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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

NOTICE 1155 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice 2725 of 1998 as published in Government Gazette No. 19456 dated 13 November 1998, as set out in the Schedule.

A ERWIN
MINISTER OF TRADE AND INDUSTRY

KENNISGEWING 1155 VAN 1999

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP VERBRUIKERSAKE (ONBILLIKE SAKEPRAKTYKE), 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, publiseer hiermee, kragtens artikel 10(3) van die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet No. 71 van 1988), die verslag van die Sakepraktykekomitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing 2725 van 1998 soos gepubliseer in Staatskoerant No. 19456, gedateer 13 November 1998, soos in die Bylae uiteengesit.

**A ERWIN
MINISTER VAN HANDEL EN NYWERHEID**

BUSINESS PRACTICES COMMITTEE

REPORT IN TERMS OF SECTION 10(1) OF THE HARMFUL BUSINESS PRACTICES ACT, 1988 (ACT No. 71 OF 1988)

Report No. 66

**Omega Trust, Omega Power Marketing,
Gerhardus Francois Janse van Rensburg
and Jan Frederick Olivier van Zyl**

1. Introduction

On 21 January 1998 the Business Practices Committee⁽¹⁾ (the Committee) received a letter from the South African Reserve Bank (SARB). The letter stated that the bank received an enquiry from a consumer about Omega Trust (Omega) but that there appeared to be no clear indication of a possible contravention of the Banks Act, 1990 (Act No 94 of 1990). The SARB added that the Committee might consider investigating the activities of Omega.

As far back as 29 April 1997 the SARB, via the Registrar of Banks, addressed a letter to the attorney of Omega. The Registrar *inter alia* wrote:

"Kindly note that Omega Trust does not fall within the meaning of "any other institution or body" as envisaged in section 2(vii) of the Banks Act, 1990 (Act No 94 of 1990 - "the Act"). We are therefore unfortunately unable to adhere to your request that Omega Trust be exempted in terms of section 2(vii) of the Act.

This Office does not intend to prevent *bona fide* multi-level marketing programmes from operating in the Republic of South Africa. Multi-level marketing programmes may be described as any marketing strategy in which participants obtain the right to recruit additional participants, or to have additional participants placed by the promotor or any other person into the program participant's program grouping, in order to sell goods and to receive money; provided that the payments received by program participants are derived primarily from the sale or purchase of goods or services, and not from recruiting additional participants nor for having additional participants placed into the program participant's program grouping.

Having regard to the information submitted to this Office in respect of your client's proposed business we are not convinced that the proposed business of Omega Trust falls within the meaning of a bona fide multi-level marketing programme". (Own underlining).

2. Omega Trust and Omega Power Marketing

Omega, a trading trust, started doing business on 1 March 1998. The trustees of Omega are Gerhardus Francois Janse van Rensburg (hereafter called vR) and Jan Frederick Olivier van Zyl (hereafter called vZ). vR said they started in October 1996 with extensive enquiries to ensure that their proposed business would be legal. vR reiterated this statement on 5 January 1999 and added that there was "...nothing in writing that we could work on". There are eight regional branches of Omega, located in Johannesburg, Nelspruit, Klerksdorp, Vereeniging, Rustenburg, Middelburg, Mossel Bay and Durban. Omega identified 31 regions where it intends establishing a local presence.

Another relevant entity is Omega Power Marketing CC (97/22391/23, hereafter called OPM). The members of OPM are vR and vZ. The national "director" of OPM is Mr E Hattingh (Hattingh). Two regional "directors" report to Hattingh. By December 1998 there were eight marketing "directors" and this number, according to vR will eventually be increased to nine, one for each of South

1. The Business Practices Committee is a statutory committee within the Department of Trade and Industry and administers the Harmful Business Practices Act, 71 of 1988.

Africa's provinces. The marketing "directors" report to the regional "directors" and national "director" in turn reports to vR and vZ. The marketing "directors" manage ± 50 marketing managers. The marketing "directors" and the marketing managers are remunerated on a commission basis only. Hattingh, the national director, is paid a salary and a commission by Omega.

3. Various discussions with and over Omega

On 11 February 1998 officials of the Committee visited the headquarters of Omega at its offices in Silverton. This visit was followed by a great number of discussions between officials, the Committee and representatives of Omega and other events. This is borne out by the following.

12 February 1998:

The Committee confirmed the preliminary investigation instituted in terms of section 4(1)(c)⁽²⁾ of the Harmful Business Practices Act, 71 of 1988 (the Act), into the business practices of Omega, OPM, vR and vZ.

16 February 1998:

Further discussions between officials and VR at Omega's offices.

18 February 1998:

Still further discussions between officials and VR in Silverton.

18 March 1998:

vR and vZ addressed the Committee. vR undertook to furnish the Committee with certain documents and the Committee resolved to again look into the detail of the scheme.

