DARE TO BE GREAT, INC!: A CASE STUDY OF PYRAMID SALES PLAN REGULATION

I. INTRODUCTION[1]

In the sprawling parking lot of a shopping center on the east side of Columbus, Ohio, a young man, perhaps in his early twenties, wearing a bright yellow suit upon the lapel of which a jewelled American flag pin flashes in the morning sun, emerges from a parked Cadillac. He strolls across to the mall, glancing around as though he is looking for someone. Striding up to another young man in work clothes who has just exited from a luncheonette, he offers his hand and introduces himself.

"Hi! I'm Jim Jones (warmly shaking hands). What's your name?"

"Fred Smith" (staring awestruck).

"I'm awfully glad to meet you, Fred. What do you do for a living?"

"I work in a machine shop" (extracting hand).

"Make pretty good money, Fred?"

"I do OK" (shrugging shoulders).

"How would you like to earn twice as much as you're making now?"

"Sure, who wouldn't? How?"

"I don't have time to explain it to you now, Fred. Just give me your phone number and I'll call you later and tell you all about it."

Although the reader may smile at the thought of a stranger obtaining his telephone number so easily, Fred had no such qualm, or at least succumbed after Jim assured him that his business was legal. Jim telephoned Fred the next evening and invited him to a Dare To Be Great, Inc! "Golden Opportunity Tour" to be held that weekend at the Sheraton-Gibson Hotel in Cincinnati. Fred again asked for specifics about the company, but Jim demurred, promising that all his questions would be answered that weekend. After receiving assurances that his transportation, meals and lodging would cost him nothing, Fred agreed to come, and Jim arranged to pick him up at 7:30 Saturday morning.

Dare To Be Great, Inc! (hereinafter "DG"), as Fred and hundreds of other guests recruited in a similar manner will discover at the Golden Opportunity Tour (hereinafter "GO Tour"), operates what is known as a pyramid sales plan. It is estimated that 200 companies in the United States use pyramid sales plans,[2] the distinguishing characteristic of which is that in exchange for a sum of money, the participant receives both a

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[1] The factual assertions and conclusions contained in this Note are, unless otherwise documented, the product of the writer's attendence at a Dare To Be Great, Inc! "Golden Opportunity Tour" and numerous interviews with past and present Dare To Be Great, Inc! officers and franchisees. No attempt will be made to individually cite these sources.

[2] N.Y. Times, Jan. 13, 1972, at 59, col. 5. An estimated 35 of these companies operate in Ohio. Interview with Robert DeLambo, Acting Attorney Inspector, Division of Securities, Ohio Department of Commerce, in Columbus, Ohio, May 1, 1972.

product (sometimes an inventory of product) and the right to earn finder's fees for recruiting additional participants. Such a scheme, if successful, produces a chain-like, theoretically open-bottomed pyramid of franchisees, each of whom is also a potential franchisor. Due to a high rate of complaints by dissatisfied investors, pyramid plans have attracted the attention of the media, the National Council of Better Business Bureaus, government agencies (including consumer agencies and attorneys general in almost every state), the Securities and Exchange Commission, the Federal Trade Commission and the Postal Service. Most of the scrutiny of pyramid plans has focused on a single organization, Glenn W. Turner Enterprises, Inc., a holding company with 68 subsidiaries[3] including the two most successful and most maligned pyramid schemes, DG and its sister company Koscot Interplanetary, Inc. The purpose of this Note is to investigate the methods employed by DG to sell its franchises, in order to decide whether or not some sort of special government regulation of pyramid sales plans is indicated, and then to see how pyramid plans are actually being regulated.

II. DARE TO BE GREAT, INC! INVESTOR RECRUITING

A. *The Pyramid Structure*

DG, based in Orlando, Florida, and dispersed into 15 regional centers throughout the United States, sells a series of four self-motivation courses, or "Adventures," which are similar in content to the familiar Dale Carnegie-type courses. For $300 a buyer receives Adventure I, "Self-Discovery," which includes 12 tape cassettes and a tape player, some supplemental written material, and an attaché case to hold it all. Adventure II, "Self-Improvement," includes 12 more tapes and sells for $700. These courses are sold by franchisees on a retail basis and are not strictly a part of the pyramid structure. For $2000 a prospect receives Adventure III, which includes Adventure II and additional motivational tapes, and for $5000 he receives a cartridge projector and six sound films, and becomes an Adventurer IV. Purchasers of each Adventure also receive the privilege of attending training classes which are held in their localities approximately once a month by traveling instructors employed by DG. Adventures I, II and III require two, twelve, and three days of classes respectively. The Adventure IV course takes four days and is taught only at the District Offices. Adventures I and II are general motivation and development courses. In Adventures III and IV, however, the emphasis is placed on methods of selling DG franchises. The reason for this is that the purchaser of Adventure III or IV receives the privilege of selling Adventures I-IV to others, thereby earning finder's fees of $100, $300, $900 and $2000, respectively.[4] The pyramidal aspect distinguishes DG from other "retail"

[3] N.Y. Times, May 8, 1972, at 35, col. 1.

[4] However, if an Adventurer III recruits an Adventurer IV, he receives only $900 of the

motivation courses. The remainder of the price of the courses, $200, $400, $1100 and $3000, respectively, is retained by the company, which distributes part of it to the managers in the form of overrides. The first management position in the DG sales hierarchy is that of Area Director, who is in charge of one large city and its environs, *i.e.* the area encompassing several smaller cities and towns. A District Director has charge of several areas. Ohio, for example, contains three Districts. A Regional Vice President may be responsible for one or several states. The other important position is that of instructor. The instructors travel around their regions teaching the courses, and speaking at GO Tours. They receive in excess of $100 per day plus traveling expenses. DG recruits all its managers and instructors from its own ranks. A person cannot obtain a position with DG unless he has invested in the program and demonstrated success at recruiting others.

According to the written agreement, the new investor in Adventure III or IV does not immediately receive the right to recruit additional prospects. Instead, he agrees that "[i]t has . . . been explained to me that in order for me to participate in the placement of other courses . . . I must meet the present requirements to become an I.S.A. [Independent Sales Agent] and I must make separate application to DARE TO BE GREAT, INC! and be approved by them [sic]."[5] Although this provision of the agreement is briefly mentioned at the GO Tour, it does not explain what, if any, requirements the new investor must satisfy, nor are the prospects left with the impression that anyone's "application" is ever rejected. According to the Zanesville, Ohio, Area Director (formerly the Columbus Area Director), an Adventurer III is required to attend the Adventure I and III courses and pass an objective and short-answer examination on their content in order to become an Independent Sales Trainee (I.S.T.). Prior to completing this requirement he may sell courses, but his finder's fees will be held in escrow by the company. An Adventurer IV must fulfill a similar requirement in order to qualify as an Independent Sales Agent (I.S.A.).

The worrisome aspect of companies like DG and Koscot, which has a similar program (using cosmetics as the retail product), at least to many government officials across the country, is that a franchisee can make money far more quickly by recruiting new franchisees (an activity known as "head hunting") than by selling products. These officials feel that this "chain letter" system "can be highly profitable to those who get in early

$2000 finder's fee. The remaining $1100 is paid to the Adventurer IV who recruited ("sponsored") the III, or, if he is not a IV, to the first IV up the chain. Obviously, the prospect has a great incentive to enter as a IV, or, if he cannot initially afford the necessary $5000 investment, to advance to IV by investing the additional $3000 as early as possible.

Adventurers I and II may not presently recruit new franchisees, although they were permitted to do so, at least in Ohio, prior to November 1, 1971.

[5] DG "Enrollment Form" (undated).

and disastrous to those who get in near the bottom after an area is saturated with franchise holders."[6] They also feel that the high incentive to gain recruits exposes prospective investors to other, more direct dangers. To determine whether or not these fears are well-founded, it is necessary to observe closely the DG recruiting process, and to discover how the investor fares once he has entered the program. Since the GO Tour is the primary recruiting vehicle, it is also the focal point of this discussion.

B. *The Golden Opportunity Tour*

The GO Tour begins at 7:15 on Saturday morning, when the sleepy prospect[7] is picked up at his home by his already bright-eyed sponsor, attired perhaps in a red, white and blue striped blazer set off by white patent leather boots with the jewels on his flag pin flashing. Sponsors and guests from the Columbus Area gather in the dining room of a motel in Delaware, a town just north of the Columbus city limits. Sponsors lead their guests from table to table introducing everyone. The mood is jovial and anticipatory, with much loud talking and laughter. The waitresses too are happy, because they know from experience that these Dare To Be Greaters are good tippers. They see them at least five times a week, since the GO Tours leave from the motel each Wednesday and Saturday morning, and business training meetings are held each Monday, Tuesday and Friday evening. In addition, the Adventure classes are held there when the traveling instructors are in the city. The chartered Greyhound leaves a bit after 9:00 a.m. and the 23 people, including 11 prospects, settle down for the two and one-half hour ride on Interstate 71 to Cincinnati. The Columbus Area Director's wife, a registered nurse, explains that she and her husband, an ex-Toledo policeman, were prejudiced towards black people until they "joined the company" and learned that blacks are the same as whites. She tells how Glenn Turner, the founder and principal shareholder of Glenn W. Turner Enterprises, Inc., personally contributed $50,000 for muscular dystrophy research on a Jerry Lewis telethon, and how his example influenced other Dare To Be Greaters to give generously to charities. The Area Director, in response to a question, says that he never tells anyone his income. To do so would be dangerous, because if he were to tell a prospect that he had made $40,000 in his first ten months with the company, and the prospect joined the company and made that much in his first six months, he might feel that he had accomplished enough and stop working for the next four months. Sponsors roam the bus talking with each other and with all the prospects. One quickly discovers that the worst sin is having a negative attitude. "Turnerites" are "posi-

[6] N.Y. Times, Jan. 13, 1972, at 59, col. 4.

