Weaponizing Rhetoric to Legitimate Regulatory Failures

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WEAPONIZING RHETORIC TO LEGITIMATE REGULATORY FAILURES
Kat Albrecht & Kaitlyn Filip*

ABSTRACT

Pyramid schemes are illegal. According to the courts, they are fraudulent because they must eventually collapse, disappointing or exploiting the members at the bottom. This illegality, largely governed by the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC), is narrowly construed to encompass only very specific instances of activity. In particular, we argue that the specificity of the law allows multi-level marketing companies (MLMs) to argue that they are “not a pyramid scheme” both legally and societally in order to obfuscate exploitative conditions within the company.

We take LuLaRoe as a case study of the ways in which this discourse is weaponized to obfuscate the harms of multi-level marketing, thereby exposing a substantial hole in regulatory frameworks. We conduct thematic text analysis on a popular internet discussion forum to study how ordinary people understand the law surrounding multi-level marketing companies. We share findings about how the specific construction of the law affects legal consciousness and cynicism about the protective capacities of consumer protection and regulatory law. We advance the theoretical terrain by moving from legal consciousness to legal cynicism to a new concept that we name “legal creativity.” We ultimately argue that a narrow legal interpretation of “pyramid schemes” serves to further exploit the very people that such illegality is meant to protect; that ordinary people navigate regulatory holes and fundamentally imperfect knowledge of the law by employing legal creativity to generate solutions.

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I. INTRODUCTION

In September 2021, the four-part docuseries *LuLaRich* premiered on Amazon Prime Video. The documentary tells the story of the founding of and subsequent turmoil surrounding the multi-level marketing (MLM) company, LuLaRoe. The show, through formal interviews with the founders DeAnne and Mark Stidham, interviews with former LuLaRoe distributors and designers, and deposition footage from lawsuits against the Stidhams, told the story of a rapid, and ad hoc building of a massive company known for selling leggings with bold patterns. What followed was eventual feelings of disenchantment—and subsequent lawsuits—from distributors who felt as though they were being set up to fail. The series points to a large array of problems within LuLaRoe that harmed distributors, including astronomical buy-in costs into over-saturated markets and the use and circulation of stolen artwork. *LuLaRich* also interviewed former top-level distributors who were left bankrupt and unsatisfied with their experience. Notably, the docuseries also centered around deposition footage of the Stidhams directly contradicting their own interview testimony. It is a salacious story of a
company causing a great deal of harm with ambiguous legal reckoning. Although *LuLaRich* itself made a huge splash—with headlines detailing the documentary as a tale of the scandals haunting LuLaRoe and predicting the “collapse” of the company—the broader cultural and legal impact of LuLaRoe and companies like it remains understudied and largely ignored by the law even as these same companies continue to thrive.\(^4\) In the aftermath of *LuLaRich*, LuLuRoe has continued to operate and has most recently released their 2023 Valentine’s Day Collection.\(^5\)

Although LuLaRoe garnered particular attention in fall 2021, it is just one of many MLMs operating in roughly the same fashion. Multi-level marketing companies, as their name suggests, operate by organizing their sales into multiple levels. Instead of franchises or storefronts, MLMs center around one company selling goods or services with layers of independent distributors who directly sell within their personal and professional networks. These distributors also make money by recruiting additional distributors to work under them in what is called their “downline.” Many well-known companies work with this distribution model or with this model in addition to more traditional storefronts.\(^6\) Such companies include, but are not limited to: Arbonne, Amway, MaryKay, Avon, Beach Body, Herbalife, Nu Skin, Pampered Chef, Primerica, Tastefully Simple, Thirty-One Gifts, and Young Living.\(^7\) Although *LuLaRich* portrayed LuLaRoe as a company whose business model structurally hurt their distributors, the problems described by the series reach far beyond this one company. And the law, despite the broken promises of the LuLaRoe lawsuits, lacks teeth against the harm these companies cause.

It can be tempting to delegitimize the economic effects and social consequences of MLMs due to romanticized notions of suburban Tupperware parties and door-to-door lipstick sales. However, this $35 billion industry operates in a legal gray area that leaves 99% of its consultants losing money

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after targeted and predatory recruitment tactics. Moreover, a lot of these companies can skirt the technical requirements of ineffective pyramid scheme regulations in the United States and continue to operate legally. The regulatory oversight of MLMs is toothless, relying on the opaque and ineffective concept of the “pyramid scheme” against which MLMs can often define themselves in order to dodge legal accountability for their unsustainable business practices. We demonstrate that because of the massive administrative holes, MLMs functionally weaponize anti-pyramid scheme rhetoric to appear legitimate to vulnerable recruits and consumers. In other words, MLMs use the ineffective concept of the pyramid scheme in order to build a case for their own legitimacy. In this way, the law serves to endorse and amplify the very harm it was intended to prevent.

This Article uses LuLaRoe as a case study to interrogate the ways in which legal regulation of pyramid schemes utterly fails in the face of MLMs. Even beyond that, the ineffectiveness of pyramid scheme regulation actually creates an opening for businesses that are facially legitimate to exploit consumers and distributors in the very ways that anti-pyramid rules and regulations are theoretically meant to prevent. We argue that existing rules against pyramid schemes are thin and do not adequately regulate against the behaviors that are harmful in practice. Furthermore, we argue that not only is this category not protective, it is also problematically opaque and difficult to understand in such a way that erodes public trust in the regulatory system.

We select LuLaRoe as a case study because of its large market share, spate of legal problems, and the presence of a large discursive community focused on LuLaRoe, but the harms that this company perpetuates and the problems we articulate are generalizable across the industry. We broadly argue that the legal definition of a pyramid scheme is so narrow that predatory companies like LuLaRoe are insufficiently regulated. Further, we argue that the specific construction of the law has additional consequences that affect consultants and consumers. To make these arguments, we conduct a thematic analysis of text discussions about LuLaRoe and identify three primary concerns: (1) that the specific legal definition of a pyramid scheme creates a way for LuLaRoe and its consultants to differentiate LuLaRoe from an illegal pyramid scheme, (2) that ordinary people do not understand the legality of MLMs or the definition of pyramid schemes, and (3) that ordinary people are consequently pessimistic about the capacity of law to protect them from exploitation and predatory practices.

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8 See Jon M. Taylor, Consumer Awareness Inst., The Case (for and Against Multi-Level Marketing intro, at 4 (2012) (explaining the results of studying 350 MLM or direct sales companies and discussing common myths and misperceptions about the structure of and possible profits from such companies).
This Article makes several important scholarly and practical interventions. First, we introduce the theoretical idea that both cultural and legal discourse can work to paper over systemic injustices, directly contributing to the legal consciousness, and legal cynicism literature. Second, we specifically interrogate the legal and analytic category of the “pyramid scheme,” arguing that it is opaque, unsustainable as a regulatory practice, and a functionally useless category. Third, we demonstrate how ordinary people talk about and understand the legal and analytical category of “pyramid scheme” by unpacking the relevant discourse around our particular case study. In doing so, we make methodological interventions in the legal consciousness space by utilizing data from internet forums, and bringing in direct perspectives from ordinary people. Specifically, our data source is Reddit, which structurally offers space for detailed discussion under the veil of anonymity, giving a more accurate depiction of how people actually talk to each other, particularly when compared to artificial lab conditions under which behavior and opinion are ordinarily studied.

The Article proceeds as follows. First, we unpack the history of MLMs, including how they have been socially and economically disadvantageous. Second, we review the currently existing literature in the legal consciousness and legal cynicism spaces in order to hone in on these conversations and develop them into our own theory of legal creativity. Specifically, we discuss literature on administrative law and regulatory philosophy, class actions and arbitration as means of adjudicating harm against businesses, and the legal consciousness and legal cynicism literature we have foregrounded in this introduction. Third, we unpack the existing legal terrain of regulating pyramid schemes, ultimately arguing that this legal concept is not a useful heuristic for preventing the types of harms perpetuated by MLMs, as outlined in section two. Fourth, we introduce our case study, specifically unpacking the history of LuLaRoe and its controversies to date. Fifth, we delve into that case study, using forum data to argue that MLMs and their distributors use and, ultimately, weaponize rhetoric around the concept of “pyramid schemes” in order to dodge social and legal accountability. Further, we argue that ordinary people, non-legal experts, are aware of how this rhetoric is deployed and how the law is toothless to stop it. Finally, we conclude with recommendations, specifically focusing on the recommendation to affirmatively regulate MLMs as MLMs in order to prevent the pervasive use of “pyramid schemes” for oppositional self-definition.

II. HISTORY AND HARM OF MULTI-LEVEL MARKETING

Direct-sales models have been popular in the United States since the early 20th century, with early estimates in volume of direct sales ranging
from $300–500 million annually.  

Although some companies targeted male salespeople, college-aged salespeople—and in the case of Fuller Brush Company, African American teachers—women targeted companies have long dominated the beauty and lifestyle categories.  

With the midcentury rise of behemoth beauty brands like Avon and Mary Kay, women had new types of work options outside the home, propelling direct sales to billions of dollars in retail sales each year post-WWII.  

Today, multi-level marketing is driven by primarily female consultants delivering female-targeted products like home goods, fashion, and beauty.  

Data collected by the Direct Selling Association in 2017 found that 73.5% of the 18.6 million direct-sales consultants are female and that they contributed to an estimated $34.9 billion in annual retail sales.

Following several important structural and operational changes, direct-selling models transitioned into multi-level marketing (both structurally and rhetorically) in 1945.  

While still strongly reliant on directly selling to networks of friends and family, the contemporary MLM model also makes recruiting, training, and supervising recruits the job of sales consultants.  