7 April 1998:

More discussions between officials and vR at the offices of Omega.

8 April 1998:

Discussions between officials and vR and vZ in Silverton.

14 May 1998:

Mr Leon Louw, Executive Director of the Free Market Foundations, Mr Ray Hawkins (Hawkins), financial manager of Omega, and vR addressed the Committee. After the address by the representatives of Omega the Committee resolved to undertake a section 8(1)(a) investigation in

2. A section 4(1)(c) investigation enables the Committee to make such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with, any harmful business practice which allegedly exists or may come into existence. Notice of section 4(1)(c) investigations is not published in the Government Gazette as opposed to section 8(1)(a) investigations. The purpose of section 4(1)(c) investigations is to enable the Committee to make a more informed decision as to whether a section 8(1)(a) investigation is called for. The Minister of Trade and Industry is not empowered to make any decisions on the strength of a section 4(1)(c) investigation. He may do so in terms of a section 8 investigation.

terms of the Act into the business practices of Omega, OPM, vR and vZ.

15 May 1998:

Another round of discussions between officials and vR and vZ took place in Silverton.

28 May 1998:

At a meeting of the Committee it was resolved that arrangements be made to grant Omega the opportunity to address the Committee during a formal hearing that was to be held at the next meeting of the Committee on 18 June 1998.

18 June 1998:

The Committee was addressed by vR, Hawkins and Mr T Hawkins, Omega's training manager. The Committee resolved that additional information be obtained from Omega and circulated to the members of the Committee within fourteen days

2 July 1998:

Officials held discussions with vR and Hawkins in Silverton.

8 July 1998:

Still further discussions between officials and vR were held at the offices of Omega.

28 July 1998:

At a meeting of the Committee it was resolved to grant Omega yet a further opportunity in terms of the *audi alteram partem* rule to respond within two weeks to the Committee's concerns in relation to the apparent harmful business practice of Omega's business. The Committee resolved to then consider the response by Omega and to debate the issue whether it should pursue the investigation in terms of section 8(1)(a) of the Act.

1 September 1998:

The Committee resolved that the attorneys of Omega be informed that the impending notice of the investigation were to be published on 11 September 1998.

8 September 1998:

vR, in his capacity as co-trustee of Omega and OPM brought an application for an interdict against the Minister of Trade and Industry NO and Louise Arlene Tager NO from preventing the Committee to proceed with the publication of the notice of a section 8(1)(a) investigation. The main thrust of the argument was that certain provisions of the Act were unconstitutional

26 October 1998:

Judge van Dijkhorst made the following order⁽³⁾ (directly translated from the Afrikaans) regarding the application by vR and OPM:

"1. Sections 7(3) and 8(5)(a) of the Harmful Business Practices Act 71 of 1988 are

3. See G F Janse van Rensburg and Omega Trust Power Marketing CC v The Minister of Trade and Industry and Louise Arlene Tager, case number 22658/98, 26 October 1998, High Court of South Africa, Transvaal Provincial Division.

declared invalid.

2. The retrospective effect of the above order is limited. The validity of the above order is limited. The invalidity will apply only from the date of confirmation thereof by the Constitutional Court in terms of section 172(2)(a) of the Constitution.
3. Apart from the order in paragraph 1 above, the application is denied.
4. Each party is to bear its own costs".

13 November 1998:

Notice 2725 of 1998 appeared in Government Gazette 19456. This Notice read as follows:

"In terms of the provisions of section 8(4) of the Harmful Business Practices Act, 1988 (Act No 71 of 1988), notice is hereby given that the Business Practices Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of -

Omega Trust, Gerhardus Francois Janse van Rensburg (ID600807 5038 00 7), Jan Frederick Olivier van Zyl (ID 590614 5091 00 8), Omega Power Marketing CC (97/22391/230), and any member, employee, agent and/or representative of any of the aforementioned in respect of the activities of Omega Trust and/or Power Marketing CC".

16 November 1998:

vR applied for leave to appeal against the finding of the judgement by Judge van Dijkhorst..

23 November 1998:

The Director: National Consumers Affairs Office of the Department of Trade and Industry informed the State Attorney that the Minister of Trade and Industry (the Minister) would appeal against the Judge's finding and would also object against vR's application for leave of appeal.

15 December 1998:

The attorney of Omega, vR and Hawkins again addressed the Committee.

28 December 1998:

Officials held discussions with vR and at the Omega offices.

5 January 1998:

Extensive discussions were held between vR, vZ and an official of the Committee at the offices of Omega in Silverton.

Protracted correspondence between the Committee and the attorney of Omega also ensued. This correspondence mostly revolved around legal issues. There was also correspondence between the Committee and vR.

