where he focused on international law and global affairs, and organized international delegations of attorneys, judges, elected officials and journalists to monitor elections and constitutional reforms in developing countries. He previously worked with Capitol Exchange Corporation; the Hopkins & Sutter law firm; Gray & Company Public Communications, International, and Bank of America.

Hoffman serves as co-chair of the Nielsen External Advisory Council and was the founder of the *American Business Leadership Institute*. He serves on the First Amendment Advisory Council of *The Media Institute*, and served as a member of the National Advertising Review Board (NARB). Hoffman was elected to serve on the national board of the Council of Better Business Bureaus (2013), but deferred serving in that position for government service at the FCC.

In 2008, Hoffman was appointed [adjunct professor on the faculty of Georgetown University](#). He teaches graduate courses on *Marketing, Advertising and Technology Policy; Communications, Technology and Organizations*; and *Corporate Responsibility* in the Communication, Culture & Technology (CCT) program. His articles have been published in [The New York Times](#), [The Wall Street Journal](#), [The Washington Post](#), [The Washington Times](#), the *Los Angeles Times*, the *Chicago Tribune*, *Broadcasting & Cable*, *Christian Science Monitor* and *Foreign Policy*, and he has appeared on *NBC*, *FOX*, *CNN*, *MSNBC* and *NPR* as an expert commentator. He is the author of *Doing Good--the New Rules of Corporate Responsibility, Conscience and Character*, and is a Contributor to [The Hill](#) newspaper.

Mr. Hoffman received an A.B. from Princeton University and a J.D. from Georgetown University Law Center. He is admitted to practice law before the D.C. Court of Appeals; the Commonwealth of Pennsylvania; the U.S. District Court for the District of Columbia; the U.S. Court of International Trade and the U.S. Supreme Court.

Deborah A. Lathen, Esq., ICA

[Deborah Lathen](#) is a nationally recognized leader and expert on media, communications and corporate policy, with over 25 years of legal, business, regulatory and public policy experience. She was appointed by the Mayor of the District of Columbia, and confirmed by the D.C. City Council, to serve on the newly created [District of Columbia Board of Ethics and Accountability](#), serving on the Remuneration and Corporate Social Responsibility Committees. She served as a non-executive member of the Board of Directors of BT (British Telecom) from 2007 to 2010, and has advised a wide range of corporations, trade associations and consumer organizations on compliance and consumer protection matters. [She is known for tackling cutting edge, complex policy and legal issues](#) during a time of unprecedented communications industry consolidation and convergence. Lathen's subject matter expertise based on experience at Fortune 500 companies and national law firms include: Corporate Governance, Civil Litigation, Business Transactions and Mergers, Environmental Law, Privacy Issues, Internet and New Media issues, Property, Labor Law and Consumer Affairs. Practiced before the following regulatory agencies: Federal Communications Commission, National Highway Safety Transportation Authority, Department of Transportation, Food and Drug Administration, Federal Trade Commission, National Labor Relations Board, Department of Justice, Equal Employment Opportunity Commission, Consumer Protection and Safety Commission, and the Environmental Protection Agency.



Ms. Lathen currently provides strategic, regulatory advice and counsel to senior executives of Fortune 100 companies and others on a wide array of policy and regulatory matters. Clients have included, Verizon, AT&T, Scientific-Atlanta (now Cisco). She is a frequent [guest commentator](#) on regulatory policy for television, newspapers, industry and magazines and a distinguished speaker at domestic and international industry conferences and lecturer at leading universities.

Lathen was appointed to a Senior Executive position in the Clinton Administration, serving as Chief of the Cable Services Bureau, Federal Communications Commission in Washington, DC from 1998-2001. She led a bureau of 112 lawyers, accountants, engineers and economists in setting policies and crafting regulations covering the cable, satellite TV and other broadcast industries and headed the agency's efforts on broadband deployment, video programming and Internet policy. She had principal responsibility for review of some of the largest US telecom mergers to date: AOL/Time Warner, \$108 billion, AT&T Media One, \$58 billion and ATT/TCI \$50 billion.

