GOLDEN PULLIN

The only guide to business opportunities you'll ever need

BY ANDREW A. CAFFEY

tion of companies that comprise the business opportunities industry has a remarkable appeal to entrepreneurs. By and large, business opportunities are innovative and endlessly fascinating. Where else can you find so many different types of companies offering for sale nothing less than the American dream itself?

But whether you're planning to buy or sell a business opportunity, you should know that the business of business opportunities has its own rules, traps and rewards. As with any business, you're bound to make a mistake if you fail to study the advantages and disadvantages, as well as the various regulations, of business opportunities before plunging in.

ties industry has a remarkable SOMETHING IN COMMON

The most successful business opportunity sellers have some common characteristics... and common battle scars. Their programs have broad appeal to the marketplace, they can be operated part time or full time, and often, they can be operated from home.

Above all, successful business opportunities must be affordable. By and large, they are structured to appeal to individual investors; many are geared to be purchased with a credit card, although several packages on the market will cost you as much as \$20,000, maybe more.

In addition, the best business opportunities have a distinct marketing "hook." They combine an unusual product, program, service or idea with a straightforward sales plan. They are built on concepts that appeal to buyers uninitiated in the business world: They are easily understood, the training is not too sophisticated, and the business can be clearly conveyed in prepackaged written or audiovisual media.

Most business opportunities are sold on the fundamental premise that "anyone can do this" and make money. Sales plans are generally designed around and assume an aggressive level of cold calling and frequently rely on selling via contacts with friends and family members. These businesses have a surface appeal that's irresistible to investors; their sales presentations crackle with moneymaking potential.

1 OPERATOR



When investigating a mul-"illegal. Legitimate MLM companies

♦ Since success ultimately depends on the product look for a high- "vestment required" and determine quality product or service for which - whether you think it's reasonable. there is a demand in the marketplace.

◆Pyramid schemes, which require: participants to make an investment Contact state authorities to see or purchase in return for the right to if the business is legitimate or if comrecruit others for economic gain, are applaints have been filed. Check out.

tilevel marketing (MLM) op- must be genuine retail organizations portunity consider the follow—"that market products or services to ing.

Often, there is no upfront investment, except for possibly a sales kit or demo materials sold at cost.

YMAL S'TAHT "SEU NIOL OT THAY UO Chen's constant query to potential multilevel marketers. Chen is always on the lookout for hot prospects to become her customers-or to join her as a distributor for National Telephone & Communications. She's earned a reputation for persuasiveness by pitching nearly everyone she meets on the longdistance services the company offers.

"I looked at the marketing plan and saw that [the business wasn't] that difficult," says Chen.. "It's simple, everybody : uses the telephone, and there's no inventory or employees."

Chen, who also owns three Southern California flower shops, bought into the multilevel marketing opportunity part time in August 1994. The 40-year-old entrepreneur clues in friends, family and friends of friends on the service's benefits. Or, if someone wants to make a little extramoney, Chen shuttles them down to the nearby Irvine, California, headquarters for a tour and informational meeting:

Her persistence has certainly paid off: Through her part-time homebased efforts, Chen pulls in an average of \$2,000 to \$3,000 a week. In fact; she recently put one of her flower shops up for sale to? make way for a full-time pursuit

a session of the session of coins Good connections: Jany Chen draws on a vast network of acquaintances to make her MLM business work.

the company's business records, which should be on file with the state and county in which it operates.

and the second s

♦Investigate what a particular business proposition entails and how long the company has been in existence.

♦Make sure the company has evidence to back earnings claims. 5000

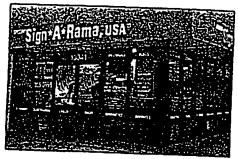
Check for a buyback policy. Legitimate companies buy back inventory and sales kits from distributors who want to leave the program (within a reasonable time)....-Heather Page

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portunity with Hartville, Ohio-based

HILE TAKING A TASTY TRIP DOWN the aisle of a candy trade show in September 1993, it wasn't the sweet smell of treats or the sight of chocolate-dipped strawberries that caught Rick Homer's attention. It was a dull, silver-colored machine that stamps out 2,000 customimprinted chocolate coins per hour. was intrigued with the machine," says the 30-year-old entrepreneur, "and once I saw it in action, it wasn't long before I realized ... he's looking for. it was something I could probably do well with...:

What Homer was looking for was a way to create personalized prod ucts to complement his candy business, Heart's Desire Chocolate Inc. He found it through a licensing op a square foot facility in May.