4. The Omega scheme

4.1 The presentations

New Omega members are canvassed by existing members. vR preferred to talk about "cardholders" and not members. In this report, however, the "cardholders" will be called members. A prospective new member attends a presentation in his area in the company of an existing member. vR said that Omega did not turn away prospective new members who attended the presentation by themselves. Prospective members are invited by existing members to attend a presentation by Omega and are required to pay R50 ("door money") as a contribution to the snacks that are served. No alcohol is served to those attending. During the presentation a number of slides are shown to those present. The following are the contents of these colour slides:

- Slide (a) Ω Omega Trust. Welcome. Enjoy your evening
- Slide (b) Are you tired of ... High Prices? Bad Service? Poor Quality? Shoddy Workmanship
- Slide (c) You have 2 choices To save more To earn more BUT most SOUTH AFRICANS don't MAKE USE of either of these opportunities
- Slide (d) You are here to SAVE & EARN
- Slide (e) Consumer terrorist?
- Slide (f) The Omega Card is changing those attitudes for YOU ... with Collective Bargaining YOU have Consumer Power
- Slide (g) A pie chart showing the "Breakdown of Income". The chart shows that 44% goes to "Bond, Car, Tax, Etc" and on the remaining 56% Omega can achieve a saving of 11,2% for its members. It is also stated "OMEGA CAN HELP YOU!!.
- Slide (h) Another pie chart showing the "Breakdown of Income". Recreation = 3% and Survival = 97%
- Slide (i) A slide from "Consumer News", apparently an in-house leaflet, with the following headings: "Omega Trust affects Government decisions on consumers' behalf!", "Consumers Tired of High Prices" and "Hotline for Consumerism".
- Slide (j) Ω Omega Leisure: Sea Cruises, Wildside Adventures, Coach Tours, 216 hotels, discount accommodation, airfares, car hire
- Slide (k) R46 500 could be made or earned by canvassing one member per month for nine months.

Slide (g) was misleading. It was explained to vR early in 1998 that it just was not possible to achieve "... a saving of 11.2% for its members". Omega apparently did not take the expenditure and shopping patterns of South African consumers into consideration. It seemed that the percentage of 11.2% was not a deliberate attempt to mislead prospective members. vR conceded that the wording "... a saving of 11.2%" was a mistake, but the same slide was used during presentations early in January 1999.

Those wishing to become members sign an application form. The "Conditions Applicable to Cardholder" are published on the reverse of the application form. Condition 6 states:

"The Trust shall be obliged within 21 days after having received payment of the amount referred to above, to issue the Cardholder with his/her discount card and consumer directory which will however only be available for distribution at a workshop session where the operation of the card is explained".

New members may join Omega's "marketing team". There is, however, no obligation to do so. A new member wishing to become part of the marketing team has to sign a document called **ACKNOWLEDGEMENT**. In the document the member declares that:

- "1. This acknowledgement has been effected by me voluntary.**
- 2. I have decided to join the marketing team of OMEGA TRUST as an independent marketing agent and this decision has been made voluntarily.**
- 3. The commission which I earned will be taxable and I will be responsible to declare such commission to the Receiver of Revenue and to pay the necessary income tax owing in respect thereof.**
- 4. The commission which I will receive will be paid to me by way of electronic transfer and I will sign all documents and give all information necessary to allow OMEGA TRUST to effect such transfers.**
- 5. In order to receive my introductory commission I will be obliged to attend every workshop session following on the introduction of every new Cardholder and I will use my best endeavours to persuade such new Cardholder(s) to accompany me to attend that workshop meeting".**

4.2 The Omega brochure/folder

The following is stated in an Omega brochure/folder:

"As you know Omega Trust is a registered trading trust. Extensive investigations were done with the Receiver of Revenue and the Registrar of Banks. As consumers we know some protection comes from the Newspaper "consumer watchdogs". One such "watchdog" - Die Beeld Newspaper's "TOT U DIENS" - did extensive investigations about Omega Trust. We are very pleased to say we have passed with flying colours and we have had a positive article published in the newspaper".

A photo, copied from the report in the Beeld, shows vR displaying a letter that "Mr Francois van Rensburg of Omega ... received from the Registrar of Banks. In the letter the Registrar sets out guidelines as to the way Omega should market their discount card". (Directly translated from the Afrikaans). It would seem from section 1 of this report, however, that the Registrar was not convinced that the proposed business of Omega fell within the meaning of a bona fide multi-level marketing programme.

It is also stated in the folder:

"A simple philosophy to follow ... The more card holders you enroll for Omega Trust, the more successful you and Omega Trust will be" and "Save & earn money with Omega Trust".

It was stated that Omega was formed with the purpose of enhancing "... your consumer empowerment through collective bargaining as well as new opportunities to take charge of your economic future".

4.3 Payments

To become a member of Omega as from 6 April 1998, a person has to pay R6 736.85. Previously this amount was R5 263.16. The R6 736.85 applied when a member paid by instalments on a credit card. Those members who paid by cash or by cheque were given a discount and were required to pay R6 400 only. The R6 400 per member was paid into the account of Omega. Omega retained R2 760 (43.13 per cent) of this amount and the remaining R3 640 (56.87 per cent) was paid to OPM. The R3 640 was distributed as follows:

R2 500 was paid to the existing member(s) that recruited the new member.