This creates a system where sales consultants develop “downlines” from which they gain selling incentives or bonuses. Scholars William W. Keep and Peter J. Vander Nat explain that MLMs effectively combine three forms of entrepreneurial sales: (1) selling products to non-distributors, (2) selling products to other distributors via downlines, and (3) earning company

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14 Throughout this Article, we deliberately use the phrase “multi-level marketing,” although MLMs have been and continue to be referred to as network marketing and direct sales models as well. We use MLM for consistency across this Article because it is the most well-known nomenclature, and because it emphasizes the problematic structure of the model particularly when compared to obfuscating nomenclature such as “direct selling.”

compensation based on personal purchases and the purchases of a downline.\textsuperscript{16} Effectively, not only are sales consultants salespeople, but they are also customers when they purchase from other distributors in their upline.

Although the MLM industry has seen massive profits and the Direct Sales Association has reported profits for women,\textsuperscript{17} the reality for individual consultants is much more bleak. In fact, despite the corporate profits, 99% of individual consultants lose money.\textsuperscript{18} This is a shocking proportion of participants in MLMs and, as we shall show, a substantially worse outcome than might be expected given their legality. This statistic is not new, nor has it slowed the meteoric rise of MLMs. As far back as 1980, an investigation by the Office of the Attorney General for the State of Wisconsin found that the top 200 distributors of Amway (a popular lifestyle MLM founded by the DeVos family) made an average of -$900: operating at a loss of nearly $1,000.\textsuperscript{19} The 2011 report by the Consumer Awareness Institute conducted thirty years later found no improvement in the odds of MLM success, and reports that 100% of the 350 analyzed MLMs are recruitment driven, top-weighted, and that at least 99% of consultants lose money.\textsuperscript{20} Additionally, research has concluded that financial losses from MLM participation are felt more severely in areas with less formal labor force participation by women, higher inequality, lower social capital, and a higher percentage of people identifying as Hispanic.\textsuperscript{21} This leaves us with a market structure that is proven predatory, begging the question of why MLMs continue to be popular, continue to be profitable, and continue to be legal.

The terrain of MLMs has continued to change with the advent of the internet. Although MLMs got their start in Cold War living rooms and in door-to-door sales, in 2023 they largely exist through social media and are propelled in digital spaces. The classic “Tupperware party” is largely a phenomenon of the pre-internet days, and now, most buying, selling, and recruiting takes place online. MLM distributors utilize all forms of social media—including Facebook groups and Instagram stories in particular—in order to buy, sell, and recruit additional participants. This has given MLM consultants a wider customer base than ever before. The advent of social media has come with a substantial increase in the number of sellers and, consequently, a substantial increase in the volume of informal advertisements

\textsuperscript{16} Keep & Vander Nat, \textit{supra} note 9, at 192–93.
\textsuperscript{17} \textit{DIRECT SELLING ASS’N}, \textit{supra} note 13.
\textsuperscript{18} \textit{TAYLOR}, \textit{supra} note 8, intro. at 4–5.
\textsuperscript{19} \textit{Id.} ch. 7, at 3.
\textsuperscript{20} See \textit{id.} at 21, 26; \textit{id.} ch. 8, at 55; \textit{id.} ch. 10, at 49.
(or social media posts) for MLM products and services. These posts are often entirely free from oversight, either from regulatory agencies such as the FCC or from the companies for which they advertise. Selling tactics on social media have been documented to be misleading, including creating deceptive images and posts about money-making potential and flexible work opportunities.22

The COVID-19 pandemic has led to increased legal and popular problematization of MLMs. Since the pandemic reached the United States in March 2020, MLM distributors have made health and earnings claims related to the coronavirus: they are exaggerating the health benefits of their products and making guarantees of income for furloughed workers in addition to generally exploiting a time of panic for profit.23 This pandemic rhetoric prompted the FTC to release multiple rounds of warnings directed at companies and individual consultants beginning in April of 2020. These warnings specifically highlight financial claims that tout MLMs as a viable employment strategy in the wake of mass unemployment due to COVID-19.24 One such highlighted claim, comparing an MLM to the United States government’s stimulus package in a bid to recruit new distributors, was made in a video that stated:

I can tell you that there’s thousands of people that are out of work right now. They’re all looking for a way to go earn money. This is a great stimulus package, because you get to teach somebody how to go earn $1,730 literally in their first 10 days in the business.25

This demonstrates how the pandemic could be leveraged as a means to, not just sell products, but to recruit additional distributors. This particular brand of rhetoric brought increased scrutiny to MLMs both in the public consciousness and from regulatory agencies.

25 Id.
Just over a month later, in June of 2020, the FTC released another round of warnings to combat claims made in both English and Spanish languages. Again, the FTC focused on misleading health claims and financial claims made by multi-level marketing companies and their sales consultants. It remains to be seen if there will be a significant rise in MLM consultants and consumers as a result of the economic devastation of the pandemic as it is still too early to tell even three years out, though several news outlets report an increased prevalence of predatory recruitment tactics. However, the attention from the FTC in particular seems to have been short-lived.

III. THE PATH FROM LEGAL CONSCIOUSNESS TO LEGAL CYNICISM TO LEGAL CREATIVITY

In this Article, we use our case study to map a path from the heavily established theoretical frameworks of legal consciousness to legal cynicism to a new theoretical framework we call “legal creativity.” All of these theoretical frameworks attempt to theorize the relationship between ordinary people—non-experts—and the law. Legal consciousness scholars study how ordinary people understand and interpret the law. This is an epistemological framework but one that often argues that people’s understanding of the law motivates their interest in and ability to interact with the legal system to enact their rights. Legal cynicism posits that some communities, particularly marginalized ones, have a robust lack of trust in the legal system, often stemming from their intimate knowledge of that system. We take both of these theoretical categories in turn before unpacking our own theory of legal creativity as a response to legal consciousness and legal cynicism.

Legal consciousness literature, as described by Lynette J. Chua and David M. Engle, “refers to the ways in which people experience, understand, and act in relation to law,” including the documentation of that process. Sometimes this theoretical framework intersects with the law and rhetoric or

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27 Id.


the law and literature scholarship. Patricia Ewick and Susan S. Silbey, for example, argue that the law is a kind of narrative which frames how people understand it. Other important work in legal consciousness emphasizes the ways in which an individual or group’s social position influences their consciousness or understanding of the law. Others have argued that changes in policy and social movements can result in shifts in legal consciousness.

Legal cynicism literature has similar social-scientific and humanistic dueling underpinnings. Political and rhetorical theorists emphasize the ways in which public trust in institutions can be eroded through the public’s awareness of malfunctions in the institution, including the legal system. Social scientists have named and studied this phenomenon as legal cynicism and have noted how it functions, particularly within poor, Black communities to justifiably limit trust in policing.

In this Article, we contribute to these literatures as we argue that, in our case study, ordinary people are specifically and deliberately engaging with the law, but that engagement ultimately renders them cynical about the protective capacities of the law. We find that, despite the opacity of the concept and overall difficulty clarifying what a pyramid scheme is or means legally, ordinary people are able to sufficiently grapple with the law to

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understand that it does not offer meaningful legal protection. This awareness of the toothlessness of the law results in cynicism about the law. However, we take that a step further and discuss how this awareness of the lack of protective capacity—and the conception of the law as a problem-solving tool—also results in ordinary people engaging in what we call “legal creativity.” Here, we will move beyond the legal consciousness and legal cynicism literature to develop how ordinary people engage in legal creativity.

IV. LEGAL REGULATION OF PYRAMID SCHEMES

Although the FTC has paid some increased attention to MLMs in the COVID-19 era and, as we will show, consumers are increasingly curious about the MLMs’ legal standing as pyramid schemes, the substantive case law on MLMs as pyramid schemes is incredibly thin. Pyramid schemes are illegal; a company theoretically cannot operate as a pyramid scheme without facing potential civil or, in some instances, criminal sanctions. However, it is incredibly difficult to determine the standards against which companies will be measured in determining if they are legally cognizable as pyramid schemes. This is particularly true for MLMs which operate as complete structures and always involve—at least facially—the sale of goods or services. As we will show in our case study analysis, there is an assumed cultural relationship between pyramid schemes and MLMs in some discursive communities. Ultimately, however, although the relationship between MLMs and pyramid schemes has taken hold in the popular imagination, the law has not adequately provided guidance for or testing of this relationship. In fact, insofar as a legal definition of pyramid schemes exists, we argue that it is so narrow as to be functionally meaningless. In this section, we unpack the legal terrain of MLMs and argue that the legal and analytical category of “pyramid scheme” is functionally toothless in the face of most pertinent predatory business practices.

This section proceeds in four parts. First, we discuss the specific lawsuits faced by LuLaRoe in order to begin to understand the contemporary legal landscape through the most contemporary example. Next, facing unsatisfying legal answers from LuLaRoe’s spate of legal cases, we draw on the historical example of Herbalife and unpack the “doomed to fail” as a standard for understanding the definition of a pyramid scheme. Again, not reaching clear definition standards, we turn next to Amway and the still-in-use rules that define pyramid schemes. We argue here that even though we begin to see some affirmative definition work from lawmakers, it is ultimately just an expression of preference from Amway itself and covers only a small portion of the problem. Finally, we turn to agency guidance to once again attempt to understand the most current definitional landscape on
the “pyramid scheme” versus MLM debate. Here, we argue that, once again, the guidance does little to actually cover harms caused by MLMs and instead, sets up an artificial distinction between “pyramid schemes” and “legitimate MLM business opportunities” that only serves to paper over overt regulatory failures.

A. The Law Through LuLaRoe

We begin our legal analysis through a specific look at LuLaRoe. Because, as we will show, the law has not affirmatively offered substantial insight into how MLMs are evaluated via statute or strong precedent, using contemporary cases is, in fact, the best way of beginning to understand the legal landscape. LuLaRoe has, compared to other MLMs in the digital age, been a hotbed of legal activity. In legal actions against MLMs alleging a pyramidal structure, the cases are likely to be civil suits where the plaintiffs are individuals (or classes of individuals) or regulatory action taken by federal agencies like the FTC, the Securities and Exchange Commission (SEC), or the Department of Justice (DOJ). The DOJ has criminal jurisdiction, but they are unlikely to exercise such jurisdiction over MLMs. Instead, the major players here tend to be individuals in class action suits and the FTC. LuLaRoe has faced litigation and enforcement from both.

