**Neora Court Insights**

Upon reviewing the Neora Court Opinion and its comprehensive analysis of case precedents and the appropriate legal standards for multi-level marketing (MLM), particularly regarding internal consumption, it becomes clear that the I2G Court failed to apply the correct standards to determine whether it was a pyramid scheme as opposed to another MLM company. Every MLM relies on "internal consumption" to expand its business. However, the I2G Court allowed the government expert and the prosecution to instruct the jury that "internal consumption" was illegitimate. By disregarding the "legal MLM standard," the conviction effectively labeled every MLM company in America as an illegal pyramid scheme.  The prosecution misrepresented the law to a jury with no background in mlm, and the Court refused the proper instructions to correct it.

The proper legal standard that cleared Neora of pyramid scheme allegations was not afforded to the I2G defendants. The instructions and definitions left the jury no clear way to differentiate a pyramid scheme from any other MLM company. This precedent potentially implicates twenty million individuals who engage in MLM.

After thoroughly reviewing the extensive information provided by Neora, as well as the Federal Trade Commission (FTC) and relevant case law—including the Koskot decision and FTC guidance—the court determined that Neora did not qualify as an illegal pyramid scheme under § 15 of the FTC Act.

The Neora court's Koskot analysis incorporated precedents and principles from Torres, Omnitrition, and BurnLounge, along with the FTC’s guidance from 2004 and 2017.

The Neora Court established that the \*\*The FTC carries the burden to establish the Koscot test, and thus, it is the FTC’s obligation to show that Dr. Bosley’s assumption applies, not the Defendants’ burden to show it does not.

In the I2G case, the government completely overlooked the Koskot burden. The jury was not instructed on the Koskot standard, nor were they given any guidelines for determining whether the products or their usage were unrelated to rewards. The government's evidence demonstrated a direct link between product purchases, usage, and rewards. Multiple witnesses and documents revealed that 25% of bets were paid through binary commissions. However, the jury was not informed that the Koskot standard needed to be met to prove the existence of a pyramid scheme.

The government focused on standard multi-level marketing (MLM) practices that were unfamiliar to the jury and unrelated to product rewards. For example, a typical "business transfer request" was misrepresented as fraudulent. The government claimed that Hosseinipour reserved "customer spots" without informing anyone else. They spent ninety minutes discussing emails concerning a business transfer request, regardless of whether it was approved. This assertion was particularly outrageous, especially considering the evidence presented by the government in sections 101(i) and 101(d), which indicated that distributors had reserved thousands of customer positions in I2G. The allocation of I2G customer spots was not a secret held by Hosseinipour. Section 101(i) recorded 2,650 customer positions, while section 101(d) showed over 12,000 customer positions.

The government argued that the defendants should not be allowed to present the anti-saturation defense to the jury. The Court prohibited the defendants' expert from discussing anti-saturation or any defenses related to pyramid schemes. Similar to the allegations against Neora, the claims that I2G operated as a pyramid scheme were primarily based on the biased opinions of William Keep. After being hired, Keep publicly expressed on a blog that he wanted to see top distributors convicted in a criminal case by the DOJ. His opinions constituted the entirety of the government's evidence that I2G was a pyramid scheme. The assumptions made by Keep were entirely rejected by the Neora Court.

Keep’s and the government's interpretation of the law, which states that internal consumption does not count as "product sales," along with the strict benchmark that requires exclusively retail sales was disqualifying. The defendants can’t be convicted on a non-existent legal standard that misrepresents the law.

The Neora Court rejected these views, describing them as “rigid opinions without any basis in reality.” The Court found that 90% of Neora's sales were driven by internal consumption, with only 1% documented as retail sales. It also accepted Dr. Vansdale's opinion that in multilevel marketing (MLM) systems, at least 70% of sales typically come from internal consumption by distributors who purchase products without engaging in other activities. This conclusion is supported by extensive case law, guidance from the FTC, and the Congressional record.

There is no legal guidance that supports the idea that retail sales should be used as the standard for defining "ultimate users," as Keep suggested. In fact, case law and FTC guidance contradict this viewpoint and establish "internal consumption" as the legal standard for product sales in multi-level marketing (MLM). Internal consumption accounts for 70-95% of all MLM product sales. The court in the Neora case dismissed this argument outright.