[7] DG's most commonly used prospecting tool, the "cold," on-the-street approach, has already been illustrated. See text accompanying note 1 *supra.*

tive" *ad nauseam*. They never disagree with anyone, and always manage to find something good to say about anyone and anything. They are as much concerned with the attitude of everyone else as they are with their own. The bus is filled with exclamations of "Great!," "Fantastic!" and "That really jacks me up!" There is a song about Vitacot, a vitamin supplement presumably sold by a Turner corporation ("take two today, just to be sure"), and another entitled "I've Got That Good Old Turner Feeling Deep in My Heart." Someone blows a cavalry charge on a battered bugle, after which everyone is supposed to shout "Columbus!" The purpose of all this, of course, is to show the prospects how happy and "positive" Dare To Be Greaters are, how everybody likes everybody else, and to begin to instill a group spirit, a sense of belonging, in the prospects. The bus pulls in at noon. The Sheraton-Gibson, an old, established hotel, is just off Fountain Square, across the street from a large, new Brooks Brothers branch, an art gallery, and other trappings of respectability. There is an hour for the guests to see their rooms, comb their hair, perhaps have a quick lunch in the hotel coffee shop. Check-in and luggage handling is supervised by the Columbus GO Tour Chairman, a young, attractive ex-waitress. She is engaged to the Area Coordinator, who used to be an apprentice electrician before his fiancée brought him into the program. Both positions, although non-remunerative, are coveted, since their occupants are promising franchisees being groomed for Area Directorships.

At one o'clock the ballroom, equipped with a low, portable stage and rows of wooden chairs, is jammed with 600 or 700 people from all over Ohio, Kentucky and Tennessee. Last week there were reportedly twice as many, but this week Michigan is opening its own GO Tour center. There are more prospects than sponsors, and the groups can be differentiated by their name tags, red for prospects, and a symbolic green ($) for sponsors. Some of the male guests (many guests are women) are not in coat and tie. All of the sponsors, many of whom are women, are appropriately attired. Many sport wardrobes from another Turner enterprise, the House of Glenn—bright reds, greens, yellows—but most are more conservatively dressed. There is a palpable air of excited anticipation which becomes a gathering chant of "Go, Go, Go" when the master of ceremonies takes the stage. He lets the chant build until it reaches its crescendo, then swings his arm back like a baseball pitcher and hurls his fist into the air, so that the final and loudest "Go" exactly coincides with the gesture. Every "Go" chant is ended in this manner rather than being allowed to tail off into a few last, feeble "Go's." After a recitation of the Pledge of Allegiance, the first speaker is introduced. In the manner of Glenn Turner, and all subsequent speakers, he makes his entrance by sprinting up the center aisle and leaping into the arms of the previous speaker for a prolonged

embrace; Dare To Be Greaters are not afraid to display their affection for each other. The speaker, an enthusiastic young man with a pronounced Tennessee accent, launches into an obviously memorized, short talk,[8] the purpose of which seems to be to warm up the audience for the second speaker, who is the Ashland, Kentucky, Area Director. He runs up the aisle and embraces the first speaker to enthusiastic applause, culminating in a "Go" chant. In his "canned" speech he tells the guests, step by step, how they can earn $40,000 in ten months, part time, by investing $5000 in DG and recruiting other franchisees. Each time he pauses to erase the blackboard, the audience, led by the sponsors, begins a "Money Hum." Everybody hums until the fist-in-the-air signal comes from the speaker, who has by this time finished erasing the board, at which time everybody yells "Money" at the top of his lungs. After each "Money Hum," the Areas do their "Area Cheers." Dayton, Cincinnati, Canton, Columbus, Lexington, Ashland, Nashville, etc. each has its own unique cheer. Columbus, of course, does its bugle charge which was practiced on the bus. Sponsors urge their guests and guests of other sponsors to join in the various cheers, chants and hums to become part of the group. The reason for the "Money Hum" could be that these Dare To Be Greaters don't want the prospects to have those few seconds, during which the speaker is erasing the board, to have negative thoughts about what the speaker just said, to think that perhaps he can't do as wellas the figures on the board say he can. Or, the "Money Hum" could simply be an interest-maintaining device to keep the prospects attention focused on the speaker. The speaker goes on to tell about a woman in Wisconsin who earned $16,000 in her first month, and about a man who earned $50,000 in one month.

Now come the featured speakers, the Canton, Ohio, Area Director, the Tennessee District Director and a National Instructor. Their speeches are not "canned," and they are very good at what they are doing. They make no attempt to disguise their purpose, the purpose of the GO Tour. They tell the prospects again and again, "We're going to get your check!" The way they go about doing this, and they do it remarkably well, can only be described as brainwashing. For five hours on Saturday afternoon, with only a 20 minute break, for six hours that night with no break, and for five solid hours on Sunday afternoon, professional salesmen brainwash the prospects with the "Turner Philosophy." This is not a mere pitch to the prospect that he can make a lot of money selling DG franchises; it is an actual philosophy, which is why it takes an entire weekend to present. The chief exponent and example of this philosophy is Glenn W. Turner himself, who is adulated, if not deified, by his followers. These supersalesmen of the GO Tour are his disciples. The message is that every per-

[8] The script of his speech, as well as much of the GO Tour, is set down in the DG Training Manual.

son has within him the potential to be great, but that he will never be great until he believes that he can be. Ninety-five percent of the people in this country have been "programmed" all their lives by their well-meaning parents, relatives and friends to believe that they will never make more than $10,000 a year, that they are just average, and that they have to work for somebody else all their lives to make a living. DG conducts GO Tours because two days are needed in order to re-program prospects to believe that they can succeed if they believe they can. For two days, out of the mouths of the professional speakers and from Glenn Turner himself, on film, the message pounds at the prospects: "All things are possible to him who believes;" "What does it take to become a success? *Believing in yourself*;" "Making a million dollars was easy. What was the hardest thing in the world was *believing I could do it*;" "I challenge you to *take back your mind*;" "If people tell you enough that you can do it, you can do it;" "Glenn Turner believes in the people. He believes that you are great. He founded DG to make money, yes, but his real reason was to give people a chance to realize themselves;" "If Glenn Turner, harelip sharecropper's son with an eighth grade education, can do it, anybody can do it;" "Glenn Turner has dedicated his life to helping people. He has given away over 20 million dollars to charitable organizations. His greatest aim in life is to wrap this world in love, peace and understanding;" "This corporation is dedicated to *your success*;" Turner—"What makes me happy is turnin' on people."

But there is more than just this Norman Vincent Peale-Dale Carnegie "positive thinking" pitch. There is a call to what amounts to class revolution, and it strikes a responsive chord. Turner—"Two percent of the people in this country control one-third of the wealth;" "You're puppets on a string and people are jerking them;" "I formed this company to bring this country away from the mass corporations *back to the people*;" "We are criticized because we are an organization of people, and the people don't own this country anymore; the politicians and businessmen do, and we are a threat to them;" "This is a movement of people;" "We have half a million people and we're looking for a hundred million more, to give America *back to the people*;" "I don't know of any company in America that has been attacked like this company has been, because we give people hope;" "They have your mind but they haven't got your heart." On Sunday afternoon, the ballroom lights are dimmed and the prospects hear a recording of Glenn Turner talking about his corporation of people while the Jordannaires, a country-western group, sing "Glory, Glory, Hallelujah" in the background. This moment is symbolic of the entire weekend's appeal to the prospect to invest $5000 for everything that is good—religion, country, family and himself.

But the potential franchisee is not asked to do it alone; in Turner

Enterprises, everybody helps everybody else. One Area Director who spoke said that, although he made $7000 in his first week, he didn't earn it, because his sponsor and other sponsors did the work—all he did was bring some guests to a GO Tour. The Turner message, however, is not simply that everybody helps everybody else to make money; the message is to love people. "We talk about money to get your attention. What we are really talking about is *helping people*. Money is secondary." This, of course, is potentially the cruelest of the misrepresentations (if that is what they are) because it appeals to people who are lonely and who need to feel loved and accepted. It is those same people who will suffer most if they later become disillusioned. "Most of you have more friends here than you've had in a lifetime." "I came into this company to make money and then I found out what it was all about—helping people." This appeal to the prospect to join a group where he will be loved and appreciated is reinforced by the sponsors who appear united in their desire to help him, and they feed his ego in any way they can, especially by telling him how great he is.

The GO Tour speakers do not deemphasize the importance of hard work to success in DG; in fact, they stress the importance of work. "There's no free lunch. If you're looking for something for nothing, you're not going to find it here." "As ye sew, so shall ye reap." "We spell 'luck' w-o-r-k." Prospects are never told, however, of what all this work consists. They are told that they must "prospect" to find people to bring to GO Tours, take care of their guests on the tours, and get their checks, which includes going to the bank with the prospect when he borrows the money to invest.

In addition to examining the substance of the Turner message, it is illuminating to look at the packaging techniques by which the message is sold to the prospects. Most obviously, the flaunting of apparent wealth —the Cadillacs, the outrageous suits, the roll of $100 bills which many Dare To Be Greaters frequently display—is intended to persuade deceptively the prospect that all the franchisees are making money hand over fist. The sponsors' friendliness with and flattery of their prospects have previously been discussed. Related to these is the creation of group spirit and the appeal to the prospect to join the group, to belong to the DG family. Intermingled with this "group" appeal is the revival-like spirit which pervades the entire two days—the speakers' running to the stage, the embraces, tears and kisses, the seemingly compulsive handshaking and backpatting, the testimonials of old and new franchisees about how the company has changed their lives, the songs, hums, cheers and chants, the adulation of Glenn Turner and the enthusiastic response to the speakers.

