

Top 10 Apparent Misrepresentations in Recent Usana Earnings Call

1. **Question:** “By implication are you saying that everything else in the Minkow report [in context, everything except the resume issue with Waitley] is without merit or are you still studying pieces of the Minkow report...”

Answer: “Yes most definitely we find everything else we have looked at to be false, or misleading or taken out of context...”

Here’s the truth. **First**, the company has conceded that Myron Wentz, founder, Chairman, and holder of 46% of Usana stock, has parked his stock in Lichtenstein. This was first disclosed in our report. **Second**, Usana has conceded that Dr. Wentz renounced his American citizenship on St. Kitt’s and Nevis, which was first disclosed in our report. **Third**, Usana could not deny the tape of their Opportunity Meeting at their headquarters, which included multiple misrepresentations. These misrepresentations ranged from the Utah Attorney General putting his stamp of approval on the company to impute credibility to Usana’s business model, to the statement made to our representative that “we are not a multi-level marketing company.” These statements are recorded on tape, were disclosed in our report, and are true and undeniable. This makes Usana’s statement in the earnings call untrue.

Fourth, the company copped to the fact that 87% of its distributors are not earning money (Wall Street Journal, March 15th, 2007), a fact that went previously undisclosed before the issuance of our report. **Fifth**, the top 3% of commission-receiving distributors receive 70% of the commissions paid out by Usana, and this remains an uncontested fact, with the source documentation for this created by Usana and posted on its website. **Sixth**, senior management made the statement during the conference call knowing that Dave Wentz signed the 2006 10-K and the June 30th 2006 letter to the FTC, which have two contradictory statements to two different government agencies, regarding the impact of the same issue, first pointed out by our report.

Moreover, we stand by all of our findings, and these six examples prove the company **has just been less than candid** with investors and analysts during their April 4th, 2007 earnings call. The next logical question is: What else is Usana not being candid about?

2. How seriously has Usana senior management taken a seven year resume misrepresentation in official SEC proxy statements?

“We had an inadvertent mistake in Denis’s bio -uh- which we had, he had actually tried to correct, but we had missed the edit and so that slipped through in that template [inaudible] part of the report.”

How hard to Denis try over the seven year time period to correct his own resume that created new information? Moreover, the government (and take this from an ex-felon who knows firsthand) may just take this a little more seriously than this explanation provided by Usana senior management.

I do not speak for any government agency but only from my personal experience. However, each misrepresentation for each year, is potentially punishable by imprisonment for “not more than five years.” This may evoke a big yawn from commission-generating broker dealers, but not from me. This is serious and unspinnable. And the punishment for Mr. Waitley according to Usana? One hundred and fifty thousand dollars a year in consulting fees paid to him--still. Not a bad gig, until you become acquainted with the following section of the U.S. Code:

TITLE 18 > PART I > CHAPTER 47 > § 1001

§ 1001. Statements or entries generally

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to—

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

3. The credentials of Dr. Timothy Woods.

The official Usana biography states the following about Dr. Timothy Woods:

“After receiving a bachelor's degree in environmental biology from the University of California, Santa Barbara, Dr. Wood earned a master's degree in environmental sciences and a **Ph.D. in biology** from Yale University.”

During the recent earnings call, senior management made the following statement about the issue:

“As regard to Dr. Tim Woods. He earned his doctorate in 1980 from the Yale University Graduate School of Arts & Sciences. He conducted his graduate work under the guidance of a professor who was on the faculty of the Yale School of Forestry & Environmental Studies. His dissertation, entitled Biological and Chemical Control of Phosphorous Cycling in a Northern Hardwood Forest, concerned a technical field of study termed biogeochemistry, which is commonly considered a field of biology. Furthermore Dr. Wood's principal focus in research and class work while earning his PhD was in the field of biology. For that reason his academic credentials as described in the Usana proxy materials reflect this area of specialization.”

