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# Reality Check

## Herbalife Nutrition, Ltd.

NYSE:HLF

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# Executive Summary

Herbalife Nutrition Ltd., a Multi-Level Marketing (MLM) nutritional supplement company, has a long and highly publicized history of being accused of operating as a pyramid scheme. Less well known is the extent to which its global reach has overlapped with money laundering and narco-trafficking channels.



Based on numerous interviews, Freedom of Information Act (FOIA) requests, legal document searches, and internal Herbalife materials, this report presents a history of Herbalife's intersection with money laundering and the illicit drug trade, both directly and indirectly through its distributors. For decades, rather than address its entanglement with money laundering in ways that would dis-

suade further criminal involvement, Herbalife has structured its business in such a way that it remains vulnerable. Examples include:

- Allowing its products to be moved through the so-called "gray market," where products in one country are illicitly transported across borders to another
- Relying on poorly disclosed or undisclosed third parties to operate the Herbalife business in high-risk countries including Russia, Colombia, Panama and Mexico, creating blind spots throughout the company's vast operational footprint
- Allowing high-ranking distributors at the top of the pyramid to make decisions at Strategy and Planning Committee meetings that dictate the company's global expansion plans, vendors, and policies, even though members have questionable histories and, in at least one case, a narcotics trafficking conviction
- Building a complex business structure that permits the company and distributors to move money across international borders with little to no regulatory oversight

Herbalife's business has been linked to at least two notorious drug cartels, as well as the global bank HSBC, known for terrorist and narcotics financing. The company's extensive track record of compliance failures, in direct violation of multiple federal Anti-Money Laundering (AML) statutes, leaves open the door to those who would use Herbalife to move illicit goods and funds around the world.

Herbalife has carefully cultivated a public image as a purveyor of nutritional supplements that are designed to help its customers lose weight and stay fit. Thus far it has been successful in convincing the marketplace that it is a legitimate business, albeit one with a few deficiencies like any large company. Considerable evidence supports a different and darker view.

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uct to distributors in more than 90 countries. In addition, the logistics of compensating members in so many countries present a serious challenge, and for that reason, Herbalife has transformed into a sort of global bank, able to reimburse distributors for their sales wherever they might be in the world, in whatever currency might be needed. The system also accommodates the “unbanked,” with the company offering numerous ways for those buying and selling its products to deal in cash.

## Corporate History

### The 1980s: Mark Hughes Creates a Money Machine



Mark Hughes and his product line in the company's early days. Photograph: healthforindia.blogspot.com

LA 196A-4028  
SLH/BAR

The following investigation was conducted  
by SA [REDACTED] on May 24, 1985:

AT LOS ANGELES, CALIFORNIA:

[REDACTED] advised that in December 1984 and recently MARK HUGHES, dba HERBALIFE had conventions at the Universal Amphitheater. These conventions were for approximately 6,000 distributors. Before and during conventions, HUGHES would snort cocaine in the "green room." HUGHES and his girlfriend would use coke at a frequency of approximately every hour. HUGHES is recently married to a wealthy girl and still indicates he wants more money. HUGHES is very flashy using stretch limousines, et al. HUGHES made the statement "I want everyone arriving in limos through the front door. I want everyone to know how much fucking money I have."

An excerpt from Mark Hughes's redacted FBI file, which largely concerns the United States Senate Permanent Subcommittee on Investigations hearing, but also contains some key details regarding Hughes's behavior.

Herbalife was founded by a charismatic salesman named Mark Hughes in 1980. Hughes began using drugs when he dropped out of school in the ninth grade, according to a 1985 People Magazine article.<sup>4</sup> His mother died of a drug overdose when he was 19.<sup>5</sup> By the time Hughes turned 30, he was a multi-millionaire living in a Beverly Hills mansion.

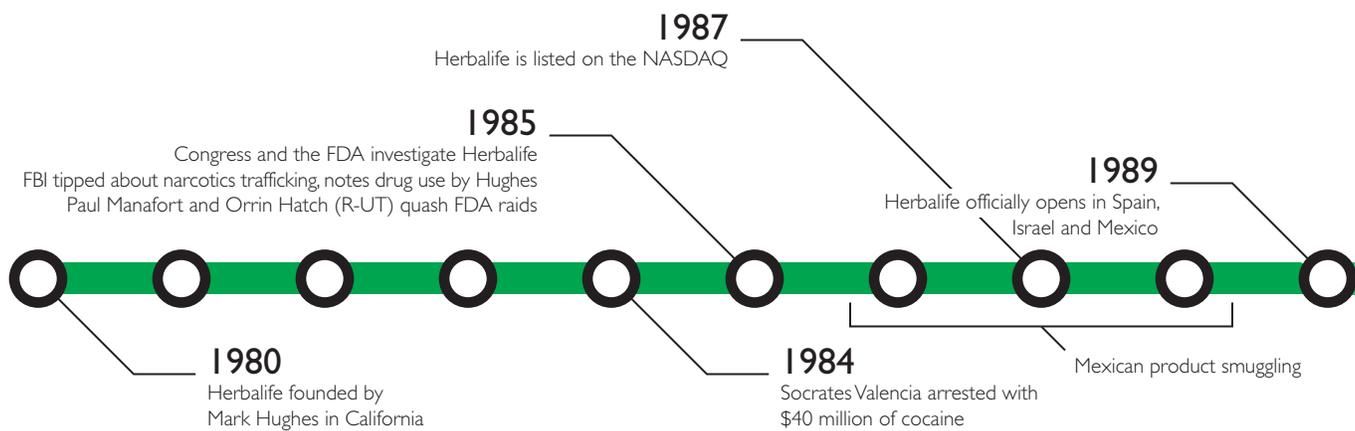
Hughes obtained the status of cult leader among legions of distributors who believed Herbalife was a path to financial freedom. Videos of his presentations, with titles such as “How you will start with nothing and gain everything,” are still popular with those seeking to emulate his success.

Hughes's on-stage euphoria, it turns out, was enhanced by drug use. “Before and during conventions, Hughes would snort cocaine in the 'green room,’” a Federal Bureau of Investigation (FBI) memo dated May 24, 1985 states. “Hughes and his girlfriend would use coke at a frequency of approximately every hour.”

The memo, obtained via a Freedom of Information Act (FOIA) request, also noted: “Hughes is very flashy, using stretch limousines, et al. Hughes made the statement ‘I want everyone arriving in limos through the front

4 People, April 29, 1985, “Despite Critics and Lawsuits, Herbalife Has Made Mark Hughes Wealthy If Not Healthy.” <http://people.com/archive/despite-critics-and-lawsuits-herbalife-has-made-mark-hughes-wealthy-if-not-healthy-vol-23-no-17/>

5 The New York Times, May 23, 2000, “Mark R. Hughes, 44; Founded Nutrition Supplement Concern.” <http://www.nytimes.com/2000/05/23/business/mark-r-hughes-44-founded-nutrition-supplement-concern.html>



door. I want everyone to know how much fucking money I have.”

### ***An Anonymous Tip***

Hughes’s FBI file contained another memo, this one based on an anonymous phone tip by the friend of a former female Herbalife employee. The friend called the Santa Rosa, California office of the FBI on October 1, 1985, which documented the following:

*“The female advised the caller that Herbalife imports numerous types of herbs from foreign countries and, in doing so, they smuggle cocaine and heroin into the United States packed in herbal supplies they receive from these foreign countries. She further advised that Herbalife had a distributorship of cocaine similar to that of their distributorship of their products. She stated most of the major Herbalife distributors in the larger cities have someone on their end involved in the distribution of the cocaine.”*

Afraid for her life for fear of “how high up in the Herbalife organization” the matter went, she had refused to contact authorities on her own, according to the caller. She alleged that Herbalife was essentially two separate companies: a public-facing company that sold nutritional supplements and a secret company that used that same infrastructure and supply chain to traffic in illicit narcotics. Either the FBI never followed up on these claims or it chose to omit its follow-up from the FOIA response provided.

This tip may have been nothing but a hoax. But if true, it raises questions about some of Herbalife’s top distributors and the company itself. In the MLM business, those who get in early often become the enduring success stories.

Two of those involved early on with Herbalife were John and Susan Peterson, a real estate investor and professional decorator who moved from Minnesota to Texas.

### ***The Gray Market in Mexico***

Susan Peterson, a stay-at-home mom who claimed to have made a quarter of a million dollars in her first few months with Herbalife, and John Peterson, a former real estate

Memorandum



To : SAC, LOS ANGELES *Herbalife International Inc. R6A-4028 (4/85)* Date 10/16/85

From : SAC, SAN FRANCISCO (12G-57)

Subject : ~~HERBALIFE~~  
NARCOTICS MATTER

*147-2103 - 3 (10/19)*  
*141-1345-12 (10/13)*

On 10/1/85, an anonymous male caller, who refused to identify himself, advised the Santa Rosa Resident Agency of the following:

The caller advised he had a female friend, age 25 to 35, who had been employed in Los Angeles, California, by HERBALIFE for approximately a year and a half and had left their employment about eight months ago.

The female advised the caller that HERBALIFE imports numerous types of herbs from foreign countries and, in doing so, they smuggle cocaine and heroin into the United States packed in herbal supplies they receive from these foreign countries.

She further advised that HERBALIFE has a distributorship of cocaine similar to their distributorship of their products. She stated most of the major HERBALIFE distributorships in the larger cities have someone on their end involved in the distribution of the cocaine.

The caller advised that his female friend was a cocaine user in the past but is now clean, and he has no reason to doubt what she has told him.

The caller has requested the female to go to authorities with her information but she has refused to do so, stating she fears for her life. She stated this fear arises out of how high up in the HERBALIFE organization that this matter goes.

The caller refused to identify himself nor would he provide any further information regarding the female. The caller stated that should he obtain information of a more specific nature he would contact the Santa Rosa Resident Agency.

- ② - Los Angeles
- 1 - San Francisco

ADH/ma  
(3)

*196*  
*129 - 4028-19*

SEARCHED <i>11/1</i>	INDEXED <i>11/1</i>
SERIALIZED <i>11/1</i>	FILED <i>11/1</i>
OCT 30 1985	
FBI	

*b6*  
*b7C*

broker with a crooked grin, were among the star distributors who arrived in Hughes's limousines. Susan Peterson, in pink skirt suits, was a fixture at Herbalife events, giving bubbly business opportunity presentations in which she insisted failure was not a possibility for those who committed to the business. Ultimately, the couple built one of Herbalife's most successful distributorships. John Peterson, meanwhile, branched out from selling timeshares in Mexico to smuggling Herbalife products across the border.

The couple built an enormous business in Mexico, though Herbalife did not formally open the market until 1989. Even after the market opened, it wasn't clear who was in charge. When Herbalife Internacional de México, S.A. de C.V. was registered in Mexico City that year, the company's shareholders included various members of the Mexican Parra family, Corpomexico International, S.A.<sup>6</sup> and Mark Hughes, but not the company itself.

It wasn't until June 1992 that Herbalife registered a company in Mexico that was part of its public company ownership structure. Herbalife Products de México, S.A. de C.V. listed its owners as Herbalife International, Inc. and Herbalife International of America, Inc., according to filings with the Securities and Exchange Commission (SEC).<sup>7</sup>

The Petersons also stashed their assets offshore. In 2017, the International Consortium of Investigative Journalists (ICIJ) announced a leak of over 13 million files, referred to as the Paradise Papers, which included corporate registry data from Bermuda, where John and Susan Peterson incorporated three shell companies: TDC, Ltd., Windy Peaks, Ltd., and Health Vision International, Ltd. Court documents filed in the Petersons' eventual divorce revealed the names of the shell companies.

Whether or not the Petersons were ever involved in anything more than building an Herbalife business ahead of the crowd, they created the prototype of a money laundering operation: importing and selling products into a country outside the United States and then moving the proceeds of that business to one or more companies in a secrecy haven.

## ***A Taxi Full of Cocaine***

Several years prior to joining Herbalife, Socrates de Jesus Valencia, a Colombian national, was arrested in New Jersey after police found cocaine with a street value of \$40 million in the trunk of his taxi. A 1984 report in the *Bergen Record* stated:

*"A luxury Edgewater apartment overlooking the Hudson River was being used as a*

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6 Page 13 of the October 1, 1981 corporate charter for Corpomexico Internacional, S.A. de C.V., a Guadalajara company, lists José Alonso Parra Osuna as owning 51%. Five other shareholders—four of them members of the Parra family—own the remaining 49%. See <https://www.plainsite.org/realitycheck/hlf/19811001.corpomexico.pdf>.

7 Herbalife later registered Servicios Integrales HIM, S.A. de C.V. in 2007 and Herbalife Mexicana, S.A. de C.V. in 2009, both in Jalisco. Both companies are also owned by Herbalife International, Inc. and Herbalife International of America, Inc.

*'stash pad' for pure cocaine from Colombia, federal authorities said yesterday as they announced the arrest of two men and the largest cocaine seizure ever in New Jersey.*

*More than 79 pounds of the drug and almost \$1 million in cash were found in the apartment and the garage of the building at 50 Route 5. An additional 55 pounds of cocaine were found in the trunk of a New York taxi owned by one of the suspects, authorities said.*

*The total seizure was 134.2 pounds, which had a street value of \$40 million to \$50 million, U.S. Drug Enforcement Administration officials said... [Tomas] Troncoso and a second Colombian national, Socrates Valencia, 25, of Queens were arrested on Park Street in Weehawken as they returned to Valencia's cab. In the trunk, federal authorities said, were two suitcases filled with packages of the drug wrapped in plastic...*

*Bail of \$500,000 was set for Valencia, who was portrayed by his attorney as 'a dupe, an innocent person' whose taxi had been hired by Troncoso for a trip to Newark International Airport. But Murphy, the prosecutor, contended that Valencia's log sheets showed he was off duty. She also said it was illegal for a New York cabbie to pick up a passenger in New Jersey and that Valencia had purchased several kilograms of cocaine in the past."*

Socrates Valencia was released from prison in 1985.<sup>8,9</sup> He signed up as an Herbalife distributor with a New York address in Astoria, Queens in 1987 and later sponsored his brother, Arquimedes Valencia, as a United States-based distributor who appears to have signed up while living in Spain in 1989.<sup>10</sup> Arquimedes's Herbalife operation would be entangled in another drug-related investigation in Manhattan a few years later. Mark Hughes personally signed Arquimedes's application.

We may never know whether a ninth-grade dropout with a cocaine habit, running a multi-million-dollar business, allowed his company to be used by drug interests. But we came very close to knowing.

## **Congress Investigates Herbalife**

On March 6, 1985, the Attorney General of the State of California filed a lawsuit in Santa Cruz County seeking an injunction and civil penalties to halt Herbalife's fraudulent claims and business practices.<sup>11</sup>

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8 Federal Bureau of Prisons Inmate Locator Search for "Socrates Valencia." <https://www.bop.gov/inmateloc/>

9 *USA v. Socrates Valencia*, New Jersey District Court, Case No. 85-cr-00185. <https://www.plainsite.org/dockets/2lk7w2zr3/new-jersey-district-court/usa-v-socrates-valencia/>

10 Valencia Brazilian tax dispute documents. <https://www.plainsite.org/realitycheck/hlf/19870000.valencia.pdf>

11 *Los Angeles Times*, October 16, 1986, "Herbalife Settles Suit Filed by State on Medical Claims." [http://articles.latimes.com/1986-10-16/business/fi-5791\\_1\\_medical-claims](http://articles.latimes.com/1986-10-16/business/fi-5791_1_medical-claims)

In April 1985, the Los Angeles division of the FBI opened a file on Herbalife in response to televised allegations “alleging fraudulent activities that are within the investigative jurisdiction of the FBI.”<sup>12</sup> Simultaneously, the FBI was aware that, “the United States Senate is conducting an investigation into Herbalife Corporation and its officers,” though initially it was unsure which committee was responsible, slowing progress.

The U.S. Senate Permanent Subcommittee on Investigations held hearings on May 14-15, 1985. The hearings formally focused on “worthless diet products,” but the senators had questions about Herbalife’s business practices and its controversial use of the stimulant ephedrine for weight loss in many of its products. Former distributors testified that Herbalife products made them sick and that they had trouble getting their money back once they realized that the company’s claims were bogus. Mark Hughes also testified, batting back criticism by scientific advisors who also testified at the hearings with the snide rhetorical question, “If they’re so expert in weight loss, why did they look so fat?”<sup>13</sup>

### ***Black, Manafort, Stone and Kelly***

As part of the widening government investigation, the Food and Drug Administration (FDA) was planning to raid Herbalife warehouses across the country under its “quackery program” according to a 1987 interview with Mervin Shumate, the FDA’s Director of Enforcement. The interview was conducted as part of a project to create an oral history of the FDA.

“What we had in mind is we were going to make seizures in all the regional warehouses around the country,” Shumate recalled. “It would have been a massive operation that would have really taken them out.”