Another selling technique which appears to work well is aimed at overcoming the objections, or potential objections, of the prospect's wife.

First, most sponsors make every effort to have the prospect's wife accompany her husband on the GO Tour, for the obvious reason that a prospect who attends the GO Tour alone may emerge "Turnerized," but then go home, only to be dissuaded by his "negative" wife. At the GO Tour the speakers invoke the promises of material success (home, car, vacation, etc.) presumably made by the husband to his wife when the couple were planning their lives together, and they ask the husbands rhetorically how many of those promises they have fulfilled. They then launch into an exhibition of statistics purporting to show that the prospect will more likely than not be "dead broke" at retirement age, that he will have spent all his life "spinning his wheels" and never succeeding. The alternative, of course, is to invest $5000 in DG and make $40,000 a year part time. "We dare you to take that first step to achieve your dreams. We dare you to be great. You are as great as you dare to be." The wife, meanwhile, is urged by both the male speakers and wives of sponsors to refrain from attempting to dissuade her husband from investing in the company, even if she is not sure that it is a good investment. She is urged to let him be the boss and make the decisions, and then support him in his decision, be "behind" him. Wives of Area and District Directors take to the stage to exhort wives not to hold back their husbands because of a desire for security.

Another feature of the sales pitch is to say the "good" things over and over, but to mention the "bad" things only in passing and quickly shift back to the "good" things. The prospect of making vast sums of money by recruiting new franchisees is continuously drummed into the guests' heads. There is the basic blackboard demonstration of how, working only part time, he can make $40,000 in ten months' time by recruiting only two new franchisees a month at $2,000 a head. All weekend he hears testimonials of and references to people who it is claimed have made and are making huge sums of money. On Saturday afternoon each Area reports its receipts since the Wednesday-Thursday GO Tour. These amounts are totalled up on the blackboard.[9] On the other hand, the prospect is told only once, quickly, that his finder's fees will be held in escrow until he completes the required courses and is "approved by the company." He is not informed at all that, as a franchisee, he will necessarily incur significant out-of-pocket expenses, most notably those of transportation, food and lodging for his GO Tour guests, and his share of the rent for facilities for business training sessions and Adventure schools.[10] In addition, prospects

[9] The half-week's total announced at the GO Tour attended by the writer was $133,200. One Area Director stated that Michigan, Ohio, Kentucky and Tennessee together gross between one quarter and one half million dollars per week.

[10] For example, a Columbus area sponsor pays $70 for himself and each of his GO Tour guests. If he brought two people to a GO Tour, either two single people or a couple, it would cost him $210. This includes round trip bus transportation and meals and lodging at

are not warned that a time may come when their area is saturated and there are no more prospects, which would render worthless the franchise to recruit new franchisees.

Another technique used to persuade the prospect to invest his $2000 or $5000 is the very openness with which the company and the sponsors pursue the goal of "getting that check." During the Saturday speeches the speakers frequently warn the guest that "We're going to get your check, so you might as well make up your mind." There is even a "Get the Check" chant which is frequently repeated. The Dare To Be Greaters are not ashamed of asking for the check because, they say, the new franchisee is not investing in the company, but in himself. The theory is that a person who has not been successful in the past will not become successful unless he commits himself by a kind of "leap of faith." "You ask why should you invest in Dare To Be Great just to go to work for it. We ask you to put up so that you will put out. You are being challenged to do what you have never done." When questioned about the high cost of a franchise, one officer explained that a "negative" person would not work unless he had invested heavily. A large investment is necessary, he said, to motivate a person to change himself out of fear of losing his investment.

Another method used to allay the prospective investor's fears and skepticism is "identification" with the prospect. Every speaker, all of whom have presumably achieved financial success through DG, tells of his introduction to the company, and how he felt the same way that the prospects are feeling now. In that way, he brings all their skepticism out into the open and then attempts to dissipate it. He tells them that he too, only a short time ago, was a dissatisfied gas station attendant, school teacher, or factory worker when he attended his first GO Tour, that he too wanted to believe what the speakers were saying but was afraid that it was a big "con game," that he too thought all the people who were jumping up and down and screaming "Money" and "Get the Check" were crazy, and that he too thought himself too "dignified" to join in the fun. One speaker made explicit his identification function when he said that: "I'm here for one reason—to be a mirror reflection of yourself."

Further methods of selling the company include, among others, the extremely long meetings, which are psychologically debilitating and can wear down the prospect's resistance, the aura of corporate respectability with which the company attempts to clothe itself,[11] the films of Glenn

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the hotel. Each Columbus area franchisee must also pay for his share of the expense of renting the motel facilities used for business training meetings and Adventure schools.

The former Columbus Area Director explained that although the GO Tour speakers do not disclose these and other expenses to prospects, he directs sponsors in his Area to fully explain them to prospects before they agree to invest. A Columbus franchisee independently confirmed this policy, although she said that such had not been the policy under the previous Area Director.

[11] The prospect is told that Turner Enterprises controls 70 corporations and plans to de-

Turner himself addressing a GO Tour and discussing his philosophy on the grounds of his Florida estate, the "bandwagon" appeal ("last night in Detroit 100 percent of 450 people joined"), and testimonials of prospects who have just made up their minds to join the company. These testimonials, which begin late Saturday night and continue on Sunday, are reminiscent of the "witnessing" at the end of a revival meeting, when the new converts, one by one, come to the front of the hall and proclaim their new-found faith. One person after another tells how the events of the weekend have inspired him and given him the belief that he can become successful and help other people succeed. Many people say that what most impresses them is the friendliness and willingness to help of the people in the program. These converts are a strange mélange, young and old, broke and financially secure, high school dropouts and college graduates, "freaks" and "straight" people. Seeing the diversity of backgrounds of these new (and old) Turnerites, one begins to wonder if perhaps a great many people are not discontent with their lives.

C. *Fate of the Investor*

After the prospect has come up with the required $2000 or $5000, how does he fare with DG? It is apparent that most of those who invest in DG never recoup their investment, and many lose more than their original investment because they are persuaded to spend more money for Area "dues," GO Tour expenses, new clothing, and leasing or purchasing a new automobile. Additionally, although the franchisees are initially sold on the program as a part-time venture, most are later persuaded or decide to quit their jobs to devote full time to Turner Enterprises, thereby losing the income from their former jobs.

The experience of one unsuccessful investor illustrates the fate of most people who enter the program. A week before he was honorably discharged from the Air Force in October, 1971, this 24 year old high school graduate was leaving a "job fair" in Columbus which he had attended in the hope of getting a job on his return to civilian life, when he discovered a DG flyer on the windshield of his car. Curious, he telephoned the sponsor who had left the flyer and attended an Adventure Meeting with him that evening at a north side motel.[12] The Adventure Meetings, which are miniature GO Tours employing mostly local talent using a script prescribed by a DG training manual, were previously held in Columbus five nights a week, but have been discontinued, perhaps because they were not

velop 500 more in the next year, both here and in other countries. The functions of these existing and planned corporations are not disclosed.

[12] He is the only person interviewed who was prospected by a flyer. The usual method is "cold" canvassing by teams of two or more franchisees in shopping centers, on the street, or virtually anywhere. A gas station owner was recruited by a franchisee who had stopped to buy gasoline. Another person was prospected while installing a phone in a franchisee's apartment.

as successful as the GO Tours in selling prospects.[13] The airman was unfavorably impressed with the "phony enthusiasm" of the meeting and walked out after his sponsor attempted to sign him up. During the next two weeks his sponsor and other franchisees harassed him with univited visits to his new place of employment and late night telephone calls to his home.[14] Wavering, he finally decided to invest in the company, relying in part on his sponsor's oral misrepresentation that he could rescind the agreement within thirty days of its execution.[15] Unlike most investors, who must borrow the money,[16] he had saved enough from his Air Force pay to write a $5000 check. He quit his new job almost immediately to devote full time to the hectic schedule of the DG franchisee—team prospecting during the daytime, Adventure Meetings for prospects Monday through Friday nights, training sessions two nights a week after the Adventure Meetings, a GO Tour every weekend, and "follow-up" of prospects during the remaining time.[17]

Before he invested, his sponsor had assured him that the company paid the GO Tour expenses, and had not informed him of the other necessary expenses of being a franchisee.[18] After approximately two months, he had recruited no new franchisees, but he had spent an estimated $2500 on GO Tours, "dues," and miscellaneous expenses, in addition to his $5000 original investment and the opportunity cost of not receiving income from the job he had quit.[19] All he had to show for his investment in DG was a briefcase full of tape cassettes and a depleted savings account. Many investors are still less fortunate, since they are left with a loan to repay.

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[13] Unfavorable publicity generated by a series of radio shows aired by Donald Moffat, the WOSU (Columbus) Radio Ombudsman, and articles in the Columbus Dispatch probably played a part in the decision to discontinue the Adventure Meetings. The adverse publicity also helped undermine the morale of many of the Columbus Dare To Be Greaters. There were approximately 30 active franchisees in Columbus during the fall of 1971, but no more than ten were active by early 1972. Other areas in Ohio, notably Dayton and Canton, have many more active franchisees.

[14] Such badgering of recalcitrant prospects appears to be standard procedure. Those interviewed said that they were trained to hound a prospect until they had his check.

[15] Two weeks later, when he attempted to exercise his supposed right of rescission, he was laughed at. According to other investors interviewed, many people have been induced to invest in DG by this same false representation, although it is apparently not practiced in Columbus at the present time.

[16] Every interviewee stated that DG trains its franchisees to advise prospects to disguise from the bank or other lender the true purpose of the loan, in order to maximize the chance of obtaining it. Franchisees are also told to accompany the prospect to the bank when he applies for the loan and when he picks up the check.

[17] One franchisee said that his nightly absence during the three months of his association with DG almost ruined his marriage.