All Usana had to do was simply amend Dr. Wood's biography to perhaps state that he has a doctorate degree in Forestry & Environmental Studies with an emphasis in biology. But rather than concede that point and err towards being more specifically accurate (as opposed to less specifically accurate) during a time when people (including the SEC) are looking closely at the company, this management team pridefully rebuffs the Wall Street Journal findings and refuses to make any changes according to the conference call.

This despite another admitted error by the company about Dr. Wentz's Ernst & Young entrepreneur award made in the very same conference call—albeit the company reduced it to one isolated case where the award appeared to be national, when it was in fact regional. Either this is a pattern of behavior that is consistent with our initial reports findings or this company has had computer glitches that actually create information that tends to make board members and senior management look much more qualified.

4. Usana survey reveals that 3 out of 4 Usana distributors join NOT to earn an income, but for true health, according the President Dave Wentz.

When asked about Usana's actual retail sales, upper management responded with the following during the earnings call:

“In fact we also have a survey that we did of 48,000 associates. Did it a couple of years ago. And we asked them why they joined Usana. Approximately 75% joined for the health benefits of the product. And about 25% joined to build a business, uh, or to, for financial gains. So, when you look at 75% of the distributors, the associates joining for health reasons as their primary reason, you know that you have 75% that are consumers, taking the product, and may not even be spending any of their time or efforts to build a business. You have 25% who are coming in looking for the products for health benefits, but the primary focus is to either earn a small amount of income to help cover some bills, to pay for vacation or some holiday expenses, or those who want to go full force and replace their other income and become full, get all of their income from Usana. So, to say that 14% of our people, 14% of our sales are to customers is completely ridiculous and misconstruing the facts. It doesn't also

include all of the retail sales that our distributors make on, after we get the products to them, that we don't have the names...they keep their retail customer lists to themselves and they own those retail customers so to speak and service them by providing the product directly to them. And the company does not know who they are, does not have contact with them. So, completely misconstrued allegations."

Why didn't any analyst ask the following questions: **If this is true, Mr. Wentz, why the attrition rates? Why the severe turnover if the expectation of the vast majority of your distributors is only "good vitamins?" With this expectation level, shouldn't we expect a huge retention rate for distributors because they have lower expectations? After all, they only want "True Health" and "are not trying" to build a business, right?**

But that is not what the evidence bears out. Moreover, this 75% statistic is found nowhere in Usana's 10-Ks or 10-Qs, and has only been reintroduced because it appears to serve as a mitigating factor to failure and collapse rates that the company can no longer conceal based on the findings of our report.

Additionally, on the same conference call, upper management told analysts and investors that new promotions are being implemented which include a new issue of Success at Home Magazine and "Share the Success 3" where \$250,000 in cash will be awarded to the top 50 associate business builders in North America.

Again, why didn't an analyst ask the following: **Won't this new cash award further exacerbate the problem of 70% of the compensation going to the top 3% of the distributors who receive commissions, which was first established as fact in FDI's initial report?**

In an attempt to justify that retail sales are occurring, Usana contradicts the purpose of the new contests and incentives for business builders. Why encourage business building if 75% of distributors aren't building businesses?

5. **Usana's Las Vegas regional meeting was cited multiple times during the conference call, noting record attendance for a regional event, in an attempt to continue the "everything is fine, not to worry" approach to Wall Street.**

However, Duke Tubtim (Associate ID# 2119355 from Hacienda Heights, California), the 1 Star Diamond profiled at the event, is also profiled prominently elsewhere on the internet - like the Rip Off Report web site at: <http://www.ripoffreport.com/reports/ripoff140503.htm>, and this page: <http://infenet1.tripod.com/VOnehistory.html>.

These sites do seem to present a pattern of "pyramid" type behavior for the recently profiled Usana Diamond. But the company made no mention of this "below the iceberg" fact of the Las Vegas outing they touted multiple times during the conference call.