R500 was paid to the marketing manager which manages the area in which the new member was signed up; and

R300 was paid to the marketing "director" to whom the relevant marketing manager reported.

R40 was paid to the national "director"; and

R200 was paid to the regional "director" to whom the relevant marketing "director" reported.

R100, in addition to the R500, was paid to the marketing manager should he achieve certain marketing goals.

A new member ("X") could, if he/she so wished, become part of the marketing team for Omega. "X" would receive R1 000 each for the first two members canvassed by him/her. Should "X" canvass a third member he/she becomes a "senior" marketer and would receive R2 500 for the third and consecutive, and unlimited, new members. "X" would also receive R1 500 for the first two members recruited by the third and consecutive members canvassed by him/her.

The scheme could also be explained as follows: Assume an individual (YOU) becomes a member of Omega. YOU could earn commission on the introduction of new members by yourself. When following the steps set out below, one should keep in mind that each new member pays R6 400 and R2 500 of this amount is earmarked by Omega for the recruitment of members. The amounts deducted in respect of income tax are ignored because the effect on each member will be

different, depending on the marginal tax rate of the member.

Step 1: An existing member of the scheme recruits YOU and YOU become a member or partner by paying R6 400. YOU are now a junior partner. R2 500 of the R6 400 paid by YOU will be paid to the junior partner and/or the senior partner who recruited YOU.

Step 2: Should YOU canvass two new members, A and B, YOU would receive R1 000 for each member recruited. YOU then become a senior partner. A and B then fall away from YOUR structure and YOU do not receive any further commissions from them or the consumers they recruit.

Step 3: Once YOU have become a senior partner YOU would receive R2 500 for each subsequent new member. For example, YOU would receive R5 000 were YOU to recruit members C and D. C and D are now YOUR junior partners. There is no limit on the number of junior partners YOU, as a senior partner, may recruit.

Step 4: Should C, YOUR junior partner, recruit E, C would receive R1 000 and YOU would receive R1 500 out of the R6 400 paid by E. E would now also be YOUR junior partner. The same applies to D should he recruit X.

Step 5: Should C recruit F, C would receive R1 000 and YOU would receive R1 500. F is also now YOUR junior partner. The same applies to D should he recruit Y. For the sake of clarity D and the members recruited by him will be ignored.

Step 6: C has now recruited two members, E and F, and consequently he, that is C, becomes a senior partner. C then falls away from YOUR structure. C would now be in the same position YOU were in step 3. He would then receive R2 500 for each subsequent new member and could probably develop his own structure of junior partners.

Step 7: E and F are YOUR junior partners. Should E canvass G, E would receive R1 000 and YOU would receive R1 500. The same remuneration would apply should E canvass H. E would now become a senior partner and fall away from YOUR structure. YOU, however, now has two more junior partners, namely G and H. The same reasoning applies to F.

YOUR number of junior partners increases, provided they recruit other junior partners, resulting in income being produced without YOU having to recruit new members YOURSELF. Furthermore, the increase in the number of YOUR junior partners grows at an exponential rate. For example, assuming that each junior partner recruits two new members, the number of partners after the ninth level would be $2^9 = 256$.

The scheme allows for each member, provided the member advances to the status of a senior partner, to start his own structure or "pyramid". These structures or pyramids are not the same. For example, member A could canvass ten new members and member B three new members. Each new member thus canvassed by A and B would probably enrol various numbers of other new members. The number of people in each structure will differ between each partnership or pyramid. In general, however, Omega is also characterised by a pyramid structure in the sense

that the marketing managers, marketing "directors", national "director" and the regional "directors" find themselves at the top of the pyramid.

Should "YOU" canvass only one new member per month and these new members (from the third new member onwards) also canvass one member per month, "YOU" stand to receive R46 500 after nine months (see Slide k above). These figures are explained to those attending the presentations arranged by the marketing "directors" and marketing managers. "YOU" will pay income tax on the monies received by you. vR stressed that there was no obligation whatsoever on new members to canvass new members. The only benefit for these members joining the scheme was that they could enjoy the benefits of the scheme. The benefits of the scheme are discussed under section 5 of this report.

4.4 The number of members

On 7 April 1998 Omega had 1 316 members. With the collapse of Newport, Omega offered membership to an unknown number of ex Newport members of which ± 660 accepted. This offer was only valid to the end of December 1997. The cost of membership to these ex Newport members was R250. The number of new members canvassed by Omega since 1 March 1997 to 6 April 1998 was ± 656 . During April 1998 vR predicted that the growth during the rest of 1998 would be much better.