According to Shumate, the FDA had been reviewing autopsy reports, investigating whether cases of liver damage were caused by consumption of Herbalife products—a question that is still frequently raised by researchers three decades later.<sup>14</sup> There was a clear feeling that something needed to be done about Herbalife, Shumate recalled, but the FDA abruptly halted its planned action against the company:

*“As we were getting down toward the hearing, all of a sudden we get the word that there aren’t going to be any seizures...”*

He blamed interference in the agency’s affairs by Senator Orrin Hatch (R-UT), whose constituents included individuals involved in Utah’s nutritional supplement and MLM

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12 Apparently, the FBI opened the case file directly in response to news reports that aired on CNN.

13 UPI, May 15, 1985, “Herbalife chief under fire in hearing.”  
<https://www.upi.com/Archives/1985/05/15/Herbalife-chief-under-fire-in-hearing/9849484977600/>

14 The National Institutes of Health have an entire website devoted to Herbalife’s hepatotoxic effects with over sixty citations to medical literature. See <https://livertox.nih.gov/Herbalife.htm>.

And that's what we did. I remember it very well because we worked the whole doggone weekend. There was a Redskins game, a playoff game or something, we wanted to see so darn bad. We were able to turn on the set, but it was so snowy you couldn't see anything. But we did do it; we did get it done. I remember they were not all that significant, but we had to get them to them.

RO: Some of these products, I guess, were considered as foods, and some as drugs.

MS: Some were foods, some were drugs. There were some food-additive questions. I've got some here, for example. They were herbs, and vitamin minerals. One was Tangkuei; that might have been the one that from was Fiji. I'm not positive. Pollen and yeast tablets, I guess; it was a mixture of stuff. It's the kind of stuff that you see in health food stores.

We then had to meet after that for a long time with their lawyers here in town and work this out. I think I've heard just recently that they're still not done with this, to this day, on this mess. But I remember that the people who came in to represent that company were from a law firm here in Washington. Paul was told that this guy, Paul Manafort, was a lobbyist of the highest, absolutely highest stature. He could pick up the phone and talk to the

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In a 1987 interview about the FDA, Mervin Shumate recounted his run-in with Paul Manafort, running crisis management for Herbalife at the time.

industries. Hatch also had help from McClain "Mac" Haddow, a former Hatch staffer turned Chief of Staff for Margaret Heckler, Secretary of the Department of Health and Human Services (HHS). Haddow kept a close eye on every step of the Herbalife investigation, according to Shumate:

*"There was this young man sitting in the conference room I had never seen before. He was a good-looking young man, very well dressed... He never said a word. He strictly sat there throughout. But you can imagine what an effect that had on the FDAers when Mac Haddow's got his own rep sitting there monitoring everything that's being discussed. Of course, I'm sure the commissioner knew exactly who he was."*

Herbalife also hired its own personal representative to intercede: an "extremely well-dressed" lobbyist named Paul Manafort,<sup>15</sup> who made staffers uneasy.

*"It was clearly recognized that they were not Food and Drug lawyers, but they were extremely well-dressed. That was kind of an intimidating factor, too, when you hear this kind of thing, that these people are not really lawyers, they're lobbyists. I saw after that some time that they have such accounts as the Saudi Arabian account; they're lobbyists for the Saudi Arabians. So, you know, they're in the big leagues..."*

At the time, Manafort worked for the lobbying firm Black, Manafort, Stone and Kelly. Decades later, he would become the head of candidate Donald Trump's 2016 presidential campaign. In the fall of 2017, Special Prosecutor Robert Mueller, a former director of the FBI, indicted Manafort for money laundering and tax evasion.<sup>16</sup>

At the height of his influence in Washington, when Manafort was working for Herbalife, his firm's other clients included a number of controversial foreign powers such as the Prime Minister of the Bahamas, Lynden Pindling. The Justice Department was considering an indictment of Pindling after a witness in a federal drug trafficking case

15 "History of the U.S. Food and Drug Administration: Interview with Mervin Shumate," March 11, 1987, Page 403. <https://www.plainsite.org/realitycheck/hlf/19870311.shumate.pdf>

16 USA v. MANAFORT et al, District Of Columbia District Court, Case No. 1:17-cr-00201-ABJ. <https://www.plainsite.org/dockets/370/p34tf/district-of-columbia-district-court/usa-v-manafort-et-al/>

testified that he had been told Pindling was receiving \$88,000 a month in payments from drug traffickers.<sup>17</sup>

Shumate described the Herbalife episode as “traumatizing” and said it marked the beginning of the FDA becoming politicized:

*“How could you get these kinds of lobbyists involved, and this kind of conduct with the [Chief of Staff of the Secretary of Health and Human Services] involved, and the commissioner and the deputy commissioner on a case like that without something. So that’s just a question that I have in my mind, and always will have. But that’s the Herbalife story.”*

Herbalife eventually paid \$850,000 to settle the California Attorney General’s investigation without admitting wrongdoing.<sup>18</sup> Mac Haddow, Hatch’s former staffer, was sentenced to a year in prison for taking government money in an unrelated case.<sup>19,20</sup>

One year later, Herbalife listed on the NASDAQ and began an aggressive overseas expansion, officially opening for business in Israel, Spain, and Mexico in 1989. With its expansion came entanglement with money laundering.

## The 1990s: Herbalife Expands, Attracting Cartels

### “Ask for Hector and Say It’s About Losing Weight”

An October 30, 1995 *New York Times* article<sup>21</sup> described how Herbalife distributor Hector Gualteros was arrested for laundering money for the Cali cartel on the Sprain Brook Parkway in Westchester County, New York:

*“Inside a black 1985 Chevrolet Camaro a state police trooper discovered \$40,000 in small bills, postal money orders worth \$16,000 and records of extensive financial transactions with Colombia. The driver, Hector Fabio Gualteros, told the police the money and records were part of his work as an independent distributor of Herbalife International health-care products. Agents with the State Organized Crime Task Force and the Federal Customs Service placed Mr. Gualteros under surveillance, eventually monitoring 22 telephone lines, 8 beepers and 13 fax lines. In weeks, their suspicions were confirmed.*

17 *The New York Times / Reuters*, January 14, 1988, “BAHAMAS LEADER TIED TO DRUG BRIBE.”  
<https://www.nytimes.com/1988/01/14/us/bahamas-leader-tied-to-drug-bribe.html>

18 *The New York Times*, October 17, 1986, “Herbalife to Pay \$850,000 Penalty.”  
<https://www.nytimes.com/1986/10/17/business/herbalife-to-pay-850000-penalty.html>

19 *The New York Times*, July 14, 1987, “Ex-Cabinet Aide Admits Theft.”  
<https://www.nytimes.com/1987/07/14/us/ex-cabinet-aide-admits-theft.html>

20 *USA v. HADDOW*, District Of Columbia District Court, Case No. 1:87-cr-00165-NHJ.  
<https://www.plainsite.org/dockets/3ae4i44a0/district-of-columbia-district-court/usa-v-haddow/>

21 *The New York Times*, October 30, 1995, “CALI DRUG CARTEL USING U.S. BUSINESS TO LAUNDER CASH.”  
<http://www.nytimes.com/1995/10/30/nyregion/cali-drug-cartel-using-us-business-to-launder-cash.html?pagewanted=all>

6. This investigation began with a traffic stop of defendant HECTOR FABIO GUALTEROS. On May 11, 1994, New York State Police officers stopped a car driven by defendant HECTOR FABIO GUALTEROS and, as described further below, obtained documents from the car and statements from GUALTEROS concerning the laundering of drug proceeds.

7. On May 13, 1994, based largely on information derived from the car-stop, the Honorable Edward J. McLaughlin, a Justice of the Supreme Court of the State of New York, Special Narcotics Part, authorized the interception of telephonic and electronic communications occurring to and from telephone and fax number (212) 594-5124 (hereafter, the "HERBALIFE FAX/PHONE").

8. In subsequent months, Justice McLaughlin and other judges of the Special Narcotics Part authorized the interception of telephonic and electronic communications occurring to and from several other telephones at Herbalife, including:

- a. (212) 594-5117 (the "HERBALIFE 5117 PHONE");
- b. (212) 594-5122 (the "HERBALIFE 5122 PHONE");
- c. (212) 594-0409 (the "HERBALIFE 0409 PHONE");
- d. (212) 868-0490 (the "HERBALIFE 0490 PHONE");
- e. (718) 278-6621, the home telephone of defendant HECTOR FABIO GUALTEROS, (the "GUALTEROS HOME PHONE");
- f. (917) 971-3378, a cellular telephone used by defendant HECTOR FABIO GUALTEROS (the "GUALTEROS CELL PHONE"); and
- g. (917) 983-9394 (the "GUALTEROS 9394 PAGER") and (917) 245-0272 (the "GUALTEROS 0272 PAGER"), two digital pagers used by HECTOR FABIO GUALTEROS.

An excerpt of the criminal complaint in the Gualteros case makes clear how much the drug trafficking scheme relied on Herbalife as a front.

cial agent with the United States Customs Service.

*"GUALTEROS told NYSP investigator Jose Rivera that he had purchased the 25 money orders found in his car that day from various U.S. Post Office branches in New York City. GUALTEROS further told Investigator Rivera that he had received the cash used to purchase the money orders from customers of his employer, Herbalife. GUALTEROS also said that the faxed documents contain instructions directing him to distribute Herbalife products and other items to his customers, and that these instructions come from his 'clients in Colombia'."*<sup>22</sup>

Accomplices in the scheme were instructed to act as Herbalife customers, according to page 16 of the affidavit, which described how a woman (later found murdered in her apartment in Queens) used the Herbalife office as a pick-up point for money:

*"GUALTEROS said that he was too busy to come down and meet her and asked her to come up. Ojeda said she was not going upstairs, but that she would send her cousin upstairs. GUALTEROS told Ojeda to tell her cousin to ask for 'Hector' and to say that it was about losing weight."*

22 USA v. I-95-m-174-01, et al, New York Eastern District Court, Case No. I:95-mj-00174-ASC, Document 1, Page 11. <https://www.plainsite.org/dockets/download.html?id=209993626&z=d0066da7>

*As described in court papers and interviews, the ring collected drug money for the Cali cartel and paid it to small New York City companies exporting costume jewelry and watches. Cash was often left in brown paper bags."*

Gualteros worked out of what was ostensibly an Herbalife office in mid-town Manhattan with another distributor, Arquimedes Valencia, the brother of Socrates Valencia, who had been arrested nearly ten years earlier with \$40 million of cocaine in the trunk of his taxi. According to an on-line registry of pay phone owners, Socrates Valencia owned a pay phone at the same address as the Herbalife office.

Furthermore, Gualteros and Arquimedes Valencia had established a New York company called ARQ-HEC Marketing in 1994. That business provided a cover for Gualteros's activities, according to an affidavit filed in the case by Michael O'Brien, a special



Members of the Herbalife inner circle at a hotel on March 30, 1990. Socrates Valencia is on the far right; his sponsor, Frank Jala, is on the far left. Ben Cole is third from the left in the back. Cole recruited a number of top distributors but otherwise kept a low profile. Photograph: Ben Cole via Facebook

Officer O'Brien also noted in his affidavit that during the time period that Gualteros's Herbalife office was under surveillance, cocaine packaged in Herbalife materials appeared at locations across the country.

- On February 15, 1994, the Nebraska State Patrol seized 238 kilograms of cocaine, some of which was packed in boxes bearing the label Herbalife.
- On April 7, 1994, U.S. Customs agents in Savannah, Georgia seized two large bags containing 38 packages of various sizes and shapes that field-tested positive for the presence of cocaine, with the gross weight

of 48 kilograms. Some of the packages were wrapped in Herbalife plastic paper:

- On April 29, 1994, the Beaumont, Texas Police Department seized 201 kilograms of cocaine, some of which was wrapped in packages marked Herbalife.

Gualteros was convicted of money laundering and sentenced to 24 months in prison.<sup>23</sup> Neither Arquimedes Valencia nor Socrates Valencia were charged. Prosecutors told the *New York Times* that Herbalife was not implicated. Nonetheless, what should have been obvious to Herbalife management was that its business opportunity—with its cash sales and parade of visitors—was easily turned into a front for criminal activity. As the company expanded internationally, the value of using it in such a manner increased substantially.

### ***Leaving the Door Wide Open***

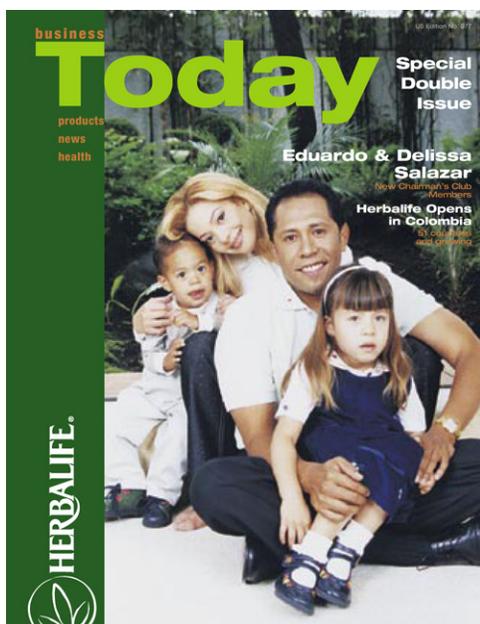
Eduardo Salazar Bracamontes, a former Mexican anesthesiologist who claimed to earn \$140,000 per month with Herbalife was the first Latin American distributor to reach the company's prestigious Chairman's Club.<sup>24</sup> During the 1990s, Salazar developed the Nutrition Club concept, a way to engage those lower on the economic ladder by allowing the sale of Herbalife products in single servings. Distributors created thousands of Nutrition Clubs in their living rooms and in tiny storefronts across Mexico. Individuals were encouraged to visit these clubs daily to learn about nutrition and the potential for wealth through Herbalife.

The Nutrition Club concept spread rapidly through Latin America, and ultimately, to the United States, where it was adopted at the corporate level. Today, there are

<sup>23</sup> *USA v. 1-95-m-174-01, et al*, New York Eastern District Court, Case No. 1:95-mj-00174-ASC.

<https://www.plainsite.org/dockets/2jxlsvdzg/new-york-eastern-district-court/usa-v-195m17401-et-al/>

<sup>24</sup> "Today," U.S. Edition 077, August 24, 2001. <https://www.plainsite.org/realitycheck/hlf/20010824.today.pdf>



Eduardo Salazar Bracamontes with his wife Delissa and children, featured in an Herbalife news magazine.



Ticket to Herbalife "S.T.S." training event in Colombia, with training requirement form in the background.

Herbalife Nutrition Clubs around the world, though they can be difficult to spot. With deliberately limited signage, blocked-out windows, and no advertising, they often appear to be eerily vacant storefronts.

Salazar also created a "training program" to spread his message, and operated under the "Nutricell" brand, according to distributors. Many top distributors followed Salazar's example and created their own training programs, though they offered little in the way of actual training for legitimate work. Distributors are expected to regularly attend classes and listen to other training participants give testimonials about their success with Herbalife's products and its business opportunity.

These sham training programs are generally conducted under a sub-brand, such as "*Universidad del Éxito*" ("Success University"). Distributors have built large international organizations around this concept. For example, Jorge Ruiz, a top Mexican distributor and member of Salazar's downline, based his "Club 100" system on the same model.<sup>25</sup> He expanded the business to the United States with the aid of Colombian distributors who set up a large training center in Miami.

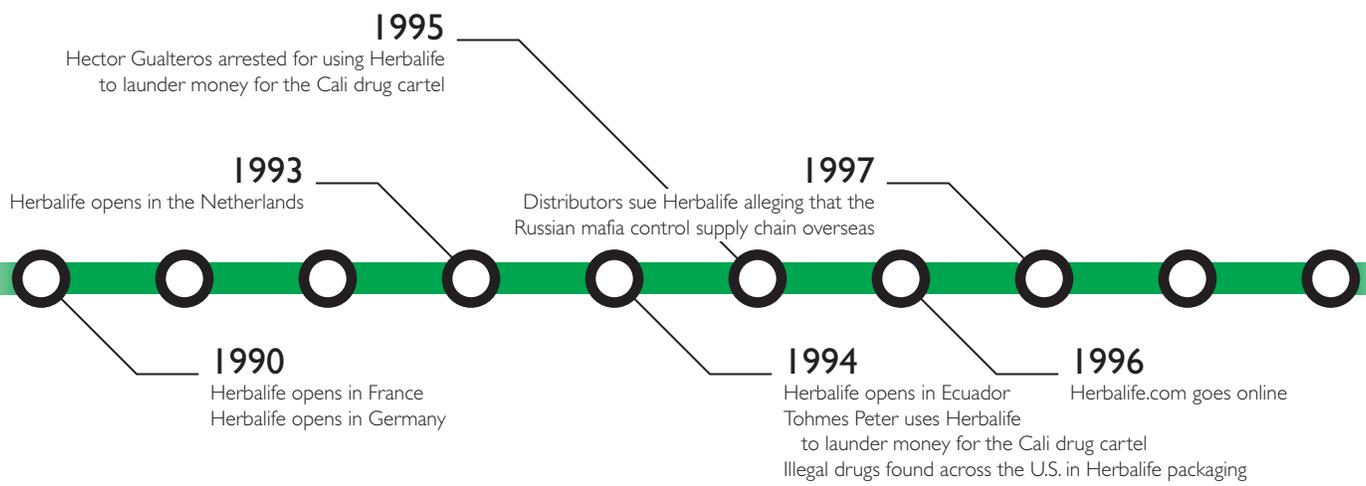
These programs also create the perfect cover for a high-volume business that requires large, centralized purchases by those running the training clubs, not to mention extensive international travel for members of the group to participate in training sessions. As of 2017, the Herbalife training program model is being challenged in federal court in the Southern District of Florida.<sup>26</sup>

To run his business in Mexico, Salazar was allowed to stock his own warehouse, according to a former Herbalife employee. Salazar purchased and then resold products to his Nutrition Club recruits, becoming a wholesaler between Herbalife and a vast network of Nutrition Club operators.

