

# The Rebirth Of Business Opportunities

How regulations and smarter consumers have changed the face of opportunity offering

Andrew A. Caffey | June 1, 1996

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Buying a business opportunity is an exciting proposition. A smart, prepackaged start-up kit for a homebased business is just the financial boost a lot of Americans are looking for these days. Enormous corporate layoffs have thrown thousands of people into a tight job market, and sooner or later many of them will look for ways they can do something they've always wanted to try: own and run their own businesses.

The term "business opportunity" refers to a variety of packaged business programs--generally less expensive than full-blown retail franchise businesses--that enable investors to begin their own businesses. For many, a business opportunity is the most available and attractive entry gate to the pleasures and challenges of entrepreneurship.

The business opportunity community is poised for growth in 1996. Sellers who understand this market--and are clever enough to manage the legal difficulties associated with selling business opportunities--will ride an unprecedented wave of small-business development.

Both buyers and sellers face challenges in the business opportunity marketplace. If you're considering buying a business opportunity, be sure to find a program that fits your personal needs, evaluate the opportunity with sufficient care and a working knowledge about business opportunity investing, and negotiate your purchase in a fashion that will protect your financial investment.

Business opportunity sellers, on the other hand, must create a program that will meet an investment need in the marketplace, invest in system support so that customers have somewhere to turn when they apply the practical elements of the business, and comply with the confusing patchwork of state and federal business opportunity laws.

The future of business opportunities--and the shape of smaller, homebased business development in this economy--will be largely determined by the way in which buyers and sellers handle these challenges.

## Cracking the Buyers Dilemma

As a business opportunity buyer, you can select from among approximately 2,000 investment opportunities. Clearly, the sheer number of programs available presents your first challenge. The aisles of most business opportunity and franchise trade expos are teeming with investors who can find opportunities dealing with everything from rebuilding transmissions to distributing candy, from direct mail promotion to making money on the Internet.

*Investor Tip: Think through your needs, dreams, strengths and weaknesses before you consider buying a business opportunity. Note the characteristics of your ideal business venture. If, for instance, you have a passion for computers, or if fishing is your life, look for programs dealing with these specific areas of interest. The most successful business owners focus on doing whatever it is they do best; remember, there is no person happier than one who earns a living doing something he or she loves.*

Next, review your financial resources. How much money can you afford to invest in this business? How much do you have to make to feed the dog? What other sources of funds or reserves do you have? Be realistic in this assessment and be sure you have sufficient reserves to meet unexpected delays or disappointing sales.

Say you're presented with an interesting program for a modest sum. The sales representative is urging you to buy while there are still territories available in your town, and you can see clearly where this opportunity might take you and your wallet. Now what?

First, check with the company to see if it has a business opportunity disclosure statement to give you. This point is discussed in more detail below, but many companies are required to deliver a disclosure document to their prospective buyers within a certain amount of time--usually ten business days--before the sale takes place. If you receive one of these

invaluable documents, study it with care and jot down any questions you have for future reference.

*Investor Tip: There is simply no shortcut for the evaluation stage for a business opportunity buyer. It involves homework, leg work, phone work and pencil work. The more research you conduct before buying, the more prepared you'll be in your business.*

Many buyers will not receive a disclosure statement, though, and will be left to research the investment the old- fashioned way. First, request key investment facts from the company. For instance, make sure you have on your checklist the following items of information: the seller's state of incorporation; the names of its officers; its financial statements; a copy of every contract/invoice/application form (preferably before you sign them); copies of any earnings representations and their substantiating data; and a complete list of buyers in your area. Other information may be more difficult to collect but is equally important: litigation history or state/federal actions against the company; bankruptcy history; sales made in the state in the past year; and the percentage of buyers who are still in the business a year after their purchases.

The best unbiased source of firsthand information, of course, is another investor who has had experience with the program. Ask the prospective seller for a complete list of names (be wary if you get just a couple names-- request between five and ten), and then contact some of these people. If they have a retail operation, plan to visit them.

*Investor Tip: Talking with other business owners will help you gain a fuller sense of the company's practical operations. If you have only three questions to ask another owner, be sure they include the following:*

- *Did the investment live up to your expectations?*
- *What's the market like for this product line/service?*
- *What were your gross and net sales last year?*

Next, check out the usual sources of bad news: the Better Business Bureau (BBB) and your state's consumer law enforcement agency (usually part of the Attorney General's Office). They will often tell you if there are complaints on file or if action has been taken by the state against any of the business opportunities you are researching. If you get bad news, check

with the seller; sometimes reports are simply wrong or overstated. What is the company's side of the story?

If you've researched the business opportunity and have found it to be credible and affordable, how do you handle the next step: payment?

*Investor Tip: Negotiate! Don't think that you're buying groceries at the store here; the price, along with just about all other terms of the deal, is negotiable. Negotiation is a way of life in business and is expected. If you've prepared yourself to go into business, let this be your first business negotiation.*

Your goal in haggling is to protect your investment. If the program requires you to pay every dollar up front for inventory or equipment to be delivered at a later date (to "preserve your territory" or for some other reason), negotiate your terms. Offer to pay a small portion up front, and establish an installment plan for the balance that keeps pace with the delivery of promised product or services. Bargain away as many add-on expenses (freight charges, handling charges, restocking fees, activation fees and the like) as you can. Guard your dollars as the precious operating capital they are.