When investigating a licensing opportunity consider the following: ♦ If you're purchasing equip ment, ask other licensees if it's reliable and if it does what it's supposed to do-consistently. Consider checking with an accountant to see when you'll earn back your initial investment and begin to clear a profit. Ask for a copy of the license agreement, and consult an attorney to understand the rights being licensed.

♦ If trademarks, copyrights,

cense, make sure you understand them. Are you authorized to sell the product using the company name, or do you have to come up with your own name? Will marketing materials be supplied, or will you need to create them?

♦ Before you buy, make sure there's a market for your business. Gather brochures and test-market the product in local businesses. Ask them what they would pay for the product or service. 🔆

Chocolate Street USA. Homer pur-

chased one of their coin machines,

as well as the supplies and packag-

ing; companies seeking special pro-

motions or gifts simply provide him

with artwork ideas, and Homer cre-

ates a design and imprints the

chocolate. And when he needs a

special mold-like a wrench shape

for his client Snap-On Tools-Choco-

late Street USA provides whatever

This second business, which he

dubbed Chocolate Street Canada,

has added a new dimension to his

Kenogami, Ontario-based business,

Homer says; in fact, increased sales

allowed him to expand into a 4,000-

Striking gold: A personalized coin patents or other proprietary machine license is just what kick rights are granted with the limachine license is just what Rick?

In fact, business opportunity companies have a reputation for selling the sizzle and nothing but the sizzle-and that is where the law steps in. The most prominent similarity among business opportunity sellers is the array of state and federal laws that complicate their business lives.

■ WHAT IS A BUSINESS OPPORTUNITY?

The legal definition of a business opportunity, generally speak-

ing, is the sale of goods and/or services for at least \$500 (less in some states) that enables the purchaser to begin a business, and in which the seller makes one of several representations. These can include a guarantee of profitability, a promise of assistance, an offer to buy back any unsold products assembled or grown, and, last but not least, the representation that there is a market for the products or services to be sold by the purchaser. (Ask yourself this question: If you

sell a product at wholesale for resale by the purchaser, is it even possible to avoid representing that there is a resale market for the product? Probably not. Gotcha!)

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Don't believe too much of the talk about a red-tape revolution emanating from the newly elected Congress. Business opportunities are heavily regulated, Newt not-

withstanding, and the changes in Congress are not likely to directly affect the regulation of business opportunity sales in the foreseeable future. The sale of a business opportunity (as that concept is variously defined) is regulated by the Federal Trade Commission (FTC) and 24 states' laws.

In 1979, the FTC adopted an um-

OUG SNELSON DOESN'T THINK OF HIMSELF AS A MAN WHO TAKES HUGE risks...even though the Montville, New Jersey, entrepreneur sunk more than \$50,000 into 20 air-popped popcorn vending machines.

"I purchased so many machines because I felt that if [the idea] worked well, I'd be in a terrific situation to grow rather rapidly in a few years," recalls Snelson. "I wanted to be really committed to it."

And while the move certainly made for jangled nerves, Snelson felt fairly confident about his choice because of what it wasn't-a franchise



In the bag: Doug

Snelson found a

with a heavy time commitment. What the health-care publishing and communications executive wanted was a part-time, flexible venture that also appealed to his healthconscious bent. One franchise show and several company interviews later, Snelson; 44, finally decided Hollywood Pop's lowcalorie, fat-free popcom hit the spot...