In addition to a host of other civil lawsuits, including for improper calculation of sales tax, intellectual property theft on their product design, and breach of contract failure to pay their suppliers, LuLaRoe has been the named defendant in several civil cases specifically alleging that they operate as a pyramid scheme. In 2017, LuLaRoe was confronted with five class action civil suits in the Central District of California alleging that LuLaRoe

35 See sources cited infra notes 39–49.
37 Id.
38 See sources cited infra notes 39–49.
operated as a pyramid scheme.\textsuperscript{40} All five of these cases were voluntarily dismissed by the plaintiffs.\textsuperscript{41}

In 2019, LuLaRoe was the named defendant in another Central District of California class action suit, which resulted in an arbitration order and another voluntary dismissal.\textsuperscript{42} Often, the reasons for the voluntary dismissal are unclear; here, however, the plaintiffs named the reasoning in their motion to dismiss. In this instance, they expressly stated that the arbitration order was unduly prohibitive because it functionally decertified the class, mandating that each plaintiff proceed with arbitration individually.\textsuperscript{43} Class action suits work effectively as a response to companies causing harm to large groups of individuals because they allow for damages sufficient to compensate representation while still providing some form of restitution for the harms experienced and those individuals harmed.\textsuperscript{44} Arbitration is typically more financially feasible for defendant corporations and more expensive for individual plaintiffs because it requires each individual to participate in their own action against the company.\textsuperscript{45} Arbitration is typically not subject to standard rules of discovery (limiting the kinds of evidence that can be introduced and emphasizing greater initial knowledge from the plaintiffs at the time of pleading) and arbitral awards tend to be smaller.\textsuperscript{46}

Functionally, there is no precedential outcome in any of the class action civil suits brought against LuLaRoe because they all ended in a voluntary dismissal prior to actual litigation. The courts have not yet fully heard the issue of whether or not LuLaRoe is operating as a pyramid scheme. Although there are often legal, economic, and strategic reasons behind a pattern of dismissals, it is not possible to ascertain a specific legal rule from a case that did not proceed. From the pattern of litigation, we are able to see a glimpse into litigation strategies being attempted—here, in part, arguing that LuLaRoe is operating as a pyramid scheme—but lack a deep understanding


\textsuperscript{44} David Rosenberg, \textit{Mandatory-Litigation Class Action: The Only Option for Mass Tort Cases}, 115 HARV. L. REV. 831, 832 (2002).


\textsuperscript{46} \textit{Id.} at 150–51.
as to why they are unsuccessful and even if they would be successful, were particular barriers to that argument removed.

Beyond the individual class actions, the Washington Attorney General brought a civil suit against LuLaRoe in 2019, also claiming that the company was operating as a pyramid scheme.\textsuperscript{47} In February of 2021, LuLaRoe settled this case for $4.75 million.\textsuperscript{48} Although there are many reasons why a company might choose to settle instead of pursuing litigation—LuLaRoe itself points to the comparative expense of a protracted legal battle—the outcome is the same as with the dismissed civil suits above: we cannot definitively say what the court would do with these facts under those laws.\textsuperscript{49} The story of the law as told through the litigation against LuLaRoe is one that is fundamentally unsettled. Although the litigation strategy coalesces around the idea of the illegal pyramid scheme, LuLaRoe itself gives very little insight into actually understanding how the law understands MLMs.

**B. “Doomed to Fail”: Historical Insight from Herbalife**

The cases against LuLaRoe ultimately go nowhere in terms of offering a definitive answer to the question of whether or not LuLaRoe is operating as a pyramid scheme. In fact, no cases against any MLM have offered a definitive standard for determining how (or whether) to distinguish MLMs from pyramid schemes. The closest any legal action has gotten into offering insight is the 2016 FTC settlement with health and wellness MLM Herbalife. In 2016, the FTC mandated that Herbalife, in order to continue operations, would need to pay $200 million to compensate consumers and to fundamentally restructure their business to decouple compensation from recruitment.\textsuperscript{50} The terms of this settlement are obviously not precedential but they offer more contemporary insight into the FTC’s regulatory process and broadly reiterate an older regulatory action as well as model some standards


\textsuperscript{49} Id.

that become clear in FTC and SEC consumer-facing guidance: that a pyramid scheme is “doomed to fail.”

The idea that a pyramid scheme is a pyramid scheme because it is “doomed to fail” has definite popular analytical traction, although that is only part of the legal story.51 This term is analytically simple in organizations operating without the transmission of products or services. An enterprise is “doomed to fail” if its sustainability depends upon the continued recruitment of additional investors at lower and lower levels of the pyramid. Pyramid schemes require top level investors to recruit a larger number of investors at the next level to turn a profit and, in turn, those investors must recruit a larger number of investors at the next level in order to turn a profit. As long as the next level is and can be bigger, the members will be profitable. A pyramid scheme is analytically doomed to fail because, eventually, there cannot be a bigger level and investors who are at the bottom when the scheme runs out of potential investors will inevitably lose their money. This structure is easy to identify in something like the “airplane game” where the entire enterprise exists solely to pay money up the pyramid, which became the salient news media touchstone for what a pyramid scheme looked like at its simplest.52 Here, there are no goods or services being exchanged and the scam is much more evident.

The analytically more difficult question occurs when a company includes a product or service in their model, as is always the case in an MLM by definition. A product fundamentally changes the nature of the agreement or promise: any financial investment looks, legally and rationally, more akin to a traditional financial investment. The buy-in to an MLM looks closer to a franchise or licensing agreement even though it is not one—a normalized business opportunity whereby a participant exchanges money for permission to sell (and potentially turn a profit)—and becomes legally distanced from a simple exchange of money for a promise of an impossible return. The idea that income is not guaranteed feels more comfortable and is often legal when goods and services are involved: this is, after all, the normal risk of running a business. However, the existence of a product is likely insufficient to defeat concerns about an enterprise being doomed to fail. Courts have not held that a product alone is sufficient and have only considered it as one factor. The doomed to fail term of art is not, in fact, the only way that courts look to


evaluate whether an enterprise is a pyramid scheme. We consider that in the next section.

C. The Amway Rules: Our Analytic Substitutions

The still-leading case on determining whether an MLM is operating as a pyramid scheme is the FTC decision in *Amway*.53 This 1979 case leaves open the possibility that an MLM could be legally cognizable as a pyramid scheme while, at the same time, decidedly determining that Amway is not one. Amway, founded in 1959 by Jay Van Andel and Richard DeVos, sells health, beauty, and cleaning products, and has also been the defendant in various cases alleging that their operation is a pyramid scheme.54 Like LuLaRoe, Amway has never been found liable for or guilty of acting like a pyramid scheme. However, the case explicitly lays out some ground rules on understanding the relationship between pyramid schemes and MLMs that are still cited today.

The FTC, in *Amway*, looked to Amway’s own rules as a proxy for determining how the company functioned in relation to unethical, exploitative, and illegal consumer behavior.55 The Amway Rules, a set of Amway’s own rules for consultancy and distribution, speak to the implicit legal question defined from this action: Are the consultants operating as distributors or as customers?56 In other words, is the profit primarily from recruitment? Notably, this test is a reframing of the “doomed to fail” idea that is both more specific and more potentially applicable to an enterprise that does involve the distribution of products. In other words, the Amway Rules still work within the same conceptual arena as the “doomed to fail” heuristic. However, the Amway Rules now explicitly define the tests in relation to what type of person is providing the profit: consumer or distributor. The material rules, together sufficient to establish that Amway’s profits are primarily from recruitment, were the Seventy Percent Rule, the Ten Customer Rule, and the Buy-Back Rule.57

The Seventy Percent Rule and the Ten Customer Rule both pertain to the allocation of bonuses among consultants. In order for an individual Amway consultant to qualify for Amway’s bonus framework—money on top

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54 See generally *Complaint, Amway Corp.*, 93 F.T.C. 618 (No. 9023); *Pokorny v. Quixtar, Inc.*, 601 F.3d 987, 990 (9th Cir. 2010).

55 *Amway Corp.*, 93 F.T.C. at 710.

56 *Id.* at 716.

57 *Id.*
of ordinary commission from a resale—a consultant must sell 70% of their inventory to others and the others must consist of ten or more other individuals. We argue that these rules seek to ensure that consultants are distributing rather than purchasing items “as customers” (either intentionally or incidentally becoming the final destination because the items will not or cannot be redistributed).

However, this is largely an aesthetic concern as less than 1/5 of MLM consultants meet the requisite sales threshold to qualify for bonuses. In practice, the rule does not do much other than theoretically disincentivizing an individual distributor from purchasing a large amount of product in exchange for a bonus. This type of behavior, according to LuLaRoe’s own disclosure statements, does not account for the ways in which most of their distributors actually interact with the company. This is, as we shall argue, one specific way of diminishing predation but it does not have a widespread impact. The Amway bonus rules work to incentivize some aspects of behavior vis-à-vis bonuses but still does not take burden off the distributor for recruitment rather than sales. If anything, these rules incentivize more recruitment because recruitment guarantees that more product will go to more people, which will meet the requirements for bonuses, and will presumably provide a desirable source of income.

Amway’s Buy-Back Rule stipulated that Amway would accept returns of and offer refunds on unsold merchandise should a consultant choose to sever their relationship with the company. Although terms and conditions may apply—the company need not buy back at the full purchase price or might exclude certain types of merchandise—this does provide substantial assurance that the consultant is not the final home of the merchandise and is not, functionally, a customer. Compared to the specific rules governing bonus allocation, the buy-back rule seems substantially more robust. It protects against making the distributor into a customer and is thereby more effective at alleviating some of the more exploitative business practices.