The Omega members who elected to become part of the marketing team will cease to receive commissions once Omega has a substantial member base. vR guessed that 100 000 members would constitute a "substantial" member base. The reasoning is that the scheme would by then have gained such momentum that new members will come forward without having to canvass them. The eventuality is conveyed to new members of the marketing team.

It was put to vR that if Omega continued to canvass 656 members per annum the "substantial" number base of 100 000 would be achieved in 165 years. During the meeting on 18 March 1998 vR told the members of the Committee that Omega intended having "... a consumer base in excess of 10 000 cardholders over six months". This implies that 1 666 members should be canvassed per month over the months April 1998 to September 1998. This is an increase of 175 percent above the average of 605 new members per month in April 1998.

On 26 December 1998 the total membership of Omega was 3 050. This is an increase of 1 734 from 7 April 1998 to 26 December 1998, or an average of 198 per month. This is obviously far less than vR anticipated. vR was apparently not alarmed at the slow rate of growth.

4.5 The members who have recouped their monies

The distribution of the commissions paid by Omega as at 3 July 1998 is reflected in the table on the next page. It is clear from this table that approximately 80 per cent of the 555 members have not recouped their capital outlays. During the presentations prospective members are told that they could "make" R46 500 by canvassing one member per month for nine months. It is also clear from the table that only 11 members (2 per cent of 555) received more than R40 000. In the

Committee's Report No 56: Newport Business Club (Pty) Ltd and Others⁽⁴⁾ it was stated that 91 per cent of the Newport members have not recouped their payments, compared with only 9 per cent who have done so. The percentages in the Newport case were almost identical to those calculated during the investigation into the Rainbow Business Club and others⁽⁵⁾ (Rainbow) and may be indicative of the trend in these types of schemes.

vR said that the figures in the table could be expected, because "... members do not join Omega Trust to recoup their monies. They join purely for the benefits that membership entails".

5. The purported benefits of joining Omega

The following purported benefits of joining Omega were set out by Omega.

5.1 Short term insurance plan

The cardholder/member has access to "...highly competitive insurance rates", as well as a rebate of 25 per cent of the risk premium after three years should the member not have lodged a claim for three years running.

5.2 Access to legal advice

Omega contracted a firm of attorneys to give members legal advice at R100 for the first half hour of the first consultation and at a discounted rate of 22 per cent on legal services following the first consultation.

5.3 Omega Call Centre

Members could call a "one stop" helpline to have access to leisure accommodation, for example hotels, game lodges, guesthouses and resorts such as Aventura. Negotiations are under way to contract discounted airline and car hire rates for members.

4. Report 56: Newport Business Club and Others, published under Notice 1349 of 1997 in Government Gazette No 18292 dated 17 December 1997.

5. Report 55: Rainbow Business Club and Others, published under Notice 1958 in Government Gazette No 18531 dated 12 December 1997.

5.4 Motor vehicles

Members have access to second hand motor vehicles at competitive discounted prices. These "... at or below Mid-Auto Dealers Guide Book prices - Approximately between retail & wholesale price based on the industry standard, the Auto Dealers Guide of car prices".

Amount recouped (R)	Number of members	% of total
< 6 400	434	78.2
6 401 to 10 000	39	7.0
10 001 to 20 000	49	8.8
20 001 to 30 000	18	3.3
30 001 to 40 000	4	0.7
40 001 to 50 000	5	0.9
50 001 to 75 000	4	0.7
75 001 to 100 000	1	0.2
> 100 000	1	0.2
Total	555	100.0

Members with motor insurance claims have access to "Motor Claim Assistance". This facility makes for a "speedy and professional" completion of the claim. Members further have access to "Fleet management".

5.5 Discounts

To qualify for these discounts on a continuous basis, members need to pay an annual subscription fee of R180. Members could obtain discounts from various contracted retailers by showing their membership cards. A national pharmacy group, for example, offers Omega members discounts of up to 30 per cent. Other retailers and service providers include building and hardware supplies, business services, such as advertising services, office automation, office furniture, office supplies and stationary, butcheries, computer services, electricians, gearlock fitment, liquor stores, motor repair services, motor spare parts, motor trailers, pool services, plumbers, restaurants, tire and mag wheel sales and transport services.

vR said that Omega is currently (December 1998) negotiating *inter alia* a national grocery chain store and an international tour group representing 10 000 tour operators worldwide to secure more discounts for members.

In the agreement with Omega the suppliers agree on the following:

"The agreement is hereby placed on record that the percentage preferential discount as described above are afforded the Cardholder of Omega Trust for an indefinite period by the product/service supplier above. The Preferential Discount agreed upon can only be retracted, reduced or changed by the service/product supplier by giving a written notice of 6 (six) calendar months to Omega Trust. Preferential Discounts offered to the

cardholders of Omega Trust will be based on normal retail prices, i.e. not on prices loaded for the purpose of discount. Omega Trust undertakes not to charge the product/service supplier a fee for the advertising of such products or services. Omega Trust further undertakes to advertise/promote the product/service provider's product or service in its cardholder's Service and Discount Guide".