After taking out a loan against the equity in his home, Snelson purchased the machines from the Boca Raton, Florida-based company in July 1994. He secured locations by showing photographs of the machines to New Jersey business owners on evenings and week: ends. Five months later, he'd, placed all the machines in sports bars, car washes and fitness centers within: 15 miles of his home. Maintenance is minimal, requiring between three and 15 minutes permachine each week ready-made business to fill them with fresh popcom and cups. And if as a popcorn vendor: there's a problem with the machine, he consults an instruction manual or calls the company's technical assistance

centers from the control of the cont "I'm not a technical person," says Snelson, "but I was able to learn what needed to be done through my own experience and by making my

own mistakes." While the machines paid for the interest on his loan within six months of installation-and several locations are asking for additional kinds of products-Snelson cautions entrepreneurs searching for easy money: "It takes hard work and a positive attitude to find that gold mine."

When investigating a coin-operated business opportunity, consider the following:

♦ Finding a location is the most difficult part of the vending machine business. Be wary if a seller says the machines "find their own locations."

Some companies require you to purchase a certain number of machines; if you're not experienced, don't make a large investment.

♦To protect yourself, defer payment or put payment in escrow until the machines are delivered, particularly if you're unfamiliar with the company. ♦Be sure the market isn't saturated with the product. Visit locations and potential businesses to gauge demand before you buy.

∴ ♦ If you don't receive a disclosure document, find out why:

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1-800-825-1525 or 216-741-0400. 4705 Van Epps Rd., Cleveland, OH 44131 brella regulation that applies to business opportunity ventures nationwide. It requires a business opportunity seller to prepare and deliver to prospective purchasers a disclosure document describing the highlights of the offer being made and the background of the selling company. But while the FTC Franchise and Business Opportunity Rule requires pre-sale disclosure, it does not demand that the seller register the offering with the FTC or file any papers with the government. Merely by delivering a disclosure statement in a timely manner, a seller meets the requirements of federal law.

The FTC does not pre-empt state law in this area, unless the state provides less protection for the buyer. In

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HE DAYS OF NAVIGATING THROUGH of faceless employees are distant memories for Frank Yantek. A former financial executive with Federated . Michigan, for inclusion in one of the Department Stores, Yantek, 38, -: shrugged off the corporate cloak to become a Q-Pon Book dealer in April 11 books in the mail. 1994. Today, Yantek runs his direct- this no accident that The Q-Pon mail business from a home office equipped with the bare necessities: personal computer, telephone and fax machine. He has no employees-and local businesses, checked references he plans to keep it that way.

That leaves Yantek on his own to round up: Cincinnati business owners interested in the co-op advertising services he provides with The Q-Pon Book, He discusses any special offers the advertiser wants to include in the ad prior to drawing up a preliminary layout. Then, the company's graphic design department pulls the ad to-



No experience required: Thanks to support from his company's headquarters, Frank Yantek's direct-mail venture took off.

gether and faxes the proof sheet to stuffy boardrooms and masses. Yantek; once final changes have been made, he sends the final proof back to headquarters in Breckenridge, eight books he publishes annually. A local delivery service then drops the

> Book suits Yantek to a T. He considered six different direct-mail opportunities, conducted market research with and completed the financial projec-

tions before deciding. Next. he purchased the territory rights to his area-and hasn't had any regrets since.

"Being in the small-business community is a lot of fun," says Yantek, who runs : his business full time. "It's given me the opportunity to make money and work with other small businesses. which is what I enjoy the most."

When investigating any program in which you purchase products for resale, consider the following:

♦Distributorships/dealerships aren't likely to be registered as a business opportunity or have a disclosure document. Investigate them by requesting financial statements, visiting the headquarters and talking to other dealers.

♦Find out if the price of any inventory you're purchasing is indeed a wholesale price. Be wary of any initial level of inventory you're required to purchase that seems higher than reasonable.

♦ Make sure there's an eager, unsaturated market for any product you plan to distribute; you don't want to be stuck with excess inventory.

If possible, test the product by purchasing a small amount of inventory. Or, ask potential purchasers if they'd be interested in the type of product you're considering selling.