Neither rule on its own is necessary, but each may or may not be legally sufficient individually though their individual sufficiency has yet to be tested. However, the Amway Rules are models for how to parse out the legal distinction between a pyramid scheme and a legitimate enterprise. Although the universe of behaviors modified by the Amway Rules is extraordinarily

58 Id.
60 Id.
61 Amway Corp., 93 F.T.C. at 732.
small, MLMs can and do adopt the Amway Rules as a mode of signaling their legal legitimacy and the FTC can and does use the Amway Rules to establish that standard.\(^6\) This is, as it stands, the best understanding of the current state of the law governing MLMs and pyramid schemes. Ultimately, these rules, we argue, allow for massive gaps that allow for additional behaviors that are not legally recognized as problematic. Furthermore, we reiterate that in Amway, the FTC took Amway’s lead, allowing the business under investigation to set the standard for how businesses of its type should function.\(^6\) This allows MLMs to operate using standards that they voluntarily constructed.

D. Published Administrative Guidance from the FTC and SEC

Beyond the Amway Rules, the FTC and SEC offer published guidance on distinguishing between pyramid schemes and what they call “legitimate MLM business opportunities.”\(^6\) We take this guidance at face value and interpret these publications as indicative of problematic business behaviors that could, theoretically, be subject to regulatory authority. In this section, we synthesize these documents, drawing out analytically what the FTC and SEC take to be problematic behaviors. What the agencies suggest potential consultants look for can be broken down into three types of behaviors: first, the use of bombastic rhetoric in recruitment; second, the framing of the opportunity as a recruiting opportunity rather than a sales opportunity; and, third, behaviors that position the consultant as the buyer. We take each of these in turn and analyze their limitations, ultimately arguing that the distinctions offered between “legitimate MLM business opportunities” and pyramid schemes are so hollow as to be meaningless. Once again, we conclude that the analytic category of the pyramid scheme is ultimately legally toothless.

The FTC and SEC warn against promoters who utilize bombastic rhetoric in recruiting additional participants.\(^6\) They warn against the deployment of rhetoric that seems “too good to be true”: promises of high returns in a short time period or extravagant promises about earning potential,

\(^6\) FTC v. BurnLounge, Inc., 753 F.3d 878, 883 (9th Cir. 2014) (citing Amway Corp., 93 F.T.C. at 716).

\(^6\) See discussion supra Section IV.C.


\(^6\) Beware of Pyramid Schemes, supra note 64.
easy money or passive income, or emotional/high-pressured sales tactics (such as saying that the opportunity is time sensitive). On its face, this subset of warnings makes a great deal of sense. They are functionally suggesting that manipulative advertisement is a sign of overall manipulative business practices.

However, using this to parse out pyramid schemes from “legitimate MLM business opportunities” is incredibly difficult and over-emphasizes the distributor rather than the company for which they distribute. For example, some MLM distributors might routinely deploy this language even if that language is not specifically sanctioned by the company they sell for; while, at the same time, other distributors for the same company might not utilize bombastic rhetoric. As a warning sign, this overemphasizes the individual choices of individual distributors. A person who only encounters distributors who do not use this rhetoric are not, in fact, encountering a meaningfully different type of business—they are just encountering a slightly different recruitment tactic. This warning does little to emphasize how the business itself operates.

The agencies further warn against promoters who pitch the opportunity as one about recruitment rather than sales and they warn against structural features of the enterprise that position the opportunity as one about recruitment rather than sales. That is, they warn against individuals joining companies in order to become recruiters rather than salespeople. The FTC identifies this as a prominent warning sign: “Promoters emphasize recruiting new distributors for your sales network as the real way to make money. Walk away. In a legitimate MLM program, you should be able to make money just by selling the product.” The SEC makes the structural critique implicit by warning against a lack of demonstrated revenue from retail sales to show that the MLM generates income by selling products and services to people outside the enterprise. In other words, it’s not a good sign if the recruiter cannot establish that consultants generate income by selling products or services to people who are not also consultants. Further, they warn against complex commission structures that reward something other than sales, usually recruitment, made to individuals, which are likely translatable into the bonus structures discussed above.

Facially, this is an obvious indictment against predatory business practices. It makes sense that businesses that focus on recruitment rather than sales would be likely to operate as pyramid schemes because the emphasis on recruitment suggests that new levels of distributors are where the profits

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66 Id.
67 LuLaRoe Pyramid Scheme Allegations, supra note 42.
68 Multi-Level Marketing Businesses and Pyramid Schemes, supra note 6; see also LuLaRoe Pyramid Scheme Allegations, supra note 42.
are coming from. However, it is not clear how this is a difference-making trait, and the overemphasis on companies being explicit about their emphasis on recruitment is problematic. These warnings do not emphasize patterns of behaviors that have the outcome of emphasizing recruitment over product sales—such as, flooding the market with sellers such that the product is oversaturated, offering bonus structures for recruitment, or allowing recruiters to earn money off of every recruitee’s sale, all of which are normal MLM behaviors—but instead, focus on whether or not the company is pitching itself as emphasizing recruitment.\(^69\) Again, this focuses on the behaviors of distributors, who are the ones who would be making these claims, rather than on companies who are likely to emphasize their products while maintaining practices that emphasize recruitment. In other words, none of the FTC or SEC warning signs adequately warn against the emphasis on recruitment.

Finally, the FTC and SEC warn against structural features in the enterprise that position the consultant as the customer.\(^70\) The SEC warns against enterprises where buy-in is required, that is, if a potential consultant is required to pay to participate within the program.\(^71\) The FTC offers a more holistic warning against companies where consultants buy more products than they personally use or can resell in order to stay active in the company or to qualify for bonuses.\(^72\) The concern about qualifying for bonuses seems to match exactly with the Amway Rules, but the warning against buying to stay active does work to demystify the role of products as buy-in. It is clear that the existence of a product might not be sufficient to distinguish between a legitimate business opportunity and a pyramid scheme or other illegal enterprise.

This is, at best, confusing guidance. Paying to participate is difficult to meaningfully define, particularly if one is parsing a “legitimate MLM business opportunity” from an illegal pyramid scheme. Directly giving money to an upline in exchange for an opportunity rather than wholesale products or licensing to sell under a particular company’s name is much more obviously suspect. Again, MLMs \textit{by definition} do not do that: the buy-in money comes with an inventory of products.\(^73\) The FTC guidance allows for the existence of a product but does not clarify how a potential distributor

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\(^69\) \textit{Multi-Level Marketing Businesses and Pyramid Schemes}, supra note 6.

\(^70\) \textit{Id.; Beware of Pyramid Schemes}, supra note 64.

\(^71\) \textit{Beware of Pyramid Schemes}, supra note 64; \textit{Multi-Level Marketing Businesses and Pyramid Schemes}, supra note 6.

\(^72\) \textit{Multi-Level Marketing Businesses and Pyramid Schemes}, supra note 6; \textit{Beware of Pyramid Schemes}, supra note 64.

\(^73\) \textit{Multi-Level Marketing Businesses and Pyramid Schemes}, supra note 6; \textit{Beware of Pyramid Schemes}, supra note 64.
could determine what practices specifically lead to distributors over-buying or why those company behaviors differ from the ordinary costs of starting a business.\textsuperscript{74} Certainly, MLMs have practices that promote over-buying: LuLaRoe, for example, does not allow distributors to pick their inventory and operates on a model whereby they have limited runs of extremely popular patterns, encouraging consultants to buy large bundles of product in the hope of getting the specific items that are more likely to sell.\textsuperscript{75} The guidance, once again, points to patterns of behavior from distributors—that may be difficult to impossible for a potential distributor to spot or identify—rather than on the corporate behavior that encourages those warning signs to crop up.

The FTC and SEC guidance to consumers is not a set of legal standards. Notably, although there is substantial overlap, the boundaries discussed here go beyond those advanced by the FTC in \textit{Amway} because the stakes are lower. That is, there is a broader universe of potentially suspicious behaviors under the agency guidelines. Here, the agencies are offering warning signs to identify what could be a pyramid scheme rather than actually testing for pyramidal structure as they would in a regulatory action. Yet, even then, they fall short. All MLMs at some point or another meet one or more of these warning signs: consultants regularly make “limited time” recruitment offers and income disclosure statements that routinely establish that only the top percent of consultants make income from the enterprise.\textsuperscript{76} However, none seem to ever cross the line from “warning signs” to “stop signs” in an actual legal proceeding. The guidance ultimately straddles the line between critique and acceptance of the MLM business model. Here we have argued that in some ways, the practices of the companies are apparent in this guidance, yet they refrain from fully implicating MLMs, allowing there to exist a category of “legitimate MLM business opportunity” without meaningfully defining how that differs from a pyramid scheme.

Therefore, although the FTC and SEC both advise consumers that some MLMs can be pyramid schemes, there is a tendency to identify a potential other option—a “legitimate MLM business opportunity”—without providing a robust definition of that for comparative purposes. That is, all of the guidance is predicated on the idea that there does exist such a thing as a “legitimate MLM business opportunity,” but what that would actually meaningfully look like to a consumer is an open question. What the guidance does in practice, then, is functionally distinguish MLMs generally from

\textsuperscript{74} \textit{Multi-Level Marketing Businesses and Pyramid Schemes}, supra note 6; \textit{Beware of Pyramid Schemes}, supra note 64.

\textsuperscript{75} McNeal, supra note 48.

pyramid schemes. Because the reader cannot meaningfully parse the distinction between legitimate and illegitimate MLMs, the use of “legitimate MLM business opportunity” functionally serves to legitimize all MLMs discursively.

