

REPUBLIC
OF
SOUTH AFRICA



REPUBLIEK
VAN
SUID-AFRIKA

Government Gazette Staatskoerant

Vol. 408

PRETORIA, 14 JUNE 1999
JUNIE

No. 20185

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

NOTICE 1145 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

1, 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 433 of 1999 as published in Government Gazette No. 19836 dated 19 March 1999 as set out in the Schedule.

A ERWIN
MINISTER OF TRADE AND INDUSTRY

KENNISGEWING 1145 VAN 1999**DEPARTMENT 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 433 van 1999 soos gepubliseer in Staatskoerant No. 19836, gedateer 19 Maart 1999, soos in die Bylae uiteengesit.

**A ERWIN
MINISTER VAN HANDEL EN NYWERHEID**

SCHEDULE .BYLAE

BUSINESS PRACTICES COMMITTEE

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

Report No 75

**MARKETING FOR SUCCESS (PTY) LTD,
trading as ALPHA CLUB**

1. INTRODUCTION

On 17 September 1997 the Minister of Trade and Industry (the Minister), after considering Report 56⁽¹⁾ by the Business Practices Committee^(*) (the Committee), published Notice 1350 in Government Gazette 18292. In this notice the Minister declared a number of business practices unlawful. The parties who were directed to refrain from applying the harmful business practices were **Newport LLC, Newport Business Club (Pty) Ltd, Newport Business Club (Newport), Martin Bradley, Wayne Bradley, Clancy Connor, Els Dijkstra, Elaine Douglas, Rob Edward, Paul Farrally, Ben Glas, Richard King, Bob Mitchell, Robert Prichard, Peter Sealey and Steven Sweeney and/or any member, partner, agent, representative, employee or any other person on their behalf.**

On 17 November 1997 the Committee received a fax from a consumer who alleged that he was invited to a Newport meeting on 22 November 1997. He further claimed that he was told that Newport was now legal because it was **"affiliated"** with a travel agency. On 18 November 1997 the Committee received a copy of an article about Alpha Club that was published in a Cape Town newspaper. On 19 November 1997 **Mr L Louw⁽⁴⁾ (Louw)**, briefly informed the Committee about a new venture called Alpha Club. Issues raised by **Louw** are **quoted** from the minutes of the meeting of the Committee held on 19 November 1997.

"Mr Peter Sealey⁽⁵⁾ of Newport Business Club approached Louw to meet with the Committee. Louw discussed certain issues, for example the involvement of Interpol, with Newport. John Carway, a very wealthy person who was at loggerheads with the Irish Government was the main role player behind Newport. Carway was keen to meet the Committee. The possible liquidation of Newport was mentioned resulting in the transfer of all assets to Alpha Club. The newspaper "Beeld" published an article on the new developments before Newport could inform and/or meet the Committee. Alpha was considered as the new vehicle whereby timesharing will be sold. Alpha did have a contract with RCI. Alpha owned timesharing which will be banked with RCI. A figure of nine to ten thousand resorts world wide was mentioned. The present members of Newport

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- (1) See Report 56: Newport Business Club (Pty) Ltd and Others, published under Notice 1349 in Government Gazette 18292, dated 17 September 1997. This report on Marketing for Success, trading as Alpha Club, could be regarded as a sequel to Report 56, and would be better understood should the reader were to first study Report 56.
 - (2) The Committee was established in terms of section 2 of the Harmful Business Practices Act, 71 of 1988 ("the Act"). The purpose of the Act is to provide for the prohibition or control of certain business practices and for matters connected therewith.
 - (3) Report 56: page 51.
 - (4) Mr Louw is the executive director of the Free Market Foundation. He was also a consultant to Newport.
 - (5) Mr Peter Sealey, a solicitor from England, was a legal advisor to Newport.

would be able to use their R14000 investments in Newport by making use of the timesharing offers. The La Brie investment will remain in place. Sanlameer was one of the resorts in question. Alpha has a lot of credit with RCI. New members will be recruited to join Alpha at R16 000 per recruit. Newport would prefer to lose the litigation instituted against the Committee as the situation would then fit in better with their new plans. A concern called Marketing for Success did become involved in the affairs of Alpha Club and acquired the 20 percent interest which Newport held in the *en commandite* partnerships between Newport and its members”.

2. ALPHA CLUB INTRODUCED TO EX-NEWPORT MEMBERS

On 2 December 1997 the Committee received copies of two letters from the Free State Commercial Crime Unit of the South African Police Service. These letters seemed to be relevant to an understanding of the connection between Alpha Club and Newport. The first letter was dated 7 November 1997 and was addressed to “Dear Member”. The letter was signed by Ms Alexandra Sullner (Sullner), Chief Executive Officer of Marketing for Success (Pty) Ltd. The second letter, dated 12 November 1997 and addressed “To all Newport Business Club (Pty) Ltd ‘en commandite’ partners” was signed by Richard King⁽⁶⁾.

2.1 Sullner’s letter dated 7 November 1997

Alexandra Sullner introduced herself to the approximately 8 300 ex-Newport members (the ex-members) as the Chief Executive Officer of Marketing for Success (Pty) Ltd, (“MFS”). It was stated in the letter that MFS had concluded a transaction with Newport whereby it had acquired the 20 percent interest that Newport owned in the *en commandite* partnerships that the ex-members and Newport were party to. MFS agreed to issue at no cost to these members an Alpha Club silver membership card. The ex-members were further informed that the business conducted by MFS and Alpha Club in South Africa was completely different to that which was conducted by Newport.

Alpha Club, she said, was a holiday and travel club with a difference. It offered its members, their family and friends world-wide travel benefits that were “... unique and very cost effective”. From the moment of joining Alpha Club, its members could become established in a business of their own⁽⁷⁾ (Committee’s own underlining) which would allow them to sell Alpha Club memberships to their family, friends and the public at large. Alpha Club members could choose whether to make this a full-time or part-time business to suit their own lifestyle

(6) Richard Joseph Peter King was the sole director of Newport.