6. **Usana senior management stated repeatedly that distributors have "rallied" during this period – and so have the class action lawyers who have filed no less than 6 suits against the company.**

Although the filing of a lawsuit is not evidence, and most likely in a class action suit there will only be one combined case, the fact that multiple law firms, knowing that there were other law firms already ahead of them in line, all have cited the same report, our original report, as their primary basis for allegations asserted in the fraud and misrepresentation law suits.

Once again this all becomes cumulative in that despite the company's efforts to dismiss these suits as baseless and not disclose potential costs to defend and their impact on earnings or even the time of management necessary to defend these suits, the company would have us believe that all these law firms are wrong in their conclusions in that they literally impute credibility to our original report by establishing it as the basis for the suits. The reality is plaintiffs in these kinds of cases receive compensation on a contingency basis—meaning they must believe there is a high likelihood of wrongdoing by the company to file in the first place. So as the distributors rally, according to management, so do the lawyers rally

and they are rallying around the facts uncovered in our original report—the report senior management today says is entirely baseless.

7. 14% of Usana’s revenue is from retail sales, but retail sales are higher!

During the conference call, Usana executives said that our report missed the mark on true retail customers because we cited the 14% preferred customer figures from the company’s quarterly and annual reports to the SEC. Essentially the company argues that their retail sales should include sales from Usana to distributors, because most distributors consume the products they buy.

Our response based on the evidence is simple. **If distributors are consuming Usana products, they are not doing so for long** based on the collapse and attrition rates and admitted high turnover of distributors. Additionally, if these distributors actually have the retail business and customers that the company claimed in the conference call, **then why are 87% of them not making money and why are they quitting and creating such incredible turnover?**

I’ll tell you why. Because the primary reason 86% of Usana’s sales are to distributors is because distributors purchase these products **out of fear of missing their 10% or 20% commissions. Without continuous personal purchases of products, distributors do not qualify to receive their commissions.** It is a pay to play system. If distributors had a “secret pool” of retail customers that they could actually retail these products to, they would not be failing and quitting the Usana Health Sciences, Inc. business opportunity at such an alarming rate.

8. What was not said was the most disappointing.

How can CFO Gil Fuller, in record time, know precise numbers about gross revenues, net profits, earnings per share, and per country figures, and yet be silent (with a deafening silence) on critical issues that may make the company look bad--like how many autoship cancellations Usana has experienced in the past 3 weeks? Considering the fact that autoship accounts for 52% of Usana’s direct sales revenue, and may quite properly be termed the company’s bread and

butter, isn't it odd that Mr. Fuller hasn't examined those numbers? We simply do not know because Mr. Fuller indicated that he does not know but over and over during the call we heard that this past week was Usana's "best ever" sales week.

Gil Fuller got this information in record time and down to the very week. Yet on an issue that could potentially be negative news, we do not hear about that information. There is another thing Mr. Fuller appears to know and be fully aware of: Wentz flew (to Liechtenstein) **and he knew**.

9. The early date of this conference call is consistent with Usana's motive from the beginning—the stock price. It is all about the stock price.

The company needed to release this early earnings information, by their own admission, to begin repurchasing shares on the open market again, in order to seemingly provide **buying power** to a stock that has lost significant value. According to Usana, the company can still buy back \$37 million and in fact indicated that they would be open to even borrowing money to repurchase more shares on the open market. I have another suggestion for the \$37 million. **Give it back to the many people that have emailed me recently about the money they have lost trying to succeed as a Usana independent distributor.**

10. When does all this become cumulative?

When do enough red flags get raised before one says: "I simply cannot rely upon the senior management or the Usana board of directors." How many things must be shown that were previously hidden before Wall Street realizes the issues with Usana Health Sciences, Inc. is not about EBITA or EPS or even ROI, which the analysts keep pointing to but rather the issue is a five letter word: FRAUD.