Neora, which has the same MLM characteristics as I2G, was cleared of all pyramid scheme charges.  Neora, however, was appropriately judged under the FTC Act as a civil regulatory violation, as Congress intended per their failed Anti-pyramid Acts of 2017 and 2018.

**Similarities with Neora and I2G**

Like I2G, Neora employed **a binary compensation plan,** which the government expert Keep called a “binary pyramid scheme structure,” making I2G a pyramid scheme.

Like I2G, Neora employed **fast start, leadership, and matching bonuses.**

Like I2G, Neora's product package sales were connected to **rank advancement.**  Neora offered 19 distinct ranks to i2G’s four ranks. However, I2G allowed rank advancement through product sales without recruiting, while Neora required product sales to distributors and recruiting efforts.

Like I2G, Neora faced **allegations of a 96% loss rate, with 90% of the losses attributed to “recruiting sales” rather than “product sales.”** However, the Neora Court decisively rejected this claim and accepted that 90% of the“recruiting-related” sales were “product sales based on “internal consumption. Reynold similarly described 90% of i2g sales as “product sales.”

Like I2G, Neora issued **terms and conditions** to outline the compensation plan with no explicit promise of income or returns to an independent distributor’s business.

Like I2G, **pyramid scheme expert testimony** was used in the Neora case.  The FTC expert, Dr. Bosley, had opinions identical to Dr. Keep. The Neora Court rejected the views as "rigid theoretical opinions not borne out of reality."

Unlike I2G, **Neora was allowed to have its expert** counter Bosley’s opinion. Without the ability to challenge William Bosley with Neora's expert, Dr. Walter Vansdale, a Neora victory would not have been possible.

Like I2g, Neora's success depended on **sales to the ultimate consumer.** Both I2g and Neora had 90% “product sales.” The government key witness Vansdale like i2G government witness Reynolds testified that over 90% of I2G sales were product sales.

The main distinction is that the Neora Court accurately acknowledged that "internal consumption" accounted for 90% of Neora's total product sales, while only 1% resulted from "retail sales."

Like I2G, Neora distributors' eligibility for commissions and bonuses is based on product "volume," which refers to the value assigned to a product. However, the business volume (BV) accumulated by I2G distributors can come from retail customer transactions, independent of the distributors' own product package purchases.

Similarly, Neora distributors can qualify for monthly commissions by either purchasing products for personal use or through sales made to customers.

In line with I2G's practices, Neora has also offered significant checks to top earners during recognition events, which is common in multi-level marketing (MLM). Additionally, like I2G, Neora distributors utilize a back office system that enables them to contact support and review their commission reports.

As with I2G, only a small number of Neora distributors reach the top ranks. In 2021, only seven Neora distributors achieved the top rank out of 35000. In contrast, I2G, which has less than 20,000 distributors, had seven distributors or distributor teams that earned over one million dollars, with over 200 distributors earning commissions exceeding $10,000, according to Reynold’s records. This performance surpasses typical earnings seen in MLM statistics.Like I2G, Neora distributors' eligibility for commissions and bonuses is based on product "volume," which refers to the value assigned to a product. However, the business volume (BV) accumulated by I2G distributors can come from retail customer transactions, independent of the distributors' own product package purchases.

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* Neora January 2021–December 2021.
* 40.1 % of Active US Brand Partners earned cash commissions
* 59.9% did not earn any cash commissions.
* The average annual gross cash earnings of Active US Brand Partners was $1,358.
* 1.9% earned a Car Bonus for one month or more.
* median tenure for BPs and PCs may be approximately eight months and months,
* Like I2G, Neora distributors listed a variety of reasons for joining the business, including love of Neora products,82 the ability to earn free products through the 3UR Free program,83 product discounts,84 personal development,85 and additional income.86

**Coming Directly From Neora Opinion**

Consistently, over 90% of Neora’s revenues come from product sales; (to distributor ultimate users) the remaining 10% of revenues come from starter enrollment Product Packs to BPs and upgrades, and nonproduct sales.94 An estimated less than 1% of Neora’s product sales are made to Retail Customers.95