(7) The “business” was selling Alpha memberships. Existing Alpha members invited prospective new members to a meeting where the “advantages” of membership was explained to them. This marketing strategy was also followed by Newport.

and economic needs. She also said that Alpha Club trained its members in how to conduct their business and its members were to be provided with their "... own place at two Alpha Club meetings in the area every week where they can conduct their business with the assistance of senior Alpha Club management. The level of income to be achieved is determined by the Alpha Club members own enthusiasm and diligence".

She further stated that in the Alpha Club **programme**, operated in South Africa and marketed by **MFS**, every new member **started** off with a silver membership which would allow them to sell silver memberships. As their businesses grew, **they could** progress to a gold or platinum membership **which** would have allowed them in turn to sell gold and platinum memberships.

The **ex-members** were informed that "...in the next few days you will be contacted by your local Alpha Club representative (as Alpha Club has recruited many of the **Newport** Sales Personnel, this will probably be somebody that you already know) who will tell you a lot more about Alpha Club and provide you with all the information and material to start to enjoy Alpha Club and to earn money from your new business".

As part of the agreement between Newport and **MFS**, Alpha Club took over the Newport offices in **Bedfordview**. The physical address of the outlawed Newport and Marketing for Success were the same, namely Norwich Life House, 3 Cambridge Place, Corner of Oxford and **Kirkby** Roads, **Bedfordview**.

2.2 King's letter dated 12 November 1997

The following is a **precis** of the letter dated 12 November 1997 and addressed "To all Newport Business Club (**Pty**) **Ltd** 'en **commandite**' partners".

"Newport has been engaged in constant litigation with South African authorities, incurring legal costs of many millions of **Rands**. The Committee, a group of people operating unconstitutional, recommended to the Minister that our business should be deemed to be a harmful business and closed down. The Minister accepted the recommendation by the Committee. Newport has brought the unconstitutional actions of the Committee and the **Minster** before the Courts alleging bias, prejudice, ignorance, duplicity and bad faith being exercised by the Committee. We are still awaiting the **judgement**.

Newport, however, is fearful that even with a favorable **judgement** that would allow it to recommence its business, the Committee will again attack **Newport**. The Committee, the South African Government and the South African press have conspicuously ignored the benefits that Newport has brought to the economy of South Africa in the past twelve months. These benefits include creating more than 250 jobs, the payments of more

than R14 million in taxes, the investment of more than R15 million⁽⁸⁾ in a timeshare development and the opportunity to members to generate substantial incomes.

In the face of concentrated prejudice, duplicity and bad faith and faced with escalating legal fees, Newport adopted another course of action to protect its members' interests. Accordingly, Newport has sold its 20 percent interest in the *en commandite* partnerships to MFS, a newly created South African subsidiary of an international company.⁽⁹⁾ MFS holds the South African franchise to operate Alpha Club, a holiday and travel club. The membership of Alpha Club are sold through a system whereby members are established in their own businesses. (Committee's own underlining).

The net effect of the transaction is that each Newport member will receive an entry-level Silver Card membership to Alpha Club and the associated business ownership status attached thereto. The collective retail value of the memberships being issued is in excess of R132 million. The appropriate legal advice has been taken to ensure that the method by which MFS operates the Alpha Club franchise in South Africa is legal and regardless of any possible bias from the Committee, could never be deemed to be a harmful business practice.

For the avoidance of doubt, Newport has been advised by their legal representatives to inform you that MFS operates a business which is completely different from that which you have experienced since joining and participating in Newport. Notwithstanding this, your Alpha Club membership provides you and your family with immediate valuable benefits and the opportunity to generate income for years to come while participating in your own business with the assistance of MFS to market Alpha Club".

With the information at its disposal, the Committee on 2 December 1997 resolved to undertake a section 4(1)(c)⁽¹⁰⁾ investigation in terms of the Act into the business

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- (8) No evidence was ever produced that this amount was indeed invested.
- (9) Marketing for Success was not a subsidiary of an international company. The sole shareholder was Sullner. It later appeared that Hendrik Venter was also a director of MFS.
- (10) In terms of the Act the Committee could undertake a section or a section 8(l)(a) investigation into the business practices of a particular entity or individual. 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 is not empowered to make any decisions on the

practices of **MFS**, trading as Alpha Club. In this **report**, any reference to **MFS** would mean **MFS**, trading as Alpha Club. Similarly, any reference to Alpha would mean Alpha Club, the trading name of **MFS**. The words "**MFS**" and "Alpha" will be used alternately. At this point it is necessary to **deviate** from **Newport, MFS** and Alpha Club to briefly discuss the investigation by the Committee into money revolving schemes.

3. THE INVESTIGATION INTO MONEY REVOLVING SCHEMES

The investigation by the Committee into the business practices of Newport commenced **early** in 1997. The investigation was protracted because of numerous court cases instituted by Newport against the Committee. These are set out in detail in Report 56.

The investigation into **Newport** was preceded by an investigation into the business practices of the Rainbow Business Club.

The Rainbow **and** Newport schemes led to a mushrooming of such schemes in South Africa during the past three years. These schemes, commonly called "pyramids", create a dilemma for authorities. While a scheme is operating there are people, who are making money out of **it**. This apparent success is always visible to new entrants. **Should** the authorities step in and stop the scheme to prevent still more people from losing money, the authorities are accused of being paternalistic, unconstitutional, interfering with the consumers' freedom of choice, ignorance, bias and many more. When the authorities do not intervene and the scheme grinds to a stop, as *all these* schemes inevitably do, the outcry is "... why did the authorities not intervene?"