*Investor Tip: Throughout the research and negotiation process, keep up your antennae for even a hint of deceit, a quick con, or other problems. If the offer sounds too good to be true, if the representative's selling style is just too aggressive for your taste, or if the deal just doesn't feel right in your gut, be prepared to move on. Business opportunity investing has its trap doors and must always be handled as a high-risk investment. Remember to pay attention to your instincts.*

According to many state officials, business opportunity fraud is a persistent problem. "It is not a matter of how sophisticated the buyer is," says Dale E. Cantone, assistant attorney general of Maryland. "We have seen very well-educated, savvy people get hurt by slick sales techniques. It's the hard sell that pulls people in, and the techniques are classic. We see increasing numbers of companies using 800 numbers, classified ads and familiar high-pressure telemarketing routines."

Suggests Cantone, "Buyers should carefully check whatever they are told

and be skeptical about inflated claims of business potential. We can prosecute these scams, but even where we are successful, it is rare that we recover lost investments."

## Meeting the Sellers Challenge

The first challenge faced by business opportunity sellers is internal. Creating a program that meets a need in the market and helps people get into a successful business activity takes vision and dedication. All too often the vision is the sizzle in the sale, but the systems just are not there to back it up.

Debra M. Bollinger, director of the South Dakota division of securities, this year's chair of the North American Securities Administration Association's (NASAA) Franchise and Business Opportunity Committee, and a national leader in the business opportunity enforcement arena, confirms the point: "We see a lot of business opportunities in vending machine placements and other businesses that are literally 'fly by night' operations. They may be built on a good idea, but the program sellers just can't make it work."

Not only must the systems be developed, but sophisticated sellers must also consider a customer support program to provide technical advice and start-up business counseling. It's a hallmark of the business opportunity tradition that the buyer receives his package, gets an enthusiastic slap on the back and never hears from the seller again. Now, however, more sellers are recognizing the importance of keeping the buyer-seller relationship healthy. In this sense, sellers are no different from other marketers in the '90s: They've discovered the value of customer service and, along with it, the importance of standing squarely behind their products. Customer service has become an operational cornerstone for successful businesses in the '90s; the companies that cultivate this relationship with their customers will lead the expansion trends in the balance of the decade.

## The Compliance Challenge

By far the greatest external challenge for the business opportunity seller is complying with stringent state and federal regulations designed to protect consumers and hamper fraudulent business opportunity sales.

Business opportunities (also known as "Seller Assisted Marketing Plans" in certain jurisdictions), are regulated by these laws in 25 states. In addition, the sale of business opportunities is regulated nationally by a Trade Regulation Rule of the Federal Trade Commission (FTC).

The state statutes generally require that the seller register offerings with state officials before selling in that state and provide to the purchaser a detailed disclosure document prior to completing a sale. Some states go further, requiring the seller to establish a surety bond; others require the use of an escrow account to handle money accepted prior to the delivery of goods or services.

The FTC requires disclosure only and prescribes in detail the 23 sections of the disclosure document to be delivered to the prospective buyer. Under FTC Rule (and most state laws) disclosure must be presented to the buyer at least ten business days prior to the seller receiving money or a binding contract being signed by the buyer.

Companies conducting a national sales program have the task of complying with these lists of regulations. Largely because the laws are inconsistent and the cost of national compliance is daunting, many companies bypass the fundamental disclosure and registration requirements, hoping not to come up on the enforcement radar screen.

## Project Telesweep

The community of business opportunity sellers has seen a wave of government enforcement actions in the past few years, culminating in the 1995 "Operation Telesweep." In the summer of 1995, the staff of the FTC and as many as 20 state enforcement agencies launched a carefully choreographed series of more than 100 lawsuits against business opportunity sellers. The lawsuits alleged violations of various federal and state laws, principally state consumer protection and business opportunity laws. Companies that were not in compliance with federal and state business opportunity laws were carefully targeted.

A Project Telesweep press release, circa summer 1995, read as follows:

"State and federal officials estimate that well over \$100 million a year is being lost to these swindles promising quick, easy money in vending

machines, amusement games, pay telephones, and display racks. . . .Our goal today in Project Telesweep is to try to put a stop to the swindlers who are literally looting the American Dream."

But despite the spotted reputations and shady practices of these other business opportunity sellers, legitimate sellers will survive the government-forced industry shakeout. "I think there is a place in the market for legitimate business opportunities," says Washington State Securities Division Administrator Deborah Bortner. "I hope so, because there is a greater need these days among those being laid off from large corporations. More and more people are reaching out, and unfortunately that also means there are more victims of illegitimate investment programs.

"We have seen increased numbers of companies registering under our state's business opportunity law, largely because we monitor business opportunity trade shows. We also work closely with state newspapers. We have a novel feature under our law [which says] that companies who register are issued a registration number that must be presented to newspapers when they advertise. No number, no advertisement--and they are referred to us for registration information."

## The Path to the Future

The future of business opportunities is now being defined by the buying habits and the increasing demands of better informed investors. Investors are generally more alert to the potential traps of buying a prepackaged business program and tend to demand more for their investment.

The future is also being determined by the ability--and willingness--of sellers to invest in buyer-seller relationships and conduct their businesses in compliance with applicable laws. The government has demanded a higher level of compliance than we have previously seen in the marketplace, and in the process it has created an unexpected and optimistic fork in the road to the future of business opportunities.

## Information for Sellers

Early moves toward improved information flow have been taken with the appearance of the Business Opportunity Bulletin, a business opportunity

newsletter published by American Business Opportunity Institute (ABOI) in Washington, DC. Geared toward the interests of business opportunity sellers, the publication provides its readers with a medium to chart legal and legislative developments that directly affect their businesses.

## For More Information . . .

The Federal Trade Commission (FTC) provides a package of information about the FTC Franchise and Business Opportunity Rule, free of charge. Write to: Public Reference Branch, FTC, Washington, DC 20580, or call (202) 326-3128.

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