In the private sector, Lathen was one of the top attorneys and business leaders in the Nissan Motor Corporation, from 1990 – 1998 in Carson, California. She served as Director, National Consumer Affairs (1994-1998); Managing Counsel (1990-1994). Highlights of her career

include: ♦ Served as chief counsel and negotiator for multibillion-dollar international joint development project between Nissan Motor Limited Company, Japan and the Ford Motor Company, for the Nissan Quest and the Lincoln Mercury Villager. ♦ Conceptualized the legal structure and incorporated Nissan's reinsurance and captive insurance companies in Hawaii, California, Nevada and Arizona. ♦ Implemented changes to Nissan's National Consumer Affairs Department ("NCAD") that improved customer service levels by 80%. ♦ Coordinated Nissan's role in the first voluntary repurchase program in the history of the automotive industry involving 30,000 vehicles.

Lathen previously worked as Senior Counsel at TRW in Orange California from 1988-1990, providing counsel multimillion-dollar business agreements. She managed outside counsel for eight business units for the Information Systems Group, provided counsel on privacy and consumer laws, managed the acquisition of real estate loan business and assisted in divestiture of major business unit. Previously, Lathen served as Litigation Attorney for The Quaker Oats Company in Chicago, Illinois (1982-1988), where she managed 50 percent of litigation against Quaker Company and its subsidiaries, with primary responsibility for Fisher-Price division. She provided counsel and support on FDA regulations and the Robinson-Patman Act, and received the Chairman's Special Achievement Award.

In private law practice, Ms. Lathen was an Associate Attorney at Keck, Mahin & Cate, in Chicago, where she arbitrated National Labor Relations Board (NLRB) and collective bargaining agreement disputes. Earlier at Foley & Lardner, in Milwaukee, Wisconsin she arbitrated labor, collective bargaining agreements and wage and hour disputes.

Lathen is a Member Board of Directors of Minorities in Media and Telecommunications, former member of Rails to Trails Conservancy, Safe Harbor Women's Shelter and the Nissan Foundation. She was [selected as a History Maker](#) for inclusion in the Smithsonian archival on prominent African-Americans, Senior Government Executive Service Award, Los Angeles Legal Aid Volunteer Award, and Award from the former Los Angeles Mayor Tom Bradley for community service.

Ms. Lathen earned a Juris Doctorate (J.D.) from Harvard Law School, and an A.B., *magna cum laude*, in Government, from Cornell University. She is Admitted to practice before courts of Wisconsin (1978), Illinois (1981) and California (1990).

Thomas K. Tessmer, Esq., Compliance Attorney

Tom Tessmer is an experienced compliance and litigation attorney, who has worked on complex litigation and class action matters on behalf of major corporations. His subject matter expertise includes antitrust, intellectual property and privacy litigation. He has conducted large-scale electronic and paper document review, focusing on responsiveness, substantive legal issues, and work product/attorney-client privilege. His second level review experience includes the following areas: Antitrust Litigation, DOJ/FTC Second Request, Patent Litigation, Pharmaceutical Litigation, Federal Regulatory Investigations (FTC, FDA), Foreign Corrupt Practices Act, Paragraph IV damages litigation, False Claims Act and Patent Infringement.

Page | 8

Tessmer served as an Associate Attorney at McCabe, Weisberg & Conway, LLC, where he represented multiple national banks and handled all aspects of cases regarding debtor/creditor matters in a fast paced work environment. He prepared, filed and argued Motions; Objections; Responses and Court Orders before the US Bankruptcy Court Eastern District Virginia as well as Virginia State Court. He also prepared legal memoranda; conducted legal research; analyzed banking accountings, communicated daily with clients and attorneys, Reviewed pre and post foreclosure documents and accountings as an acting Trustee, reviewed title abstracts, and prepared Deed transfer documents.

Previously, Mr. Tessmer served as a Law Clerk for U.S. Trustee, John W. Hargrave in New Jersey. In that role, he researched multiple areas of law including, but not limited to, Bankruptcy, Real Estate, Commercial Transactions, Contracts, Secured Transactions, Government Regulation, Eminent Domain, Tax, Corporate Formation, Creditor's Rights. He drafted pleadings, interrogatories, summary judgment motions, subpoenas, certifications, formal and informal legal briefs, presentations, *lis pendens*, legal memoranda, and various other required motions. He also handled individual cases under supervision in which the duties included case timeline management, correspondence, document review, discovery management, production of evidence, billing, file management, bankruptcy petition preparation, and client interviews. He is proficient with litigation and document management systems, technology and hardware, including: document review software including Relativity, Summation, Concordance, Axcelerate, EED, Applied Discovery, Ringtail and Kroll Ontrack Inview.