The **ad hoc** investigations took up considerable time and the Committee resolved to **undertake** a general or section 8(1)(b) investigation in terms of the Act into "money revolving schemes". The following appeared as Notice 1545 in Government Gazette No 18390 of 31 October 1997.

"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)(b) of the said Act into money revolving schemes as defined in the schedule.

Schedule

In this notice, unless the context indicates otherwise, a "money revolving scheme" means a **scheme-**

strength of a **section** 4(1)(c) investigation. He may do so in terms of a **section** 8 investigation.

(a) whereby participants are required to contribute valuable consideration towards the scheme, part of which contribution is used to reward both the promoters of the scheme **and/or** participants who preceded new participants and whereby promoters **and/or** participants are **entitled** to receive rewards out of contributions made by successive participants; and/or

(b) whereby the rewards of promoters and/or participants are **directly** correlated to the numbers of new participants canvassed directly or indirectly by the existing promoters and/or participants; and /or

(c) in which a majority of participants will not recoup their contributions, irrespective of:

(i) the stage on the life cycle of the scheme; and/or

(ii) at what stage the scheme comes to an end; and/or

(iii) at what stage the participants joined the scheme”.

The results of this investigation were published under Notice 1349 of 1997 in Government Gazette 18292 dated 17 September 1997.

4. THE COMMITTEE'S LETTER DATED 3 DECEMBER 1997 TO **MFS** AND THE RESPONSE OF **MFS**

In the **Committee's** letter dated 3 December 1997 to **MFS**, **MFS** was informed about the intended investigation set out in section 3 above. A copy of the notice was attached to the letter. **MFS** was also notified that **Louw** informed the Committee on 19 November 1997 about **MFS** and Alpha Club although he said that he did not have all the details of the new venture.

The Committee informed **MFS** that, with the little information at its disposal, and in view of Notice 1 545 (notice of the investigation into money revolving schemes), that it was concerned that the scheme operated by **MFS** and/or Alpha Club might **not** be "... completely different to that which was conducted by Newport". A number of questions were put to **MFS**, for example what the exact relationships between **MFS** and Alpha Club and the shareholders or members were and why did **MFS** and/or Alpha Club issue memberships, with a purported value of more than **R132,8** million, to **ex-members**? Information at the **Committee's** disposal indicated that the total assets of **Newport** could not be more than **R28 million**⁽¹¹⁾.

(11) In Report 56 it was mentioned that it cost **R14 000** to become a **Newport** "partner". **R5 300** of this **R14 000** was paid to the recruiting members, **R4 740** was paid directly to the "management" and the remaining **R3 960** was available for costs and "investments". Assuming that **Newport** had 8300 members at the time they ceased "business", **R32.868** million (8 300 times **R3 960**) was channeled to Newport. Assume

MFS/Sullner's response to ~~the~~ letter of ~~the~~ Committee dated 3 December 1997 was dated 12 December 1997, but was received at the offices of the Committee on 6 January 1998 only. She said that before answering the specific questions asked by the Committee, she **would** like to make a few points about Alpha Club in general and the method by which **MFS** conducted its business in South Africa. The following is a brief summary of the letter and allegations made by **Sullner**⁽¹²⁾.

She emphasised that Alpha Club was not a timeshare sales operation but a holiday and travel club. The Alpha Club memberships were sold by existing members through a multi-level sales programme that conformed "... to the legal criteria which governs multilevel marketing worldwide". Members of Alpha Club did not carry stock, nor were they left to arrange their own business infrastructure. Alpha Club provided a product worth the cost of the membership and provided the infrastructure for each member to operate **his/her** business.

She further stated that **MFS** had been licenced by **Brayfield** Investments Limited to operate the Alpha Club business in South Africa. She confirmed that she was the sole shareholder in **MFS**. **Brayfield** Investments Limited was the master franchisee for Alpha Club and **MFS** paid a royalty to **Brayfield** on each membership sold. The Alpha Club was administered from a head office in the **Algarve**, Portugal, to provide the resort accommodation for members. Alpha Club purchased accommodation from holiday exchange organisations and from hotels, apartments and resort developers.

She said that the **R132.8** million was the gross face value of the silver card membership issued to the **ex-members**. This was allegedly not based on the asset value of Newport but was based on the price that Alpha Club was selling silver memberships in other countries. An alleged commercial decision was made to the effect that, to obtain an initial platform of 8300 members, justified the issue of silver membership to the **ex-members** at no cost "There are obvious costs to **MFS** and indeed to **Brayfield** but these will no doubt be recouped as the business grows in South Africa".

MFS invited the Committee, or selected members, and it's investigating

further that **Newport had** indeed invested **R15** million and that their legal costs were **R4** million. Then **R1 3.868** million remained assuming a zero administration cost. This amount plus the unproven investment of **R15** million meant that the total assets were, at most, **R28.868** million. There was, obviously, no evidence of the **existence** of these "assets". The **collective** retail value of the memberships offered to **ex-members** was stated by King as **R132.8** million. For all intents and purposes it seemed that nothing had really changed. Existing members of **Apha** needed to recruit new members to start their own business.