[18] This is a universal complaint of disenchanted DG investors. *But see* note 10 *supra*.

[19] None of the disenchanted investors interviewed has made enough money from finder's fees to cover even his expenses, let alone his original investment. With one or two possible exceptions, apparently none of the Columbus franchisees has made a profit.

III. Efforts To Regulate Pyramid Sales Plans

As the number of dissatisfied investors mushroomed,[20] it was inevitable that regulatory agencies would move against DG and similar pyramid plans. The Securities and Exchange Commission and the attorneys general or consumer protection agencies of almost every state have thus far initiated some kind of legal action against either Koscot or DG or both.[21]

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[20] Turner alone claims to have 400,000 investors in Koscot and DG. N.Y. Times, Aug. 31, 1972, at 45, col. 5.

[21] Council of Better Business Bureaus, Inc., Report (untitled) (1972), under cover of memorandum dated May 9, 1972, is the most recent in a series of such reports which summarize state actions against Koscot and DG. This extremely useful report, which also contains the names and addresses of agencies involved, is summarized here as follows: *Ala.*—Koscot and DG under investigation; *Alas.*—Koscot under investigation; no action contemplated against DG; *Ariz.*—Koscot assured discontinuance of false and misleading representations; action filed against Koscot and DG to enjoin pyramid sales and to secure restitution to investors; *Ark.*—Koscot entered into consent judgment in which it agreed to stop pyramid sales and make refunds to investors; preliminary injunction obtained in action under new consumer protection statute seeking restitution to investors; *Cal.*—Koscot and DG under injunction prohibiting pyramid sales (see text accompanying notes 98-105, *infra*); *Colo.*—action against Koscot under Securities Act pending; DG under investigation; *Conn.*—by stipulation, Koscot and DG are prohibited from selling franchises; action for fraud and misrepresentation pending; *Del.*—no action against Koscot contemplated; DG enjoined from doing business until it complies with state's "investigative demand"; *Fla.*—Koscot entered into consent judgment; Glenn Turner under indictment for conspiracy to violate securities and lotteries laws: *Ga.*—no action contemplated against either Koscot or DG; *Hawaii*—informal negotiation with Koscot; no action comtemplated against DG; *Idaho*—Koscot under investigation; DG under preliminary injunction based on Securities Act; DG under injunction based on Consumer Protection Act; *Ill.*—Koscot consented to judgment prohibiting multilevel sales, misrepresentations, etc.; DG under investigation; *Ind.*—Koscot enjoined from doing business other than by way of revised marketing plan found not to violate Securities Law; under temporary restraining order (hereinafter "TRO") prohibiting operations; DG under investigation; *Iowa*—Koscot enjoined from multilevel sales; DG under investigation; *Kan.*—Koscot enjoined from doing business, ordered to refund approximately $600,000 in initial investments; DG under TRO prohibiting further activity in action charging violations of securities, lottery, chain referral, deceptive practice, and proprietary school statutes; *Ky.*—Koscot assured compliance with lotteries, gift enterprises and chain merchandising statutes; DG under investigation; *La.*—no action contemplated against DG or Koscot; *Me.*—Koscot agreed to consent judgment prohibiting deceptive and fraudulent practices and ordering restitution to investors who relied on misrepresentations; DG agreed to consent judgment prohibiting further business and ordering restitution; *Md.*—Koscot under surveillance after cease and desist order for violations of Securities Act withdrawn; decision awaited on hearing before Maryland Board of Education to determine whether DG must be licensed as an educational program; *Mass.*—Koscot agreed to consent judgment prohibiting deceptive practices, etc.; TRO prohibits Koscot and DG from engaging in business other than retail sales, places assets in temporary receivership; *Mich.*—appellate court, holding that Koscot marketing plan violated deceptive advertising and lottery statutes, enjoined pyramid sales and advertising found to violate deceptive advertising statute; no action contemplated against DG; *Minn.*—Koscot under preliminary injunction prohibiting sale of distributorships in action charging violations of securities, antitrust, consumer fraud, false advertising, and pyramid sales statutes; consolidated for trial with private class action brought on behalf of all Koscot distributors; in similar action, TRO prohibits DG from transacting business of any kind; *Miss.*—Koscot and DG in process of negotiating consent judgment; *Mo.*—Koscot and DG consented to judgment prohibiting "a multitude of practices;" Koscot under TRO in subsequent civil contempt action; *Mont.*—Koscot and DG under investigation; action contemplated; *Neb.*—Koscot and DG under investigation; *Nev.*—Koscot and DG negotiating consent judgment; *N.H.*—Separate actions filed against Koscot and DG requesting injunctions prohibiting deceptive practices and misrepresentations, and ordering restitution to investors who purchased franchises as a result of such practices; *N.J.*—Koscot under preliminary injunction prohibiting viola-

The actions usually have been based on one or more of three theories: (1) the sale of a franchise is the sale of a security, and therefore the companies must either cease operating or comply with federal or state securities laws; (2) sales of franchises are accomplished by various false or misleading representations which allegedly violate various consumer protection statutes; and (3) the pyramiding of franchises constitutes an illegal lottery or "endless chain,"[22] also in violation of a specific type of consumer protection statute. The purpose of this section is to illustrate the applica-

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tion of statutes relating to consumer fraud, antitrust, misrepresentation, deceptive practices, and failure to disclose information; DG enjoined from doing business, ordered to make refunds to all investors; *N.M.*—no action contemplated against Koscot or DG; *N.Y.*—Koscot and DG consented to judgment; Koscot appealed and lost in App. Div.; on appeal to Ct. of App. (See text accompanying notes 91-97, *infra*); *N.C.*—consent judgment prohibits Koscot from selling distributorships; preliminary injunction prohibits DG from operating pyramid scheme; *N.D.*—Koscot and DG under TRO in action for injunction; restitution sought; *Ohio*—Koscot enjoined from selling distributorships in action based on Securities Act; similar action filed against DG; TRO obtained in separate action under new Consumer Sales Practices Act (see text accompanying notes 54-90 and 106-16, *infra*); *Okla.*—Koscot and DG under investigation; *Ore.*—Koscot consented to judgment prohibiting misrepresentations, limiting number of distributorships; in assurance of voluntary compliance, DG agreed not to violate Oregon law, to limit number of franchisors, to refrain from paying excess commissions, from making false and misleading statements, and to make certain refunds; in action brought seeking permanent injunction and restitution, preliminary injunction prohibits DG from selling franchises; State Corporation Commissioner has sued DG charging sale of unregistered security; *Pa.*—Koscot signed assurance of voluntary compliance under which investors can obtain 45 percent refund; Koscot enjoined from referral sales and misrepresentation; DG enjoined from referral sales, misrepresentation of earnings, and deceptive practices; in subsequent civil contempt action, preliminary injunction directs DG to suspend all activities; *R.I.*—Koscot and DG entered into "hold harmless agreement" under which any investor can obtain full refund if he suffered by misrepresentations; preliminary injunction prohibits all but retail sales; *S.C.*—Koscot and DG under investigation; *S.D.*—Koscot entered into consent agreement under which it will limit number of distributorships and eliminate referral sales; DG under investigation; *Tenn.*—although state has a Pyramid Sales Scheme Law which provides criminal penalties, no action aginst Koscot is contemplated as far as Attorney General's office is aware; in prosecutions of DG personnel, Pyramid Sales Scheme Law held unconstitutional (on appeal to Supreme Court of Tennessee); *Tex.*—in action alleging that Koscot is selling unregistered securities, the Securities Commissioner lost on appeal; In separate action, TRO prohibits pyramid sales, misrepresentation of earnings, ease of recruitment, conducting a lottery, etc.; civil contempt action seeks $160,000 for violation of TRO; in separate action, TRO granted prohibiting violation of Proprietary School Act; *Utah*—Koscot under investigation; action filed charging DG with operating illegal lottery, and requesting injunction and rescission of all contracts; *Vt.*—action against Koscot contemplated; preliminary injunction denied in action against DG to enjoin sale of franchises; new Trade Rule prohibits chain distributorship schemes; *Va.*—Koscot under investigation; preliminary injunction prohibits DG from operating pyramid sales scheme; separate action pending for restitution to investors; *Wash.*—Koscot under investigation; DG entered into consent judgment based on Proprietary School Registration Act and Consumer Protection Act, which provides for refunds to investors induced to invest by misrepresentations; over $300,000. refunded so far; *W. Va.*—no action contemplated against Koscot; DG under investigation; *Wis.*—Koscot enjoined from selling distributorships, etc.; in separate action under Pyramid Sales Act, preliminary injunction prohibits sale of distributorships; no action contemplated against DG; *Wyo.*—Koscot and DG under investigation; *P.R.*—action filed against Koscot seeking to enjoin misleading practices, to void contracts obtained through misrepresentation, and to provide restitution to investors; DG under investigation; *V.I.*—no action contemplated against Koscot or DG; *D.C.*—Koscot and DG under investigation.

[22] *Id.*

tion of these theories to pyramid schemes by examining regulatory efforts in several jurisdictions.

A. *The "Securities" Theory: Federal and State*

The Securities and Exchange Commission has declared that the operation of pyramid sales plans, the common element of which it defines as "a sales pitch which stresses the amount of money a participant can make on the recruitment of others to participate in the plan,"[23] often involves the offering of an "investment contract" or "participation in a profit sharing agreement," both of which are securities as defined in the Securities Act of 1933.[24] The Commission believes that "a security is offered or sold where the franchisee is not required to make significant efforts in the operation of the franchise in order to obtain the promised return."[25] This occurs where "prospective participants are led to believe that they may profit from participation . . . without actually assuming the significant functional responsibilities that normally attend the operation of a franchise. . . ."[26] The Commission emphasizes that

> the assignment of nominal or limited responsibilities to the participant does not negative the existence of an investment contract; where the duties assigned are so narrowly circumscribed as to involve little real choice of action . . . , a security may be found to exist.[27]

According to this reasoning, DG and Koscot franchise agreements are investment contracts, since the standardized recruiting scheme, using the GO Tour as the crucial selling tool, leaves little choice for the franchisee, who is relegated to a distinctly secondary role. Although he is a prospector and sometimes a closer, his contribution to the recruitment of franchisees is minor in comparison to that of the company-produced GO Tour.