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OW DO YOU KNOW WHETHER YOUR COMPANY CONCEPT IS CUT OUT TO BE A business opportunity? For Brenda Scharlow, owner of Tumblebus Inc., the answer was a little market research . . . and a lot of gut instinct.

When the gymnastics teacher began Tumblebus Inc. in 1988, accolades from elated parents immediately started pouring in. Her bus, equipped with balance beams, trampolines and more, visits day-care centers to teach children gymnastics. But while she was content with her business, Scharlow knew that with the growing number of working parents-plus the interest she received from gymnasium owners when speaking at U.S. Gymnastics Association conferences-the time was ripe for expansion.

"I decided a business opportunity could be successful because I knew children in day care weren't getting enough activity," says Scharlow.

Although she initially looked into franchising, this mother of eight instead opted to go the business opportunity route so she wouldn't have to invest a lot of time in providing ongoing support. Less than a year after starting her mobile business, the 45-year-old entrepreneur had created business opportunity marketing materials, set the pricing, and begun passing out brochures at seminars and speaking engagements.

Interest was so high that Scharlow had to hire a full-time employee to retrofit the buses. Since then, she has sold 98 fully equipped Tumblebuses. and in 1993, she also began selling Li'l Red Water Wagons, firetrucks equipped with swimming pools for children to swim in during the hot summer months.

Last year, the Clarksville, Indiana, entrepreneur opened Tumblebus : Station, an 18,000-square-foot kids' center featuring playground equipment, gymnastics and aerobics classes, and an indoor batting cage. Plans to offer the station as a business opportunity are in the works.

While growth has been fairly quick, Scharlow says it's all progressed very naturally. "Setting up (the business opportunity) was quite easy. If you really believe in something, then you can sell it." -H.P.



Creating opportunity: Brenda Scharlow made a good business even better by selling her idea as a business opportunity.

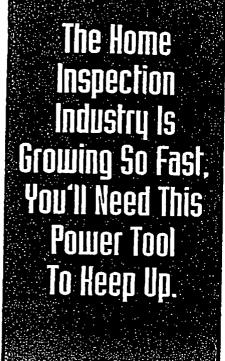
that case, the federal rule requires the disclosure statement be delivered at the first personal meeting for discussing the sale or at least 10 business days before the sale is made-whichever event comes first.

Meeting state law requirements is another kettle of fish altogether. States require the same type of presale disclosure, and most of them impose the additional requirement that the seller register the offering with state authorities before any selling takes place within state borders. (See "Rules to Sell By" on page 127 for a breakdown of state rules.) In addition, individual states may impose other requirements. California, for example, requires the lion's share of the purchase price be put into an escrow account until all

goods or services are delivered, and most states require a substantial bond be placed on file as a condition of registration. Louisiana requires sellers to file and maintain with the Department of Justice a surery bond of \$50,000—no exceptions. That means you must put up \$50,000 in cash to sell business opportunities in that state. Talk about barriers to market entry!

■ THE HEAT IS ON

There is no love lost between regulators and sizzle-selling business opportunity companies. These two groups get along like oil and water. Regulators operate on the assumption that virtually any business opportunity program is fraudulent and effectively dare you to prove other-





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portunity Sales Act..."), and the outcome depends on the seller's resourcefulness in negotiating a resolution to the problem. Unsuccessful negotiation can result in civil fines, private lawsuits, cease-and-desist orders barring your business from operating in the state and even criminal sanctions.

Do we have your attention yet? Becoming a business opportunity seller has a distinctly dark and difficult side. The sizzling quality of the marketing pitch will continue to draw the attention of state enforcement authorities. There are no self-regulating industry groups working to take the sting out of the regulations, and, unfortunately, the states have not let up trying to eradicate the species. There is no escape from the potential liability.

There are, however, two safe harbors from the threat of regulators: full compliance with state business opportunity regulations or becoming a business format franchise.

■ COMPLIANCE CONSIDERATIONS

What you need to do to comply with business opportunity laws depends on each state's definition. How a business opportunity (or a "Seller Assisted Marketing Plan," as it is called in some states) is defined differs from state to state. To complicate matters further, the 24 state definitions are all different from the FTC's business opportunity definition; state definitions tend to include far more types of businesses than the FTC definition.