Salazar also took a cue from the Petersons and expanded throughout Latin America

25 Pershing Square Capital Management, LP Presentation, July 22, 2014, "The Big Lie." <http://www.herbalifepyramidscheme.com>

26 *Lavigne et al v. HERBALIFE, LTD et al*, Florida Southern District Court, Case No. 1:17-cv-23429-MGC. <https://www.plainsite.org/dockets/36elbnuu6/florida-southern-district-court/lavigne-et-al-v-herbalife-ltd-et-al/>



ahead of Herbalife’s official planned openings. He recruited in Ecuador and Costa Rica, for example, long before Herbalife set up operations there, according to an April 19, 2015 presentation in Quito, Ecuador by Maria de Lourdes Gutierrez, a President’s Team member. Gutierrez described how Salazar personally chose and trained the people to open his network in what were “virgin countries for Herbalife products at that time.”

The company’s filings with the SEC during the mid-1990s describe a careful expansion strategy in which the company relied on teams of local lawyers to assure compliance with every aspect of local laws:

*“The Company engages in a structured and thorough analysis of potential new markets, including analysis of regulatory conditions, product approval procedures, competitive forces, synergies between new and existing countries and distributor presence or interest in new markets, before selecting markets to enter.”<sup>27</sup>*

In reality, Herbalife was relying increasingly on distributors acting outside of the company’s rules, who in turn worked in concert with third parties, to lay the groundwork for its business in countries with extreme operational risk—a gradual process known internally as “remodeling.”

### ***The Russian Mafia***

In February 1997, U.S. Herbalife distributors Dan and Mary Fallow filed suit against Herbalife in the Superior Court of Maricopa County, Arizona, alleging that Herbalife had diverted money away from the couple’s business to other distributors.<sup>28</sup> Dan Fallow argued that he had been loyal to the company, even going so far as to travel to Europe to help resolve problems with a competitor said to be counterfeiting Herbalife products. The complaint made a startling revelation:

*“During its investigation of the competitor, Herbalife learned that the Herbalife prod-*

<sup>27</sup> Herbalife International Inc. SEC Form 10-K, December 31, 1996.

<sup>28</sup> *Fallow, et al v. Herbalife Intl Inc, et al*, Arizona District Court, Case No. 2:03-cv-02612-SRB. <https://www.plainsite.org/dockets/fap4emh/arizona-district-court/fallow-et-al-v-herbalife-intl-inc-et-al/>

uct in Russia was controlled by the Russian Mafia, and that organization could prevent any legitimate Herbalife operations in Russia without payment to the Mafia. Herbalife pressured Dan Fallow to contact the Russian Mafia and gain its permission for product distribution, paying the Mafia if necessary, and/or using the Mafia to put the competitor out of business ‘quietly.’ Although Dan Fallow feared for his life and asked Herbalife to provide protection for him, it refused to do so.”<sup>29</sup>

The case wound its way through state and then federal courts in the District of Arizona and then the District of Idaho,<sup>30</sup> where it moved again to one of three related dockets in that district’s Bankruptcy Court.<sup>31</sup>

It is easy to see how Herbalife might have lost control of its supply chain in Russia; according to the LinkedIn profile of a former Herbalife employee, the company had as many as eight third parties operating Herbalife’s business there.<sup>32</sup> Among the entities Herbalife worked with was Ahlama Trading Ltd., a shell company based in the British Virgin Islands—a secrecy haven that allows the ultimate beneficial owners of companies to remain hidden from public view.<sup>33</sup> Not only did Herbalife allow Ahlama to be part of its supply chain, but an agreement between the two parties stipulated that Ahlama be allowed to further subcontract Herbalife sales to other parties.<sup>34</sup>

### ***Cali Cartel Redux: The Man of Many Names***

On November 29, 1994, approximately one month after Hector Gualteros was stopped on the Sprain Brook Parkway, attorneys working on behalf of Mary Jo White, former United States Attorney for the Southern District of New York, filed a sealed complaint against more than twenty defendants who comprised a ring responsible for moving more than \$100 million of drug money around the world.<sup>35</sup> The fourth defendant listed was a Hungarian man with Israeli citizenship familiar to the Drug Enforcement Administration (DEA) and possessing many names: Tohmes Peter, also known as “Peter Thomas,” “Peter Thomes,” “Moti,” “Renee,” and “Dr. Thomas G. Peter.”<sup>36</sup>

29 *Clint S. Fallow et al v. Herbalife International, Inc. et al*, Arizona Superior Court, County of Maricopa, Case No. CV 96-03558, Amended Complaint. <http://assets.factsaboutherbalife.com/content/uploads/2016/01/22154845/Exhibit-LL.pdf>

30 *Fallow, et al v. Herbalife Intl, Inc, et al*, Idaho District Court, Case No. 2:04-cv-00175-TLM. <https://www.plainsite.org/dockets/2jw3iprg2/idaho-district-court/fallow-et-al-v-herbalife-intl-inc-et-al/>

31 *Daniel Steven Fallow - Adversary Proceeding*, Idaho Bankruptcy Court, Case No. 03-06021-TLM. <https://www.plainsite.org/dockets/2jw3v0pwc/idaho-bankruptcy-court/daniel-steven-fallow-adversary-proceeding/>

32 The LinkedIn profile of Yona Fichman contains a recommendation for Vlad Hadji, former General Manager for Russia and the CIS for Herbalife EMEA. The statement reads in part, “The Herbalife Russia operation included managing a team of over 50 managers and [sic] staff members, managing 8 3rd parties across [sic] Russia...” See <https://www.linkedin.com/in/yona-fichman-106a6b6/>.

33 The true owner(s) of Ahlama Trading Ltd. used mailing addresses in Petah Tikva, Israel and Saint Petersburg, Russia, and may have been involved in a lawsuit over warehouse space in Kyiv, Ukraine. See the June 26, 2007 decision of the Economic Court of Kyiv, Case No. 3/286. <https://edrsr.dominus.kiev.ua/judgement/772400>

34 “AMENDMENT NO. 1 TO NON-EXCLUSIVE INTERNATIONAL DISTRIBUTION AGREEMENT,” October 8, 2005. <https://www.plainsite.org/realitycheck/hlf/20051008.ahlama.pdf>

35 *The New York Times*, December 1, 1994, “U.S. Says It Uncovered a \$100 Million Drug-Money Laundry.” <http://www.nytimes.com/1994/12/01/nyregion/us-says-it-uncovered-a-100-million-drug-money-laundry.html>

36 Peter—who is not a doctor—used so many aliases that he would occasionally have trouble remembering which name to use. On some court documents that appear to be in his own handwriting, he began writing his name with “Peter” first, then crossed it out, and wrote “Tohmes” followed by “Peter” again afterward.



Thomes Peter, as portayed in a 2013 Swiss flyer advertising a church event for “Die Neue Schule des Lichts und der Erinnerung,” or “The New School of Light and Memory.” According to the Israeli news site Globes, after suing his wife, Susanna, in Israel in 2003 for \$18.5 million, where the judge took into account, “the fact that Peter is a disabled IDF veteran, wounded twice during the Six-Day War and the Yom Kippur War, and that he receives a monthly pension from the state of NIS 4,300, and has no other source of income,” Peter appears to have most recently set up shop in Switzerland.

The criminal complaint alleged that Peter lived in Mulheim, Germany, and in January, 1994 met several of his co-conspirators in Zurich, Switzerland. His role in the money laundering conspiracy is elucidated in a letter sent to Mary Jo White years later by the law firm of Weil Gotshal & Manges LLP, pleading for a presidential pardon for Harvey Weinig, one of the two partners of the now-defunct law firm Hirsch Weinig:<sup>37</sup>

*“In October, 1993 Hirsh advised Weinig that he had been contacted by one of his former Israeli clients—a man named Peter Thomes who was then living in Germany. Hirsch described Thomes as someone involved in world-wide distribution of parallel market or gray market goods including electronic equipment, computer equipment, health and beauty aids and other commodities. Hirsch explained that these products were being sold in geographic areas outside the particular geographic area where Thomes’ companies were authorized to sell and that therefore these unauthorized parallel or gray market transactions were conducted strictly in cash.”*

*“Hirsch went on to explain that one of Thomes’ couriers had been detained in Puerto Rico by the DEA and that approximately \$270,000 in cash had been seized from him by agents who erroneously believed the cash to be the proceeds of illegal drug transactions. Thomes had asked Hirsch to take the necessary legal steps to secure the return of the money as well as another \$260,000 that the courier had left in storage at a San Juan hotel. Hirsch advised Weinig that he had successfully handled a similar*

*matter for Thomes several years earlier when another of Thomes’ couriers had gray market money seized by the DEA in New Mexico. Hirsch told Weinig that he had persuaded the DEA to return the money since there was no evidence that the money was related to drugs. He advised Weinig that as a result of this prior work on behalf of Thomes he (Hirsch) was well versed in seizure law.”*

The lawyers went about hiring a former firefighter, Richard Spence, with “a desire to do investigative work” to fly to Puerto Rico to find the remaining money, who also assumed rights to the funds since Peter was nervous about having his name appear in connection with it. Eventually, the lawyers enlisted the firefighter to regularly handle the transport of Peter’s funds to avoid getting tangled up with the DEA. On February 4, 1994, they set up a New York shell company, Transglobal Import/Export Trading, Inc., and used its bank account “from which [funds were] wired it [sic] to specified locations, primarily in Europe, as instructed by Thomes.” It was at this point that

37 Second Report by the Committee on Government Reform. United States Government Printing Office Report 107-454. 2002. Pages 1,709-1,828.

Hirsch flew to Zurich to discuss the funds transfers with Peter and Swiss bankers. "In March 1994, Hirsch and Spence traveled to Florida to meet with Thomes who was attending a convention held by one of his primary suppliers, Herbalife." Six months later, Hirsch became "a secret government informant and told Weing that Thomes [sic] cash shipments [sic] were the proceeds of drug transactions."

In fact, Thomes Peter was one of the most successful money launderers for the notorious Colombian Cali cartel, which began to threaten the lawyers, Spence and Peter himself when \$2.5 million went missing. It is notable that while Peter chose to use various electronics vendors to provide a cover story, the only non-electronics company he reportedly used to cover his money laundering activities was Herbalife.

While Herbalife was not directly implicated as part of this major money laundering case, the company was now not only turning a blind eye to its distributors engaging in gray market shipping—it was facilitating and tracking the process.

### 62,061 Ecuadoreans Registered as U.S. Distributors

0000002

1	NOTARIA VIGESIMA NOVENA	
2	DEL	
3	CANTON QUITO	
4	CONSTITUCION	
5	En la ciudad de San	
6	Francisco de Quito,	
7	Capital de la Repú-	
8	blica del Ecuador,	
9	hoy día T	
10	( 3 ) de fe bre r o	
11	* HERBALIFE DEL ECUADOR S.A.*	
12	de mil novecientos	
13	noventa y cuatro,	
14	ante mí, Doctor Ro-	
15	drigo Salgado Val-	
16	dez, Notario Vigé-	
17	simo N, vno del Cen-	
18	\$ 20'000.000,00	
19	tón Quito, Comparg	
20	ce: El señor Doc--	
21	tor Alejandro Ponca	
22	Martínez, casado,	
23	en su calidad de -	
24	Mandatarío de las compañías HERBALIFE INTERNATIONAL INC.	
25	HERBALIFE INTERNATIONAL OF AMERICA, INC., conforme	
26	consta de los documentos habilitantes que se agregan.-	
27	El compareciente es mayor de edad, de nacionalidad -	
28	ecuatoriana, domiciliado en esta ciudad de Quito -	
	hábil para contratar y poder obligarse, é quien de -	
	conocer doy fe y dice que eleva a Escritura Pública -	

DR. RODRIGO SALGADO VALDEZ  
Notario Público

The founding documents of Herbalife del Ecuador S.A. were filed on February 3, 1994, just before the reported arrival of Mexican distributor Eduardo Salazar.

According to corporate registry documents in Ecuador, Herbalife del Ecuador S.A. was established on February 3, 1994, fourteen years before Herbalife announced the official opening of the Ecuadorean market until 2008.<sup>38</sup>

Internal Herbalife documents show that distributors recruited in Ecuador purchased millions of dollars of products from the company in the U.S. and were entered into Herbalife's tracking system as U.S. residents. Herbalife shipped their orders to a handful of addresses in Miami, New York and Illinois where the orders were consolidated by freight forwarding companies and sent to Ecuador. Later, after the market formally opened in Ecuador, Herbalife converted these "U.S." distributors to Ecuadorean distributors.

Herbalife not only permitted this activity; it tracked it internally. By the time the market officially opened, Herbalife had 24,162 Ecuadorean distributors registered in its database and another 37,899 "desertions," or distributors who had signed up but stopped ordering, and it had nine

38 Herbalife County Opening Dates, 2012. <https://www.plainsite.org/realitycheck/hlf/20120000.openings.pdf>

President's Team members earnings hundreds of thousands of dollars a year each in commissions.<sup>39</sup>

Ecuador was a risky place to create a massive gray market operation. In the early 1990s, the country was an emerging transit point for drugs and, the United States government feared, for drug money, according to an article published in the *New York Times* in December 1994:

*"Wedged between the two major cocaine-exporting countries, Colombia to the north and Peru to the south, Ecuador has not traditionally been considered an important link in the international narcotics trade. And unlike its neighbors, it has not recently received significant increases in United States aid to battle drugs.*

*But authorities on drug trafficking and American intelligence reports indicate that as Colombia and Peru become more aggressive in fighting traffickers, the Colombian drug cartels are increasingly turning to Ecuador. Ecuador is a natural alternative because of its accessible seaports, good inland transportation routes, proximity to drug-producing countries and relatively loose drug laws."<sup>40</sup>*

In 1999, Herbalife continued to insist that it took "a systematic, proactive approach to working with government and licensing agencies in both new and existing markets to ensure that our products and distribution model are in compliance with all local laws and regulations."<sup>41</sup> This simply wasn't true. Distributors and third parties were taking control of the company's overseas business, allowing Herbalife to push into new markets while offloading the costs. It was an extraordinarily profitable and risky way to do business.

## The 2000s: Death and Sub-Contractors

### *A Drug Overdose*

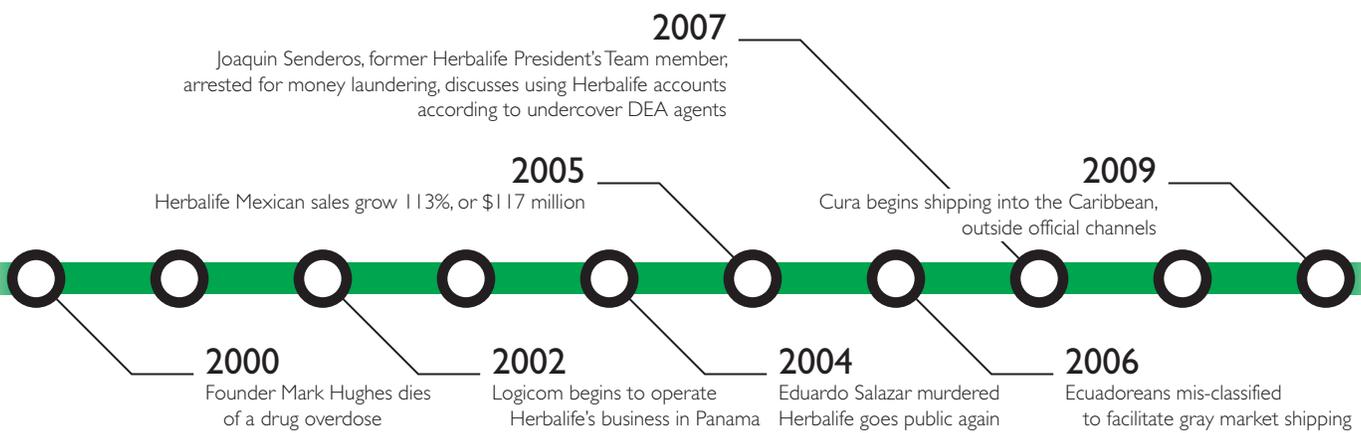
Herbalife's annual net sales doubled between 1995 and 1999, approaching \$1 billion by the end of the millennium. The company was officially operating in 46 countries.