Furthermore, as we have indicated throughout this section, the guidance rests almost exclusively on the practices of individual distributors, rather than offering a holistic or robust look at the systemic practices of companies or the business model in general. The immediate impact of this means the effectiveness of the warnings to consumers varies tremendously based on the practices of the individual-level distributors each consumer may encounter. A consumer may encounter distributors who do not use bombastic rhetoric or rhetorically emphasize recruiting, but that do still rely on recruitment instead of selling products. Furthermore, this warning pattern distracts from the power of the company and the subtler ways that MLMs can and do exploit customers. Importantly, this guidance suggests that the people responsible for the harms caused by pyramidal business practices are the individual level distributors who are most likely to do the behaviors described above. This is a concerning pattern of guidance because, ultimately, we argue, regulating individual distributors is not an effective solution given that the problems delineated are company- or industry-wide.

Ultimately, the legal relationship between MLMs and the category of pyramid schemes is an open question. There has been very little traction in regulating MLM behavior or remediating harms related to MLM behavior through the pyramid scheme framework. MLMs are unlikely to face sanctions as pyramid schemes. If anything, as we have argued, the MLMs themselves are able to utilize the undefined and underexplained, but assumed, distinction between “pyramid scheme” and “legitimate MLM business opportunity” to directly evade being lumped in with pyramid schemes without being meaningfully structurally distinct. In the next section, we begin to discuss how that assumed but not substantive difference between “pyramid scheme” and “legitimate MLM business opportunity” is actively weaponized by MLMs in order to emphasize their legitimacy without evidence to support it.

V. LULaROe CASE STUDY

We argue here that the lack of suitable legal protection against predatory MLMs does more than leave consultants and customers vulnerable—it actually creates a weapon of legitimacy for predatory MLMs. As we have discussed above, there are massive gaps in the regulatory framework, which allow for predatory behavior from MLMs to be legally legitimizd. Here, we argue that this legitimization is used by participants in the MLMs to recruit
additional participants. Specifically, we argue that distributors do what the FTC and SEC warned about above, entirely unchecked by the companies they sell for. Using conversational text data from the popular internet forum Reddit.com (“Reddit”), we analyze the process by which legal rhetoric surrounding pyramid schemes is used to distinguish an MLM company from an “illegal pyramid scheme” and how the protections of law are both confusing and insufficient in the minds of ordinary people. We look at two levels of discourse: first, the rhetoric from distributors distinguishing themselves from participants in pyramid schemes and, second, the rhetoric around that distributor rhetoric by ordinary people discussing the companies. We do this using LuLaRoe as a case study.

LuLaRoe is a massive MLM that is best known for selling leggings with outlandish patterns.\(^77\) In the eleven years since LuLaRoe’s 2012 founding, the company has become among the most notorious; and we argue that it is the site of intense discursive contestation. There are a number of competing stories about what LuLaRoe does, what LuLaRoe means, and how LuLaRoe functions within society. The self-told story of LuLaRoe is one of a struggling mother making a fortune in modest, size-inclusive clothing.\(^78\) The founders emphasize this story, building up a narrative of their humble beginnings and painting a picture of clothing with strong mass appeal.\(^79\) However, critics identify the consequences of LuLaRoe’s business strategy, saying that it is actually:

[T]he story of rural and suburban disenfranchisement and the MLMs that offer desperate American women a chance at clawing their way out. They’ve become part of the fabric of suburban America, as cherished and inevitable as barbeques and the county fair . . . it’s a genius manipulation of rural and suburban American societal norms.\(^80\)

This suggests that LuLaRoe is something much more sinister, utilizing the narrative of humble beginnings to trap others with false promises. At one end of the spectrum, LuLaRoe’s own marketing materials suggest an interestingly disruptive company that fills a unique market need (modest, aesthetically pleasing clothing specifically for mothers). At the other,

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\(^79\) Id.

critiques of the company suggest a predatory scheme that utilizes that very rhetoric in order to exploit the customers whose needs they claim to address.

We argue that the truth is much closer to the exploitation end of the spectrum. By unpacking how this particular company actually functions—in addition to how LuLaRoe and its consultants and customers talk about the company—we are able to show how LuLaRoe operates specifically and intentionally in relation to the regulatory frameworks discussed above. Understanding how their language works helps us understand the actual narratives at play for the company and, subsequently, what persuasive techniques they are using in order to recruit participants and make money. In this section, we delve into our case study, explaining our selection criteria, and unpack how LuLaRoe functions to evade regulation.

A. Why LuLaRoe?

LuLaRoe is a compelling case study of MLM practices for logistical and legal reasons: their recency, slew of legal troubles, relatively high (and unstable) buy-in costs, and the relatively heavy demonstrated use of MLM bonus structures that is most at stake in defining pyramid schemes in Amway. However, LuLaRoe also has an uncommonly strong retail presence and buy-back guarantee that makes it less likely to be sanctioned under existent pyramid scheme regulations. They have a complicated interplay with the definitional framework discussed above. Although the particulars of how LuLaRoe operates might differ from other MLMs, we argue that the ideology driving their particular business strategies (fundamentally evading capture under pyramid scheme regulatory frameworks) is actually quite similar to other MLM companies. Therefore, we are able to use LuLaRoe as an exemplary case that allows us to deeply interrogate particulars even as the case maintains its generalizability.

We begin with a brief history of LuLaRoe told through these salient and shifting features—legal troubles, buy-in costs, bonus structures, retail presence, and buy-back guarantees—before transitioning into the rhetorical data project. This data project transforms the problem of MLMs from one characterized by a lack of protections, to one where the importance of the law actually grants some legitimacy and permanence to MLMs. In other words, the data project illustrates what we were previewing above: the ways in which pyramid scheme-related rhetoric functions to legitimize MLMs and create confusion and, even beyond that, pessimism about the law itself. Regulatory loopholes are utilized not just as loopholes, but also as rhetorical strategies for recruiting additional members: regulation becomes its own kind of bombastic rhetoric offering promises to recruits of legality and legitimacy.
LuLaRoe is a women’s fashion company founded by Mark Stidham and DeAnne Brady in 2013, primarily known for selling heavily-patterned, “buttery soft” leggings. By 2017, LuLaRoe had grown from self-described, single family, hand-sewing maxi skirts into a retail juggernaut worth $2 billion and with over 80,000 “independent fashion retailers”—IFRs, the LuLaRoe-specific terminology for distributors—concentrated mostly outside of large urban cities. The company scaled very quickly to become the widespread MLM it is today, moving massive amounts of product to and through a large number of distributors. As we have discussed above, LuLaRoe’s turbulent rise to the top of the MLM fashion industry has included lawsuits for improper taxes on retail goods, appropriated copyrighted artwork, non-payment to manufacturers, non-payment to the postal service, and, significantly, multiple rounds of pyramid scheme accusations—most notably a 2019 filing by the Washington State Attorney General that resulted in a $4.75 million settlement.

B. The Problems of LuLaRoe

Although we argue that LuLaRoe is structurally similar to other MLMs, it has two key distinguishing features. It is distinguishable from many other MLMs first, because it has historically involved a high start-up cost—although recently their start-up costs have shifted seemingly in response to litigation—and second, because it requires that distributors maintain a collection of an expensive inventory of clothing in many sizes. A class action filing in March of 2019 explains that the buy-in costs range from $2,000 to $9,000 for first orders of clothing. This is uncommonly high; many other MLMs require a buy-in for a starter pack retailing $250 or less.

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81 See About LuLaRoe, supra note 78.
82 Richard Kestenbaum, This Retailer Went from Zero to $2 Billion in Four Years, FORBES (Oct. 17, 2017, 7:45 AM), https://www.forbes.com/sites/richardkestenbaum/2017/10/19/this-retailer-went-from-zero-to-2-billion-in-four-years/?sh=309b37d5d5a3. In episode one of the LuLaRich docuseries, DeAnne describes the early years involving herself personally handmaking 20,000 maxi skirts. This seems implausible for one person in even four years, so it is difficult to get a handle on who was working on what in those early days and how production scaled. LuLaRich, supra note 1.
83 Horton, supra note 4.
84 LuLaRoe to Pay $4.75 Million, supra note 48; Suddath, supra note 77.
87 See, e.g., TASTEFULLY SIMPLE, https://join.tastefullysimple.com/ (with the most expensive kit priced at $99); SCENTSY, https://scentsy.com/join (with kits starter packs priced at $99).
Moreover, as we mentioned briefly above, distributors do not get to choose the patterns of clothing that they purchase as LuLaRoe ships orders in blind bundles; this leaves retailers constantly re-purchasing in the hopes of procuring desirable patterns and in-demand sizes.\textsuperscript{88} Heightened levels of inventory accumulation has tangible consequences for the tens of thousands of women who have left the company. LuLaRoe’s practice of blind bundling leaves many distributors with massive amounts of inventory when they decide to leave, and it has historically been unclear whether or not LuLaRoe would “buy-back” that unsold, unwanted inventory and, if so, if that would be a full refund. Notably, LuLaRoe’s buy-back policies have changed frequently, with little warning, and are often unclear as to their specific applicability to common garments. LuLaRoe’s combination of high buy-in costs and inconsistent and confusing buy-back policies leaves distributors taking an atypically large financial risk when joining the company.\textsuperscript{89}

That risk feels even bigger considering the low potential for reward. Yearly disclosure statements—of LuLaRoe in particular and of MLMs as a category—tell a profoundly negative story about the financial realities of participating in MLMs as a distributor.\textsuperscript{90} Most distributors do not make any money at all from their participation.\textsuperscript{91} Even more troublingly, most participants lose money through these “business opportunities.”\textsuperscript{92} But the stories told in litigation underscore how truly volatile this situation is. In a class action complaint filed in March of 2019, three plaintiffs explained the extent of financial ruin possible for former LuLaRoe consultants that they alleged was a result of LuLaRoe’s culture of blind bundling merchandise to distributors.\textsuperscript{93} Plaintiff Tabitha Sperring pled that she was left with $16,000 in credit card debt and $11,000 in unsellable inventory; plaintiff Paislie Marchant pled that she was left with $10,000 in unsellable inventory; and

\textsuperscript{88} This incentivizes massive and frequent purchases in the hopes of obtaining patterns that are desirable to customers. Note that retailers could theoretically select sizes (with some exceptions), but that scarcity of wholesale items to purchase often left retailers to buy whatever sizes they could or even unable to purchase new inventory at all.