- (12) The Committee did not meet **Sullner** during the course of the investigation. The same applied to King at the time of the Newport investigation.

officers to Alpha Club's headquarters in Portugal to see the operation at **first hand**, interview the executives and employees and get a "first hand" understanding. **MFS** would have paid the reasonable costs attributable to this visit. *The Committee declined this invitation.*

5. THE COMMISSION STRUCTURE

The commission structure of **MFS**, trading as Alpha Club, was similar to that of **Newport**. To explain the composition of the commission structure, the following is quoted from a document which the Committee received from Alpha:

- "1. The **R16 000**⁽¹³⁾ payment made by you is your non-refundable capital contribution in your partnership with Marketing For Success (Proprietary) Limited ("**MFS**")
2. By entering into the partnership you will acquire ordinary (Silver) membership of Alpha Club and the benefits and discounts that it offers. (A copy of the current rules of Alpha Club is **attached**.) Full details of such membership and the benefits accruing to you will be explained to you in more detail at presentations.
3. Once you have entered into the partnership you are **entitled** to earn commission by selling Alpha Club memberships. The commissions payable are illustrated by the following steps, keep in mind that each new **partner** pays **R16 000** and **R5 000** of this amount is earmarked by **MFS** for commissions on the sale Alpha Club memberships. The amounts to be deducted in respect of income tax are ignored because the effect on each partner will be different, depending on the marginal tax rate of that partner.
- 4
 - 4.1 **STEP ONE** - You become en **commandite partner** and purchase an Alpha Club membership by paying **R16 000**. You are now a Silver Member. **R5 000** of the **R16 000** paid by you will be paid to the Silver Member and/or the Group Member who sold you your Alpha Club membership.
 - 4.2 **STEP TWO** - Should you sell two new Alpha Club memberships, you will receive a commission of **R3 000** for each new members sold. You then become a group member. You do not receive any further commissions from the initial

(13) The **R16 000** had to be paid in **cash**. **Newport** members also had to pay cash to become members.

two memberships that you sold or the people that they sell memberships to.

4.3 **STEP THREE - You are now a Group Member. For each Alpha Club membership sold directly by you, you will receive a commission of around R5 000.**

4.4 **STEP FOUR - You will receive a commission of R2000 out of the R16 000 capital contribution for each new membership sold by your Silver Members.**

The steps set out above are merely a basic outline of the operation of the business and further comprehensive details will be furnished to you on request and in any event at the business and marketing development programmed held by **MFS** each week.

5. Note that **MFS** retains R1 000 of the **R16 000** paid and applies it *inter alia* in meeting its sales management costs as described in paragraph 4.4.4.5 of the En **Commandite** Partnership Agreement and administration expenses, employment costs and including, without limitation, payment of the **licence** and/or franchise fees payable to Alpha Club licensor.
6. In addition, **10%** of all commissions accruing to you from "indirect sales" shall for all purposes be deemed to be earned by and accruing to the **partnership** and shall be dealt with by **MFS** in furtherance of the business of the partnership".

In an example the accrued earnings in a nine-month time frame, assuming that members made only one new sale of membership per month, was stated as R1 34 000. The commission structure was more or less similar to the structure that applied to **Newport**.

6. OTHER COMPLAINTS RECEIVED BY THE COMMITTEE

On 17 December 1997 the Committee received a complaint from the Timeshare Institute of South Africa (**TISA**) about Alpha Club. In its letter **TISA** stated *inter alia*:

"We have attempted to **ascertain** the nature of their products and in discussions with **RCI** it appears that Alpha Club is relying on a voucher scheme, which is available in the industry. This once again means that the accommodation is totally **dependant** on availability and that the club itself does not own any stock emanating from the voucher scheme".

On 22 January 1998 the Committee received a complaint from **RCI** Southern

Africa in which it was *inter alia* stated:

“The Alpha Club are, we believe claiming to be affiliated to RCI and to have access to accommodation in this country, whilst we acknowledge that a lead generation agreement exists with RCI Portugal, RCI Southern Africa has no agreement what so ever with the Alpha Club. Furthermore RCI Southern Africa will not supply accommodation to Alpha members unless he/she is a bona fide timeshare owner at an RCI affiliated resort and a paid up member of RCI Southern Africa”.

On 24 June 1998 the South African Reserve Bank wrote to the Committee and stated *inter 8/is*:

“The Registrar of Banks has reason to suspect that the above-mentioned organisation is **and/or** has been conducting the business of a bank whilst it is not registered as a bank in terms of the Banks Act, 1990. For your information, please note that we are currently in the process of establishing whether this is, in fact, the case. Furthermore, this office would appreciate to learn whether you have any information in your possession relating to the activities of the Alpha Club, especially since it may be a possibility the Newport Business Club (Pty) Limited may be involved in the said scheme”

Commercial Crime Units of the South African Police Services also brought the activities of **MFS/Alpha** to the attention of the Committee. On 26 May 1998, for example, the Commercial Crime Unit of **Mpumalanga** alleged that **MFS/Alpha** contravened Notice 1350 (see the first paragraph of this Report). The Committee also received a number of enquiries from individuals.

7. SEVERAL MEETINGS ABOUT THE AVAILABILITY OF ACCOMMODATION

On 19 January 1998 **officials** of the **Committee** held discussions with **Sealey** and **Mr David Moulds**, General Sales Manager of Alpha Club and based in **Armação de Pêra**, Portugal. This meeting took place at the **offices** of **MFS** in **Bedfordview**. A **further** meeting between **officials** and **Sealey** was held on 8 April 1998 at the same venue.

Newport was closed down by the Minister because, *inter alia*, a majority of Newport Club **members** would at any stage lose money when the scheme came to an end. The Committee was of the opinion that this fact unreasonably prejudiced the existing and future Newport members. Spokesmen for **MFS/Alpha** contended that same argument could not be followed in the Alpha case. Alpha members allegedly had the opportunity to obtain holiday accommodation abroad at **greatly** reduced rates. Therefore they could not lose anything. Despite various correspondence and discussions, **MFS/Alpha** could not convince the Committee that the accommodation offered was indeed available or taken up.

8. LETTER DATED 17 JULY 1998 FROM THE COMMITTEE TO SEALEY

Sealey was informed on 17 July 1998 that **MFS/Alpha**, was discussed at a meeting of the **Committee** held on 14 July 1998. Previous correspondence between **MFS/Alpha** and the Committee revolved round the issue of the availability of accommodation abroad. The Committee also wished to discuss aspects of the marketing strategy followed by Alpha.