Then, on June 19, 2000, the company's founder, Mark Hughes, was found dead in the bedroom of his Beverly Hills mansion after consuming a toxic cocktail of alcohol and anti-depressants. His death set off decades of court battles over his fortune and left the company leaderless.

39 An internal Herbalife presentation from August 2008 cites 24,162 presumably active "names" in the "LA database," plus another 37,899 "desertions." Ecuador officially opened for business on November 17, 2008.

40 *The New York Times*, December 1, 1994, "U.S. Says It Uncovered a \$100 Million Drug-Money Laundry." <http://www.nytimes.com/1994/12/01/nyregion/us-says-it-uncovered-a-100-million-drug-money-laundry.html>

41 Herbalife International Inc. SEC Form 10-K, December 31, 1999.



Adding to its woes, in 2002, Herbalife was forced to halt sales of its popular weight loss products containing the stimulant ephedrine due to health and regulatory concerns. On April 10, 2002, private equity firms Whitney & Co. and Golden Gate Capital, Inc. swooped in, announcing a plan to take Herbalife private and turn it around. The private equity firms paid \$706.7 million, largely raised through debt, to purchase the company.<sup>42</sup>

Two years later, following a number of changes including the replacement of the company's CEO with Michael Johnson, a former Disney executive, plans were underway to take the company public again.

### ***A Murder in Mexico***

On November 23, 2004, three weeks before the IPO, Eduardo Salazar was gunned down in the street in Mexico City. Press reports said the killing was the result of a commercial dispute between Salazar and George Khoury Layon, a known associate of the Beltran Levya drug cartel. In addition to being one of Herbalife's top distributors, Salazar, it seemed, operated an establishment called El Perro ("the Dog") while Khoury owned a nearby club called El Doberman. According to *El Universal*, Salazar had contracted with hit men to have Khoury killed for 1 million pesos.<sup>43</sup> The hit men informed Khoury of Salazar's intentions, and Khoury offered them more money to turn on Salazar.

Salazar was posthumously inducted into the Founder's Circle, the very top tier of Herbalife's recognition scheme. According to an internal Herbalife document, Salazar's Mexican company, Corporativo Cens S. de R.L. de C.V., received payments from a downline organization that was regularly purchasing around 1.7 million volume points each month, or more than \$2 million dollars per month of Herbalife products.<sup>44</sup> Corporativo Cens is presently owned by his widow, though according to limited Mexican court records, its ownership may be contested by other family members.

<sup>42</sup> Herbalife International Inc., Form S-4, filed November 13, 2002.

<sup>43</sup> *El Universal*, April 11, 2012, "Formal prisión a cómplice de Freyre y Tagle." <http://archivo.eluniversal.com.mx/notas/841068.html>

<sup>44</sup> An internal Herbalife spreadsheet shows the volume on which each distributor can take Royalty Override payments, meaning a 5% commission on each level of a distributor's downline, three levels down.

FOLIO No. : 355311

**COMERCIO**  
**GOBIERNO DEL DISTRITO FEDERAL**  
**REGISTRO PUBLICO DE LA PROPIEDAD Y DE COMERCIO**  
**DIRECCION DE PROCESO REGISTRAL INMOBILIARIO Y DE COMERCIO**

**JURIDICA Y DE SERVICIOS LEGALES**

SE AUTORIZA EL PRESENTE FOLIO REGISTRAR LA INFORMACION DE LA AGENCIA REGISTRAL Y DE COMERCIO. CONTINUACION SE DESCRIBE. FECHA: 04-OCT-2006.

ANTECEDENTES REGISTRALES:

SECCION: VOLUMEN: TOMO:  
FOLIOS: ASIENTO:

**DATOS DE IDENTIFICACION**

DENOMINACION O RAZON SOCIAL: CORPORATIVO CENS, SOCIEDAD DE RESPONSABILIDAD LIMITADA DE CAPITAL VARIABLE

DIRECCION: MEXICO D.F.

DURACION: 99 AÑOS

CAPITAL: \$ 99,000.00 PERMISO DE RELACIONES EXTERIORES: 914944

OBJETO: LA COMPRA, VENTA, IMPORTACION, EXPORTACION, ARRENDAMIENTO, COMERCIALIZACION, DESARROLLO, PROCESAMIENTO, MANUFACTURA, EXPLOTACION Y DISTRIBUCION DE PRODUCTOS DE PRODUCCION, MERCANCIAS Y SUMINISTROS DE MATERIAS EN GENERAL DEL TRAFICO MERCANTIL, Y PRODUCTOS DERIVADOS DE LA ELABORACION DE LOS MISMOS, SEAN EN SU ALCANCE O NO EN SU ALCANCE, PARA COMERCIALIZARLOS EN LA REPUBLICA MEXICANA Y EN EL EXTRANJERO.

11-Jun-15 1 / 1

FECHA DE IMPRESION 04 OCT 2006 16:25:23

FOLIO No. : 355311\*

**SOCIEDADES MERCANTILES**

**CONSEJERIA JURIDICA Y DE SERVICIOS LEGALES**

**CONS DE FC**

GOBIERNO DEL DISTRITO FEDERAL  
REGISTRO PUBLICO DE LA PROPIEDAD Y DE COMERCIO

ENTRADA	FECHA	OPERACION	FECHA DE IMPRESION
518680	03-10-2006	C106	04 OCT 2006 16:27:01

CONSTITUCION SOCIEDAD DE RESPONSABILIDAD LIMITADA

MORALIDAD SOCIEDAD DE RESPONSABILIDAD LIMITADA DE CAPITAL VARIABLE NO. ENTRADA 518680 DE FECHA 03/OCT/2006 FOLIO 355311. SE AUTORIZA EL PRESENTE FOLIO REGISTRAR LA INFORMACION DE LA AGENCIA REGISTRAL Y DE COMERCIO. CONTINUACION SE DESCRIBE. FECHA: 04-OCT-2006.

ANTECEDENTES REGISTRALES:

SECCION: VOLUMEN: TOMO:  
FOLIOS: ASIENTO:

FECHA DE IMPRESION 04 OCT 2006 16:27:01

Excerpts from Mexico City corporate registry documents for Salazar's company, Corporativo Cens, show that his widow has ownership rights. The company may be worth fighting over given its entitlement to revenues from Salazar's Herbalife downline. Unfortunately, civil court documents are inaccessible to non-parties.

In the years to follow, Herbalife attributed the Nutrition Club model to a member of Salazar's downline and the details of his death faded into the background. Salazar became, like Hughes, a legend and a hero to the thousands of distributors recruited every year into Herbalife business opportunities.

### Undisclosed Third Parties

With its return to the public markets, Herbalife became more methodical in its use of third parties. Herbalife makes a few references to these companies in its financial statements, calling them "importers." In fact, importers operate virtually all aspects of Herbalife's business in certain markets. In addition to the obvious work of getting products through customs, they also serve as cash collection centers, track distributor commissions, and assume responsibility for interacting with local government officials. In many ways, these third parties take on the role once reserved for entrepreneurial distributors who bought Herbalife products in the U.S. and transported them through gray markets. They also offer plausible deniability, insulating Herbalife from legal liability in jurisdictions where

bribery is known to be common and the restrictions of the Foreign Corrupt Practices Act (FCPA) might limit an ambitious international company's growth prospects.

Herbalife's disclosure regarding these companies has been minimal. In some cases, public records reveal who owns the contractors that Herbalife relies on to move its products around the world. In others, the information is considerably less clear.

### Logicom Companies

Logicom (an abbreviation for the Spanish "Logística Comercial"), a Costa Rica-based network of companies operated by former DHL executives,<sup>45</sup> has run Herbalife

45 Logística Comercial Website. See <http://www.logisticacomercial.net/leadership-team.html>. See also Danny Sáenz and





Outwardly, there is nothing about a Cura facility to distinguish it from one owned directly by Herbalife. We were unable to find any indication that Cura provides warehousing or shipping services (or any other services for that matter) to companies other than Herbalife. Herbalife covers all of Cura's costs, and payments—collected mainly in the form of cash—are picked up by armored truck and deposited in an Herbalife bank account, according to interviews with former employees.

Cura has assisted Herbalife distributors with moving product overseas outside of official channels. Herbalife entered into an agreement with Cura Resources in 2009 to provide shipping into gray markets in the Caribbean. On February 4, 2010, Cura changed the name of one of its subsidiaries, "Cura Resource Group CT, LLC," to "Icaribbeansolution, LLC" with the Michigan Secretary of State and moved into the international shipping business.

While distributors could order products through Herbalife's official channels, Herbalife instructed them to contract separately for international shipping with Cura. Herbalife even agreed to provide boxes to Cura so that its products could be shipped in a manner indistinguishable from Herbalife-assembled packages.

These off-balance sheet shipping arrangements may help explain Herbalife's seemingly low shipping costs—not to be confused with the extraordinarily high shipping charges imposed on Herbalife distributors. In 2010, the SEC sent a letter to Herbalife management asking how much the company actually spent on shipping, as Herbalife breaks out shipping revenue, but not shipping expenses. The company revealed that it spent just \$58 million, or about 2% of its net sales. In comparison, MLM competitor Avon Products, Inc. (NYSE: AVP), which discloses both its shipping charges and shipping expenses, spent 9%.

Herbalife's ability to overcharge its distributors and somehow transfer or eliminate much of its shipping costs more than accounted for the company's total 2010 net income of \$290.5 million.

### ***Rogue Distributors in Mexico***

By January 2007, distribution had become a major issue for Herbalife, forcing the company to hold an unusually timed conference call outside of the quarterly earnings calendar to announce that it was lowering its guidance due to problems in Mexico. CEO Michael Johnson explained that Mexico was experiencing "growing pains." The day after the January 2007 guidance adjustment, Herbalife's stock dropped 24%. The company eventually terminated 10% of its Mexican sales leaders over compliance issues.<sup>51</sup>

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51 Herbalife Ltd. Guidance Announcement Final Transcript, January 5, 2007, Page 6. Previously available at <http://ir.herbalife.com/static-files/3fd6c95e-5665-46fd-bfe0-d4759a078939>



A map of official Mexican Herbalife distribution points from the company's slides.

Herbalife CFO Richard Goudis later explained that the compliance problems related to “illegitimate” distributors who had infiltrated Herbalife’s ranks and were engaged in “non-compliant activities.” These activities had been fueling Herbalife’s growth.

*“...in markets or in states where we did not have distribution points, very entrepreneurial distributors were driving a pickup truck to a distribution center, picking up product and then selling to people that were not in their organization.”<sup>52</sup>*

Herbalife’s solution was to create more authorized locations at which distributors could purchase and pick up products, expanding its network of warehouses from two locations in 2006 to twenty-one by 2009. In Q1 2010, Herbalife partnered with the Mexican retailer Waldo’s, allowing distributors to pick up products

at any of 300 stores (“productos en más de 300 diferentes tiendas en todo el país”).<sup>53</sup>

Herbalife President Des Walsh explained how innovative distribution strategies were replacing the inappropriate practices of the past:

*“[I]n remote areas where it may take several days for product to reach them, and where it’s not practical for them to have visited in person one of our 20 sales centers, what would happen in that area is that an upline distributor would effectively carry an inventory of product and they would actually sell that to their downline... [Now] you’ve got the increased access with the additional Waldo’s location that are causing those distributors to switch their patterns and buy directly from the company and pick up at a Waldo’s. What that means is that distributor leaders who had a small warehouse who were supplying that inventory, effectively are selling off an inventory, because they no longer need to provide that service to their downline.”*

Further pick-up arrangements were announced with Modatelas, and then drug store chain Farmacias Benavides<sup>54</sup> in 2013 and convenience store retailer Oxxo in 2014, when the head of Herbalife’s Mexico operations said there would be 700 places for Herbalife distributors to pick up their products in Mexico.<sup>55</sup>

## Life, Death & Victory

In 2007, a former Herbalife President’s Team member named Joaquin Alejandro Sen-

<sup>52</sup> Bank of America Securities Consumer Conference, March 12, 2009.

<sup>53</sup> *Expansión*, May 28, 2012, “México, Mercado Clave Para Herbalife.”  
<https://expansion.mx/negocios/2012/05/25/herbalife-americana-de-corazon-mexicano>

<sup>54</sup> *Expansión*, December 18, 2013, “Herbalife y Benavides Firman Convenio.”  
<https://expansion.mx/negocios/2013/12/18/farmacias-benavides-vendera-herbalife>

<sup>55</sup> *El Universal*, August 6, 2014, “Entrevista: Herbalife, en busca de alianza con Oxxo.”  
<http://archivo.eluniversal.com.mx/finanzas-cartera/2014/impreso/herbalife-en-busca-de-alianza-con-oxxo-112381.html>



Joaquin Alejandro Senderos Higuera, as a young money launderer promoting his Life & Victory Multi-Level Marketing company, and as a prisoner in Mexico around 2011 shortly before his death believed to be at the hands of prison guards.

Senderos Higuera was arrested in Mexico for laundering drug money through Life & Victory, his own knock-off version of Herbalife. Life & Victory used its presence in the United States, Mexico, Panama and Colombia to launder money for the Beltran Leyva drug cartel. It would take nearly a decade for the operation to be halted by the DEA and Mexican law enforcement.



A 1990s-era canister of peach flavored Life & Victory “C-Luet” dietary supplements.

When Senderos left Herbalife in 1994, the same year Hector Gualteros and Tohmes Peter were moving money for a different cartel, he took Herbalife’s then-head of Distributor Relations with him. The “Life and Victory International Marketing Network, Inc.” was incorporated on February 17, 1993 in Florida, while “Life & Victory, Inc.” was registered in California seven months later on September 8, 1993, followed by another entity with the same name that was formed in the Cayman Islands on March 8, 1994. By 1995 Life & Victory was registered in Argentina and Colombia as well. According to the company’s website<sup>56</sup>, in 2006 Life & Victory promised “the food of the future” and had a nominal presence in “Argentina, Brasil, Colombia, España, Gran Caimán, Israel, Panamá, Puerto Rico, Rusia, USA y México.”

It is unclear whether Life & Victory was intended to actually sell nutritional supplements in its early days, or whether it was always a front for drug smuggling. Either way, Senderos made an effort to appear legitimate, uploading the company’s first website around 2001 with the tagline of “Convertimos la Nutrición en Diversión,” or in English, “We Turn Nutrition into Fun.” Product lines included “L&V Bears” (a gummy vitamin product), “L&V A-Life,” “L&V B-Ignited,” and “L&V C-Luet.”

In Colombia and Mexico, Senderos also registered companies under a variation of the “Nutricell” name, but with only one “L”—similar to the name Eduardo Salazar had used to brand his Herbalife business. He set up other companies in Mexico as

<sup>56</sup> Previously, Life & Victory’s website was located at <http://www.lifeandvictory.com>. A version from 2006 can be accessed via the Internet Archive at <https://web.archive.org/web/20060106052651/http://www.lifeandvictory.com:80/>.

Expediente Nro:	94 030542	Fecha Solicitud	2004-09-21 16:43:59
Denominación MARCA:	<b>LIFE &amp; VICTORY</b>	Tipo:	NOMINATIVO
Certificado:	204233		
Clasificación Niza:	32 Versión 7		
Vigencia:	16/09/2007		
Titular:	<b>HERBALIFE INTERNATIONAL, INC.</b>		
De:	INGLEWOOD NEW JERSEY ESTADOS UNIDOS		
Dirección:	sin establecer		
A:	LOS ANGELES CALIFORNIA ESTADOS UNIDOS		
Dirección:	1800 CENTURY PARK EAST, LOS ANGELES, CALIFORNIA 90067		
Apoderado:	ALICIA LLOREDA RICAURTE		
Fecha Anotación	2004-09-23 16:58:37		

Expediente Nro:	94 032660	Fecha Solicitud	2004-09-21 16:43:12
Denominación MARCA:	<b>LIFE &amp; VICTORY</b>	Tipo:	NOMINATIVO
Certificado:	192683		
Clasificación Niza:	29 Versión 7		
Vigencia:	25/11/2006		
Titular:	<b>HERBALIFE INTERNATIONAL, INC.</b>		
De:	INGLEWOOD CALIFORNIA ESTADOS UNIDOS		
Dirección:	sin establecer		
A:	LOS ANGELES CALIFORNIA ESTADOS UNIDOS		
Dirección:	1800 CENTURY PARK EAST, LOS ANGELES, CALIFORNIA 90067		
Apoderado:	ALICIA LLOREDA RICAURTE		
Fecha Anotación	2004-09-23 16:57:52		

*Herbalife International, Inc. in Los Angeles appears as the applicant for two Colombian trademarks on "Life & Victory," the supplement brand name used by Mexican money launderer Joaquin Alejandro Senderos Higuera.*

well, detailed in what appears to be a transcript of a Mexican court document for File Number 22/2008 that somehow leaked onto the internet.<sup>57</sup>

Herbalife had some sort of interest in Life & Victory. In July 1994, it began to register trademarks for the name in Chile, Uruguay, Bolivia, Colombia and Venezuela and continued with registrations all the way up to August 2007, around the time Senderos was arrested.<sup>58</sup> Later, Herbalife borrowed against the value of the Life & Victory trademarks, which were included in a list of more than 2,000 trademarks attached to their credit agreement.