\textsuperscript{91} See 2020 LuLaRoe Income Disclosure Statement, supra note 90.

\textsuperscript{92} See id.

plaintiff Sally Poston pled that she lost $22,000.\footnote{See id. at 5.} These are financial consequences that outlast the yearly disclosures of MLMs and foreshadow the scope of the economic costs of MLMs to ordinary Americans.

Unpacking the bonus structure reveals a massively top-weighted structure for consultants that is contingent on gross disparities in the distributors’ incomes, generally. According to LuLaRoe’s 2020 income disclosure statement, the median IFR gross profit was $1,444.65.\footnote{See 2020 LuLaRoe Income Disclosure Statement, supra note 90.} Additionally, 19.2\% of IFRs made $0 or less, while 50.1\% made between $1 and $4,999 (notably covering a substantial range of outcomes).\footnote{Id.} However, only 2.35\% of IFRs made over $75,000.\footnote{Id.} This means that the distributor experience is heavily skewed to earning less than $5,000 per year or losing money through the endeavor.\footnote{Id.} Still, there are distributors who make substantially more, earning a very real middle- or upper-class salary annually from the company. This is a massive disparity in outcomes.

The reason for this disparity is LuLaRoe’s Leadership Bonus Plan. Under this plan, consultants earn bonuses based on the total pieces sold by the entire TEAM (“Together, Everyone Achieves More”) in the downline. That means that the highest-ranking consultants receive 5\% of the dollar amount of inventory of all the consultants below them, even those they did not directly recruit.\footnote{Called Out, \textit{LuLaRoe: The Hot New Pyramid Scheme}, MEDIUM (Mar. 7, 2017), https://medium.com/@calledout/lularoe-the-hot-new-pyramid-scheme-82905385c9de.} However, 85.38\% of distributors make no money under the Leadership Compensation plan.\footnote{Gemma Davison, “\textit{It Was Very Toxic!” The Bizarre Rise and Fall of LuLaRoe}, VERIFIED.ORG (Oct. 12, 2021), https://www.verified.org/articles/guides/the-bizarre-rise-and-fall-of-lularoe.} This is not facially illegal or even unethical. It is easy to see how it could feel or seem unfair. For example, founder DeAnne Brady herself had consultants disclose the discrepancy between their commissions and actual retail sales at a leadership convention in 2017—which underscored the lack of a relationship between sales and income, despite that being the purported business structure.\footnote{LuLaRoe to Pay $4.75 Million, supra note 48.} Consultants reported that their monthly bonus checks ranged from $85,000 to $307,000, while their personal retail sales ranged from $12,000 to $25,000.\footnote{Id.} This demonstrates that, on average, a vast majority of income for high-ranking consultants is coming from recruitment incentives rather than selling retail products.
Despite this demonstrated use of incentive structure tactics, which ought to raise a red flag per the FTC’s own guidelines, LuLaRoe can likely distinguish itself from pyramid schemes because a majority of consultants (especially those comprising the 99.84% in the lowest incentive tier) make their money exclusively by actually selling clothing and the company currently, as of this writing, has a seemingly generous buy-back policy.\footnote{See 2020 LuLaRoe Income Disclosure Statement, supra note 90.} For example, in 2016, LuLaRoe claimed 72.63% of its income through selling clothing alone.\footnote{Wicker, supra note 80.} This reality can co-exist with massively inflated bonuses at the top of the proverbial pyramid, since a vast majority of consultants lose money or make very little money. LuLaRoe as a company may make 72.63% of its income through selling clothes; however, that figure does not specify \textit{to whom}.\footnote{Id.} If much of those sales are taking place within the company (to distributors who, due to an oversaturated market, cannot sell their inventory to outside consumers), that tells a story that differs profoundly from an ordinary retail opportunity.

LuLaRoe also has a 90% to 100% buy-back program that seems to follow the precedent set by \textit{Amway}.\footnote{LuLaRoe to Pay $4.75 Million, supra note 48.} However, this program excludes a large amount of limited edition merchandise and numerous consultants report being unable to secure their full refund under the buy-back program, especially after LuLaRoe abruptly changed the terms of the buy-back program from 100% of wholesale investment to 90% in 2017.\footnote{Desiree Stennett, \textit{LuLaRoe Just Changed its Return Policy…and Retailers are Absolutely Livid}, PENNY HOARDER (Oct. 11, 2017), https://www.thepennyhoarder.com/make-money/lularoe-changes-return-policy/.} The buy-back structure is one that exists on paper, passing the bare minimum \textit{Amway} test, but does not actually exist or work in practice. Both the misleading nature of the compensation structure, and buy-back system further illustrate how an MLM such as LuLaRoe might escape the legal categorization of ‘pyramid scheme’ without doing anything substantive to protect their consultants, compared to the victims of legally acknowledged pyramid schemes.

\textbf{VI. Methods and Discourse Data}\footnote{Please note that Section VI consists of original data collected by the authors and therefore contains few citations that are attributable to external sources.}

In this section, we unpack our case study and thematically analyze the results of our data collection. This section proceeds in two parts. First, we
describe our methodological approach and justify our particular data selection. Second, we discuss the themes we found in the data. We break these themes into four discursive categories: (1) pyramid schemes as conceptually illegal, (2) general incomprehensibility surrounding the legal definition of pyramid schemes, (3) pessimism about the protective capacity of the law, and (4) layperson suggestions of alternative litigation strategies in light of this pessimism.

A. Methods

In order to better understand the tangible consequences of the legal grey area of multi-level marketing, we conduct discourse analysis on a universe of discussion about MLMs in general and LuLaRoe in particular. Discourse analysis provides a set of tools to interpret a phenomenon in a theoretically informed and insightful way. In capturing a fuller universe of discussion around LuLaRoe, we avoid assuming what people are discussing and avoid the sterility of a laboratory experiment. Instead, we are able to study a snapshot of a community, interacting naturally in accordance with their own substantive understandings and their own understandings of what issues are important.

Thus, our data collection procedure began with the identification of a suitable community for text extraction. We targeted platforms where there would be discussion from MLM retailers, former MLM retailers, and MLM product consumers. We made this choice not only to integrate a variety of perspectives, but also to more fully represent the pipeline flow of information, from upline to downline, to consumers. Reddit emerged as a viable platform for this research due to its public accessibility, the prevalence of active discussions, and the way comments and threads function on the site. Reddit has previously been used in a variety of social science and humanities research for discourse analyses efforts similar to ours. Reddit is organized

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into a series of communities called subreddits, where users opt into subreddits of interest. There are a number of engagement behaviors available to users including: authoring posts, responding to others’ posts, upvoting or downvoting posts or threads, and giving awards to other users. This variety of engagement types creates a more dynamic community of discussion and endorsement that could be analyzed in a survey experimental setting. This is particularly useful to our analysis as we seek to understand community consensus and perceptions overall, rather than solely at the individual level.

We mined three active subreddits for threads that specifically reference LuLaRoe and coded the resultant posts into a set of themes that typifies understandings of pyramid schemes and the legality of MLMs.\textsuperscript{111} We describe the selected communities in Table 1 below. We balanced the selected subreddits across three vectors: activity, specificity, and pro-anti MLM sentiment. It was generally difficult to find subreddits that were explicitly pro-LuLaRoe. However, historically, we observed that r/LuLaRoe used to be more positive toward the brand and that historical text was intentionally included in this analysis.

\textsuperscript{111} Reddit is a public facing platform where users comment pseudo-anonymously under a consistent username. The following section contains quotes taken from commenters in the three subreddits mentioned in Table 1. While this information is public, we have redacted usernames to further protect the privacy of commenters.
**TABLE 1: SUBREDDITS USED IN DATA COLLECTION**

<table>
<thead>
<tr>
<th>Name</th>
<th>Users</th>
<th>Rationale for Inclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>r/Antimlm</td>
<td>637K</td>
<td>This is by far the largest MLM-related community on Reddit, making it a repository and hub for sharing screenshots and personal experiences and beliefs surrounding MLMs. There is no corresponding ‘pro’ MLM subreddit.</td>
</tr>
<tr>
<td>r/Defectivedetectives</td>
<td>8K</td>
<td>This is a subreddit specifically for former consultants of LuLaRoe. General topics of discussion are experiences with the company, policies of the company, and the future of the company (including pending litigation).</td>
</tr>
<tr>
<td>r/LuLaRoe</td>
<td>6K</td>
<td>This is a subreddit specifically for LuLaRoe apparel. It used to be more positively geared toward the brand, even serving as a means for customers to find desirable patterns of LuLaRoe apparel and for positive discussions of the company. More recently, the subreddit is more firmly anti-LuLaRoe in its rhetoric. The entire history of the subreddit was included in this analysis.</td>
</tr>
</tbody>
</table>

We employed an ontological search method, generating a list of terms relevant (but not morally directional) about LuLaRoe and legality, constructing Boolean search queries to extract streams of threads, posts, and comments from the relevant subreddits. We intentionally constructed these queries to include common abbreviations of LuLaRoe (llr). We searched all three forums for a set of seven terms including, “LuLaRoe AND illegal, llr AND illegal, LuLaRoe AND legal, llr AND legal, LuLaRoe AND pyramid
scheme, ILR AND pyramid scheme, and pyramid scheme.” Forums specific to LuLaRoe included searches only for the terms: legal, illegal, and pyramid scheme since refining LuLaRoe did not need to be accomplished through the Boolean search.

This resulted in a total sample of 211 unique threads comprising of 101,848 upvotes, and 10,130 unique comments. Each comment was carefully and manually examined by the research team in its individual context—and in its relationship to the thread it was a part of—and was qualitatively coded into thematic categories, represented here with examples typical of larger discussions across the three analyzed subreddits.