Most of Neora’s product sales—between 75 and 80% of sales—are made to PCs.(distributors who consume the product) 96 Sales to PCs are considered ultimate end-user sales, i.e., purchased for personal use without the intent to resell to anyone else.97 The data indicates that, as a percentage of total product sales, sales to PCs have been increasing and sales to BPs have been decreasing since 2017.98, but the only logical conclusion is that those people are savings seekers. And there are other Brand Partners who’ve flat out said they’re not interested in building a business or -- or doing anything other than buying the product.”).

 it can be estimated that 65% of BPs’ purchases are for personal use; under that same model, 90% of total product sales in 2021—including BPs, PCs, and retail customers—can be estimated for personal use.100 Approximately 70% of Neora BPs do not sell products or build an organization through recruitment.101 From February 2019 to January 2020, 69.4% of all BPs earned no commissions.102 For that same period, there were seven BPs with the highest rank—Platinum National Marketing Director—who on average, earned substantially more in gross rewards.

In 2021, 95% of Neora’s revenues came from product sales; 3% from enrollment product packs/upgrades, and 2% from non-product sales. (with PCs/distributors as the ultimate users)

Dr. Vandaele estimated that, on average, 75% percent of total product sales—including BPs, PCs, and retail customers—were for personal consumption, and on average, 43% of purchases by BPs were for personal consumption. Id. 101 Tr. 3-A at 105–07 (“I think we’re 68 or 69, something like that, but pretty much in alignment with the direct sales industry.

Of any direct sales company, about 70 percent of the people who sign up don’t do anything. . . . And so we have a lot of our 70 percent, who don’t do anything, are still buying our products. They’re savings seekers.”);