He was reminded that on previous occasions the Committee expressed its concern about “money revolving schemes”. A copy of Notice 1 545 (see section 3) **was included** in the letter. The Committee required **Alpha** to explain to the Committee why:

- “(a) the marketing strategy whereby commissions paid to existing members and **management**, such as executive partners assistant marketing directors, marketing directors and regional directors or whatever they are called, to canvass new members is not a harmful business practice as defined in section 1 of the **Act**.
- (b) the Committee should not undertake an investigation in terms of section 8 (1) (a) of the Act into the business practices of Alpha and those persons responsible for its management’.

9. THE MEETING WITH THE COMMITTEE ON 28 JULY 1998

Representatives of Alpha attended a meeting of the Committee on 28 July 1998. An independent business recorded the proceedings at the meeting and prepared a transcript thereof. Representing Alpha were **Sealey**, **Mr** Richard Lawrence (Lawrence) and **Ms** Elaine Douglas (Douglas). Lawrence, it was said, “... represented the Alpha team and advises world wide” and **Ms** Elaine Douglas was “... actually a member of the company”. She was in charge of the training of Alpha members in South Africa to run and operate their own businesses.

The Chairman of the Committee said that the meeting should focus on the letter of the Committee dated 17 July 1998. She referred to (a) and (b) set out in section 7 above.

Sealey, Lawrence and Douglas explained to the Committee that Alpha was involved in multilevel marketing and that it was no different from other businesses in South Africa who distributed their products through multilevel

(14) **Ms** Douglas was one of the **parties** who were directed by the Minister to refrain from applying the harmful business practices set out in the first paragraph of this report.

marketing. Douglas told the Committee about the presentations that Alpha gave two days a week and how hard the Alpha Club members worked to earn their money. **During** the discussions **Sealey** said that a “money revolving scheme” just invokes money and that if it was **properly** run and **properly** managed, there was nothing imperatively wrong **with** such schemes.

The Committee also discussed the number of reservations Alpha made on behalf of its members. From figures supplied by **Sealey**, it appeared that Alpha received 246 **enquiries** from members for holidays abroad. Only seven (2.84 percent) of these enquiries led to confirmed bookings. Approximately 63 percent (155 members) of the 246 members, having received **offers** for accommodation, did not elect to avail themselves of **it**. Another 26 (10.5 percent) **enquirers** said that they would advise the office about their decisions and 12 (4.9 percent) informed the Alpha office that their **offers** were too expensive. Other members informed the Alpha office *inter alia* that they were no longer traveling, advised the office that their offer was not suitable, requested more suggestions and that they made enquiries only. It was **earlier** stated that Alpha Club **offered** silver card membership to all 8300 **ex** Newport members.

These figures suggested that the Alpha Club members were not that interested in going aboard for holidays, but became members to “make money” by canvassing new members. Less than 0.1 per cent (7 members) of the 8300 **ex**-members availed themselves of the opportunity to enjoy a holiday abroad. **Sealey** said that he was not **surprised** by the figures because members were “... testing the system” to see what was available. He said:

“**Look** its just because they were just testing the system. You see, I think what happened, and this is **probably** not really of any great relevance, **but**, this is my view. At 8000 people who were bitterly disappointed to be disenfranchised. And out of the blue, and they suddenly get an Alpha club membership. Now, those 8000 odd people were not only upset and cross, they were disenchanted. They’d lost I believe, a desire to carry on in this type of industry. They lost their believe, motivation, call it what you will. So, we expected, inevitably, a fair number of people that would, would just see if it was true, or was **it**, you know, all the bad press, and **it’s** a scam, it’s a scheme. It doesn’t **exist**. I think they were **just**, we expected them to test the system. We welcomed **it**”.

Lawrence said the Alpha product was membership. It was a service as opposed to

“... a piece of something or, cosmetic or whatever. **But**, but the service is the product”.

Sealey said **that**: “I think the reality in a way, if you buy an Alpha Club membership, and you see there is the potential to get commission by selling the **product**, inevitably human nature is such that people will have a go”. Then Douglas said that

“... some people buy for the products, most people buy it from my experience, to run their own business. And, and that is from the experience directly from the, having our meetings at the end of the night’.

This remark by Douglas confirmed that consumers became members of Alpha to make money by canvassing new members.

Sealey said in conclusion:

“**In** our view, it clearly is not a harmful business practice. I **repeat**, just like any other network marketing business. It is not based on misrepresentation. It is not based on any form of swindle. People go into it with their eyes open. They know exactly what they have to do. If they choose not to do **it**, at the end of the day, there is that one assumption that they must actually to get their value, want to book a holiday or want to go on a business trip. But there is nothing remotely underhand about it It is unique, in my experience, in the amount of effort that goes into training people. The amount of assistance that is given to people they are not just abandoned”.

At the end of the meeting the Chairman informed the representatives of Alpha that the Committee would set out in writing what to the Committee constituted the harmful aspect of the operation. Alpha would then be given two weeks to reflect on that and to see whether to what extend they could adjust their operation to allay the concerns of the Committee.

10. THE LETTER OF THE COMMITTEE DATED 14 AUGUST 1998 TO SEALEY

On 14 August 1998 the Chairman of the Committee wrote a letter to **Sealey** referring to the meeting with Douglas, Lawrence, himself and the **Committee** on 28 July 1998. It was pointed out to him that the general investigation into “**money revolving schemes**” was brought to his attention on more than one occasion. The general investigation did not preclude the Committee from undertaking investigations into specific entities that could be involved with harmful business practices as defined in section 1 of the Act. In terms of section 8(1)(a) of the Act the Committee may on its own initiative, undertake such investigation as it may consider necessary into any harmful business practice which the Committee has reason to believe exists or may come into existence.