In January 2012, the *New York Times* ran an article about a controversial DEA operation to infiltrate Mexican and Colombian drug smuggling operations by having government informants pose as money launderers.<sup>59</sup> The article detailed conversations recorded by the DEA in which an unnamed individual described for undercover agents how he used pre-paid debit cards and Herbalife accounts to move money. A FOIA request to the DEA yielded mostly redacted pages of biographical information about Senderos, with the key details of his crime largely omitted.<sup>60</sup> In response to several follow-up requests to the DEA concerning Herbalife or any of its global subsidiaries, the agency stated that "we could not positively match our search results," implying that it had never heard of the company—a statement contradicted by multiple sources.<sup>61</sup>

The source of the comments described by the *New York Times* was revealed to be Joaquin Senderos in an article published in Mexican magazine *Eme-Equis* (Spanish for "M-X").<sup>62</sup> In conversations with undercover agents that were later fully described in a Mexican extradition document, Senderos explained how he strove to avoid **Suspicious Activity Reports (SARs)** filed by banking institutions by structuring his transactions in amounts with extra cents, such as \$9,500.06. He also described how he regularly used pre-paid debit cards to avoid dealing with banks entirely while moving money across international borders. Many pre-paid cards allow for ATM cash withdrawals; some even connect directly to the **Automated Clearing House (ACH)** network and function as de facto bank accounts.

**Key Term**

**Key Term**

57 File Number 22/2008 Document. <https://www.plainsite.org/realitycheck/hlf/20071201.files.pdf>

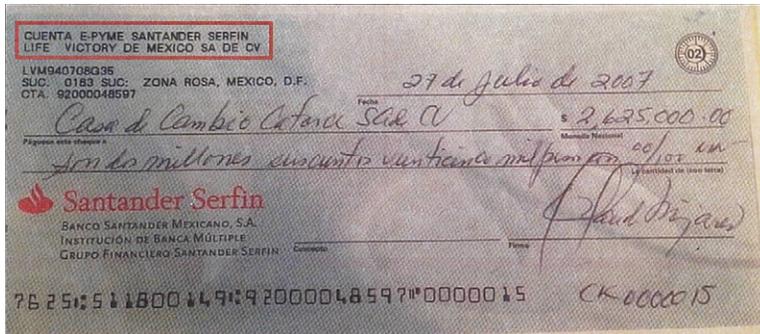
58 Third Amendment to Herbalife Credit Agreement with Bank of America dated May 4, 2015, Exhibit 10.40.

59 *The New York Times*, January 9, 2012, "U.S. Agents Aided Mexican Drug Trafficker to Infiltrate His Criminal Ring." <http://www.nytimes.com/2012/01/09/world/americas/us-agents-aided-mexican-drug-trafficker-to-infiltrate-ring.html>

60 United States Drug Enforcement Administration FOIA Request 15-00428-F Response. <https://www.plainsite.org/realitycheck/hlf/20150702.deafoia.pdf>

61 United States Drug Enforcement Administration FOIA Request 18-00365-F Response. <https://www.plainsite.org/realitycheck/hlf/20180309.deafoia.pdf>

62 *Eme-Equis*, January 8, 2012, "El Cártel de la DEA." <http://www.m-x.com.mx/2012-01-08/el-cartel-de-la-dea-2/>



Check number 0000015, dated July 27, 2007 and drawn on Life & Victory de Mexico S.A. de C.V.'s bank account at Banco Santander Mexicano, S.A. for \$2.625 million, payable to a Mexican "casa de cambio," or currency exchange house.



Herbalife pre-paid debit cards. Photographs: Facebook



A page of the Mexican newspaper Mural from January 29, 2008: "Drug cartel money laundering via pre-paid debit cards."

Whether Senderos was actually using "Herbalife" in the recorded conversation as a shorthand for Life & Victory, or whether he was still using his actual Herbalife distributorship to launder money is unclear. However, Herbalife has long offered its distributors the option of receiving sales commissions by pre-paid debit card in numerous countries, and this option was available in 2007.

Senderos died in a Mexican prison under suspicious circumstances before he could be extradited to the Northern District of Texas, where he was charged by American authorities.<sup>63</sup> Documents pertaining to his exact role in the criminal case outlined by U.S. prosecutors remain sealed.

While the revelations surrounding the Senderos case might have been expected to set off alarm bells at Herbalife headquarters, company management remained silent about the situation and did not provide compliance staff with any guidance for how to detect or

prevent such activity going forward. According to a former Herbalife employee,

*"I became aware of the fact that a Mexican Herbalife distributor, Joaquin Senderos Higuera, was indicted and incarcerated in Mexico in 2008 for suspicion of money laundering... I believe that others outside of the Compliance Department, including Herbalife executives, also were aware of the allegations surrounding Mr. Senderos Higuera.*

*Generally, in the Compliance Department, the allegations regarding Mr. Senderos Higuera were not taken seriously and instead the stories were just passed around among certain teams in the Compliance Department but nothing was done to investigate them or follow up on them..."*

63 USA v. Poveda-Ortega et al, Texas Northern District Court, Case No. 3:10-cr-00073-K. <https://www.plainsite.org/dockets/t7rt9sj8/texas-northern-district-court/usa-v-povedaortega-et-al/>

# Herbalife Today

## Herbalife's Network of Mexican Warehouses

During Herbalife's Q1 2015 conference call on February 28, 2015, CEO Michael Johnson told investors about a number of changes regarding distributor qualification in Mexico, including a crackdown on something called "field sales," or product purchases made by distributors at warehouses owned by upline distributors. Going forward,

he said, field sales would no longer be counted toward a distributor's advancement in the marketing plan—Herbalife's formal name for its pyramid. Instead, distributors would need to purchase products directly from Herbalife. The crackdown was weighing on sales in Mexico and would likely continue to be a drag on sales during the first quarter, Johnson warned.



*Humberto Jaimes delivers the Herbalife gospel at his Tecamac warehouse with boxes of inventory stacked in the background. While other photographs from his warehouse depict blenders and kettles, these boxes appear to be Herbalife product.*

Despite years of disclosure regarding Herbalife's efforts to create distribution points in Mexico, it turned out that most of the product sold in Mexico was being purchased in bulk by a handful of top distributors and then resold to their downline members out of warehouses.

Herbalife was clearly aware of how the system worked. A distributor in Mexico explained to us that a few high-level distributors purchased the products from Herbalife and stored them in warehouses in Mexico. Top distributors later filled out a form instructing Herbalife to reallocate credit for those purchases to lower-level distributors.

Even after Herbalife said it was cracking down on the field sales process in early 2015, it was impossible to confirm who was really in control of the distribution system in Mexico. The company's website for Mexico shows a long list of warehouses where distributors can pick up products. Yet when we called the warehouses and asked who owned them, we got varying responses. At some, employees identified the owner as Herbalife but at others they mentioned "Logicamex" and "Logistica Laborales."

In 2016, researchers visited an Herbalife warehouse in Queretaro, Mexico, which was identified in Mexican business directories as being operated by Logicamex S. de R.L. de C.V. A distributor picking up products at the warehouse said that it belonged to Herbalife Chairman's Club members Enrique Varela and Graciela Mier, whom she said had been granted the right to run the warehouse by Herbalife.

On June 27, 2016, two top Mexican distributors promoted the grand opening of a



*Herbalife's Acapulco offices in Guerrero, Mexico, featuring frosted glass to prevent passers-by from seeing inside. Guerrero is known to be a center of opium poppy production and is vital to the U.S. heroin trade. Accordingly, Guerrero has been racked by violence. Photograph: Google*

sales center in Monterrey: Cecelia Benitez, the daughter of Herbalife Chairman's Club member Raquel Cortes, and her husband, Daniel Carmona.

Herbalife lists only one sales center for Monterrey located on Avenue Cristobal Colon. We called the official center, which confirmed the existence of the unlisted, new center and helpfully provided a phone number and location: a shopping center in an area called Linda Vista.

When we called the new center, an employee told us that Logicamex ran the operation. We asked if Raquel Cortes owned the center and the employee said it was possible as Cortes

had attended the opening.

Like Russia, it seems that Mexico has a huge network of third parties actually operating the business on the ground. In an e-mail exchange forwarded to us by an analyst, CFO John DeSimone stated "Logicamex is one of 8 logistic providers we have in Mexico and operates 18 sales centers. To be clear, inventory at these locations are on HLF's [balance sheet] and revenue is recognized when the product is sold to our Members." Oddly, this network has never merited any public mention despite numerous disclosures regarding warehousing and distribution in Mexico.

In 2014, an article in *The Atlantic* about Herbalife's pyramid scheme structure contained the parenthetical aside from the author, Frank Partnoy: "An Herbalife spokesman told me that in 2013 the company's board of directors responded to allegations about money laundering in Mexico by hiring a third-party investigator, who found no support for the claims."<sup>64</sup>

There was no mention of whether Herbalife's investigation extended to third parties, which are clearly intertwined through Herbalife's business operations in Mexico.

## Hundreds of Shipments to Lebanon

In March 2014, according to publicly available U.S. export data, Herbalife began to send large amounts of product to Lebanon, a small country in a war-torn region that has never merited a public mention by Herbalife management. According to

<sup>64</sup> *The Atlantic*, June 2014, "Is Herbalife a Pyramid Scheme?" <https://www.theatlantic.com/magazine/archive/2014/06/wall-streets-6-billion-mystery/361624/>

Registration Certificate  
of a Commercial Company

شهادة تسجيل شركة تجارية

The Head Clerk of the Civil Court of First Instance in Beirut (Commercial Register) certifies that the commercial company known as:

ان رئيس ظم محكمة الدرجة الاولى المدنية في بيروت (السجل التجاري) يثبت ان الشركة التجارية المعروفة باسم:

"WELLNESS SARL"

"ولنس سن.م.م."  
"WELLNESS SARL"

was registered on the 6 April 2004 in the special Commercial Register under No. /1002616/ R.C. in accordance with the articles N° 26 and 49 of the Commercial Law.

قد نقيت بتاريخ ٦ نيسان ٢٠٠٤ في سجل التجارة المخصوص تحت رقم /١٠٠٢٦١٦/ من.م.م. وفقا للمادتين ٢٦ و٤٩ من قانون التجارة.

Therefore, the present certificate was issued at the request of the director Mr. Omiros Christodoulides, to be used whenever legally required.

وطيه قد اصطيت هذه الشهادة بناء لطلب مدير الشركة السيد اوميروس كريستودوليدس ليعمل بها حسب مقتضى القانوني.

On the

في



Commercial Circular  
"WELLNESS S.A.R.L."  
C. R. - / - Beirut  
Capital /5.000.000/ L.L. Fully paid

إذاعة تجارية  
شركة "ولنس سن.م.م."  
سجل تجاري - / ١٠٠٢٦١٦ - بيروت  
وأسمالها /٥,٠٠٠,٠٠٠/ ل.ل. محرزاً بكامله

Object of the Company

موضوع الشركة

The company shall be involved in general trade except commercial representation and export-import, and more specifically in the trade of nutrition products. It may carry out any trading operation not prohibited under Lebanese Laws.

تتعامل الشركة التجارة العامة باستثناء التمثيل التجاري والاستيراد والتصدير، وبشكل خاص المواد الغذائية. ويمكنها القيام بجميع الأعمال التجارية التي لا يحظرها القانون.

The Company may also participate by all manners in any other business related directly or indirectly to the object of the company under the legal limitations.

كما ويمكن ان تشارك وبأية طريقة كانت في أي نشاط متصل مباشرة او غير مباشرة بموضوع الشركة وذلك ضمن الحدود القانونية.

Right of the signature:

The company is only engaged, by the signature of its chairman, Mr. Marios STYLIANIDIS solely.

حق التوقيع:

تلتزم الشركة بتوقيع مديرها السيد ماريوس ستيليانيدس بالانفراد.

The signature of the chairman Mr. Marios STYLIANIDIS:

يوقع المدير السيد ماريوس ستيليانيدس هكذا:

Hoping for your collaboration,

آملين التعاون،

Best regards

وتفضلوا بقبول الاحترام

Corporate filings from Beirut indicate that Wellness SARL is linked to third-party logistics company Filuet Group through director Omiros Christodoulides, and is officially run by an unknown Cypriot individual named Marios Stylianidis.

the Zepol data service, in 2014, 217 Lebanon-bound shipments containing 2,130 metric tons of product were routed through the Netherlands, where Herbalife's Venray distribution center is located. That's the equivalent in weight to 3.6 million canisters of Formula 1, about one canister for every adult in the country.<sup>65</sup>

These shipments, which began on March 26, 2014—and continued for almost a year at the rate of approximately one shipment per business day—made Lebanon Herbalife's largest export market for all of 2014, according to the data.<sup>66,67</sup> These shipments also conveniently helped to offset a sharp decline in Herbalife's Venezuela sales.

When we called to ask Herbalife about these sales, the company's Vice President of Global Affairs, Alan Hoffman, insisted no shipments had been made to Lebanon. We called the telephone number for Lebanon listed on Herbalife's worldwide address list and reached a company called Wellness SARL<sup>68</sup> in Beirut. The office manager told us that Wellness SARL is an independent company whose sole business is to import Herbalife products into Lebanon. Wellness SARL has virtually no on-line profile, which is not atypical for Lebanese companies.

65 These figures assume that all product shipped is Formula 1 in a 550-gram canister and that each canister is shipped with an additional 50 grams of packaging material, for a total of 600 grams per canister. The World Bank estimates that there are 4.6 million legal residents of Lebanon, and assumes that 25% of Lebanon's citizens are less than 18 years of age. By these calculations, there are 3.45 million adult residents in the country.

66 The data are a compilation of all exports by Herbalife or its subsidiaries from the U.S. The results were ranked based on the identified final destination for the shipment. The dataset used includes ocean-bound shipments only and therefore excludes most exports to Mexico.

67 In March 2015, a Zepol representative confirmed, "Either Herbalife is exporting to Lebanon or Herbalife and/or Customs is making an error within the shipping documents." Data from another service provider, Panjiva, matched the trade data from Zepol.

68 SARL is an abbreviation for the French "Société à responsabilité limitée," commonly used as a corporate suffix in French-speaking nations.

Wellness SARL's corporate registration documents indicate that the company has three managing partners: Totalserve Management Ltd., Totalserve Consultants Ltd. and a Lebanese lawyer. The Totalserve entities, based in Cyprus, own 95% of Wellness SARL according to the registration. Totalserve Group is a network of companies in Cyprus affiliated with the Cypriot law firm E & G Economides LLC. Totalserve appears to employ over 100 individuals worldwide and manages an unknown number of shell companies, corporate filings, and tax issues for wealthy individuals, many of whom are of Russian origin.

Wellness SARL also has a Russian link: its director Omiros Christodoulides is the Chief Operations Officer of Filuet Group, Herbalife's third-party logistics company that handles Herbalife's operations in Russia and the former Soviet republics.

If Herbalife actually did ship millions of canisters of Formula 1 into Lebanon, no one can explain where it went. In June 2015, after Zepol confirmed that its records were accurate, Herbalife again insisted that the Lebanon destination designations were errors introduced by a third party, not by the company. Zepol suggested Herbalife take up the issue with the United States Customs and Immigration Service (USCIS) as it had no reason to believe its data did not reflect Customs data.

Lebanon abruptly stopped appearing as a final destination in Herbalife's customs data in late January 2015. Later, there was a trickle of Lebanese transactions and then none after June 2015. If someone mistakenly entered "Lebanon" as the final destination for 245 shipments of Herbalife products that were shipped to the Netherlands, it is not clear why the problem was solved prospectively, but not retrospectively, as data can be amended.

In the fall of 2015, we asked Alan Hoffman again about the Lebanese shipments. Over the phone, Mr. Hoffman said the third-party data could not be relied upon; that it contained mistakes and that Herbalife had been in contact with USCIS regarding those mistakes. He suggested contacting Commissioner Gil Kerlikowske, whom he knew well.<sup>69</sup> Commissioner Kerlikowske refused to entertain our requests.

Corrections to customs data are common, but thus far, it does not appear that any of the relevant Herbalife export records have been amended. A related FOIA request has been pending ever since—for about three years.

## The "Immaterial" Indonesia Subsidiary

Of all of Herbalife's many global subsidiaries—some located in extraordinarily small markets—Indonesia presents another puzzle. An analyst asked about Indonesia on

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<sup>69</sup> Mr. Hoffman was Deputy Assistant to President Obama and Deputy Chief of Staff to Vice President Joe Biden before joining Herbalife.

the company's May 9, 2018 conference call to discuss Q1 2018 earnings. The analyst noted that Indonesia and India were two markets "that don't get talked about as much" and was hoping to learn if there was anything in particular driving growth. Indonesia is considered part of the Asia Pacific region, an area that has reported sales growth for 32 straight consecutive quarters.