The Commission recognizes that the test for an investment contract enunciated by the Supreme Court in the leading case of *SEC v. W. J. Howey Co.*[28] seems, on its face, to contradict the Commission's decision that a company like DG is selling securities. In *Howey*, the Court stated that: "[t]he test [for an investment contract] is whether the scheme involves an investment of money in a common enterprise with profits to come *solely* from the efforts of others."[29] The Commission admits argu-

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[23] SEC, APPLICABILITY OF THE SECURITIES LAWS TO MULTILEVEL DISTRIBUTORSHIP AND PYRAMID SALES PLANS 1 (Securities Act of 1933 Release No. 5211; Securities Exchange Act of 1934 Release No. 9387) (Nov. 24, 1971) [hereinafter cited as SEC RELEASE]. DG and Koscot undoubtedly come under this definition.

[24] 15 U.S.C. § 77(b)(1) (1970).

[25] SEC RELEASE at 2.

[26] *Id.*

[27] *Id.*

[28] 328 U.S. 293 (1946).

[29] *Id.* at 301 (emphasis supplied).

ably that pyramidal sales plans do not come under the *Howey* definition, since the franchisee must exert some effort himself in order to recruit new investors. However, the Commission contends that "solely" in the definition does not really mean "solely," and that, in deciding whether an investment contract exists, the kind and degree of effort required of the investor must be considered, lest "the *Howey* decision . . . be permitted to become a 'static principle' easily avoided by ingeniously-devised variations in form from the particular type of investment relationship described in that case."[30]

> The term "security" must be defined in a manner adequate to serve the purpose of protecting investors. The existence of a security must depend in significant measure upon the degree of managerial authority over the investor's funds retained or given; and performance by an investor of duties related to the enterprise, even if financially significant and plainly contributing to the success of the venture, may be irrelevant to the existence of a security if the investor does not control the use of his funds to a significant degree. The "efforts of others" referred to in *Howey* are limited, therefore, to those types of essential managerial efforts but for which the anticipated return could not be produced.[31]

The significance of the Commission's ruling that franchise agreements such as that sold by DG and similar pyramid sales plans are securities as defined in the Securities Act of 1933 is, of course, that the agreement must be registered with the Commission unless an exemption is available.[32] In addition, any person who participates in the distribution of the franchises may be required to register as a broker under the Securities Exchange Act of 1934.[33] Also, companies and franchisees who engage in deceptive acts and practices in connection with the offer or sale of a pyramid franchise would violate the antifraud provisions of both the Securities Act of 1933 and the Securities Exchange Act of 1934.[34] Obviously, alluding to Koscot and DG, the Commission states that the sales promotions of such companies "may be inherently fraudulent."[35]

> Under these programs, various cash fees and percentage incentives are offered to those willing to participate as an inducement for the recruitment of additional participants. This aspect of the promotion is often given great emphasis at "opportunity meetings" at which movies may be shown and speeches made concentrating on the allegedly unlimited potential to make money in a relatively short period of time by recruiting others into the program. Since there are a finite number of prospective participants in any area, however, those induced to participate at later

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30 SEC RELEASE at 3.

31 *Id.*

32 15 U.S.C. § 77(e) (1970); SEC RELEASE at 1.

33 15 U.S.C. §§ 78c(a)(4), 78o(a)(1) (1970); SEC RELEASE at 1.

34 15 U.S.C. § 77q (1970); 15 U.S.C. §§ 78j(b), 78o(c)(1) (1970); SEC RELEASE at 1.

35 SEC RELEASE at 4.

> stages have little or no opportunity for recruitment of further persons. It is patently fraudulent to fail to disclose these factors to prospective investors. Even where some disclosure of these practicalities is made, moreover, it may be made in a manner that misleadingly fails to note the significance to the participants of the facts disclosed. In the Commission's view, use of this inherently fraudulent device to induce investment in any enterprise offering securities to the public is a violation of the antifraud provisions of the securities laws.[36]

In May, 1972, the SEC brought its first court action against a pyramid company, asking the United States District Court for the District of Oregon to enjoin DG from offering its franchises until it complied with the securities laws.[37] Specifically, the SEC alleged that the DG scheme involves the offer and sale of securities as to which no registration statement is in effect or has been filed, in violation of sections 5(a) and 5(c) of the Securities Act of 1933,[38] and that in connection with the offer and sale of securities, DG is violating the antifraud provisions of section 17(a) of the Securities Act of 1933,[39] and of section 10(b) of the Securities Exchange Act of 1934[40] and Rule 10b-5 thereunder.[41] The Commission asked for both a preliminary and a permanent injunction, and moved for an accounting and appointment of a temporary receiver to take control of all assets possessed by defendants which have been received as a result of the complained-of acts.[42]

On August 30, 1972, Judge Skopil, after making detailed findings of fact, held that DG franchise agreements are described by three separate categories of the definition of "security" contained in the Securities Act of 1933.[43] First, the court held that the agreement is an "interest or instrument commonly known as a 'security,' "[44] since it meets the "risk capital"

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[36] *Id.*

[37] SEC v. Glenn W. Turner Enterprises, Inc., CCH FED. SEC. L. REP. ¶ 93,606 (D. Ore. Aug. 30, 1972); N.Y. Times, May 18, 1972, at 8, col. 1. In addition to this case, at least 16 private actions seeking damages from Turner Enterprises, Koscot, or DG have been filed on behalf of disenchanted investors in various federal district courts. These cases, many of which are class actions, are based on various theories of both federal and state law. As of this writing, the Judicial Panel on Multidistrict Litigation has issued to all parties an order to show cause why all the cases should not be transferred to a single district for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 (1970). Order to Show Cause, *In re* Glenn W. Turner Enterprises Litigation, No. 109 (Judicial Panel on Multidistrict Litigation, filed June 7, 1972).

[38] 15 U.S.C. § 77e(a), (c) (1970).

[39] 15 U.S.C. § 77q(a) (1970).

[40] 15 U.S.C. § 78j(b) (1970).

[41] 17 C.F.R. § 240.10b-5 (1972).

[42] Complaint, SEC v. Glenn W. Turner Enterprises, Inc., CCH FED. SEC. L. REP. ¶ 93,606 (D. Ore. Aug. 30, 1972).

[43] SEC v. Glenn W. Turner Enterprises, Inc., CCH FED. SEC. L. REP. ¶ 93,606 (D. Ore. Aug. 30, 1972). The findings so closely parallel the writer's observations of DG's marketing practices in Ohio that it is apparent that DG has achieved near-total uniformity in method nationwide.

[44] 15 U.S.C. § 77(b)(1) (1970).

test first adopted by the California Supreme Court in *Silver Hills Country Club v. Sobrieski*.[45] This test, since adopted in many states, "recognize[s] that the subjection of the investor's money to the risk of an enterprise over which he exercises no managerial control is the basic economic reality of a security transaction."[46]

In holding that a DG franchise agreement is also an "investment contract,"[47] the court found that "the most essential consistency in the cases [including *Howey*] which have considered the meaning of 'investment contract' is the emphasis on whether or not the investor has substantial power to affect the success of the enterprise."[48] In applying the *Howey* "solely from the efforts of others" test, the relevant efforts are "those essential managerial efforts which affect the failure or success of the enterprise."[49] The court thus refused to view *Howey* as creating a "litmus test" intended to be literally applied in every case, since such an interpretation "would inevitably lead to the exploitation of loopholes created by that definition."[50]

The court also held that DG sells a "certificate of interest in or participation in any profit-sharing agreement,"[51] recognizing that, "What the investors receive, after all, is a right to a cut of the profits from other investors."[52] Under this interpretation of the statutory language, an agreement to share in particular, designated profits is as much a "profit-sharing agreement" as is an agreement to share all profits.

The Court issued a preliminary injunction prohibiting DG from selling or offering to sell Adventures III and IV until compliance is had with the securities laws.[53] Thus, pending a final decision on the merits, or

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[45] 55 Cal. 2d 811, 361 P.2d 906, 13 Cal. Rptr. 186 (1961).

[46] CCH FED. SEC. L. REP. ¶ 93,606, at 92,791. Judge Skopil notes that the "commonly known as" language of the federal act has not previously been interpreted.

[47] 15 U.S.C. § 77(b)(1) (1970).

[48] CCH FED. SEC. L. REP. ¶ 93,606, at 92,792.

[49] *Id.*

[50] CCH FED. SEC. L. REP. ¶ 93,606, at 92,791.

[51] 15 U.S.C. § 77(b)(1) (1970).

[52] CCH FED. SEC. L. REP. ¶ 93,606, at 92,793.

[53] *Id.* at 92,794. However, the court denied the SEC's request for an accounting and appointment of a temporary receiver, since there was no showing that either Turner Enterprises or DG was insolvent or that such relief was otherwise appropriate. *Id.*

Glenn Turner's response was to threaten to split DG into 500 companies and, if necessary, to give them away. "I want to see the federal and state governments go after 500 companies," he said. Wall St. J., Sept. 1, 1972, at 8, col. 1. In a statement, attorneys for DG said that they planned to appeal, and warned that Judge Skopil's decision, if upheld, would ". . . shake the business community to its foundations and cause a wide variety of business operations to be labeled a security." *Id.* The attorneys were evidently referring to "standard" commercial franchise agreements, which they presumably do not want regulated by the SEC. On the other hand, Harold Brown (author of *Franchising: Fraud, Concealment and Full Disclosure*, 33 OHIO ST. L.J. 517 (1972)) fears that

> in the rush to condemn these particular systems [pyramid franchise schemes], both the courts and administrative agencies are falling into the trap of making the "pyramid

intervention by another forum, DG is presently shut down all across the country.