It was put to **Sealey** that those operating “pyramid promotional schemes” **would probably** be involved in harmful business practices. The Committee was, with the information at its disposal, of the opinion that the business practices of Marketing for Success, trading as Alpha Club, could, in the light of the of the

proposed definitions in the draft section **8(1)(b)⁽¹⁵⁾ report**, constitute a “pyramid promotional scheme”. The proposed definitions of a “pyramid promotional scheme”, “consideration” and “compensation” were:

“Pyramid promotional scheme “... 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”.

Consideration “... the payment of cash or purchase of goods, services, or intangible **property**. Consideration does not include: purchase of products furnished at cost to be used in making sales and not for resale, purchase of products where the seller offers to repurchase the participant’s products under reasonable commercial terms and the participant’s time and effort in pursuit of sales or recruiting activities”.

Compensation “... the payment of money, a thing of value, or any financial benefit or any discounts which may accrue to the participant Compensation does not include: Payments to participants based upon sales of products purchased for actual use or consumption, including products used or consumed by participants in the plan and payment to participants under reasonable commercial terms”.

The following is a quote from the letter dated 14 August 1998:

“Alpha Club contends that it is in the business of “supplying accommodation” or being in the “travel business” in general. If that were the case, one would assume that Alpha Club would derive its income from its members **utilising** the services of hotels, resorts and airlines. This is not the case, because Alpha’s business; and that of its members, does not depend on selling accommodation. The turnover and profit of Alpha Club and **its** members are **dependant** on existing members recruiting new members. The income of Alpha Club and its members has no connection whatsoever with the members **utilising** or consuming the travel services”.

It was agreed at the meeting on 28 July 1998 that Alpha Club would be given two weeks to respond to this letter. The Committee would then consider your response and would decide whether it should proceed with a section 8(l)(a) investigation into the business practices of Marketing for Success, trading as Alpha Club, its shareholders, **management**, marketing directors and members.

(15) The results of this investigation were published under Notice 1349 of 1997 in Government Gazette 18292 dated 17 September 1997.

11. FURTHER EVENTS

On 27 August 27 the Committee **received a fax from** Lawrence, who was based in Salt Lake City, and counsel to Alpha Club in its **world wide** operations. He *inter alia* **said:**

“With hind **sight**, Alpha Club’s entry into South Africa by means of a negotiated transaction with Newport Business Club, utilizing the sales personnel of Newport Business Club and extending memberships to Newport Business Club members **was** a mistake. I believe it has caused **Alpha Club** tremendous **difficulty**, not only with ~~the~~ Business Practices Committee, but also with Alpha Club’s operations in South Africa. There is no question in my mind that the Business Practices Committee’s view of Alpha Club has been damaged and distorted as a result of the prior activities of the **Newport Business Club**”.

and

“It is also my understanding from reading this prior correspondence, that Marketing for Success has provided the Committee with ample evidence **that:**

1. the sale of Alpha Club memberships do not constitute the sale of time share interests.
2. the commissions paid to the marketing executives are a reasonable marketing expense.
3. Alpha Club members have access to discounts at a significant number of hotels.
4. there are no misrepresentations or dishonesty in the sale of Alpha Club memberships.
5. the price for Alpha Club membership is reasonable and **fair**”.

“I would be grateful if you **could** confirm to me in writing that the Committee is now satisfied on these issues”.

On 2 September 1998 the Committee informed **Sealey** that it considered the response by Lawrence at its meeting on 1 September 1998 and that the Committee resolved to undertake a section 8(1)(a) investigation into the business practices of Marketing for Success **(Pty) Ltd** trading as **Alpha Club** and any director, and any employee, agent **and/or** representative of any of the aforementioned in respect **op** the activities of Marketing for Success **(Pty) Ltd**, trading as Alpha Club.

On 3 September 1998 the Committee again received a fax from Lawrence in which he said **that**, provided the Committee withdraws its resolution of 1 September 1998 with respect to Marketing for Success and Alpha Club, and does not publish the proposed notice the Government Gazette, Alpha Club would immediately instruct Marketing for Success to voluntarily suspend sales of Alpha Club memberships in South Africa.

The Committee received another fax from Lawrence on 9 September 1998. He confirmed that Marketing for Success, trading as Alpha Club, would immediately suspend the sales of Alpha Club memberships for such time it is necessary for the Committee to complete its investigation or to have come to an agreement with Marketing for Success which in the opinion of the Committee would ensure the discontinuance of a possible harmful business practice.

After a meeting of the Committee on 10 September 1998, it wrote to **Sealey** on 15 September:

“ At the meeting of the Committee on 10 September 1998 you indicated **that**, should the Committee find that a harmful business practices exists and the Committee does not come to an agreement with Marketing for Success, it would immediately cease the sales of Alpha Club memberships in South Africa.

The Committee deliberated the business practices of Marketing for Success **(Pty) Ltd**, trading as Alpha Club, and resolved that:

(a) an arrangement with Marketing for Success **(Pty) Ltd** that would be acceptable to the Committee would be that Marketing for Success **(Pty) Ltd** cease the marketing practice whereby existing members of Alpha Club **and/or** the management of Marketing for Success **(Pty) Ltd** are remunerated, directly or indirectly, to canvass new members for Alpha Club;

(b) the Committee regards the business practice of Marketing for Success **(Pty) Ltd**, whereby existing members of Alpha Club **and/or** the management of Marketing for Success **(Pty) Ltd** are remunerated, **directly** or indirectly, to canvass new members for Alpha Club, a harmful business practice in terms of section 1 of the Harmful Business Practices Act, 71 of 1988;

(c) Marketing for Success **(Pty) Ltd** be afforded the **opportunity** to accept an arrangement with the Committee, in terms of section 9 of the **Act**, whereby Marketing for Success **(Pty) Ltd** will undertake to immediately cease the marketing strategy whereby existing members of Alpha Club **and/or** the management of Marketing for Success **(Pty) Ltd** are remunerated, directly or indirectly, to canvass new members for Alpha Club **in South Africa**;

(d) the arrangement set out in the preceding paragraph will be published in the Government Gazette; and

(e) should Marketing for Success (Pty) Ltd fail to agree to the arrangement set out above, the Committee will continue with the publication of the notice of the section 8(1)(a) investigation into the business practices of Marketing for Success (Pty) Ltd, trading as Alpha Club.

