

posts reports on between 10,000 and 50,000 businesses. (Ex. A, p.42). As a matter of policy, however, the BBB does not recommend any company, service or product. (Ex. A, p. 60). The reports which are not guaranteed as to accuracy, are provided solely to assist consumers in exercising their own best judgment. (Ex. A, p. 196; Ex. B60-65).

2. AC. AC was founded in June of 2003 by Timothy Darnell. (Ex. B, p. 6). AC says its product is "powerful information that bridges the gap between your current financial status and where you truly desire to be." (Ex. B1, p. 10). This "powerful information" is delivered in a two day conference, referred to as the "Millionaire Mindset Conference," held twice a year where "attendees absorb real-life stories, lessons, strategies and advice from bona-fide millionaires." *Id.* The subject matter of the conference, AC says, is "appropriate only for someone serious about earning a SIX or SEVEN DIGIT INCOME in the next 18 months or less." *Id.* (emphasis in original). The cost of the two day conference is \$9,995.00. (Ex. B1, p. 15). AC also offers ancillary products such as CDs and DVDs, but those items are not at all a focus of the business. (Ex. B, pp. 82-83).

B. The AC Income Opportunity.

AC offers an "income producing system" which, it says, provides "common people" the ability to earn "\$7,000.00 Over & Over & Over Again." (Ex. B4, pp. 1-2). AC tells recruits that the "income producing system" is designed so that they may earn "Tens of Thousands of Dollars QUICKLY" and make millions of dollars in a "MATTER OF A FEW MONTHS!" (Ex. B2; Ex. B4, p. 6) (emphasis in original). Six figure incomes and greater are held out as "realistic" annual earnings for everyone. (Ex. B2, B4). In fact, "Making Millionaires is what [AC] is all about." (Ex. B2, p. 3). AC promises recruits they can earn these huge incomes part-time (10-15 hours/week) without selling anything or even talking to anybody. (Ex. B, p. 115; Ex. E56-58). According to the interest form, only those interested in making \$100,000, \$200,000,

\$500,000, or \$1,000,000 in a year's time should apply for AC's income opportunity.² (Ex. B, 24). An AC representative simply "turns [the system] on and receives the money." (Ex. E52). It is, according to AC, "absolutely predictable!" (Ex. E52).

1. AC Focuses on Recruitment of Representatives, not Retail Sales of the Conference to Non-Participants in the Income Opportunity.

AC admits that it focuses on promoting its income opportunity, primarily through the internet. (Ex. B, p. 73). Almost all AC representatives maintain a "personalized marketing website," through which they recruit additional representatives. (Ex. B1, p. 11). Consistent with AC's description of a representative as a "professional inviter," the primary purpose of the websites is to invite recruits (i.e., persons looking for an income opportunity) to fill out an interest form to initiate the "3 Simple Steps." (Ex. B, pp. 72-73; Ex. B1, p. 6).

The "3 Simple Steps" are an online recruiting tool designed to explain the income opportunity to a recruit without the recruiting representative having to explain it. (Ex. B1, pp. 6-7). In Step 1, a recruit reads online the Getting Started E-Package ("GSEP"). Then, in Step 2, the recruit reviews the AC compensation plan. Next, in Step 3, the recruit participates in a "\$7,000.00 Call." (Ex. B1, pp. 6-7). In the compensation presentation (Step 2), recruits are told the importance of attendance at weekly training sessions because such sessions explain:

... how we attract people to come into our business
and start those incredible multiplications of two in
the matrix and reverse margin.

(Ex. B15). There is little, if any, focus on selling the conference to consumers who are not interested in the income opportunity. Rather, the focus is on exposing the income opportunity to thousands of people on a weekly basis. (Ex. B1, pp. 6-8; Ex. B20).

Until June 2006, more than six months after AC filed this suit, AC had no requirements that any of its products be sold at retail to non-participants in the income opportunity. (Ex. B, p.

² The interest form also suggests earnings of "\$160,000 within six weeks EVERY SIX WEEKS!" (Ex. B24).

71). In fact, according to AC, no selling is involved in the income opportunity. (Ex. B, p. 115; Ex. G56-59). The GSEP (step 1) emphasizes that “most of [AC’s] training focuses on how to accomplish exposure of your business to thousands of people on a weekly basis.” (Ex. B1, p. 6). Indeed, AC teaches its representatives that if a recruit asks “what is your product?” that recruit is “not a prospect.” (Ex. F1). The mission of an AC representative is to enroll, i.e., to recruit, “five EMPs [Extraordinary Marketing Professionals] over the next year” to be MMC-IV mentors. (Ex. F2). AC representatives are taught different approaches to recruiting such as: “I promote a unique income opportunity called Advantage Conferences and target individuals via the Internet who are serious about becoming millionaires.” (Ex. F3). Productivity at AC, therefore, “is the direct result of how many people you have exposed the AC opportunity to. Expose this opportunity to big numbers – you will receive big numbers.” (Ex. E50). As a result of this focus on recruiting, since January, 2005, no retail sales of the conferences have been made to persons not participating in the income opportunity. (Ex. B, p. 71).