B. Thematic Analysis

1. Pyramid Schemes Are Illegal

One identifiable subset of subreddit participants were distributors who sold product for LuLaRoe. Perhaps the most common way these distributors engaged with pyramid scheme rhetoric was by explaining how LuLaRoe could not possibly be a pyramid scheme because pyramid schemes are illegal. This logic is circular yet pervasive. One retailer wrote, for example:

Network Marketing, Multi-Level Marketing, Affiliate Marketing, all are pretty much the same thing, once you actually take time to research what it actually means and how it is structured. They are not pyramid schemes, those are illegal. If it is not for you, no biggie, but they are the wave of the future and are actually brilliant business models.

Specifically, this retailer argues that MLMs cannot be pyramid schemes because pyramid schemes as a category are illegal and MLMs as a category are not illegal. This tautological approach underscores the particular regulatory failure in parsing between those two analytic categories. In this way, the lack of specific legal prohibition of MLMs is actually cast as a legitimating distinguisher from ‘illegal pyramid schemes’ without addressing how the two business models are functionally equivalent for the consultant consumer. That is, we can critique this analysis as surface-level engagement with categories and their illegality; however, this is the same surface-level engagement present in the legal materials—from agency opinions to agency guidance—relied upon for consumer protection and regulation.

Other consultants actually defined what a pyramid scheme is as a strategy for demonstrating how LuLaRoe could not possibly be a pyramid scheme without delving into how LuLaRoe passes that test. In other words, they listed characteristics of pyramid schemes without matching those
characteristics to LuLaRoe or, more importantly, without doing the work to distinguish LuLaRoe from a predatory pyramid scheme.

In doing so, distributors defined what a pyramid scheme is as a strategy for demonstrating how LuLaRoe could not possibly be one. Commenters often focused on the presence of legitimate retail products, one of the big sticking points for the FTC, writing things like: “A Pyramid Scheme is a form of investment (illegal in the US and elsewhere) in which each paying participants [sic] recruits two further participants, with returns being given to early participants using money contributed by later ones…AKA NO PRODUCT SOLD BUT MONEY IS GIVEN.”

This is another example of how current regulation around pyramid schemes and lack thereof for MLMs can serve to amplify public confusion and vulnerability about how to identify manipulative companies. In the regulatory framework as it currently exists, there exists nothing between “illegal pyramid scheme” and “legitimate (presumptively ethical) business opportunity.” In fact, as MLMs and their rhetorical tactics demonstrate, there exists a large, utterly unchecked middle ground of manipulative, exploitative business practices that do the very things pyramid schemes do but under the guise of legal legitimacy.

Moreover, the FTC is clear that there can be a physical product and still be a pyramid scheme, but this nuance is not generally articulated by commenters in these public forms. This is unsurprising given the unlikelihood of success on a claim that a company is a pyramid scheme if they sell a product: a product serves as both a legal and rhetorical shield. Instead of interrogating the presence of a product with nuance, retailers use that presence and the continuing legal corporate existence of LuLaRoe as a justification for how it cannot be a pyramid scheme with the implication that the company is not manipulative, unethical, or problematic.

Patterns of linguistic obfuscation were not lost on non-distributors and commenters who do not support MLMs, who specifically commented on this tautological logic and how it matters for perceptions of LuLaRoe. Non-distributor commenters frequently discussed the process by which consultants continue to use this rhetoric as a recruiting tactic in their downlines and thereby explain one mechanism by which this misperception might be spread. As one commenter explains: “So, when someone says it’s a pyramid scheme, they ask their upline if it’s a pyramid scheme, and their upline says no, because those are illegal. Then they parrot that back to someone.”

In this example, other people taking in rhetoric from distributors suggest that there is a broader pattern of logically rendering MLMs as not pyramid schemes for the simple, unexplored reason of “because they are not.” Here, the commenter believes that this logic comes from higher up in the
organization—suggesting, again, that the agency guidance of surface level advertisement analysis does not go deep enough and, furthermore, ordinary people are aware of the need for more depth.

Commenters also opined that the longevity of some MLM companies (i.e., avoiding penalty under the law as pyramid schemes) also served to confer an air of legitimacy around their business models. When comparing a company like LuLaRoe to longer-lived companies like Avon or Mary Kay, a commenter explains their theory:

They’ve been around long enough that they’re seen as legitimate, they do have a reputation for pretty decent products. . . . That doesn’t make them good companies by any means, if they were they’d launch as just regular cosmetics lines, but that’s why. An air of legitimacy, products that would probably sell just as well if they were regular companies, and good PR teams.

In this way, the sheer survival of a company serves to legitimize it and its business model. This is deeply related to the idea that MLMs are not pyramid schemes because pyramid schemes as a class are illegal. Once again, we see, perhaps, that the very fact that MLMs are largely unregulated or uncritiqued operates broadly as a suggestion that they do not need to be. That is, they are legitimate because they have not been proven to not be—regardless of whether or not this lack of proof is through systemic oversight. This low bar for legitimacy is reified by a narrow legal classification of pyramid schemes. We discuss in the next section how this narrow conceptualization also led to substantial confusion about what actually counts as a pyramid scheme under the law.

2. Incomprehensibility Surrounding the Legal Definition of Pyramid Schemes

Non-distributor commenters, who were critical of LuLaRoe, frequently explained to others on the forum why LuLaRoe is unlikely to be legally classified a pyramid scheme. As is true in any unmoderated space, the accuracy of these explanations varied widely. This also matched the general technical complexity and administrative opacity of the legal concept being discussed. The following conversation exemplifies a pattern of education and analysis displayed in the comment forums, including the misconceptions that come along with legal definitions of MLMs:

[Person 1]: They aren’t different. MLM is simply a pyramid scheme. Calling it multi-level marketing is just a way to disguise this. Nobody wants to be a part of a pyramid scheme
but they might sign up for something called multi-level marketing.

[Person 2]: I had to look up pyramid schemes on Wikipedia. I guess the main difference is that they sell a non-worthless product . . . Lularoe has an entire clothing line so that is why they can get away with it legally . . . so I guess the big question would be, can people make money off of selling their clothing alone without recruiting anyone underneath them and be successful?

In this example, and more broadly, disillusioned commenters come to the forum to air their grievances with LuLaRoe and other MLMs and engage in legal education surrounding what legally constitutes a pyramid scheme. The pyramid scheme language is enduring beyond the definitional work not being done by distributors and it seems to have led forum members to look into pyramid schemes in general. However, even intentional research in the topic does not necessarily lead consumers (the group theoretically protected by law in this space) to accurate conclusions about the legality of MLMs.

Specifically, the same fixation on the presence of retail products that distributors invoked in their “not a pyramid scheme logic” was misunderstood by non-supporters. Because the presence of a retail product is tangible and easy to understand, the presence of such a product makes for a compelling but insufficient first step in understanding the pyramid scheme as an analytic framework. However, some non-distributor commenters were insistent that the existence of a product would be sufficient to defeat a claim. For example, one commenter wrote: “In their defense, Lularoe is not technically a pyramid scheme under the law, since there was an actual product being sold. But yeah they’re c*nts. This is why I suggest people engage their thinking skills and not give their time and money to people like this.”

In reality, the FTC is clear that distributors can, in fact, provide a physical product and still be a pyramid scheme. But this nuance is generally not articulated by commenters in these public forums, even as they understand the general stakes of the category—that profits come from participants, not from sales of goods or services. Instead, consultants use the presence of product and the continuing legal existence of LuLaRoe as a justification for how it cannot be a pyramid scheme or cannot be illegal. Importantly, we argue, this misunderstanding isn’t only used by consultants, but also by anti-MLM consumers.

Furthermore, we argue that this misunderstanding makes conceptual sense, given the broad lack of specificity in the law. It is unsurprising that ordinary people would latch onto any available potential substitutions for black letter rules. Here, that includes an emphasis on the selling of products
over attention to the pyramidal structure. These commenters do suggest a kind of third space—between legitimate and easily cognizable as a pyramid scheme—in which MLMs inhabit, outside the bounds of both ethicality and illegality. Although the commenters miss the nuance of the pyramid scheme as a legal category, they emphasize the nuance that simple tautological reasoning from distributor commenters miss: that businesses can operate without legal sanctions while still not being ethical. Ultimately, this is another example of how current legislation and case law around pyramid schemes and MLMs can serve to amplify public confusion and vulnerability about how to identify manipulative companies by providing a shield of legality due to the extremely narrow definition of pyramid schemes under the law. This nuance leads to our next thematic point, that commenters, particularly non-distributor commenters, are pessimistic about the protective capacity of the law.

3. Pessimism About the Protective Capacity of Law

Commenters seemed to undergo a natural progression of learning about the law to full-blown cynicism as they learned more (accurate or not) information about the law defining pyramid schemes, eventually leading them to abandoning hope of regulating MLM companies under pyramid scheme rules at all. An example of this progression is explained below:

[Person 1]: This company is shady AF, and hopefully something is able to get them on something which forces them out of business, but pyramid scheme will not be it.
[Person 2]: It just doesn’t meet the legal definition of a pyramid scheme. There is actual retailing going on with Lularoe.
[Person 1]: It would be so amazing if one of these lawsuits could make ANYTHING happen, but if they keep harping on this ‘pyramid scheme’ nonsense, nothing will come of it.

After acknowledging and agreeing that LuLaRoe does not meet current standards for pyramid scheme classification, the original commenter opines that they are hoping for any type of improvement at all. In fact, they also suggest that focusing on whether or not LuLaRoe is a pyramid scheme at all is a smokescreen that will ultimately absolve the company of any legal responsibility.