 of the product to ultimate users. Id. at \*60 (emphasis in original). The second element of the Koscot test has been characterized as the sine qua non of a pyramid scheme.  Court will address each Count in turn. A. Count 1: Pyramid Scheme “The operation of a pyramid scheme constitutes an unfair or deceptive act or practice in or affecting commerce for § 5(a).” FTC v. BurnLounge, Inc., 753 F.3d 878, 880 (9th Cir. 2014). The FTC maintains that Neora is actively violating or is about to violate § 5 of the FTC Act by operating an illegal pyramid scheme and asks the Court to enjoin Neora from operating as a multi-level marketing company. 1. Legal Standard In In re Koscot Interplanetary, Inc., et al., 86 F.T.C. 1106, 1975 WL 173318 (1975), the Federal Trade Commission established the Koscot test for determining what constitutes a pyramid scheme: Such schemes are characterized by the payment by participants of money to the company in return for which they receive (1) the right to sell a product and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to saleme. Webster v. Omnitrition Int’l, Inc., 79 F.3d 776, 781–82 (9th Cir. 1996) (adopting the Koscot standard). “[T]he presence of this second element, recruitment with rewards unrelated to product sales, is nothing more than an elaborate bound to be disappointed.” Koscot, 1975 WL 173318 at \*60. ate chain letter device in which individuals who pay a valuable consideration with the expectation of recouping it to some degree via recruitment Case 3:20-cv-01979-M Document 347 Filed 09/28/23 Page 25 of 56 PageID 21350 26 Unlike other courts, the Fifth Circuit has never expressly adopted the Koscot test to determine the existence of a pyramid scheme. Cf. Omnitrition, 79 F.3d at 781 (“We adopt the Koscot standard here . . . .”). Instead, the Fifth Circuit has acknowledged the two-part Koscot test only twice in a pair of recent related decisions.113 See Torres v. S.G.E. Mgmt., 805 F.3d 145, 153–54 (5th Cir. 2015) (Torres I) (citing Omnitrition, 79 F.3d at 781–82), rev’d on other grounds, 838 F.3d 629 (5th Cir. 2016) (en banc) (Torres II). In Torres I, the Fifth Circuit panel vacated the district court’s decision certifying a class action for victims of an alleged pyramid scheme brought under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961–68. 805 F.3d at 158–59. The panel held that decertification was appropriate because the plaintiffs would have to rely upon individualized proof of reliance as to the fraudulent conduct causing the plaintiffs’ injuries, i.e., that the plaintiffs relied on representations that the scheme was not, in fact, a pyramid scheme. Id. In doing so, the panel acknowledged the Koscot test, as explained by the Ninth Circuit in the earlier Webster v. Omnitrition International case. Id. at 153–54. The Fifth Circuit subsequently vacated the panel decision and heard the case en banc on a narrow issue: “whether the Plaintiffs may prove RICO causation through common proof such that individualized issues will not predominate at trial.” Torres II, 838 F.3d at 635. The en banc Fifth Circuit subsequently affirmed the district court’s certification decision, concluding that individual issues did not predominate because if it was proven at trial that defendants operated a fraudulent pyramid scheme, a jury may reasonably infer that the plaintiffs relied on the defendant’s implicit representation of legitimacy. Id. at 647. 113 Note, however, that the Fifth Circuit has acknowledged the Koscot distributorship model in other contexts, albeit none of which addressed the merits of the Koscot formulation of its pyramid scheme test. See, e.g., F.T.C. v. Turner, 609 F.2d 743, 744 (5th Cir. 1980); S.E.C. v. Koscot Interplanetary, Inc., 497 F.2d 473, 485 (5th Cir. 1974). Case 3:20-cv-01979-M Document 347 Filed 09/28/23 Page 26 of 56 PageID 21351 27 In reaching this conclusion, the majority admitted that “[n]o clear line separates illegal pyramid schemes from legitimate multilevel marketing programs.” Id. at 639 (quoting United States v. Gold Unlimited, Inc., 177 F.3d 472, 475 (6th Cir. 1999)); cf. Torres II, 838 F.3d at 653– 54 (Jones, J., dissenting) (criticizing the majority for not providing additional guidance as to the meaning of “illegal pyramid scheme” beyond the Koscot definition). It did, however, discuss the FTC’s Koscot test, while providing some additional observations: By definition, a pyramid scheme operates by taking money from downline recruits . . . who will never recoup their payments, and funneling the money to those at the top of the pyramid. Such schemes depend on “there [being] Peters . . . to rob for the purpose of paying Paul.” Those who lose money in a pyramid scheme necessarily do so “by reason of” the fraud because the fraud is necessary to temporarily sustain the scheme, and ultimately causes the scheme’s collapse. And, those who profit from a fraudulent pyramid scheme make money only by virtue of the participation of downline investors . . . who lose money. Torres II, 838 F.3d at 640.  Moreover, the majority observed that “[w]hether a multi-level marketing program is fraudulent or legitimate depends on its internal structure.” Torres II, 838 F.3d at 643; see also BurnLounge, 753 F.3d at 883 (“To determine whether a MLM business is a pyramid, a court must look at how the MLM business operates in practice.”). The panel decision in Torres I was vacated on certification grounds, and the en banc decision did not address the panel’s characterization of a pyramid scheme; the Court thus finds the Torres I commentary about pyramid schemes to be relevant persuasive authority. In Torres I, the panel stated that “the primary factor in deciding whether a business is whether the business focuses exclusively or almost exclusively on recruiting as opposed to sales.” 805 F.3d at 153 (emphasis in original). The panel also noted that a pyramid scheme can be distinguished from “the many types of businesses organized in a ‘pyramid-shaped’ hierarchical structure” and that “[a] true pyramid scheme, as that term is used here, Case 3:20-cv-01979-M Document 347 Filed 09/28/23 Page 27 of 56 PageID 21352 28 refers to a type of illegal and fraudulent activity, structured in a fashion that it ‘must eventually collapse.’” Id. Also relevant to the pyramid scheme inquiry is the FTC’s published guidance regarding multi-level marketing companies. In January of 2004, the FTC issued an Advisory Opinion discussing, in part, the FTC’s “analysis of compensation based on personal consumption by members of a multi-level company’s sales force.” Ex. 114 (“2004 FTC Advisory Op.”) at 1. The FTC provided the following guidance: Much has been made of the personal or internal consumption issue in recent years. The amount of internal consumption in any multi-level compensation business does not determine whether or not the FTC will consider the plan a pyramid scheme. The critical question for the FTC is whether the revenues that primarily support the commissions paid to all participants are generated from purchases of goods and services that are not simply incidental to the purchase of the right to participate in a money-making venture. A multi-level compensation system funded primarily by such non-incidental revenues does not depend on the continual recruitment of new participants, and, therefore, does not guarantee financial failure for the majority of participants. In contrast, a multi-level compensation system funded primarily by payments made for the right to participate in the venture is an illegal pyramid scheme. Id. (emphasis added). The 2004 Advisory Opinion further distinguished an illegal pyramid scheme from a legitimate buyers club, which “confers the right to purchase goods and services at a discount” and is distinguishable from a pyramid scheme, in part, because “the purchase of goods and services is not merely incidentally to the right to participate in a money-making venture, but rather the very reason participants join the program.” Id. at 2. In January 2018, the FTC released a staff business guidance document, “Business Guidance Concerning Multi-Level Marketing.” Ex. 115 (“2018 FTC Guidance”). Although not legally binding, the guidance purported to “assist multi-level marketers” in applying core consumer protection principles to their businesses. Id. at 1. In the guidance, the FTC noted that Case 3:20-cv-01979-M Document 347 Filed 09/28/23 Page 28 of 56 PageID 21353 29 “[p]roduct that is purchased and consumed by participants to satisfy their own genuine product demand—as distinct from all product purchased by participants that is not resold—is not in itself indicative of a problematic MLM compensation structure,” and instead the analysis “involves a comprehensive analysis of a variety of factors.” Id. at 2. In doing so, the FTC affirmed its prior 2004 Advisory Opinion, noting that “when evaluating the issue of participants’ internal consumption, the FTC staff is likely to consider, among other factors, both (i) whether features of the MLM’s compensation structure incentivize or encourage participants to purchase a product for reasons other than satisfying genuine demand; and (ii) information bearing on whether purchases were made to satisfy personal demand to consume the product.” Id. at 2–3. 2.