Once you have determined which laws apply to your offering, you must comply with them. And it's important you understand the first rule of compliance because it is widely misunderstood by business owners contemplating compliance with the 24 business opportunity states: It is not enough to comply only with the law in your home state. Too often, business opportunity sellers look no further than a convenient and inexpensive answer and wrongly conclude that if they register in their home state, they can go nationwide and sell their business opportunities with no further state regulatory concern or effort.

Before you engage in sales activity in any state, you must comply with that state's laws. So, even if you are a California company and are registered under the California Seller Assisted Marketing Plan Act, when you go to Utah, Washington, or any other states with business opportunity laws, you must register in those states as well.

Ironically—and tragically, for some promising businesses—state registration is a cost and bother that most sellers simply ignore. At least until the state attorney general's letter arrives.

■ BUSINESS OPPORTUNITY OR FRANCHISE?

The most familiar form in which a business venture package is sold is as a business format franchise. McDonald's, Burger King, Subway, Holiday Inn, Merry Maids and scores of others have taught the public about franchising. Franchising means a business plan is licensed, is identified by a common trademark (or goods bearing a common trademark may be distributed), and includes ongoing assistance from the franchisor.

How is a business opportunity different from a franchise? In business terms, business opportunities lack the continuing assistance, control and uniformity of operations that characterize franchise relationships. Business opportunities tend to be one-time sales of selfcontained business start-up packages; the purchasers do not participate in a licensed trademark and do not enjoy the marketing identity of a big company. Business opportunities also tend to be less expensive; initial fees are lower, and ongoing royalties are nonexistent.

Legally, however, the concepts are less distinct and do not neatly line up for convenient comparison. It is fair to say most companies selling business concepts that flunk the definition of a franchise are likely to fall under the comparatively broad definition of a business opportunity.

The presence of a trademark in the program is a frequent red flag identifying a franchise relationship. So is a separately stated fee for the within the first year of operation."

State law addresses this topic in different ways, but most business opportunity statutes demand that the seller report in the disclosure document the percentage of buyers of the package who have met or exceeded the claimed performance level and provide substantiation for those figures.

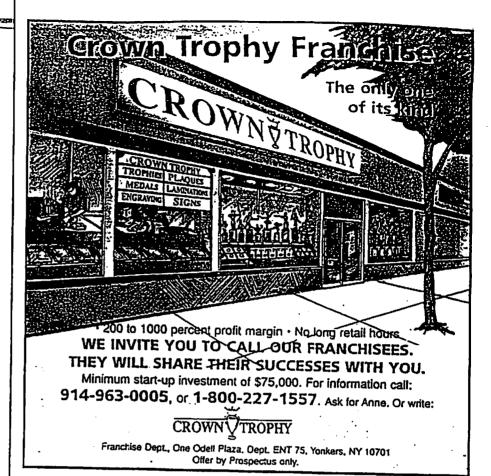
A cost-benefit analysis of launching a business opportunity includes the cost of either compliance with business opportunity regulation or the likelihood of government investigation and enforcement action against you. While those risks may have been acceptably low in the past, the increased levels of enforcement suggest the balance has begun to shift, and the decisions made by—and the survival of—hundreds of companies will be affected.

Andrew A. Caffey is a lawyer in the Washington, DC, metro area and a nationally recognized expert in franchise and business opportunity law. He is also the founder of the American Business Opportunity Institute Inc., an information clearinghouse specializing in business opportunity issues.

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 the Public Reference Branch, Federal Trade Commission, Washington, DC 20580, or call (202) 326-3128.

♦The American Business Opportunity Institute Inc. is a national information clearinghouse and seminar company specializing in business opportunity issues. For information on the institute's programs, publications and services, send a self-addressed, stamped envelope to the American Business Opportunity Institute Inc., 3 Bethesda Metro Center, #700, Bethesda, MD 20814.





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