The State of Ohio, as well as other states having similar blue sky laws, has likewise proceeded against pyramid plans on a securities theory. In June 1969, the Ohio Division of Securities issued a cease and desist order to Koscot, finding that the franchises were "securities" within the meaning of the Ohio Securities Act,[54] and ordering Koscot to halt the offering of franchises in Ohio until it complied with the registration[55] and dealer licensing[56] requirements of the Act.

In July, 1969, Koscot franchisees sought a declaratory judgment to the effect that Koscot franchises are not securities, and an order enjoining the Division of Securities from enforcing its cease and desist order.[57] In September, 1969, since Koscot allegedly had not complied with the order but had continued to operate as before,[58] the Division of Securities sought an order enjoining Koscot from offering its franchises for sale until it complied.[59] The case squarely presented the issue of whether or not the Koscot franchises are "securities" within the meaning of the Ohio Securites Act, which provides that

> "Security" means any . . . instrument which represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property, or credit of any person . . . . It includes . . . written instruments in or under profit-sharing or participation agreements . . . [and] any investment contract . . . .[60]

The argument of the Division of Securities may be outlined as follows: Koscot franchises are securities under either of two possible tests. First, blue sky laws, including the Ohio Securities Act, have a remedial purpose. They are to be interpreted to provide full and adequate protection for the investing public. Therefore a broad test to determine whether or not a security exists is whether the investor is exposed to the risk of

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> scheme" the far lines of demarcation [of the reach of the securities laws], with either the expressed or implied distinction of "regular franchises."

Letter from Harold Brown to Robert L. Beals, Sept. 8, 1972 (on file in the Ohio State Law Journal office).

[54] OHIO REV. CODE ANN. §§ 1707.01-.45 (Page 1964).

[55] OHIO REV. CODE ANN. §§ 1707.08-.10 (Page 1964).

[56] OHIO REV. CODE ANN. §§ 1707.14-.15 (Page 1970 Supp.).

[57] As previously suggested, Koscot and DG are very similar in structure and methods of operation, although they deal in different ultimate products (mink oil-base cosmetics versus motivation courses). Koscot's several levels of distributorships correspond to the Adventure levels in DG. Turner founded Koscot in 1967 and DG in 1970, and many former Koscot franchisees are now Dare To Be Greaters.

[58] Trial Brief for Plaintiff at 3, Wedren v. Koscot Interplanetary, Inc., No. 237612 (C.P., Franklin County, April 17, 1972).

[59] This procedure is authorized by OHIO REV. CODE ANN. §§ 1707.25-.26 (Page 1964).

[60] OHIO REV. CODE ANN. § 1707.01(B) (Page 1970 Supp.).

loss of his original investment. Several recent decisions indicate that the "risk of loss" test is receiving increasing sanction.[61]

The second, more complex test for a security, formulated by Professor Coffey, focuses upon the "economic realities" of the particular transaction.[62] The "economic realities" test in pertinent part, may be stated as follows: A "security" is:

> (1) A transaction in which
> (2) a person ("buyer") furnishes value ("initial value") to another ("seller"); and
> (3) a portion of initial value is subjected to the risks of an enterprise, it being sufficient if—
> . . .
> (c) part of initial value is furnished for property whose present value is determined by taking into account the anticipated but unrealized success of the enterprise, even though the buyer has no legal relationship with the enterprise; and
> (4) at the time of the transaction, the buyer is not familiar with the operations of the enterprise or does not receive the right to participate in the management of the enterprise; and
> (5) the furnishing of initial value is induced by the seller's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above initial value, will accrue to the buyer as a result of the operation of the enterprise.[63]

Comparing Koscot's method of operation with the "economic realities" test, Koscot franchises fall under this definition of "security." First, a franchisee furnishes initial value to Koscot in the form of the franchise fee. Next, that part of the fee representing the right to recruit new franchisees and thereby earn commissions is subjected to the risks of the enterprise (Koscot), in that "the success of an individual . . . [franchisee] in realizing this anticipated value depends almost entirely on the over-all success of the Koscot program, especially the regimented Golden Opportunity Meeting presentation."[64] At trial, the Division attempted to show that "investors

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[61] Trial Brief for Plaintiff at 5, 9, Wedren v. Koscot Interplanetary, Inc., No. 237612 (C.P., Franklin County, April 17, 1972). Cases cited include Silver Hills Country Club v. Sobieski, 55 Cal.2d 811, 361 P.2d 906, 13 Cal. Rptr. 186 (1961) (memberships in planned country club); Hawaii v. Hawaii Market Center, Inc., 52 Hawaii 642, 485 P.2d 105 (Hawaii 1971) (founder-membership in planned retail store); and Florida Discount Centers, Inc. v. Antinori, 226 So.2d 693 (Fla. App. 1969), *aff'd* 232 So.2d 17 (Fla. 1970) (store's customers earned finder's fees on referral sales).

[62] Trial Brief for Plaintiff at 5, Wedren v. Koscot Interplanetary, Inc., No. 237612 (C.P., Franklin County, April 17, 1972).

[63] *Id.* at 8-9, quoting Coffey, *The Economic Realities of a "Security": Is There a More Meaningful Formula?*, 18 W. RES. L. REV. 367, 377 (1967) (footnote omitted).

[64] Trial Brief for Plaintiff at 9, Supplemental Trial Brief for Plaintiff at 12-13, Wedren v. Koscot Interplanetary, Inc., No. 237612 (C.P., Franklin County, April 17, 1972). This is substantially the same test used by the SEC to label pyramid sales plans investment contracts. *See* text accompanying note 26 *supra*. The Division of Securities relied heavily on the SEC RELEASE in its argument. Trial Brief, *supra* at 5-8, 11, 15; Supplemental Trial Brief, *supra* at 13.

in Koscot were completely at the mercy of the corporation in Florida and that their success or failure in the enterprise was dependent upon factors over which they had no control."[65] Evidence was introduced tending to show that "the Company emphatically directed the . . . [franchisees] *not* to give any details of the program to a prospect before a Golden Opportunity Meeting," but to do nothing more than bring the prospect to the meeting, and let the speakers and group enthusiasm do the selling.[66] The Division also introduced evidence to show that franchisees were told to dress well, drive an expensive car and act successful regardless of whether or not they were; "this display of success was designed to enhance the appeal of the Golden Opportunity Meeting where the actual 'pitch' was made to the prospects."[67] The next element of the "economic realities" test is satisfied because Koscot neither provides new franchisees with any financial information about the company, nor are they accorded the right to participate in the management of the company.[68] Finally, the new franchisee's payment of the franchise fee is induced by Koscot's representations that he would earn more than enough money, by recruiting new franchisees, to recoup his original investment.[69] The Division concluded that since all the criteria of the "economic realities" test are met, a Koscot franchise is a security.[70]

The Division was at pains to point out that this is not a normal franchise where the franchisee pays a franchise fee for the right to retail a certain product. The Koscot franchisee receives that right, but the emphasis is on the money which a franchisee can make from selling more franchises identical to his own, not from the sale of product.[71]

In addition to arguing that Koscot franchises are "investment contracts," the Division also contended that the franchises constitute "profit-sharing or participation agreements," and thus fit within a second category of securities under the Ohio Act.[72] Evidence showed that a Director (who corresponds to the Adventurer IV in the DG hierarchy) receives a ten percent override on all sales made by his retail organization, and a two percent override on all sales made by the retail organization of a Super-

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[65] Supplemental Trial Brief for Plaintiff at 7, Wedren v. Koscot Interplanetary, Inc., No. 237612 (C.P., Franklin County, April 17, 1972).

[66] *Id.* at 5-6.

[67] *Id.* at 6.

[68] *Id.* at 11-13.

[69] *Id.* at 13.

[70] *Id.*

[71] [T]he printed Koscot agreement was cleverly drafted so as to exclude specific reference to the 'wholesaling' of distributorships. Yet, even the Company's own witnesses readily admitted . . . that a person signing one of the agreements was thereby entitled to sell distributorships and receive the concomitant finder's fees and overrides. *Id.* at 7. See text accompanying note 5, *supra.*

[72] OHIO REV. CODE ANN. § 1707.01(B) (Page Supp. 1970).

visor, originally sponsored by the Director, who later moves up to become a Director.[73]

In contending that Koscot franchises are not securities and that their sale is therefore beyond the jurisdiction of the Division of Securities, Koscot argued as follows: In *Howey*,[74] the Supreme Court of the United States construed the term "investment contract" to mean, for purposes of the Securities Act of 1933, upon which the Ohio Act is patterned,

> a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party. . . .[75]

A Koscot franchisee can earn money in two ways by recruiting and training a sales organization, thereby earning a wholesaler's margin and overrides on sales made by his people, and by recruiting new franchisees, thereby earning finder's fees.[76] A franchisee who sets up a sales organization must, to be successful, expend a great deal of effort in recruiting and training his people. His income can no more be said to come to him solely through the efforts of others than can that of any person or firm which purchases products for resale. Therefore, only the right to receive finders fees for sponsoring other franchisees in the program could possibly be construed as an investment contract. This too requires recruiting effort on the part of the franchisee. In any event, the right to earn finder's fees is an incidental benefit, since a franchisee can earn a profit on his investment by setting up, training and supplying his own sales force.[77] Evidence was introduced to show that all the franchisees were told that they would have to work to make money, that there were no "free lunches."[78] Not only is a Koscot franchise not an investment contract, under the *Howey* test, for purposes of the Ohio Securities Act; but also is not a profit-sharing or participation agreement for purposes of that Act. A franchisee does not receive profits based on the amount of his investment or based on the overall success or failure of Koscot. His earnings are based solely on his own efforts and the efforts of his sales organization.[79]

In response to Koscot's basic contention that its franchises are not securities, since franchisees have to exert significant efforts to make money in the "retail" end (recruiting and training a sales organization), the Di-

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[73] Supplemental Trial Brief for Plaintiff at 5-6, 14, Wedren v. Koscot Interplanetary, Inc., No. 237612 (C.P., Franklin County, April 17, 1972).