Analysis The first element of the Koscot test, whether BPs pay money in exchange for the right to sell a product, is met here; to enroll as a Neora BP and receive the right to sell Neora’s products, one must pay a minimum of $20 for an Enrollment Kit. Accordingly, the Court’s discussion will focus on the second element of the Koscot test—whether Neora BPs receive rewards for recruiting other participants, unrelated to the sale of product to ultimate users— interpreted through the lens the Fifth Circuit’s guidance in Torres I and Torres II, and other relevant authority.

Dr. Bosley states in her report that “[f]or all Brand Partners who enrolled between 2012 and 2020 . . . 74% recruited no Brand Partners, 85% recruited one or fewer Brand Partners, and 89% recruited two or fewer Brand Partners.”)

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 Dr. Bosley further testified, based on a review of operational data, that the vast majority of participants will lose money; she found that 96% of the approximately 400,000 BPs that have been part of Neora have lost money.115 Dr. Bosley testified that the FTC provided her with two legal assumptions for her work in this case, both taken from the Ninth Circuit’s decision in BurnLounge: first, that an ultimate user is limited to a person who would have purchased the product even if not for the business opportunity; and second, that rewards don’t have to be completely unrelated to ultimate user sales for something to be a pyramid scheme, i.e., that the existence of some sales to ultimate users for consumption does not prevent the plan from being an illegal pyramid scheme.116 Dr. Bosley also relied on her own third, uniform assumption: that BPs mainly purchase product in pursuit of the business opportunity, and thus none of BPs’ purchases for personal consumption qualify as sales to an ultimate end user.117 Put differently, Dr. Bosley— and, by extension, the FTC—assumes that purchases by BPs are never ultimate user sales. The Court finds that Dr. Bosley’s third assumption is not supported by the evidence, and the FTC provides no other evidence to show that BP purchases should be uniformly treated not as sales to ultimate users. In addition, the Court finds that the FTC improperly discounts the significance of the large volume of sales to PCs when evaluating whether the recruitment-based rewards, discussed previously, are “unrelated to” sale of Neora product to ultimate users. For these reasons, the Court finds that the FTC has not established the second prong of the Koscot test, and concludes that Neora is not operating as an illegal

pyramid scheme. 115 Tr. 1-A at 60–61. 116 Tr. 1-A at 58–59; Ex. 622 ¶ 14. 117 Tr. 1-B at 47 (“I do assume when you are a Brand Partner, you are mainly purchasing the product in pursuit of the business opportunity. . . . It is a uniform assumption, yes.”)