It is also important to note that commenters in these forums frequently engage in advanced legal analysis that leads to their cynical conclusion that the law in its current form is not designed to protect consumers. One
commenter, writing specifically about the fate of a class action lawsuit against LuLaRoe, says:

I am not optimistic. If the class gets out of the arbitration clause and gets certification, and if LLR loses both suits, then this will be the end of MLMs as we know it. I mean, more actual retailing went on in LLR than any other MLM in history. If an MLM where actual retailing happened is considered a pyramid scheme (under the law), then the MLM industry as we know it is gone. If you think an industry that is constantly greasing palms is going to just get wiped off the map, then I have a bridge to sell you. MLMs are here to stay and LLR will not be losing these cases.\textsuperscript{112}

Here, the commenter identifies the strength of MLMs politically and legally. They articulate that finding LuLaRoe to be a pyramid scheme would require a fundamental upheaval in the entire MLM industry that they view as unlikely or impossible. They also specifically point out that LuLaRoe in particular has secured its position relative to legal precedent despite their widely acknowledged predatory and damaging business practices.

In these conversations, the cynicism around LuLaRoe’s potential vulnerability to the law is deep. Non-distributor commenters can be deeply skeptical of not just the law’s ability to regulate companies like LuLaRoe, but this second commenter even goes so far as to say that agencies are unwilling to regulate companies like LuLaRoe, specifically stating that not only is LuLaRoe not doomed to fail, but it is too big to fail. This commenter suggests deep skepticism toward the regulatory potential because they believe that the deck is stacked, and has been stacked, through manipulative legislative and legal tactics by LuLaRoe. They suggest that LuLaRoe has been not only resting on an ineffective and toothless law, but has been coercively setting up structures whereby those laws are ineffective and toothless or, at least, that leave LuLaRoe out of their purview. Although this skepticism about LuLaRoe’s ethics generally transcends the scope of this paper, it does build upon a fundamental point: people see companies like LuLaRoe as untouchable, and this untouchability is deeply connected to general cynicism about the protective capacity of the law.

\textsuperscript{112} In 2018, twenty-two former consultants sued LuLaRoe for $1 billion in damages (on behalf of thousands of sellers), but a California judge ordered the case be moved to arbitration due to contracts signed by consultants mandating legal disputes be resolved by arbitration. Suddath, supra note 77.
4. Alternative Strategies and Legal Creativity

Our final thematic category follows a more hopeful path from commenters. Here, former consultants and consumers suggested alternative legal strategies for dismantling LuLaRoe, suggesting a kind of legal creativity in response to existing failures. We build out a new analytical category for legal analysis: legal creativity. We argue that both experts and non-experts, when confronted with systemic roadblocks in the advancement of justice, can and do respond to the law with creativity. In this section, we examine what that legal creativity looks like when ordinary people are confronted with a frustratingly opaque system that lacks meaningful access to remedy for harms caused. Commenters diverge from the well-worn pyramid scheme and “legitimate MLM business opportunity” scripts that we have been discussing in this Article and begin to unpack different alternative solutions.

After acknowledging the difficulty of prevailing on pyramid-scheme-type claims, commenter’s suggested avenues for legal remedies that they felt may be more viable:

I’m afraid these lawsuits won’t really go anywhere. As [redacted] said, there’s an actual product. And in theory, even the lowest-on-the-downline consultant has gotten something (no matter how sh*tty and stale the inventory is) for their money put into LLR. That’s how MLMs “get away with” hiding their pyramid-iness. The lawsuits would be better off if they address the unethical changes to policies and going back on returns.

This commenter specifically identifies the strong retail presence of LuLaRoe as a strategy for “getting away with” a pyramidal shaped company. The commenter goes a step beyond this conclusion to suggest that the law might be better suited to punish the company for policy changes than for the fundamental way the company operates. Importantly, this commenter identifies a significant shortcoming in current law surrounding pyramid schemes: the vagueness with which something becomes a “worth something” product for your investment. Rather than focusing on the nuance of product distribution, the presence of an actual product that is “worth something” takes precedence. As we have argued, even though the law might not work to address claims framed in that way, commenters address the potential—describing in fairly explicit detail how they would like the law to work: addressing the unethical behavior, even as the company moves the goal post.

A second commenter responds directly, pointing out that there are still failures with the law, even under this new imagined solution. They say:
The problem is the changes are just unethical not illegal. According to this suit the problem is that they incentivize by purchases rather than sales (they changed this in the last year). They have docs and videos stating the classic LLR phrase used “you need to buy more to sell more” which gives those at the top more money while those at the bottom couldn’t make a profit. This is what makes it an endless chain which is illegal according to CA law.

That said, I still doubt it will get them any money from LLR, but according to some the way the RICO suit is filed . . . allows them to chain this to the top 100 consultants as well. I’m sure LLR lawyers will protect the company, but leave those out to dry.

This commenter shares the cynicism toward the pyramid scheme allegations but is more generally pessimistic about the legal remedies owed for unethical behavior, differently framed. Even with the presence of substantial evidence to imply incentivizing mass inventory hoarding by consultants, there is a lack of belief in the protective capacity of the law. In fact, the commenter postulates that other consultants are more likely to bear the brunt of legal sanctions than the actual company due to the adeptness of LuLaRoe’s legal team. Here, they explicitly target an idea we developed earlier: that the current law allows for a reframing of responsibility away from companies and toward individual consumers. This commenter’s cynicism reflects that position.

Although the commenters continue to return to the idea that the law, as it exists, is ineffective, they are engaging in a discursive process that begins to delineate a desire for alternative solutions and starts to generate how those solutions would work with the problems they identify. In other words, although this conversation ends in a partially cynical place, the commenters have concluded that the law as it exists is still ineffective for dealing with the problems they have identified—they are still attempting to generate solutions within the law. The commenters follow their own substantial, if imperfect, knowledge of the law and, in the face of evidence that the law is not specifically meant to do what they are proposing, are still using the law to attempt to generate solutions. This, we argue, is a kind of legal creativity whereby ordinary people are responding to the constraints of imperfect knowledge and fundamentally flawed legal systems with a generative and discursive interest in using those very systems for productive and positive justice work.

Across all thematic groups identified here there is a common thread: the current iteration of the law protects MLMs as distinct from pyramid schemes, despite predatory tactics and consultant financial outcomes that are often
significantly worse than legally recognized pyramid schemes. We find that active retailers leverage the weakness of current law to cast their businesses as more legitimate, while disillusioned former retailers and consumers anticipate a hopeless cycle where MLMs are not only not held accountable, but where the law needs to be subverted and finessed to find a way to put MLMs out of business. This speaks to the ineffectiveness of the current regime in preventing harms meant to be mitigated by laws prohibiting pyramid schemes.

VII. RECOMMENDATIONS AND CONCLUSIONS

Generally, the United States broadly lacks consumer protection and worker protection for the types of work that MLM distributors do.\textsuperscript{113} A broader, federal regulatory plan that addresses these gaps to better protect individuals, regardless of place of incorporation or residence, would generally aid in the elimination of predatory business practices. State-specific plans cannot work due to the national (and global) nature of the corporations in the twenty-first century. Specifically, in light of our findings here, we recommend that the FTC promulgate rules with a particular eye toward the particular harms they intend to prevent. Such rules would specifically need to address how these businesses are set up as recruitment rather than sales models and need to put the onus of blame on the company, rather than independent distributors. For example, we recommend that regulatory agencies be explicitly critical of bonus structures entirely—not just require companies have rules that limit the distribution of bonuses—because those structures heavily incentivize recruitment. This incentivization of recruitment does not matter as a mere rhetorical or advertising matter; it is harmful by diluting the market, redirecting focus from sales, and encouraging stockpiling of inventory.

We also recommend that Congress enact legislation, independently or through updating existing consumer protection statutes (to expand beyond action against individual distributors and shift liability to the company) or RICO, that grants individuals private rights of action against companies with predatory recruitment and distribution practices.\textsuperscript{114} A model statute would address how profits function within MLMs—prohibiting the operation of business whereby most distributors pay money to the company rather than earn—and how distributorship, rather than just the allocation of bonuses, is based on maintaining an inventory from the company and enforcing liability

\textsuperscript{113} See generally Mangiaratti, supra note 36.

\textsuperscript{114} RICO is potentially a viable site for updating regulations around MLMs because the digital world of MLMs is plausibly related to telecom fraud and therefore, within the scope of RICO. However, this potential pathway has yet to be pursued in any previous or active cases.
against companies for the misleading rhetoric and recruitment tactics of their distributors. This would likely mean prohibiting business models based on multi-level marketing entirely.

The absence of legal regulation around MLMs does more than leave consumers and consultants vulnerable; in practice, it confers legal and institutional legitimacy onto MLMs by virtue of “not being illegal pyramid schemes.” They are able to differentiate themselves from illegal behavior without any meaningful difference or effort. In this Article we have demonstrated how legal regulation is not self-contained to the legal system. Instead, the rhetoric of legal decisions permeates the discourse around regulatory topics and changes the way people understand these phenomena. The case study of LuLaRoe exemplifies how legal discourse matters. We argue that the court’s failure to acknowledge—and to make LuLaRoe and similarly situated companies acknowledge—their pyramidal structure seems like a minor symbolic loss. However, it is extremely important how the general public understands the law and its protective capacity, and the legal replicability of the remedy for consultants in other states. In this way, the decisions of the court become the rhetoric of the public and fundamentally change the meaning of the law itself in the public’s consciousness. Failing to protect consumers does more than just fail to protect consumers: it erodes public trust in the legitimacy of the law as a system.

The current legal discourse around pyramid schemes—and the ways federal agencies carve out a tiny pocket of businesses to fit this definition—is, then, able to be exploited by the businesses themselves. By virtue of not meeting the impossibly narrow definition of a “pyramid scheme,” MLMs and the small subset of individuals who profit from them are not only able to evade liability for harms in their downline, they are also able to utilize that distinction to establish their legitimacy. In other words, MLMs are “not bad” because they are not (quite) pyramid schemes. This slippery legal framework ultimately allows the businesses to perpetuate the very harm this language purports to prevent.