[74] SEC v. W. J. Howey Co., 328 U.S. 293 (1946).

[75] 328 U.S. at 298-99.

[76] Similarly, the DG franchisee can earn commissions by "retailing" Adventure I and II courses or finder's fees by recruiting new III's and IV's.

[77] Supplemental Trial Brief for Defendant at 6-17, Wedren v. Koscot Interplanetary, Inc., No. 237612 (C.P., Franklin County, April 17, 1972).

[78] *Id.* at 5.

[79] *Id.* at 8.

vision of Securities argued that the "retail" part of the plan is mere window-dressing for the pyramid scheme. According to Division witnesses, prospects were lured to invest in the program by representations that they could make vast incomes from recruiting other franchisees, and once they had invested, they received instruction at the training sessions in "head hunting."[80] The Division contended that the only effort required of the franchisee is finding prospects to bring to Golden Opportunity Meetings where the "pitch" is given, and that the franchisee is told not to disclose any details about the company prior to the meeting. The Division concluded that this effort was minimal and completely unrelated to the ostensible business purpose of the company, retailing cosmetics.[81] Thus, in response to Koscot's argument that under the *Howey* test a Koscot franchise is not an investment contract subject to the Ohio Securities Act because a franchisee must expend significant effort himself in order to realize profits, the Division contended that

> [u]nlike the citrus grove program underlying *Howey*, the Koscot plan was a highly promotional enterprise which emphasized the money to be made from the sale of distributorships—the latter being a highly intangible benefit which depended only minimally upon the investor's efforts for success. . . .[82]

Therefore, the *Howey* pronouncement that an investment contract is present only where the investor's profits come solely from the efforts of others is "inapposite to the facts of the instant case."[83]

The trial court held that Koscot had been engaging in the sale and offering for sale of securities for purposes of the Ohio Securities Act, and permanently enjoined their offering unless and until Koscot complies with the provisions of the Act.[84] The opinion contained no findings of fact. Koscot plans to appeal from the decision.[85]

The practical effects of the holding that an investor in Koscot is purchasing a security are twofold. In order to offer franchises for sale in Ohio,

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[80] Supplemental Trial Brief for Plaintiff at 4-5, Wedren v. Koscot Interplanetary, Inc., No. 237612 (C.P., Franklin County, April 17, 1972).

[81] *Id.* at 6-7. A Division witness testified that Glenn Turner's brother, while teaching a training class, told the franchisees present to pencil the following admonition in their Golden Opportunity Meeting "scripts" because "the State was giving us trouble":

> But keep this in mind while we are talking, there is no such reality as something for nothing, and if this is what you are looking for, you will not find it with Koscot. Work and knowledge are required to earn the kind of money we are talking about.

Id. at 9-10. The Division cited this testimony as "further evidence of the fact that the Company's protestations as to the amount of work necessary constitutes a glorification of form over substance. . . ." *Id.* at 9.

[82] Reply Brief for Plaintiff at 2, Wedren v. Koscot Interplanetary, Inc., No. 237612 (C.P., Franklin County, April 17, 1972).

[83] *Id.*

[84] Wedren v. Koscot Interplanetary, Inc., No. 237612 (C.P., Franklin County, April 17, 1972).

[85] Interview with Willard Dobbs, counsel for Koscot, in Columbus, Ohio, April 21, 1972.

Koscot must comply with the registration provisions of the Ohio Securities Act,[86] and each franchisee who wishes to recruit new franchisees must qualify as a licensed dealer.[87] Compliance with these requirements presumably affords a measure of protection to the prospective investor. In addition, there appears to be a remedy for those who have already invested. The Act provides that a sale of a security made in violation of its provisions is voidable at the election of the purchaser.[88] The seller, and every person who has participated in the sale or aided the seller in any way, are liable to the purchaser for the purchase price of the security, unless the violation did not materially affect the protection contemplated by the violated provision.[89] Although an investor must bring an action within two years of the date of purchase in order to qualify for automatic rescission,[90] many investors should be able to take advantage of this provision of the Act.

B. *Consumer Protection Statutes*

Many states have proceeded against pyramid sales plans under various types of consumer protection statutes. Because New York has statutes which empower the courts to enjoin fraudulent or deceptive business practices on application of the Attorney General,[91] DG, Koscot and Glenn Turner consented to a judgment under which they are: (1) enjoined from representing to prospective franchisees that they can readily earn large sums of money, without disclosing the number of franchisees in New York who actually earn such sums, how much the average franchisee earns, and other material facts including operating expenses; (2) ordered to affirmatively disclose all relevant material facts to prospective franchisees if representations are made as to any material facts; (3) ordered to notify each person who purchased a franchise in New York that if he can demonstrate that he purchased such franchise in reliance upon misrepresentations or material omissions of the companies or their franchisees, and has suffered damage as a result, that the companies will make restitution of his damages up to the price of the franchise,[92] and ordered to make restitution to all persons thus entitled; (4) enjoined from offering or selling franchises pending the giving of the required notification; and, (5) enjoined from otherwise violating the provisions of the statutes.[93]

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[86] OHIO REV. CODE ANN. §§ 1707.08-.10 (Page 1964).

[87] OHIO REV. CODE ANN. §§ 1707.14-.15 (Page 1964).

[88] OHIO REV. CODE ANN. § 1707.43 (Page 1964).

[89] *Id.*

[90] *Id.*

[91] NY. EXEC. LAW § 63.12 (McKinney 1972); N.Y. GEN. BUS. LAW § 349 (McKinney Supp. 1971).

[92] N.Y. GEN. BUS. LAW § 349(b) (McKinney Supp. 1971).

[93] State v. Koscot Interplanetary, Inc. (N.Y. Sup. Ct. for N.Y. County, Dec. 1, 1970), *def's. motion to set aside judgment denied* May 7, 1971, *aff'd*, 327 N.Y.S.2d 1002 (App. Div. 1972).

In an affidavit in support of the state's complaint, an Assistant Attorney General in charge of the investigation, who had himself attended Opportunity Meetings conducted for prospects by both companies, stated among other things, that: (1) Koscot represented to prospects that it was not unusual for a franchisee to earn $100,000 per year; (2) DG told prospects that franchisees could earn $240,000 per year and could earn a "guaranteed income" of $50,000 per year; (3) Koscot told speakers at "Opportunity Meetings" to dress well, buy a Cadillac, and tell prospects that they are making a great deal of money, in order to induce them to join the program; (4) at "Opportunity Meetings" checks for large sums of money were waved before prospects who were told that such amounts are typically earned by franchisees in one week; (5) prospects were told that the number of available franchises in New York was limited, and that they should buy in quickly before they were sold out; (6) some prospects were told that a Deputy Attorney General of another state who was investigating Koscot became so impressed with the company that he quit his job and bought a franchise; and (7) in contrast to these misrepresentations, only 79 of the 1064 Koscot franchisees in New York have made more than $5,000 and only 10 have made more than $20,000 during the first ten months of 1970, which amounts have come from the sale of franchises, not product.[94] "What is . . . not told is that if all of the people in the program were to make the promised $100,000 per year, even with retail sales, at the end of the first year at least 150,000 new distributorships would have to be created and at the end of the second year New York alone would have to have 150 million distributors."[95]

In February 1972, more than a year after the consent judgment, New York again went to court, this time asking that Koscot, DG and Turner be held in contempt for wilfully failing to comply with the provisions of the consent judgment. A Special Deputy Attorney General states in his affidavit in support of the contempt motion that Koscot and DG continue to mandate and teach the same "scripts" for Opportunity Meetings and the "closing" of prospects, containing the very misrepresentations barred by the court's judgment, that they continue to use a pyramid sales plan, which the State contends is inherently deceptive and therefore prohibited by the judgment, that both companies still represent to prospects that astronomical incomes can be earned by selling franchises, while failing to disclose average earnings and the number of persons earning large sums, that they continue to fail to disclose to prospects the existence of certain charges imposed by the companies which reduce the profits of

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[94] Affidavit of Stephen M. Leon (Nov. 27, 1970), State v. Koscot Interplanetary, Inc. (N.Y. Sup. Ct. for N.Y. County, Dec. 1, 1970).