Tessmer's litigation and review experience includes work with the following on behalf of the following corporations: AT&T, Bank United, Disney, Exelon, Intel, NYSE Euronext, Teva Pharmaceuticals, and others in the context of DOJ, FCC and FTC litigation.

Tessmer received a J.D. with Honors, from Widener University School of Law, and a B.A. from The Catholic University of America. He is a member of the Virginia State Bar, the Bankruptcy Bar of the Eastern District of Virginia, and the District of Columbia Bar.

Anston Williams, Esq., Compliance Attorney

Anston Williams is an experienced litigation attorney with over 15 years of legal, business and policy experience. He is a former Maryland Assistant State's Attorney with demonstrated litigation management, project management and complex procedural expertise.

Page | 9

Williams has worked with the U.S. Department of Energy, managing the review of incoming FOIA /PA requests, including: document review, preparation and drafting; responses to requests pursuant to agency protocols and detailed follow up and case notes on all assigned cases.

As an Assistant State's Attorney in the Office of the States Attorney in Prince Georges County, Maryland, Mr. Williams handled a caseload of approximately 70- 80 cases daily. He attended pre-trial conferences; litigated bench and jury trials; drafted pleadings, motions, and other legal memoranda; engaged in motions practice; conducted *voir dire* and jury selection; conducted investigations, and prepared evidence and witnesses, including experts, for trial, and negotiated plea agreements and settlements

As an attorney in private practice, Mr. Williams has provided general litigation and provided consulting services to small firms and sole practitioners on areas related to business operations, property investments, foreclosures, HUD homes, tax liens, and tax sales. He provided attorney services and project management to small law firms, contract and government agencies on various matters involving mergers & acquisitions, antitrust, discovery requests, investigations, complex litigation, Title VII, EEO, ADA and FOIA. Williams has significant experience using various e-discovery platforms including Relativity, Concordance, KrollOntrack, Ringtail, Excelerate, Documatrix, and Leverage. Williams also has significant experience in Mediation and Alternative Dispute Resolution (ADR). He has convened mediation and settlement conferences, settled cases, and resolved disputes as a Mediator and Settlement Conference Practitioner. Mediated a wide variety of disputes, involving criminal, civil, family law, landlord-tenant, contracts and EEO matters as an ADR Volunteer for Community Mediation, Prince George's County. Positions required skill in neutral case evaluation, fact-finding, negotiation and conciliation.

Williams worked as an Attorney and Senior Investigator / ADR Specialist at the Human Relations Commission in Largo, Maryland. He directed daily administrative and programmatic operations for the ADR/Investigative Division and served as an Attorney Advisor on employment/housing, personnel and EEO issues. Williams mediated sensitive, high-level disputes between county offices & officials on complex cases; analyzed, researched & interpreted local, state and federal employment laws to ensure that the Commission was in compliance with federal standards; conducted FOIA requests for the agency; drafted the Human Relations Commission's "Substantially Equivalent" doctrine to meet Federal EEO Guidelines; investigated and mediated employee complaints of discrimination and harassment under Title VII; prepared recommendations concerning investigations, resolutions, mediation and conciliation of cases; prepared Letters of Determination, and drafted determinations of findings, settlements and conciliation agreements.

Herbalife ICA Application
BUSINESS IN THE PUBLIC INTEREST

Mr. Williams received a J.D. from Tulane Law School and a B.A. from Syracuse University. He is admitted to the Maryland Bar and the District of Columbia Bar.

D. Prior Experience

Each member of the team brings years of relevant experience in information gathering and analysis; report writing; and data assessment.

E. References

Regarding Adonis Hoffman, please refer to the following:

- C. Lee Peeler, Esq., President and CEO of the Advertising Self-Regulatory Council (ASRC) and Executive Vice President, National Advertising, Council of Better Business Bureaus (CBBB).
- Mary K. Engle, Esq., Associate Director, Division of Advertising Practices, Federal Trade Commission
- Honorable Mignon L. Clyburn, Commissioner, Federal Communications Commission
- Gene Kimmelman, Esq. President & CEO, Public Knowledge

References for other members will be provided upon further request.

F. Experience

Please see section B above

G. Proposed Activities

Please see section A above

H. Estimated Costs