Should Marketing for Success (Pty) Ltd accept the proposed arrangement, it is required that it be accepted in writing by a person duly authorised by Marketing for Success (Pty) Ltd to do so. The acceptance of the arrangement before 12h00 on 23 September 1998 is essential. Failing to do so will result in the publication of the notice of the investigation, as set out in (e) above”.

On 28 October 1998 Lawrence advised the Committee by fax:

“Under the present circumstances it is neither possible nor practical to continue to sell Alpha Club membership in South Africa. According we have as today’s date rescinded our licence agreement with MSF. In taking this action we have actively and immediately resolved the issue before the Committee. No Alpha Club memberships will be sold in South Africa.

As MFS is no longer a licensee of Alpha Club, neither MFS, its directors, officers and legal advisers are authorized to make any representations, give any undertakings or any commitments on behalf of Alpha Club. Alpha Club will continue to operate a service office as reservation office in South Africa to service the need’s of the existing Alpha Club members in South Africa.

At such time as Alpha Club shall determine that it wished to resume sales of memberships in South Africa, I will contact the Committee to review any sales practices before any sale begin”.

On 19 November 1998 the Committee responded to the fax of Lawrence dated 28 October 1998. Lawrence was referred to his statements that “... we have as at today’s date rescinded our license agreement with MSF. In taking this action we have effectively and immediately resolved the issue before the Committee. No further Alpha Club memberships will be sold in South Africa”. The Committee further wrote:

“You are aware that the Committee is undertaking a section 4(1)(c) investigation in terms of the Harmful Business Practices Act, 71 of 1988 (the Act), into the business practices of Marketing for Success trading as Alpha Club. In terms of section 9 of the Act, when the Committee had decided to undertake a section 4(1)(c) investigation, it may at any time

thereafter negotiate with any person or body, corporate or unincorporated, with a view to making an arrangement which in the opinion of the Committee will ensure the discontinuance of a harmful business practice which exists or may come into existence and which is the subject to the investigation.

Unfortunately the Committee is not of the opinion that, as you put it, the issue is effectively and immediately resolved. The Committee is concerned that Alpha Club could be revived in South Africa under the guise of another entity and continue the alleged harmful business practice (read in conjunction with section 9- or may come into existence). There seem to be two options. Either the Committee enters into an agreement with the "International" Alpha Club (IAC) or it continues its investigation under strength of a section 8(1)(a) investigation in terms of the Act into the business practices of Marketing for Success trading as Alpha Club.

An agreement in terms of section 9 of the Act.

You said that "As **MFS** is no longer a licensee of Alpha Club, neither **MFS**, **it's** directors, officers or legal advisers are authorized to make any representation, give any undertakings or any commitments on behalf of Alpha Club".

This sentence precludes the Committee in entering into an agreement with **MFS (Ms Sullner)** or **Mr Peter Sealey** (legal advisor). It is thus apparent that the Committee need to enter into an agreement with **IAC** to the effect that no further memberships will be sold in South Africa now or in future, either in its present form or in a modified form under the guise of another entity. The detail of such an agreement would obviously be agreed upon should this alternative be acceptable. Agreements in terms of section 9 of the Act are published in the Government Gazette.

The Committee continues its investigation in terms of section 8(1)(a) of the Act.

The Act specifies that a **report** be presented to the Minister or Trade and Industry after the completion of a section 8(1)(a) investigation. After completion of the investigation the Committee would recommend, if it is of the opinion that a harmful business practice exists or may come into existence, to the Minister which powers he should exercise to ensure the discontinuance of a **particular** harmful business practice. The powers of the Minister are set out in section 12 of the Act. Reports of investigations in terms of section 8(1)(a) of the Act are published in the Government Gazette.

It would be appreciated if you could indicate, on or before 30 November 1998, whether **IAC** is desirous to enter into an agreement with the

Committee or whether the Committee should continue its investigation in terms of section 8(1)(a) of the **Act**. It stands to reason that the Committee requires **documentary** evidence from **IAC** that it has "... as at today's date rescinded our license agreement with **MSF**".

On 30 November 1998 Lawrence informed the Committee that "Alpha has never done business in **SA**. An agreement with the Committee could be 'viewed as some admission' on the part of Alpha Club that it has in fact conducted business in **SA**".

Because of other urgent matters and also because Alpha stated that "No further Alpha Club memberships will be sold in South Africa", the Committee did not have time to again discuss **MFS** or Alpha before 8 March 1999. On 8 March 1999 the Committee confirmed its resolution taken on 1 September 1998 to proceed with the investigation in terms of section 8(1)(a) of the Act into the business practices of Marketing for Success, trading as Alpha Club. Lawrence was informed about this decision.

12. THE SECTION 8(i)(a) NOTICE

The following appeared as Notice No 433 in Government Gazette No 19836 dated 19 March 1999.

"In terms of the provisions of section 8(4) of the Harmful Business Practices **Act**, 1988 (Act No. 71 of 1988), notice is herewith 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 -

Marketing for Success (**Pty**) Ltd trading as Alpha Club and any director and any employee, agent and/or representative of any of the aforementioned in respect of the business activities of Marketing for Success (**Pty**) Ltd, trading as Alpha Club.