2.. AC’s Compensation Plan Rewards Recruitment of Representatives, not Retail Sales of the Conference to Non-Participants in the Income Opportunity.

To be eligible to earn \$7,000.00 commissions, an AC representative must be a “pro-rep IV,” also known as an “MMC-IV.” To qualify as a “pro-rep IV,” a representative must make three “qualifying sales” of the conference, at the price of \$9,995.00 each, one of which “qualifying sales” can be the representative’s own \$9,995.00 “purchase.” The first three “qualifying sales,” along with the commissions generated thereby, are passed up or paid to the representative’s upline “pro-rep IV.” (Ex. B16). Once a representative pays \$9,995.00 and recruits two others who also pay \$9,995.00, the representative qualifies as a “pro-rep IV” and is eligible to earn a \$7,000.00 commission on his or her next recruitment at \$9,995.00. (Ex. B16,

E49).³

After a representative qualifies as a pro-rep IV, the next recruit is entered into the pro-rep's own "pay register" to start the "Power of Two." (Ex. B2; B16). The "Power of Two" refers to the multiplication of recruits by two in a pro-rep's pay register. The pay register includes anyone personally recruited by the pro-rep and the first two they recruit, *ad infinitum*. (Ex. B1, p. 9). For example, when a qualified pro-rep IV recruits another representative to pay \$9,995.00 for the conference, the pro-rep IV earns \$7,000.00. When that new representative recruits two more people to pay \$9,995.00, the pro-rep IV receives \$14,000.00. When those two each recruit two to pay \$9,995.00, the pro-rep IV receives \$28,000.00 (4 x \$7,000.00) and so on. Using geometrical progressions, AC demonstrates to recruits how they can quickly amass hundreds of thousands of dollars with "infinite depth" through this recruitment system. (Ex. B2; E49). According to the GSEP, by recruiting only "35 total people" to participate in the income opportunity, one can earn a total profit of \$245,000.00. (Ex. B1, p. 9). This recruiting can continue "infinitely! 1, 2, 4, 8, 16, 32, 64 etc. all multiplied by \$7,000.00 EACH!" (Ex. B1, p. 9). AC entices recruits with the prospect of earning over \$1,000,000.00 in just 28 weeks as a result of the "Miraculous Power of 2." (Ex. B2).

Although AC claims a recruit can qualify as a "pro-rep IV" by paying the application fee of \$59.95 and "selling" three conferences to others for \$9,995.00 (instead of a self purchase plus two), no one qualifies in this fashion. (Ex. B, pp. 65-66; Ex. C, p.77). Mr. Darnell has not "seen a single person who hasn't committed to the full conference make any money at all" because of an "unwritten law, unceasingly at work," that one must purchase the conference to succeed in the AC income opportunity. (Ex. E53). AC questions a representative's commitment to building the business if the conference is not purchased. (Ex. B, p. 65; Ex. E53). Indeed, the

³ Based on AC's own data, as of June 1, 2006, less than 8% of all representatives are qualified to earn \$7,000.00 commissions. (Ex. F4). A much lower percentage has actually earned a \$7,000.00 commission.

compensation plan is designed to provide enormous incentive for representatives to make the initial upfront purchase of \$9,995.00. Because a representative's own conference "purchase" counts as one of the three "qualifying sales," he/she has to recruit only two more new representatives to qualify for pro-rep IV status and thus become eligible for the promised lucrative rewards.⁴ (Ex. B16; Ex. E49). Moreover, without the purchase, a representative's third "sale" is also "passed up" to the upline pro-rep and the representative forfeits not only the \$7,000.00 commission but also the "organizational growth" of that third leg which, according to AC, is worth potentially hundreds of thousands of dollars. (Ex. E53). Thus, AC exerts tremendous psychological and economic pressure on a new representative to make the large initial purchase to qualify to earn the huge commissions which AC says are "absolutely predictable!," "TOTALLY REALISTIC" and "next to impossible to fail." (Ex. E52; Ex. F8). Accordingly, AC itself describes the failure to purchase the conference as "business suicide." (Ex. E53).

C. AC's Membership Application to the BBB Raised Concerns about AC's Business Model.

In September 2005, AC applied for membership to the BBB. (Ex. A13). In response to the application, the BBB reviewed AC's website including the GSEP to learn more about AC's business. (Ex. A33, p. 3). The website raised concerns about AC's business model and the truthfulness of AC's advertising. Specifically, the BBB questioned AC's use of certain trademarks and copyrights found on its website, its earning representations and whether AC was primarily engaged in promoting a pyramid scheme. (Ex. A33, pp. 2-3). These issues were discussed with Mr. Darnell on October 21, 2005, and October 25, 2005. (Ex. A, pp. 136-37; Ex. A8, A33). The BBB denied AC's application for membership. (Ex. A, p. 84).

⁴ For added incentive to purchase the full conference, AC includes in the purchase price the personalized marketing website, which costs \$495.00. "Realistically," a representative is required to make this purchase to succeed in the income opportunity. (Ex. B1, p. 11).