The contracted retailers does not include the major retailers in South Africa such as OK, Pick 'n Pay, Shoprite, Spar and Woolworths.

5.6 The PAID system

PAID is the acronym for "Professional Automated Information Directory". This is allegedly the first application of its kind anywhere in the world. This telephone information retrieval system ensures the "quick and efficient" retrieval of information available to Omega members. Any obsolete information could be deleted within seconds. New information could also be added within seconds. The system is in the implementation stage and is not fully operative.

5.7 Kickback smart card

Omega has allegedly spent large amounts to ensure an efficient mode of payment at the point of sale. A benefit of this system is that a card holder/member will "automatically" receive a discount from the relevant store.

6. Conclusion

Although Omega offers discounts to members and proposes to operate the PAID system in the future, the core business of Omega is the on-selling of membership by members. The marketing scheme operated by Omega does not differ from those run by Rainbow and Newport, the only material difference being the amounts paid to the junior and senior partners and the "management".

The Minister prohibited Rainbow and Newport and certain individuals involved from continuing running their schemes.⁽⁶⁾ It was stated in the previous paragraph that the marketing scheme run by Omega does not differ from those run by Rainbow and Newport. This being the case the Committee has no alternative but to recommend to the Minister that he prohibit Omega to continue with its business in its present form.

The arguments for the Minister's prohibition of Rainbow and Newport are set out in detail in the respective reports. These arguments also apply to Omega and are not repeated here in detail. Interested readers could refer to the Rainbow and Newport reports.

6. See Notices No 1959 and 1350, both of 1997, in Government Gazette Nos 18531 dated 12 December 1997 and 18292 dated 17 September 1997 respectively.

6.1 The recoupment of monies paid

The major benefit to a person who became a member of Omega was to be found in the active recruitment and introduction of new members. A considerable part of the new members' payments served to fund the recruitment costs and the management of the scheme. The incentive to new members to recoup their initial cash payment lies in *the introduction of further new members on which this scheme is dependent*. The greater the number of new members introduced, the sooner the recoupment of the original cash payment.

The explanation of the scheme shows that a new member needs to recruit at least four other members directly to recoup his or her payment of R6 400 and make a slight profit. The canvasser's net income would be $2 \times R1\ 000$ plus $2 \times R2\ 500$ less R6 400 = R600. Under other circumstances members would need to canvass at least five persons directly or indirectly to recoup their outlays. This would apply should the third person, the senior partner, canvass two members ($2 \times R1\ 500$). The member's net income will then be $2 \times R1\ 000 + 1 \times R2\ 500 + 2 \times R1\ 500 = R7\ 500$ less R6 400 = R1 100. The effect of income tax was ignored in the examples above.

In Report 55: Rainbow Business Club and Others and Report 56: Newport Business Club and Others the Committee found that in a scheme whereby an existing member needs to recruit at least four new members to recoup his/her outlay, the percentage of members that would not recover their payments would never be smaller than 75 per cent. This would apply to the total number of members, irrespective of at what stage they joined the scheme. Applying the same calculations in those cases where a member is required to canvass at least five new members directly or indirectly, the percentage of members that would not recover their payments would never be smaller than 80 per cent. It would seem that the empirical results of Omega as set out in the table in section 4.5 clearly supports the theoretical figures.

Omega's success is dependent on the money received from its members and new members *on a continuous basis*. The potential benefit to a consumer who becomes a member lies in the right to recruit and introduce new members. The incentive to new members to recoup their initial cash contribution lies in *the introduction of further new members on which this scheme is dependent*. The greater the number of new members introduced, the sooner the recoupment of the original cash contribution.

6.2 The potential for harm

The extent of a new member's possible earnings is clearly limited by the extent of the market. And the market is limited. There are, at any time, a finite number of people with the buying power to part with R6 400 to become members of a club. The population growth rate does not match the exponential rate required to make the scheme viable for all participants over a relatively short period. Most of the people that part with their R6 400 probably joined Omega with the expectation to make a handsome profit, as shown in slide (k) "R46 500 could be made or earned by canvassing one member per month for nine months" in a few months.

The scheme can never reach a stage where everybody has recovered their payments. Those that have not canvassed any new members at all the levels of each separate pyramid structure will

lose their R6 400. The "independent" contractors, management and those at the top of every successful individual pyramid with many layers stand to earn substantial amounts. Those that have not canvassed their four members directly or five members directly or indirectly will be severely and unreasonably prejudiced. Again this will apply to all members, irrespective of when they became members of Omega.

It would then become increasingly difficult for any member to find further potential members the longer the scheme operates. Only a growth in the target market would provide potential members. The growth in the target market would also have to be equal or higher than the exponential rate required for everyone to recoup their payments within a reasonable period of time.