Herbalife Co-President and Chief Strategic Officer John DeSimone fielded the question, providing essentially no information on the market:

*"I think Indonesia, actually, was a—coming off a tough comp, but it's just—it's normal, it's single digits, it's a good market with a lot of opportunity for us. I think it's the seventh largest market. Its growth rate is a little, actually, lower than it was in Q4 sequentially. One of the things that I thought was interesting this quarter, I didn't mention so far, is of our number markets we're in, 70% of them actually had sequential improvement in their volume point trends versus Q4, right?"*

According to a July 26, 2012 credit agreement between Herbalife and Bank of America, PT Herbalife Indonesia is 99.82% owned by PT Dian Gatra Mokmur. Herbalife identifies PT Herbalife Indonesia in its credit agreement as an "immaterial" subsidiary. Virtually no information about PT Dian Gatra Mokmur is publicly available; the on-line Indonesian Registered Importer database appears to have been last updated in 2011.

In the first quarter of 2018, Herbalife reported sales for Indonesia of \$35 million, or \$140 million on an annualized basis, a not insignificant market for Herbalife and a market in which growth continues to compound. Even more striking, according to Zepol trade data, Indonesia was the top destination for Herbalife products produced in the U.S. and shipped via sea between 2010 and 2015 (the most recent data available).

## The Venezuelan Money Transfer Scheme

At the time of this report's writing, Venezuela is a failed state enmeshed in a seemingly perpetual tragedy where many thousands are going hungry. For many years, Venezuela's progressive demise could be tracked by following its currency, the Bolivar, which fractured into a complex system involving four official exchange rates before unifying again in 2018 amidst hyperinflation.<sup>70,71</sup> Despite this chaos, Herbalife was able to sell an extraordinary amount of product in Venezuela.

An internal Herbalife document dated June 15, 2009 outlines in great detail the company's belief that it had inadvertently created "a [distributor] arbitrage opportunity at the expense of [Herbalife]" due to the mispricing of its product. The presentation

70 Bloomberg News, February 19, 2015, "Venezuela, the Country With Four Exchange Rates." <https://www.bloomberg.com/news/articles/2015-02-19/venezuela-the-country-with-four-exchange-rates>

71 Financial Times, February 1, 2018, "Bolívar rallies after Venezuela unifies exchange rates." <https://www.ft.com/content/26d539d0-076d-11e8-9650-9c0ad2d7c5b5>

## How does this tie into Venezuela??

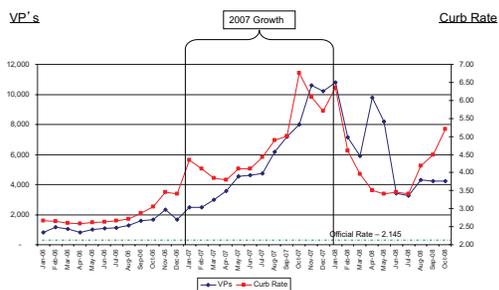
- Venezuela has two currency exchange rates
  - The **Official rate** for certain imports and payments deemed critical to the country
    - This rate is fixed by the VZ government at 2.15 VEB/USD – i.e. the “controlled rate”
  - The “parallel” or “**curb rate**”, for all other imports and payments
    - This rate fluctuates based on inflation and local availability of USD and is essentially the “free market rate”
    - Since 2007 this rate has been as low as 3VEB/USD and high as 7 VEB/USD
    - This is the primary rate that HLF has access to for repatriating cash**
- Two major impacts of these dual currencies
  - Makes it expensive for HLF VZ to pay for product that it imports and to get cash out of the country to pay OC royalties
  - Due to the unique HLF marketing plan, it creates a DS arbitrage opportunity at the expense of HLF

HERBALIFE

Making the world healthier.

In an internal 2009 presentation, Herbalife acknowledged that it had inadvertently created a lucrative way for Venezuelan distributors to game the system of exchange rates.

## VP' s / Curb Rate Relationship



VP growth is directly correlated to the change in curb rate

HERBALIFE

Making the world healthier.

In the same presentation, Herbalife directly attributes its growth in Venezuela to the “change in curb rate,” referring to one of Venezuela’s exchange rates, suggesting that its business there is a sham.

even contains several graphs showing the neat correlation between one of Venezuela’s exchange rates and its growth in volume points.

According to the company’s own theory, Venezuelan distributors were able to purchase cheap Herbalife products in Bolivars because Herbalife did not increase prices to fully reflect skyrocketing inflation in Venezuela. Meanwhile, distributors’ uplines could earn commissions on those purchases in U.S. dollars—sometimes at highly favorable exchange rates—by claiming to live outside of Venezuela. An Herbalife organization, with some members claiming to live in Venezuela and others claiming to live outside the country, could therefore purchase Herbalife products at an effective discount in Bolivars and receive commissions in U.S. dollars, using Herbalife’s payment system as a way to exchange bolivars for dollars and move those dollars overseas.

A former Herbalife executive in Venezuela described the arbitrage scheme in an interview, noting that a distributor claiming an overseas address could get “10 times the income” by being registered overseas.<sup>72</sup> The economics of the business were so attractive, in fact, that employees were known to have quit their jobs with Herbalife to become distributors, drawing commission checks of \$10,000 to \$20,000 USD per month.

Herbalife’s corporate structure somewhat obscures the flow of funds that made it possible for the company to subsidize what was essentially a massive giveaway to its top distributors. Herbalife’s Venezuelan subsidiary is 99.99% owned by a Netherlands-registered entity called Netherland VidaHerbal Cooperatief UA, according to a credit agreement Herbalife filed with the SEC. Owners of that company are hidden behind a firm that registers shell companies called TMF Management BV, according to registration documents in the Netherlands. The only name that appears on the registration documents is Rich Goudis, the company’s current CEO, who is described in the documents as liquidating Netherland VidaHerbal Cooperatief in 2008, raising questions about how it could continue to own the Venezuela subsidiary in 2012.

<sup>72</sup> One source described a Venezuelan scheme involving false claims by a specific doctor that Herbalife products could “cure” diabetes, which may have caused the Venezuelan government to approve Herbalife imports under a more favorable exchange rate intended to be used for medicine.

Distributors may have also used the gray market to bring products purchased in the United States into Venezuela, using their own local connections to obtain U.S. dollars for their imports. Herbalife stated that it was unable to obtain a significant amount of dollars at any rate from the Venezuelan central bank after about 2010. Bribing government officials to obtain access to Venezuela’s U.S. dollar reserves for questionably “essential” imports or for imports at inflated prices was a profitable activity for corrupt businesspeople and politicians until the scale of corruption in Venezuela, coupled with its many other political problems, essentially bankrupted the country.

Anomalies in Herbalife trade data suggest the company’s products were being moved through the through the gray market and into Venezuela. For example, Herbalife sent hundreds of shipments of its products mislabeled as “medicamentos” (medicine), “especialidades farmaceuticas” (specialty pharmaceuticals), “conservas comestibles” (preserved food), and “leche” (milk) to Ecuador beginning in 2008. These shipments do not appear to have cleared customs in Ecuador and may have been shipped on to another country.<sup>73</sup> The misleading labels eased the importation of Herbalife products into Venezuela under a government program that subsidizes essential imports, such as medicines, and allowed the Ecuadorean exporter to receive U.S. dollars from the Ecuadorean central bank via a regional trade agreement.

If Venezuelan distributors could use the purchase of Herbalife products to circumvent government controls on moving money out of the country, it is likely that the many drug cartels active in Venezuela would also be tempted by that same mechanism.

## Drugs in Canisters and Nutrition Clubs

In addition to money laundering, Herbalife’s business has also been used repeatedly to camouflage drug smuggling and distribution. As shown time and again in Mexico, Ecuador, Lebanon, and Venezuela, Herbalife’s international MLM businesses model selling powered products, combined with cash sales practices, policies requiring covered Nutrition Club windows and doors, visitors who come and go, and a ready stash of plastic canisters, presents unique risks. We found numerous recent instances of Herbalife distributors involved in drug-related criminal activity.



Brazilian DEIC agents proudly display the stash of Herbalife containers, drugs, BlackBerries and cash confiscated from a raid on a narcotrafficking ring in the state of Alagoas using Herbalife as cover. Photograph: O Dia Alagoas

In 2012, members of the Divisão Especial de Investigações e Capturas (DEIC) arrested several members of a narcotrafficking ring in the Brazilian state

73 Mislabeled product shipments lacked information to indicate that they cleared by customs in Ecuador, including harmonized codes, which are used by countries around the world to categorize types of products for customs purposes; location of the customs office that cleared the shipment; and customs declaration numbers.

of Alagoas (on Brazil's far eastern coast) that used Herbalife as its cover for importing cocaine from Bolivia. Nutrition Clubs in Maceió and the inland city of Arapiraca were specifically identified. According to the English translation of a newspaper article in *O Dia Alagoas*, a major Brazilian newspaper, "At the site there were several pots of Herbalife weight loss shake and R\$3,500.00 in cash. An unknown amount of crack and about 10 kilograms of marijuana were also found."<sup>74,75</sup>

In the United States, a 2012 court case, *People v. Guizar*,<sup>76</sup> details how an Illinois Nutrition Club provided a convenient venue to arrange a drug deal two years prior:

*"Sandoval then testified to the following facts regarding the narcotics transactions of May 20, May 25, and June 3, 2010. He first met defendant approximately 15 days prior to May 20, 2010, at Herbalife, 'a club where they sell tea to drink.' Defendant initiated a conversation with Sandoval. Defendant informed Sandoval that he could provide Sandoval with cocaine to sell."*

In Middletown, Connecticut, Wanda Lee Sampel and Leal R. Pickering were selling illegal drugs out of their home, and told police that a substance they were transporting in a plastic bag was Herbalife. "Despite Sampel's claims that the bag was full of Herbalife, which she said she used for weight loss[, p]olice tested it and the results showed it was heroin."<sup>77</sup>

In another criminal case eventually dismissed in 2014,<sup>78</sup> Armida Aragon-Arroyos was charged for drug trafficking. She remains on the DEA's list of fugitives. The DEA notes, "ARAGON-ARROYOS was self-employed as a Herbalife Supervisor and she has a scar on her left shoulder."<sup>79</sup>

In a letter from the SEC to former Herbalife CEO Michael Johnson on December 2, 2014, Senior Assistant Chief Accountant Tia Jenkins raised the following concern:

*"We note recent media publications that a Pedro Cardoso was charged by the Government of Brazil with money laundering or embezzlement-related crimes. Please tell us whether your current board member, Mr. Cardoso, is the subject of a criminal complaint. See Item 401(f)(2) of Regulation S-K. If so, please tell us how you intend to address this in your disclosure."<sup>80</sup>*

74 *O Dia Alagoas*, December 11, 2012, "Polícia desarticula quadrilha que vendia droga em shakes da Herbalife."

75 *Melhor Notícia*, December 11, 2012, "DEIC desarticula quadrilha que refinava e comercializava drogas em Clínica de Estética." <http://melhornoticia.com.br/noticia/policia/mn50751519/deic-desarticula-quadrilha-que-refinava-e-comercializava-drogas-em-clinica-de-estetica>

76 *People v. Guizar*, 051614 ILCA1, 1-12-0525

77 *NBC Connecticut*, September 24, 2012, "Middletown Couple Accused of Selling Heroin." <https://www.nbcconnecticut.com/news/local/Middletown-Couple-Accused-of-Selling-Heroin--170995281.html>

78 *USA v. Fernandez et al*, North Carolina Western District Court, Case No. 1:05-cr-00209-MR-DLH. <https://www.plainsite.org/dockets/2lhd51578/north-carolina-western-district-court/usa-v-fernandez-et-al/>

79 United States Drug Enforcement Administration, "Atlanta Fugitives." <https://www.dea.gov/fugitives/atl/FF7F6DC3-9502-42D2-9DC7-A5F8B5CA7BD8.shtml>

80 SEC Letter, December 2, 2014. <https://www.plainsite.org/realitycheck/hlf/20141202.letter.pdf>

In Herbalife's Schedule 14A statement filed April 2, 2013, the company had referred to Mr. Cardoso slightly differently—as a huge success:

*"Pedro Cardoso, age 46, has been an independent Herbalife distributor for 21 years and a member of the Company's Chairman's Club since 2005. Mr. Cardoso has built a successful organization of Herbalife independent distributors in several countries. He has been active in training Herbalife distributors around the world, and is a member of various strategy and planning groups for Herbalife. He is also an active volunteer for the Herbalife Family Foundation... Mr. Cardoso's qualifications to serve on our Board include his 21 years of experience as an Herbalife distributor, which brings a first-hand understanding of the function and specific needs of our independent distributors, the ultimate drivers of our business, to the Board."*

The only key fact left out of his biography was that Pedro Cardoso was also laundering money. According to *Reuters*,<sup>81</sup> "Prosecutors in Brazil charged current Herbalife board member Pedro Cardoso with money laundering in 2008 for allegedly participating in an embezzlement scheme a decade earlier that siphoned 26.7 million Brazilian reais (\$10.4 million) from the state government in Espirito Santo."

A footnote in a 2015 sentencing memorandum from the Eastern District of New York regarding Araceli Navarrete-Castro mentions that in addition to instructing "sex trafficking victims on how to work in prostitution and how much to charge," Ms. Navarrete-Castro "reported income from Herbalife, Inc."<sup>82</sup>



At a warehouse in Mexico in 2015, police found crystal meth in plastic Herbalife containers.

Also in 2015, an alleged heroin dealer working as an Herbalife distributor was arrested after stepping off a train in Vermont, according to the *Rutland Herald*. "Police estimated there was almost 10 grams of heroin, based on the average bag weighing 31.5 milligrams... Attorney Robb Spensley, who represented Sims, said his client had a job selling Herbalife products."<sup>83</sup>

In late 2015, Mexican police with the Agency of Criminal Investigation discovered narcotics stuffed in Herbalife containers in the city of Hermosillo, in the northwestern state of Sonora (approximately 250 miles south of Tucson, Arizona).

81 *Reuters*, November 13, 2014, "Herbalife board member a target in long-running Brazilian fraud case." <https://www.reuters.com/article/us-herbalife-cardoso/herbalife-board-member-a-target-in-long-running-brazilian-fraud-case-idUSKCN0IX2K620141113>

82 *USA v. Estrada-Tepal et al*, New York Eastern District Court, Case No. 1:14-cr-00105-MKB. <https://www.plainsite.org/dockets/download.html?id=237369007&z=58796ae6>

83 *Rutland Herald*, October 16, 2015, "Alleged heroin dealer arrested leaving train." <http://www.rutlandherald.com/articles/alleged-heroin-dealer-arrested-leaving-train/>



A Peruvian Herbalife distributor, standing in front of corporate marketing materials, admits to local police that she has been distributing drugs through her Nutrition Club. The green walls and aloe marketing materials are standard issue for Herbalife Nutrition Clubs. Peru, which shares a border with Colombia, is an important hub for narcotrafficking.

At the time they were discovered, the drugs were in transit; the packages containing the drugs were located at a parcel storage facility. According to an article on the Mexican news site *Crítica Diario Noticias*, “the investigators detected six plastic tubes that bore the brand name of a line of food products... When doing the review assisted by expert staff, it was found that inside these tubes there was a granular white substance with the characteristics of crystal [methamphetamine].” The article’s headline translates to, “In Herbalife boats they brought drugs!”<sup>84</sup>

In August 2017, a Peruvian television program similar to “Cops” in the United States broadcast an episode entitled “La Tía Yerbalyfe.” Now visible on YouTube, the program depicts a woman named Lizy Yannina Estrella Mestanza operating an Herbalife Nutrition Club who also happened to be selling drugs out of the same location in the Callao district of Lima, which is Peru’s main seaport.<sup>85</sup>

According to the police report filed in connection with the case, aside from cash and two cell phones, Estrella had three small bags of cocaine in her purse when they confronted her, and she told them that she had additional illegal drugs at home. Police solicited the help of their squad, and found 62 more bags of yellow cocaine base paste at her home, each containing about 20 grams of substance. Notably, Estrella’s Nutrition Club appeared to conform to standard Herbalife requirements: bright green walls, product samples visible, and marketing materials inside for everyone to see.

## Who’s In Charge?

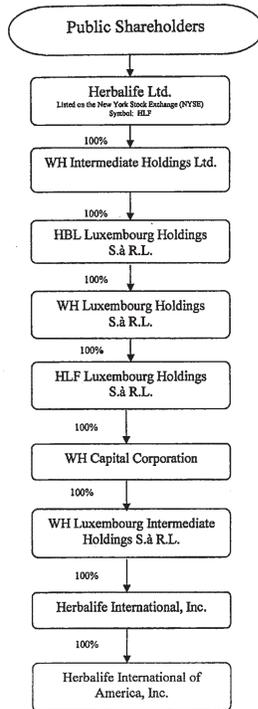
### A Complex Corporate Structure

An important part of Herbalife’s corporate structure is disclosed in Ecuadorean registry filings in a manner not clearly seen in its SEC filings. One of its two core American subsidiaries, Herbalife International of America, Inc., is held by eight sequential parent companies spanning the globe from Luxembourg (a tax haven) to the Cayman Islands (another tax haven), which is the domicile for Herbalife Ltd. (recently changed to Herbalife Nutrition Ltd.), the company actually traded on the New York Stock Exchange.