[95] *Id.* at 7.

franchisees, and that they have failed to make restitution as ordered.[96] As of this writing, the defendants have been ordered to show cause why they should not be held in contempt.[97]

The California Attorney General proceeded successfully against Koscot under that state's "endless chain" statute.[98] In February 1971, Koscot and Turner Enterprises, among others, consented to a judgment under which they were permanently enjoined from: (1) using a pyramid sales plan (under a rather complex formula, finder's fees on sales of new franchises are to be held in trust until the new franchisee produces a certain amount of retail product sales); (2) paying a commission to a sponsoring franchisee unless the new franchisee receives extensive training in business and retail sales; (3) requiring a franchisee to purchase any products or pay any consideration other than payment for the actual cost (to Koscot) of necessary sales materials, except that if Koscot requires a franchisee to purchase an initial inventory of product it must agree to repurchase it within sixty days at 35 percent of retail price; (4) soliciting prospects without informing them orally and in writing that they may cancel the franchise agreement within three days of its execution, by notifying Koscot either orally or in writing; (5) making any false, deceptive or misleading representations to prospects; (6) representing to prospects that they can earn a stated amount of money unless such amount represents the average earnings based on retail sales of one-third of all Koscot franchisees in the United States, or unless Koscot concurrently discloses the average earnings based on retail sales of a substantial number of franchisees within a particular geographical area; (7) representing past earnings of franchisees without concurrently disclosing the average retail sales earnings of a substantial number of franchisees in the same geographical area of the exemplary franchisee; (8) representing, directly or by implication, that it is not difficult for franchisees to recruit new franchisees; (9) representing directly or by implication, that it is not difficult for a franchisee to recruit retail sales personnel, or that it is not difficult to sell any minimum amount of Koscot products to the public; (10) representing, directly or by implication, that it is not difficult for a franchisee to advance to a higher distribution level, or that a franchisee will succeed; and (11) representing, directly or by implication, that the supply of

[96] Affidavit of Sheldon Horowitz (undated), State v. Koscot Interplanetary, Inc. (N.Y. Sup. Ct. for N.Y. County, Dec. 1, 1970).

[97] Order to Show Cause (Jan. 31, 1972), State v. Koscot Interplanetary, Inc. (N.Y. Sup. Ct. for N.Y. County, Dec. 1, 1970).

[98] CAL. PENAL CODE § 327 (West 1970). The statute provides that

> an "endless chain" means any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when the person introduced by the participant introduces a new participant.

The operation of an "endless chain" scheme is made a misdemeanor.

potential franchisees or retailers is unlimited. It was further ordered that: (1) speakers at Opportunity Meetings who are not franchisees shall orally disclose the precise nature of their association with Koscot, and, if they are entitled to receive any compensation for recruiting franchisees, they shall disclose that they are "salesmen" and the amount of their commissions; (2) Koscot shall disclose at each Opportunity Meeting all expenses which it is known franchisees may be required to incur in that capacity, and their approximate amounts, for example, sales tax permit or business license, warehousing, or retail product promotion; (3) within ten days of entry of judgment, Koscot shall disclose in writing the terms of the judgment to all franchisees and agents, and shall secure from each a signed, notarized statement that he has read and understands such disclosure; (4) Koscot shall obtain a similar signed statement from each prospective franchisee prior to his signing any agreement; (5) if such signed, notarized statement is not obtained prior to the time a prospect becomes a franchisee, he shall at any time have the rights of cancellation and complete refund of his total investment under all contracts with Koscot; (6) any such claim for refund may, at the option of the claimant, be settled by arbitration; (7) within ten days, Koscot shall notify each of its franchisees that if he is of the opinion that any part of Koscot's marketing program was misrepresented to him, he shall have, within 60 days of receipt of such notice, the right to demand the immediate refund of all money which he has paid to Koscot under any agreement; and (8) the Attorney General's office shall have access to Koscot's books for the purpose of securing compliance with the judgment.[99] In May 1972, the Attorney General instituted contempt proceedings against Koscot, which subsequently entered into a stipulated order requiring Koscot to offer refunds to several hundred California investors.[100] Pursuant to that order, California investors have recouped more than $500,000 from Koscot.[101]

In September, 1971, the Attorney General of California brought an even more ambitious injunctive action against DG, Glenn W. Turner Enterprises, Inc., and Koscot,[102] seeking, in effect, to shut them down in California, on three theories: (1) that they violate the "endless chain" statute;[103] (2) that they are engaged in unfair competition, fraudulent business practices, and false or misleading advertising in violation of con-

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[99] People v. Koscot Interplanetary, Inc., No. 112912 (Kern County, Cal. Super. Ct., Feb. 16, 1971).

[100] Order (July 27, 1971), People v. Koscot Interplanetary, Inc., No. 112912 (Kern County, Cal. Super. Ct., Feb. 16, 1971).

[101] Letter from Michael J. Kelly, Deputy Attorney General of the State of California, to Harry M. Cochran, Jr., May 10, 1972 (on file in the Ohio State Law Journal office).

[102] People v. Dare To Be Great, Inc., No. 636-555 (San Francisco, Cal. Super. Ct., filed Sept. 13, 1971).

[103] CAL. PENAL CODE § 327 (West 1970). See text accompanying note 98 *supra.*

sumer protection statutes;[104] and (3) that they have not complied and probably cannot comply with the registration provisions of the Franchise Investment Law.[105] This action is still pending.

In Ohio the recently enacted Consumer Sales Practices Act[106] appears on its face to forbid the operation of pyramid sales plans. It prohibits inducing a consumer to enter into a transaction by offering him a benefit for his help in entering into subsequently-completed consumer transactions.[107] Although the language of the statute is specifically directed at the practice of referral sales,[108] it should be equally applicable to pyramid sales plans, since the same potential danger to the consumer inheres in both situations. The vacuum cleaner purchaser who is promised a ten percent kickback for every sale made from leads he provides, and the DG prospect who pays $5000 for a motivation course have in common the induced belief that they are paying for not only a product, but future income which will be generated by the efforts of the seller. This belief leads each to pay more for the product than it alone is worth. In addition to the referral sales provision, the new Act prohibits the commission, in connection with a consumer transaction, of acts or practices which are either deceptive[109] or unconscionable,[110] both of which adjectives arguably fit specific practices utilized in the marketing of DG franchises.

The Act empowers the Department of Commerce to adopt rules defining practices which violate the Act,[111] and to request the Attorney General to investigate probable violations.[112] The Attorney General is authorized to bring actions for either declaratory or injunctive relief against alleged violators, and to bring class actions for damages on behalf of

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104 CAL. CIV. CODE § 3369 (West 1970); CAL. BUS. & PROF. CODE § 17500 (West 1964).

105 CAL. CORP. CODE §§ 31000-31516 (West Supp. 1972).

106 OHIO REV. CODE ANN. §§ 1345.01-.13 (Page 1972 Current Service No. 2). The Act became effective on July 14, 1972.

107 No supplier shall offer to a consumer or represent that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers, or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit is contingent upon an event occurring after the consumer enters into the transactions.

OHIO REV. CODE ANN. § 1345.02(C) (Page 1972 Current Service No. 2) A "consumer transaction" includes the sale of a franchise. OHIO REV. CODE ANN. § 1345.01(A) (Page 1972 Current Service No. 2).

108 The comment to the virtually identical section of the Uniform Consumer Sales Practices Act, from which the Ohio Act derives, merely states that "[t]his subsection forbids referral commission arrangements in which a consumer is to receive future commissions based upon events which occur after the time at which he enters into a related consumer transaction." UNIFORM CONSUMER SALES PRACTICES ACT § 3(b)(11), Comment.

109 OHIO REV. CODE ANN. § 1345.02 (Page 1972 Current Service No. 2).

110 OHIO REV. CODE ANN. § 1345.03 (Page 1972 Current Service No. 2).

111 OHIO REV. CODE ANN. § 1345.05(B)(2) (Page 1972 Current Service No. 2).

112 OHIO REV. CODE ANN. § 1345.06 (Page 1972 Current Service No. 2).

injured consumers.[113] In addition, the Act creates a private cause of action for rescission of the transaction or actual damages.[114]

On August 29, 1972, the Attorney General filed a complaint against DG and Turner Enterprises alleging violations of the referral sales, unconscionability, and deception provisions of the Consumer Sales Practices Act.[115] Judge August Pryatell of the Cuyahoga County Court of Common Pleas issued a temporary restraining order enjoining DG and Turner Enterprises from conducting any operations in Ohio.[116]

IV. CONCLUSION

For Glenn W. Turner Enterprises, Inc., and for other pyramid sales plans, the wick is growing short. Since incorporating Koscot in 1967,[117] Glenn Turner has amassed a personal fortune estimated at $150 million, and heads a holding company with 68 subsidiaries and annual sales of $200 million.[118] He has achieved such astounding success by beginning with the endless chain concept, the possibilities of which have always fascinated people, and grafting thereto a highly sophisticated marketing vehicle, the GO Tour, which many people are unable to resist. His success, and that of a relatively small minority of investors, has come at the expense of thousands of people who were swept into the venture on a tide of optimism, faith, and perhaps greed, and who have been subsequently lowered, more gently or less, into reality, thousands of dollars poorer. Turner contends that he is being "persecuted as part of a national plot to put him out of business,"[119] and such indeed appears to be the case.

Harry M. Cochran, Jr.

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[113] OHIO REV. CODE ANN. § 1345.07(A) (Page 1972 Current Service No. 2).

[114] OHIO REV. CODE ANN. § 1345.09 (Page 1972 Current Service No. 2).

[115] Complaint, Brown v. Dare To Be Great, Inc., No. 909403 (C.P., Cuyahoga County, filed Aug. 29, 1972).

[116] Interview with David N. Brown, Assistant Attorney General of Ohio, in Columbus, Ohio, August 31, 1972; Columbus Evening Dispatch, Aug. 30, 1972, at 1, col. 7.

[117] J. FRASCA, CON MAN OR SAINT 113 (1970) (an extremely favorable biography of Glenn Turner).

[118] Tobias, *Do You Sincerely Want To Give Glenn Turner Your Money?*, NEW YORK, Feb. 28, 1972, at 27. This is the best of the many popular articles about Turner and his enterprises.

[119] N.Y. Times, Aug. 31, 1972, at 45, col. 5. Turner was referring not only to the civil actions lodged against his companies, but to criminal actions brought against him individually. In his home state of Florida, for example, he has been charged with sale of unregistered securities and failure to register as a securities dealer, *Id.*, and with conspiracy to commit fraud, conspiracy to violate the state lottery law, and conspiracy to violate the state securities act. N.Y. Times, May 8, 1972, at 35, col. 1.