The major factor that really attracts members is the possibility to make R46 500 within months. When people do not "make" the envisaged profits, interest in the scheme declines. It would seem that this decline in interest is an exogenous "switch off" of schemes such as Omega. A "switch off" of the scheme would lead to the collapse thereof.

The Committee is of the opinion that Omega members would be unreasonably prejudiced. The following is the reasons for this standpoint:

At any time at least 75 per cent to 80 per cent of the Omega members are at risk. The relations between those consumers who have not recouped their payments and the business, Omega, will be harmed. In terms of the Act this by itself would constitute a harmful business practice. The argument that saturation will never be reached relies on the proposition that growth in the target market will exceed the growth in the scheme.

6.3 Government Notice 2724 dated 13 November 1998

Following the investigation into *inter alia* Rainbow and Newport, the Committee, with the approval of Cabinet, undertook a section 8(1)(b) investigation in terms of the Act into money revolving or pyramid schemes. The Committee's Report 63: "Investigation into money revolving or pyramid schemes" was published under Notice 2723 in Government Gazette No 19455 dated 13 November 1998.

After having considered Report 63 the Minister, in terms of section 12(6)(a)(iii) of the Act, gave notice that he intended to publish a notice in the Government Gazette declaring a number of business practices as being unlawful. One of these business practices is where any person, directly or indirectly, participates in a pyramid promotional scheme. A pyramid promotional scheme is defined in the notice as:

"...any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from the person's introduction of other persons into a plan or operation rather than from the sale of products by the participant or other persons introduced into the plan or operation".

It is clear from an analyses of the scheme ran by Omega that it could be regarded as a pyramid promotional scheme.

The Committee is of the opinion, because of the reasons advanced, that the activities of Omega constitute harmful business practices as defined in the Act.

7. Recommendation

The business practices of Omega constituted harmful business practices. There are no grounds justifying these practices in the public interest. It is accordingly recommended that the Minister under section 12(1)(b) of the Act declare unlawful the business practice by which anyone or more of the following persons, to wit:

Omega Trust, Omega Trust Power Marketing CC, Gerhardus Francois Janse van Rensburg (ID600807 5038 00 7), Jan Frederick Olivier van Zyl (ID 590614 5091 00 8), and any member, employee, agent and/or representative of any of the aforementioned, in the course of the business of any of the aforesaid persons, directly or indirectly -

(a) invites, procures the attendance or attempts to invite or to procure the attendance of any person to a meeting held by or on behalf of any of the aforesaid persons at which meeting such person (hereinafter referred to as the "participating person") is invited, encouraged or in any way enticed to enter into any arrangement with any of the aforesaid persons the terms whereof include any provision which have the effect that the participating person is obligated to make a payment of a financial consideration with the prospect of such participating person receiving payment or other money-related benefits, directly or indirectly, from his/her participation in the recruitment of other persons to enter into similar arrangements with any of the aforesaid persons;

(b) enters into any arrangement with any person the terms whereof includes any provision which has the effect that the participating person is obligated to make a payment of a financial consideration with the prospect of such participating person receiving payment or other money-related benefits, directly or indirectly, from his/her participation in the recruitment of other persons to enter into similar arrangements with any of the aforesaid persons.

(c) accept any financial consideration from any person in terms of any arrangement which financial consideration is used in part or in full to fulfil the obligations of either party to make payment to a third party who has entered into a similar arrangement with any of the aforesaid persons; and

(d) make any payment of any financial consideration or give any money-related benefit, directly or indirectly, to any person in terms of any arrangement as prohibited in terms of paragraph (b) or (c) above.

**LOUISE A TAGER
CHAIRMAN: BUSINESS PRACTICES COMMITTEE
11 FEBRUARY 1999**

NOTICE 1156 OF 1999**DEPARTMENT OF TRADE AND INDUSTRY****CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in General Notice 2725 of 1998 published in Government Gazette No. 19456 of 13 November 1998, which report was published in Notice 1155 in Government Gazette No. 20199 of 14 June 1999, and being of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(1)(b) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

A ERWIN
MINISTER OF TRADE AND INDUSTRY

SCHEDULE

In this notice, unless the context indicates otherwise -

"harmful business practice" means whereby any person, in the course of the business of any of the persons identified under "parties", directly and / or indirectly:

(a) invites, procures the attendance or attempts to invite or to procure the attendance of any person identified under "parties" to a meeting held by or on behalf of any of the persons at which meeting such person (hereinafter referred to as the "participating person") is invited, encouraged or in any way enticed to enter into any arrangement with any of the persons identified under "parties" the terms whereof include any provision which has the effect that the participating person is obligated to make a payment of a financial consideration with the prospect of such participating person receiving payment or other money-related benefits, directly or indirectly, from his/her participation in the recruitment of other persons to enter into similar arrangements with any of the persons identified under "parties";

(b) enters into any arrangement with any person the terms whereof includes any provision which has the effect that the participating person is obligated to make a payment of a financial consideration with the prospect of such participating person receiving payment or other money-related benefits, directly or indirectly, from his/her participation in the recruitment of other persons to enter into similar arrangements with any of the persons identified under "parties";

(c) accepts any financial consideration from any person in terms of any arrangement which financial consideration is used in part or in full to fulfil the obligations of either party to make payment to a third party who has entered into a similar arrangement with any of the persons identified under "parties"; and

(d) makes any payment of any financial consideration or gives any money-related benefit, directly or indirectly, to any person in terms of any arrangement as prohibited in terms of paragraph (b) or (c) above.