84 *Crítica Diario Noticias*, September 11, 2015, “¡En botes de Herbalife traían droga!” <http://diario-critica.mx/nota.php?id=42758>

85 YouTube, August 17, 2017, “ESTAFA EN LA VENTA DE HERBALIFE - VENTA DE DROGA.” <https://www.youtube.com/watch?v=Bo6fy6QMLmY>

**Ownership Structure  
Herbalife International of America, Inc.**



*A corporate structure chart from a little-noticed 2015 filing in Ecuador.*

One obvious possible reason to structure a company in such a byzantine manner is tax avoidance. Another is that Herbalife is engaged in activity that company management would prefer go unexamined by regulators, who would have to find documents in multiple languages from around the world in order to piece together how the company actually works. Few if any regulators have the budget to do so.

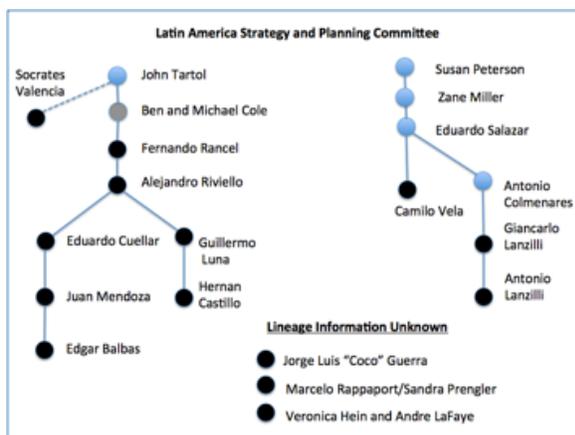
Herbalife's worldwide subsidiaries may play a role in the company's financial performance and stock price as well. Herbalife International, Inc., a Nevada company, owns the company's trademarks, including the Life & Victory trademarks associated with Joaquin Senderos. It licenses them to other Herbalife entities, including HBL (BVI) Limited in the British Virgin Islands, and to Herbalife International Luxembourg SARL, according Herbalife's May 4, 2015 credit agreement with Bank of America. Using this scheme, Herbalife also pledged 2,000 trademarks, including the Life & Victory marks, as collateral to borrow from banks, and then tapped its credit facility to tender for \$600 million of its shares. Most were purchased from entities owned by billionaire corporate raider Carl Icahn, Herbalife's largest shareholder and a champion of the company. Of course, the ability to place revenue anywhere on Earth can also be helpful for tax "planning" purposes, or when trying to meet quarterly earnings forecasts.

## Strategy and Planning Committees

Herbalife relies on Strategy and Planning ("S&P") committees made up of top earning, supposedly independent distributors to assist in the management of its business. In Latin America, there are country-specific committees and an overarching Executive Committee. Herbalife discloses virtually nothing about these committees to investors, yet the groups clearly exert substantial influence on the operations of Herbalife's business—separate and apart from the official Board of Directors.

For example, internal documents show that in China, the S&P Committee is involved in "strategy, development plan[ing], major policy and issue discussion, including events, promotions, new rules, new product launches, new DMOs [Distributor Methods of Operation] and all other regional issues." In Latin America, the S&P Committee sets retail prices, also according to internal documents.

It is instructive to look at the members of the Executive Committee for Latin America. All of them exert considerable influence while having profited from questionable activity, shielded assets in shell companies, and/or relied upon connections to often undisclosed import/export firms.



A map of the sponsorship linkages between members of the Latin American Executive Committee, with members of the group represented by black dots. Though Ben and Michael Cole do not appear as members of the Committee on any internal Herbalife documents we've reviewed, both distributors have attended Latin America S&P meetings and appear to be de facto Committee members or liaisons between the Committee and the company.

Fernando "Nani" Rancel and his wife Judith ran the most profitable distributorship in South and Central America, according to internal Herbalife documents from 2010, the last year for which we have information. Described by one distributor as being at the top of the entire Latin American pyramid, the Rancels are said to have built their organization using the same get-in-early tactics as Eduardo Salazar and the Petersons. The Rancels are Venezuelan, but are paid as Colombian distributors, which means they receive U.S. dollars for any sales outside of Colombia, including Venezuela. This has allowed them to profit from the arbitrage opportunity created by earning U.S. dollar commissions on Venezuelan Bolivar purchases.

Rancel is listed as a director of Fountain of Life, SA, a Panamanian company incorporated in 2010.

There are two other directors of that company: Alvaro Carranque Fernandez, a Colombian (and also the owner of a Venezuelan firm called Maquiladora Guarenas, CA, a company described on LinkedIn as being in the "packages and containers" business and the "outsourcing/offshoring" business) and Miguel Schwarz, a Venezuelan.

Juan Mendoza, a Chairman's Club member, is Fernando Rancel's brother-in-law and was recently elected to Herbalife's Board of Directors. As a distributor who began his recruiting in Venezuela but now who lives in the United States, Mendoza would have profited from Venezuelan currency arbitrage.



Socrates Valencia, right, at a 2014 event. Photograph: Socrates Valencia via Facebook

No longer a taxi driver, Socrates Valencia operates a substantial enterprise based in Colombia in Pereira, Manizales, and in the south of the country, near the border with Ecuador and Bolivia. He was the top distributor in Central America and the third largest distributor for all of Latin America in 2010. Valencia operates an Herbalife organization under the sub-brand "Clubes Centrales de Bienestar" (or "Central Clubs of Wellbeing" in English).

In a blog posting, Valencia described learning the basics of Nutrition Clubs in Mexico and then bringing the idea to Panama (and later Colombia, Peru, Ecuador, and the United States). His club in Panama drew 1,200 daily visitors, according to the posting, who paid cash to consume Herbalife shakes and teas. Later, 26 of his recruits left to create their own clubs, each with around 200 visitors daily. Assuming a \$5 admission charge to enter the club, that amounts to 6,400 visits daily, generating revenues of around \$32,000 per day. Yet customs databases Import



A meeting of senior Herbalife distributors at the Mexican facility of Humberto Jaimes, with Jaimes lecturing in front of a large portrait of himself and his wife.

Genius and Panjiva report just two import shipments of Herbalife products into Panama between 2010 and 2015, raising the question of whether Herbalife products were moved through the gray market into Panama. Valencia received the largest share of his commission check (about \$500,000) from purchases by his downline members in the United States, according to documents filed in a legal dispute between Valencia and Herbalife Brazil over tax withholding.

Guillermo Luna and Carola Lichtman (now divorced) are Chairman's Club members who serve on the Executive Strategy and Planning Committee for Latin America. As of 2010, Luna and Lichtman operated the third most profitable distributorship in South and Central America. The lion's share of their commissions come from sales in Venezuela and the United States. Luna is Venezuelan but is registered and paid as a Chilean distributor, making him a beneficiary of Venezuelan currency arbitrage.

Giancarlo Lanzilli and Viviana Lenarduzzi serve on the Latin American Executive Strategy and Planning Committee. As of 2010, they had the fourth highest earning distributorship for South and Central America and the second highest earning distributorship for Central America. The couple is from Venezuela, but has registered their distributorship in Panama, making them beneficiaries of Venezuelan currency arbitrage.



The passport of Antonio Lanzilli is one among millions of Mossack Fonseca's leaked files, known as the Panama Papers. Courtesy of Süddeutsche Zeitung.

Antonio Lanzilli (likely the brother of Giancarlo Lanzilli) and Mariana Palmieri operated the tenth most profitable distributorship in South and Central America and the third most profitable distributorship in Central America in 2010. The Venezuelan couple appears to operate their business out of Guatemala, but their distributorship is registered in Panama. As a result, they are also likely beneficiaries of Venezuelan currency arbitrage. In 2016, ICIJ published the Panama Papers, a compendium of stories and data surrounding a leak of 11.5 million documents from the Panamanian law firm Mossack Fonseca. Mossack Fonseca has been linked to multiple money laundering scandals and criminal schemes, and both of its principals have spent time in prison since the publication of the Panama Papers.

Lanzilli used Mossack Fonseca to incorporate Sanbridge Trade Corp. in Panama.

Yelitza Lanzilli, another member of the Lanzilli family and the fourth most profitable distributor in Central America in 2010, operates her business in El Salvador. Juan Jose Boillat Infantozzi, the sixth highest earning distributor in Central America and a mem-

ber of her downline, was investigated for improperly importing Herbalife products into El Salvador and falsifying documentation.<sup>86</sup> According to public records, Boillat has unclaimed funds sent to him from Herbalife at 8424 NW 56th Street, Suite 775 in Miami, Florida, an address that corresponds to Express Courier Services, which promotes its door-to-door service from the United States to Venezuela.

Camilo Vela and Nohemy Gaona are President's Team members who operated the sixth most profitable distributorship in South and Central America in 2010. Vela was among the distributors who rose to President's Team during the years that millions of dollars of products were improperly being sent into Ecuador from the U.S. Vela was listed as a manager on a dissolved Florida company called Health and Life L.A., LLC along with another Herbalife distributor, Lucy Acevedo.

Alejandro Riviello was the fifth highest earning distributor for South and Central America. Riviello is Venezuelan but is paid as a Colombia distributor. As a result, Riviello is another likely beneficiary of Venezuelan currency arbitrage. Riviello operates the largest Nutrition Club in Colombia in the city of Cedritos, a giant venue in which dozens of distributors operate a mainly cash business, according to a distributor we interviewed.

Edgar Balbas and Ysbelia Hernandez are Chairman's Club members who operated the ninth most profitable distributorship in for South and Central America in 2010. Edgar Balbas is Venezuelan but is paid as a Colombian distributor, making him a beneficiary of Venezuelan currency arbitrage.

Jorge Luis "Coco" Guerra is a President's Team member and a member of the Executive Committee. Guerra owns Coco Guerra Distribuciones, an import/export company in Lima, Peru.

Brothers Ben and Michael Cole, both born in Israel, are not listed as Strategy and Planning Committee members, but can be seen attending these events in Latin America and elsewhere in photos posted to social media. Michael Cole also met with President's Team members in Mexico to discuss Herbalife's insistence that field sales be discontinued in Mexico in 2015, according to a distributor who attended the meeting.



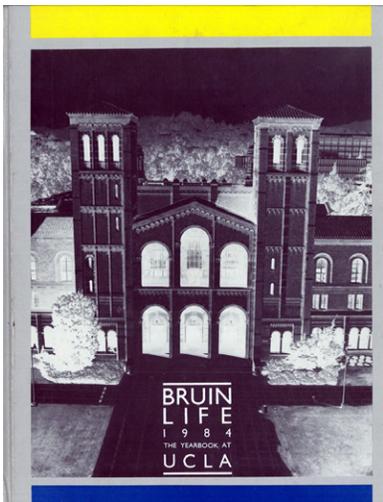
Ben Cole, center, with Mark Hughes, right. Photograph: Ben Cole via Facebook

Unlike other high-level distributors, the Coles do not make frequent appearances at events but are known to have recruited a number of distributors who went on to become Chairman's Club members. Michael Cole is classified as

86 Case No. 735-CAS-2007, Penal Court of the Supreme Court of Justice of El Salvador: <http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/2010-2019/2012/10/9A404.PDF>



Michael Cole at a 2008 Strategy and Planning Committee meeting. Photograph: Ben Cole via Facebook



<p>Booth, Barbara E. Booth, Patrick C. Bordickas, George A. Borsosky, Drew S. Borst, Brenda L. Bossmeyer, Jewell Boston, Margo L. Bogettz, Susan M. Bourcier, Stephen C. Bosman, Elizabeth J. Boysan, Lisa S. Boyd, Colene M. Boyle, Jeffrey L. Boyle, Richard A. Brabant, Charlotte M. Bradsher, Nancy M. Brady, Eric A. Branch, William A.</p> <p><b>P A S E 3 1 4</b></p> <p>Carpenter, Laura Lynn Carpenter, Robert G. Carr, David B. Carr, Melissa C. Carrington, Maria M. Carson, Norman Carroll, Joseph P. Carrow, Kimberly A. Carson, Jill C. Carson, Wendy Beth Castor, Catherine D. Castro, Daniel E. Cavanaugh, Michael J. Catalano, Alan A. Cervini, Laura A. Chaffey, Miko T. Chambers, Douglas E. Chan, Chi-Yin Chan, Doris S. Chan, Jennifer M. Chan, John D.Q. Chan, Pong-Hung Chan, Sally W. Chang, Christopher Hong Chang, Grace H. Chang, Helen Chang, Hunter S. Chang, Jinmie Chang, Kiyoung</p>	<p>Chow, Rosaline Chow, Tony M. Chiqui, Nicole D. Chirakis, Robert <b>P A S E 3 1 6</b> Chu, David Chu, John R. Chu, Lydia L.N. Chu, Yon J. Chubb, Valerie L. Chung, Calvin H. Chupak, Mitchell M. Church, Ron S. Ciccolino, Mary Frances Clark, Daniel Clark, Denise C. Clark, Diane E. Clark, Patricia S. Clarke, Kathleen M. Clarke, Barbara Lynn Claros, Juan L. Clay, Kimberly J. Clay, Reed D. Clemens, Dawn E. Clemens, Dana L. Cleverger, Lawrence A. Clifford, Ann J. Close, David E., Jr. Closs, Jeffrey M. Cobb, Shen M. Cochran, Melodie T. Cody, Jennifer A. Coffey, Christine M. Cogan, Jeffrey A. Coglianesi, Patricia A. Coham, Sabak Cohen, Cambria L. Cohen, Lauren Dee Coker, Kimberly R. Cole, Robert Collins, Douglas A. Collins, Joanne M. Collins, Keith Samuel Collins, Kene J. Collins, Reginald Bradford Collins, S. Robb Colucci, Marlene M.</p> <p><b>P A S E 3 1 7</b></p>
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Though there is a Robert Cole listed, Ben Cole's name does not appear in the 1984 UCLA yearbook (or the 1983 through 1986 UCLA yearbooks), despite his claim to have graduated from UCLA, reportedly in that year.

a Monaco distributor, according to internal Herbalife documents.

## Stymying Internal Investigators

In an interview with a former Herbalife compliance employee, we learned that distributors often purchased product in bulk in the U.S. and had it sent to freight forwarders, who then shipped the product overseas. This happened despite the fact that officially, the company had a list of freight forwarding addresses where the product was not supposed to be shipped.

"Exporting is a huge, huge problem," the employee told us.

Yet when she and others questioned large shipments of products, they were told not to interfere with the businesses of certain top distributors. Compliance employees had to seek permission before opening a file on a top distributor and permission was almost never granted. Socrates Valencia's business dealings, including large volume purchases and obvious exporting in violation of Herbalife policies, attracted scrutiny from Herbalife's compliance department, but attempts to investigate his business practices were shut down by management. A former Herbalife compliance employee described her thwarted efforts to us:

*"I am aware that Mr. Valencia called Herbalife's Call Center in Los Angeles frequently, sometimes two to three times in one day. Sometimes when there were issues with an order placed by Mr. Valencia, I spoke with Mr. Valencia directly. It is my understanding that many of his orders were in excess of \$10,000, and he typically directed that the product be shipped to Florida. Mr. Valencia paid for his orders using wire transfers or credit cards. Typically, I would verify the name and address of the credit card holder for compliance purposes. However, in Mr. Valencia's case, I was told not to and that all orders from Mr. Valencia were fine because of his distributor status and his upline.*

*On several occasions, I learned that product sold to Mr. Valencia and shipped to Florida was subsequently illegally exported to Panama using a freight forwarder. This violated another Herbalife rule governing the sale and use of U.S. products in another country. When I attempted to enforce the Herbalife Marketing Plan's rules against Mr. Valencia, I was told that due to his upline distributor, Mr. John Tartol, there was nothing that could be done to enforce the rules against Mr. Valencia. I was assured by my superiors that if there were any issues*

*with Mr. Valencia's orders, they would be discovered eventually. However, I am not aware of any discipline that was ever imposed on Mr. Valencia or Mr. Tartol.*

*Mr. Tartol is a well-known, senior level Herbalife distributor and a member of Herbalife's board. He is a Chairman's Club member, and very influential in Herbalife. I am aware that when there have been issues with his downline distributors, Mr. Tartol will contact Mr. Michael Johnson, Herbalife's CEO, or Des Walsh, Herbalife's President, to discuss the issues directly."*

## Stashing The Money

### How Distributors Earn Commissions

At the bottom of the pyramid of direct sellers are distributors who regularly purchase large volumes of Herbalife products. These distributors often purchase product that they hope to resell with large amounts of cash. Nutrition Club members around the world pay approximately \$5 every time they visit a Club to consume a single serving of Herbalife products. Club operators take this cash directly to an Herbalife warehouse or QRC, where cash is accepted.

As distributors purchase Herbalife products, they accrue volume points that qualify them for higher commissions on their downline's volume and larger discounts.