Any person may within a period of fourteen (14) days from the date of this notice make written representations regarding the above-mentioned investigation to:

The Secretary, Business Practices Committee,
Private Bag X84, PRETORIA, 0001.
Tel: (012) 310-9562, Fax (012) 320-0579
Ms L van Zyl Ref. H101/20/10/20(97)".

The office of Marketing for Success (**Pty**) Ltd, trading as Alpha Club, in **Bedfordview** and Lawrence was informed about the publication of the section 8(1)(a) notice.

13. CONCLUSION

MFS/Alpha's only real product was money. The success of **MFS/Alpha**, as in the Newport case, was dependent on the money received from its members and new members *on a continuous basis*. Ms Douglas confirmed that **MFS/Alpha** sold "business opportunities" to the members. She said "... some people buy for the products, most people buy it from my experience, to run their own business".

Sullner stated in her letter dated 7 November 1997 to the approximately 8300 ex-Newport members that Alpha Club "... was a holiday and travel club with a **difference**. It offered its members, their family and friends **world-wide** travel benefits that were unique and very cost effective". From figures supplied by Alpha, it appeared that less than 0.1 percent of the members availed them of the opportunity to enjoy a holiday abroad. This figures clearly suggests that the Alpha Club members were not that interested in going aboard for holidays, but became **members** to "make money" by canvassing new members.

The "advantage" to consumers who became members was the right to recruit and introduce new members. A considerable **part** of a new members' payment served to fund the recruitment costs, that is, the commissions payable to existing members who have recruited the new members and also the management of the scheme. The greater the number of new members introduced, the sooner was the recoupment of the original cash **payment**.

Assume that Alpha Club members had to recruit at least four new members each to recoup their "investments". These four new members must then recruit at least 16 other members to recoup their payments. Assume **further that the scheme started** with 10 people. These 10 people would need to recruit at least 40 new members to recoup their payments. The scheme now has 50 members of whom only 10 recouped their payments. To recoup their payments the 40 "out-of-pocket" members need to recruit at least 160 new members. The scheme now has 210 members of whom 50 recouped their payments while the remaining 160 members need to recruit at least 640 new members to recoup their payments. The cumulative figures are set out in the next table.

The figures in column A reflect the number of new members required to enable previous members to recoup their payments. For example, the 40 new members would need to canvass 160 new

New members (A)	Total members (B)	As a % of B
40	50	80.0000
160	210	76.1905
640	850	75.2941
2560	3410	75.0733
10240	13650	75.0183
40960	54610	75.0046
163640	218450	75.0011
655360	873810	75.0003
1621440	3495250	75.0001
10485760	13981010	75.0000

members **to** recoup their payments, and the 10240 members need to recruit 40960 new members to recover their payments.

The figures in column B shows the numbers of members necessary to enable the previous members to **break** even. For example, 850 people must have had to become members or partners of the scheme to enable the previous 210 members to recoup their payments.

The last column in the table shows the percentage of members that have not yet recouped their **payments**. Given the assumptions **underlying** the **figures** in the table, **it** is clear that 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 Alpha club scheme.

The Committee is of the opinion that Alpha members would be unreasonably prejudiced. At **any** point in time people will lose money. Few people will make money and many would lose money. The relations between those consumers who have not recouped their payments and the business, Alpha, will be harmed. **In** terms of the Act this by itself would constitute a harmful business practice.

14. RECOMMENDATION

The business practices of **MFS/Alpha** constituted harmful business practices. There are no grounds justifying these practices in the public interest It is accordingly recommended that the Minister declares the harmful business practices unlawful in terms of Section 12(1)(b) of the Act which practices are the subject of the investigation whereby anyone or more of the following persons, to wit:

Marketing for Success (**Pty**) **Ltd**, trading as Alpha Club, Peter **Sealey**, Alexandra **Sullner** and **Hendrik Venter** **and/or** any member, **partner**, **agent**, representative, employee or any other person on their behalf (hereafter referred to as "the aforesaid persons"), in the course of the business of any of the aforesaid persons, **directly** or indirectly -

(a) invites or 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 following **effect**:

(i) the parties to the agreement enter into a partnership

(ii) 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 following **effect**:

(i) the parties to the agreement enter into a partnership

(ii) 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.

It is further recommended that the Minister direct the aforesaid persons in terms of section 12(l)(c) of the Act to terminate or to cease to be parties to the **agreement(s)/arrangement(s)** mentioned above.

LOUISE A TAGER
CHAIRMAN: BUSINESS PRACTICES COMMITTEE
22 April 1999

NOTICE 1146 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

1, 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 433** in Government **Gazette 19836**, dated 19 March 1999, which **report** was published in Notice 1145 in Government Gazette No. 20185 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” the business practice whereby the parties, directly or **indirectly**:

- (a) invite or procure the attendance or attempt 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 following **effect**:
 - (i) the **parties** to the agreement enter into a partnership
 - (ii) 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) enter into any arrangement with any person the terms whereof includes any provision which has the following effect:
- (i) the parties to the agreement enter into a partnership
- (ii) 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.

"the parties" means Marketing for Success (**Pty**) Ltd, trading as Alpha Club, Peter **Sealey**, Alexandra **Sullner** and **Hendrik** Venter and/or any member, partner, agent, representative, employee or any other person on their behalf.

1. The harmful business practice is hereby declared unlawful in respect of the **parties**.
2. The **parties** are hereby directed to -
 - (a) refrain from applying the harmful business practice;
 - (b) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income there from;
 - (c) refrain from at anytime applying the harmful business practice; and
 - (d) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.
3. This notice shall come into operation upon the date of publication hereof,

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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Tel: (01 2) 334-4507, 334-4511, 334-4509, 334-4515

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaat Sak X85, Pretoria, 0001
Tel: (01 2) 334-4507, 334-4511, 334-4509, 334-4515