"the parties" mean Omega Trust, Omega Trust Power Marketing CC, Gerhardus Francois Janse van Rensburg (ID600807 5038 00 7), Jan Frederick Olivier van Zyl (ID 590614 5091 00 8), and any member, employee, agent and/or representative of any of the aforementioned.

1. The harmful business practice is hereby declared unlawful in respect of the parties.
2. This notice shall come into operation on date of publication.

KENNISGEWING 1156 VAN 1999**DEPARTEMENT VAN HANDEL EN NYWERHEID****WET OP VERBRUIKERSAKE (ONBILLIKE SAKEPRAKTYKE), 1988**

Ek, Alexander Erwin, Minister van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan in Kennisgewing No. 2725 in Staatskoerant No. 19456 van 13 November 1998 kennis gegee is, welke verslag gepubliseer is by kennisgewing 1155 in Staatskoerant No. 20199 van 14 Junie 1999, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdheid uit kragtens artikel 12(1)(b) van die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet No. 71 van 1988), soos in die Bylae uiteengesit.

A ERWIN

MINISTER VAN HANDEL EN NYWERHEID

BYLAE

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken -

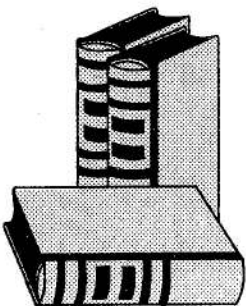
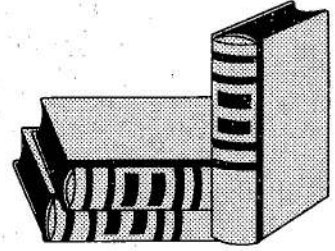
"die partye" Omega Trust, Omega Trust Power Marketing CC, Gerhardus Francois Janse van Rensburg (ID600807 5038 00 7), Jan Frederick Olivier van Zyl (ID 590614 5091 00 8), en enige lid, werknemer, agent en/of verteenwoordiger van enige van die voorgenoemde.

"skadelike sakepraktyk" die sakepraktyk waarvolgens enige persoon, in die loop van die besigheid van enige van die persone geïdentifiseer as "die partye", direk en/of indirek:

- (a) bywoning van enige persoon uitnood, bewerk of poog om uit te nood of te bewerk na 'n vergadering wat gehou word deur of namens enige van die voorgenoemde persone waartydens sodanige persoon (hierna verwys as die "deelnemende persoon") uitgenood, aangemoedig of op enige wyse in versoeking bring om in enige ooreenkoms met die persone geïdentifiseer as "die partye" te tree waarvan die terme enige voorsiening insluit wat die effek het dat die deelnemende persoon verplig is om 'n betaling van 'n finansiële teenprestasie te maak met die voorneme dat sodanige deelnemende persoon betaling of enige ander finansiële verwante voordele, direk of indirek, van sy/haar deelname in die werwing van ander persone om in soortgelyke reëlins te tree met enige van die persone geïdentifiseer as "die partye", ontvang;**

- (b) in enige reëling met enige persoon te tree waarvan die terme enige voorsiening insluit wat die effek het dat die deelnemende persoon verplig is om 'n betaling van 'n finansiële teenprestasie te maak met die voorneme dat sodanige deelnemende persoon betaling of enige ander finansiële verwante voordele, direk of indirek, van sy/haar deelname in die werwing van ander persone om in soortgelyke reëlings te tree met enige van die persone geïdentifiseer as "die partye", ontvang;
 - (c) enige finansiële teenprestasie aanvaar van enige persoon in terme van enige reëling welke finansiële teenprestasie gedeeltelik of in totaal gebruik word om die verpligtinge van enige party om betaling aan 'n derde party wat in 'n soortgelyke reëling met die persone geïdentifiseer as "die partye" ingetree het, na te kom; en
 - (d) enige betaling maak van enige finansiële teenprestasie of enige finansiële verwante voordele gee, direk of indirek, aan enige persoon in terme van enige reëling soos verbied in terme van paragraaf (b) of (c) hierbo.
1. Die skadelike sakepraktyk word hiermee ten opsigte van die partye onwettig verklaar.
 2. Hierdie kennisgewing tree in werking op die datum van publikasie.
-

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Department of Environmental Affairs and Tourism
Departement van Omgewingsake en Toerisme

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