Upline commissions are calculated based roughly on the retail price. The supervisor directly above the purchasing distributor receives 25% of the retail price as a wholesale commission; three upline supervisors each receive a Royalty Override payment of 5% for a total of 15%; and the upline group of supervisors splits a Production Bonus of 7%. Those at the very top of the pyramid share in the Mark Hughes Bonus, which totals 1% of global retail sales.

### Paying Distributors Across Borders

When a distributor's downline organization is purchasing product in the same country in which he or she resides, that distributor is paid in his home country's currency by the local subsidiary. When distributors live in one country but earn commissions on sales in another, they are paid through Herbalife's "Other Country" system in U.S. dollars.

Herbalife distributors often proudly display these Other Country checks on social media—proof they are creating a global business. For distributors in countries where U.S. dollars are not easily obtained (Venezuela, for example), the ability to receive the Other Country checks denominated in dollars is a highly prized aspect of Herbalife's



A satisfied customer from Europe. My friend Petr lives in the Netherlands, this is my 1st cheque from #Herbalife. ;)



2:25 AM - 19 Mar 2013

Above: A 2014 HSBC Herbalife check in USD payable in Venezuela. Photograph: Instagram

Below: A 2013 HSBC Herbalife check in USD payable in the Czech Republic. Photograph: Twitter

business opportunity.

Such checks represent relatively small payments to lower level distributors. The recipients of most of the money dispersed through Herbalife's Other Country check system are high-level distributors—those who can boast of vast downline organizations in multiple countries.

Herbalife's procedure for processing Other Country checks is outlined in its "Non-Resident Distributor Payment Agreement," which we reviewed. Payments are processed by Herbalife Europe Limited (HEL), an Herbalife subsidiary located in Uxbridge in the United Kingdom. This entity appears to consolidate requests for payment from various entities around the world, and issues Other Country checks for distributors with businesses outside of their nominal home countries.

HEL is described as an "independent contractor" which makes payments at the request of local entities rather than being directed by Herbalife corporate. The HEL subsidiary also charges a 5% fee for payments it processes, taking orders from local entities (which may include third-party contractors) for check disbursements. HEL then combines payments due to a distributor from any countries other than the one in which he or she claims to live and sends the distributor a check.

The system for paying non-resident distributors appears to provide a great deal of latitude for local entities to determine the size of a payment to that distributor. As long as the local entity forwards monies sufficient to cover the HEL commission payment, HEL is required to include that amount in the total owed to a distributor via the "Other Country" payment system. As a result, local entities could conceivably take cash of questionable origin at the direction of top distributors and forward that cash to HEL with instructions that it be paid as a U.S. dollar-based commission. But HEL is just one vital part of the largely unregulated financial institution that is Herbalife.

## Shell Companies Everywhere

One common attribute that many of Herbalife's top distributors seem to share is a propensity for shell company ownership. Strictly speaking, shell company ownership is not illegal, but it frequently does indicate the existence of some kind of untoward activity.

While it is easy to imagine a successful distributor starting a business in her home

**Table 1: Examples of Known Herbalife-Related Shell Companies**

Company Name	Beneficial Owner(s)	Herbalife Level	Domicile	Incorporation Date
Corporativo Cens S. de R.L. de C.V.	Eduardo Salazar Bracamontes	Founder's Circle	Mexico	July 28, 2006
Comercial Guler	Hernan Alfredo Castillo Salazar / Jennifer Guler	President's Team	Chile	Unknown
HCT Import & Export, LLC	Hernan Alfredo Castillo Salazar	President's Team	Florida	May 7, 2009
Caster SA Importaciones y Exportaciones	Hernan Alfredo Castillo Salazar	President's Team	Ecuador	July 29, 2003
Cole & Associates, Inc.	Ben Cole	President's Team	California	November 20, 1991
Intercorp Ltd.	Ben Cole	President's Team	Cook Islands	Unknown
Aramor SA	Michael Cole	President's Team	Panama	February 13, 1990
J & M Wellness Management, Inc.	Jorge de la Concepcion	President's Team	Florida	March 31, 2014
Fit Couple, Inc.	Jorge de la Concepcion	President's Team	Florida	February 26, 2014
Miami STS, LLC	Jorge de la Concepcion	President's Team	Florida	January 19, 2017
Sanbridge Trade Corp.	Antonio Lanzilli / Mariana Palmieri Perez	Chairman's Club	Panama	July 1, 2010
Danvir SA	Antonio Lanzilli	Chairman's Club	Panama	January 31, 1995
Guillermo Luna Investments, LLC	Guillermo Luna	Chairman's Club	Florida	February 11, 2009
Rancel y Asociados, SA	Fernando Rancel Marquez	Chairman's Club	Panama	October 26, 2011
Fountain of Life, SA	Fernando Rancel Marquez	Chairman's Club	Panama	July 13, 2010
JAM Florida Holdings, LLC	Juan Mendoza	Chairman's Club	Florida	April 21, 2010
JM Family Holdings, LLC	Juan Mendoza / Andrea Viso	Chairman's Club	Arizona	April 23, 2013
Casa 78, LLC	Juan Mendoza / Andrea Viso	Chairman's Club	Arizona	May 11, 2009
Encanto 904, LLC	Juan Mendoza / The Mendoza Family Trust	Chairman's Club	Arizona	October 30, 2007
Nutrition Bahamas Ltd.	Blake Morgan	Chairman's Club	Bahamas	October 8, 1996
Windy Peaks Ltd.	John O. Peterson / Susan B. Peterson	Founder's Circle	Bermuda	May 23, 2003
Health Vision International Ltd.	John O. Peterson / Susan B. Peterson	Founder's Circle	Bermuda	September 1, 1993
TDC Ltd.	John O. Peterson / Susan B. Peterson	Founder's Circle	Bermuda	May 23, 2003
Abasto XXI, SA de CV	Joaquín Alejandro Senderos Higuera	President's Team	Mexico	Unknown
Senega, SA de CV	Joaquín Alejandro Senderos Higuera	President's Team	Mexico	Unknown
Life and Victory, Ltd.	Joaquín Alejandro Senderos Higuera	President's Team	Cayman Islands	March 8, 1994
SPA TI, SA de CV	Joaquín Alejandro Senderos Higuera	President's Team	Mexico	Unknown
Nutricel (Argentina) SA	Joaquín Alejandro Senderos Higuera	President's Team	Argentina	Unknown
Nutricel, SA de CV	Joaquín Alejandro Senderos Higuera	President's Team	Mexico	Unknown
ARQ-HEC Marketing Corp.	Arquimedes Valencia / Hector Gualteros	President's Team	New York	June 17, 1994
Creadores del Éxito Internacional en Panama, SA	Socrates de Jesus Valencia	Chairman's Club	Panama	October 28, 2004
Pelicans Networks Ltd.	Leonard Waisbein	Founder's Circle	Israel	October 26, 2011
Palmsberry Ltd.	Leonard Waisbein	Founder's Circle	Israel	January 30, 1995

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 Steven L. Chelmsky, Esq.  
 1925 Century Park East, Suite 2000  
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 Intercorp Ltd.  
 1049 Hillcrest Drive  
 Beverly Hills, CA 90210

98- 169351

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**INDIVIDUAL GRANT DEED**

The undersigned grantor declares:  
 Documentary transfer tax is \$1,012.00.

For a valuable consideration, receipt of which is hereby acknowledged, BEN COLE hereby grants to **INTERCORP LTD., Cook Islands corporation**, the following described real property in the City of Beverly Hills, County of Los Angeles, State of California:

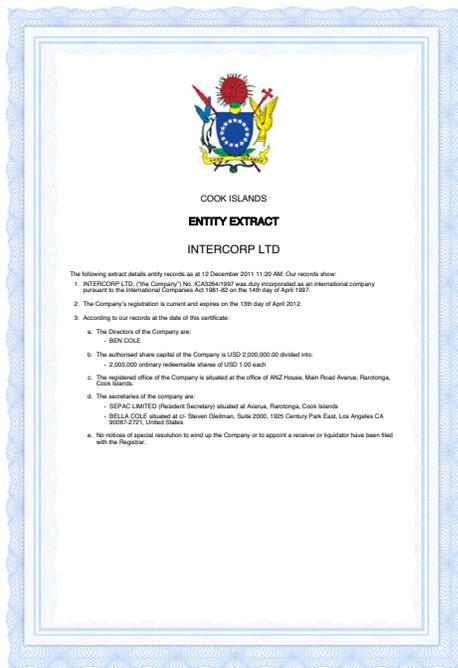
Lot 63, Tract 21360, in the city of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 587 Pages 59 through 63 inclusive of Maps, in the office of the County Recorder of Los Angeles County.

Dated: 1/29/ 1998

  
 BEN COLE

The common address of the above property is: 1049 Hillcrest Road, Beverly Hills, CA 90210.

Los Angeles County real estate records indicate that Ben Cole's Beverly Hills mansion was owned by a Cook Islands entity. The records do not indicate who owns the company.



The Paradise Papers leak included documents from 19 different corporate registers, including the notoriously secretive Cook Islands. An "Entity Extract" for Intercorp Ltd. confirms that as of 2011, Ben Cole was listed as the company's sole director, with secretaries Sepac Limited and Bella Cole, Ben's mother. Courtesy of Süddeutsche Zeitung.

town to handle the legal and accounting issues that might naturally arise as part of the Herbalife business opportunity, top distributors often register multiple corporations or LLCs that rarely have names involving nutrition and almost never appear in print in connection with their Herbalife activities. Many of these companies can be found in known tax and secrecy havens such as Panama, the Cayman Islands, and Bermuda. Notably, several companies are also incorporated in Mexico, where corporate information is maintained on the state level, and is extremely difficult (and sometimes dangerous) to find.

For example, according to Los Angeles County real estate records, Ben Cole's company Intercorp Ltd. appears as the owner of his former million-dollar Beverly Hills home. It is difficult to know much about Intercorp, as the Cook Islands are one of the most notorious secrecy havens in the world, with only a few thousand companies and trusts located there. According to a United States Department of the Treasury Financial Crimes Enforcement Network (FinCEN) advisory:

*"[T]he legal, supervisory, and regulatory systems of the Cook Islands at present create significant opportunities and tools for the laundering and protection of the proceeds of crime, and allow criminals who make use of those systems to increase significantly their chances to evade effective investigation or punishment."*

Other companies have directors and/or officers who are not the ultimate beneficial owner. Since Socrates Valencia himself can no longer legally enter Panama, his wife and son along with several other individuals now appear on registration statements for his Panamanian company, Creadores Del Exito Internacional En Panama, S.A.<sup>87</sup> According to public filings, control of the company was passed to his son, Socrates Junior Valencia, in 2013, roughly when Valencia Sr. was barred from Panama.

# Regulatory Risk

## Banks and Non-Banks

### Key Term

The frequency with which individuals use Herbalife to move money from one corner of the globe to another suggests that company management is ignoring the risk that the United States Department of the Treasury might ultimately deem Herbalife a Money Services Business (MSB), or in common parlance, a **money transmitter**.

In the banking world, there are banks and credit unions (chartered institutions whose authority is derived from either the federal government or a state government) and non-banks, who are effectively everyone else. Non-banks play a vital role in the payment system and include companies such as Visa, MasterCard, PayPal, Venmo, and Square. Non-banks can be broken down into categories even further: there are payment processors (Visa and MasterCard), MSBs (such as PayPal, Venmo and Square), and Independent Sales Organizations (ISOs, which resell services for payment processors). Certain MSBs, such as PayPal, provide services that resemble banking a great deal, even though they technically do not have a bank charter.

The definition of a money transmitter is quite simple: in almost every state—for there is extremely limited federal regulation of non-bank money transmission in the United States at present—it is any kind of intermediary corporation that takes funds from legal entity A, holds onto those funds for any length of time in an account in A's name, and then allows A to transmit some or all of the funds to legal entity B. A legal entity in this scheme might be an individual or a corporation. The account does not necessarily have to be numbered; what is important is the trust relationship. If the intermediary is holding onto A's money, there exists some risk that if the intermediary disappeared, A's money would be lost, and so beginning in the 1960s in response to isolated incidents, states began passing money transmission statutes that required money transmitters to post bonds in the event of a crisis.<sup>88,89</sup>

To determine whether a company is a money transmitter, government analysts rely mainly on actual cash flows. Though Herbalife does not call itself a bank, does not appear outwardly like a bank, and therefore does not comply with banking laws and regulations, the fact that a business serves a quasi-banking function for even a small contingent of customers has in the past been enough to trigger regulatory scrutiny. For a publicly traded, multi-national company such as Herbalife, such scrutiny would

88 Think Computer Corporation, 2011, "Held Hostage: How the Banking Sector Has Distorted Financial Regulation and Destroyed Technological Progress." <https://www.plainsite.org/realitycheck/hlf/20110815.heldhostage.pdf>

89 Retail stores are not money transmitters because there is no party B involved. For example, Starbucks Coffee allows customers to load up a closed-loop Starbucks Card (a card that only works at one merchant, either on a physical plastic card or via a mobile device) with funds. The fundamental A-Intermediary-B paradigm therefore does not exist. Closed-loop prepaid cards can only be used with one merchant, such as Starbucks, but recently criminals have begun to use them for money laundering as well, by selling them on the open market for slightly under face value. The currency received in exchange can be used for any purpose.

be an incredibly serious matter, attaching criminal liability for the company, its executives, and even its shareholders.<sup>90</sup>

Money transmission regulations are sufficiently broad that they encompass a wide variety of non-bank payment activity. In 2014, after the parent company of PlainSite filed a federal lawsuit concerning unlicensed money transmitters,<sup>91</sup> the payments subsidiary of home-sharing website Airbnb, Inc. acknowledged—despite initial denials—that it was required to register as an MSB and obtain a money transmission license in California.<sup>92</sup> It is still licensed accordingly today. Reacting to the recent Initial Coin Offering (ICO) craze, on February 13, 2018, in a letter to Senator Ron Wyden (D-OR), the Treasury Department deemed that “[a]n exchange that sells ICO coins or tokens, or exchanges them for virtual currency, fiat currency, or other value that substitutes for currency, would typically also be a money transmitter.”<sup>93</sup> The same letter explains that the Treasury Department’s **Financial Crimes Enforcement Network (FinCEN)** seeks to “proactively identify trends and risks for money laundering, terrorist financing, and other financial crimes.” In other words, FinCEN could in theory deem Herbalife a money transmitter purely to prevent *future* money laundering abuses.

Key Term

Whatever the future might bring, considerable evidence exists to suggest that Herbalife is already serving as a money transmitter today, in at least four concrete ways:

- Herbalife’s HEL subsidiary charges other Herbalife subsidiaries worldwide for the service of transmitting money, in the form of nominal commission checks, to distributors, including distributors with ties to the United States. Such activity could be construed as the “sale of payment instruments,” which would place Herbalife squarely in the domain of many state money transmission laws;
- Herbalife has internally acknowledged that its Venezuelan subsidiary assisted distributors and even its own employees with money transmission from Bolívars to U.S. dollars for years;
- Mexican distributors purchasing products in bulk for “field sales” apparently use a paper form to instruct Herbalife to reallocate commissions on a ledger to other individuals, who could be located in Mexico or anywhere else in the world;
- As discussed in Appendix A, a chain of money transmitters (many of which were unlicensed for long stretches of time) already serves Herbalife’s payment needs, but distributors are not required to bring their cash to these licensed entities.

While Herbalife can always blame its “independent” distributors for their actions—many of them act through corporations and are thus shielded from individual liability

90 18 U.S.C. § 1960(a). <http://www.law.cornell.edu/uscode/text/18/1960>

91 *Think Computer Corporation v. Dwolla, Inc. et al*, California Northern District Court, Case No. 5:13-cv-02054-EJD. <https://www.plainsite.org/dockets/t6maunfo/california-northern-district-court/think-computer-corporation-v-dwolla-inc-et-al/>

92 *Think Computer Corporation v. Dwolla, Inc. et al*, California Northern District Court, Case No. 5:13-cv-02054-EJD, Document 153. <https://www.plainsite.org/dockets/download.html?id=34234993&z=84a3930b>

93 Department of the Treasury Letter, February 13, 2018. <https://www.plainsite.org/realitycheck/hlf/20180213.letter.pdf>

anyway—the company is still in the middle of every transaction.

Herbalife's use of its own proprietary currency, volume points, poses another regulatory risk. Several formal rulings by FinCEN have indicated that exchanging virtual currency does count as regulated activity, whether or not encryption is involved. Even if volume points are not "virtual currency," they are "other value that substitutes for currency," to use the verbiage of the Treasury Department's February letter:

To be clear, all major MLM companies may be rightly considered money transmitters—not just Herbalife. By their very nature, MLMs can have tens or hundreds of thousands of what most companies would consider vendors, all over the world. The broadly distributed model makes any company in the center of the web a natural target for criminals who may want to move money from point A to point B through a nominal commission structure. Even if it means paying an unusually high transaction cost to get the money across—the MLM scheme's profits—that expense may be worth paying for criminals seeking to avoid regulatory scrutiny.

In March 2018, the United States Department of Justice indicted two individuals and their United Kingdom-based company, MH Pillars Ltd., in a criminal case involving unlicensed money transmission.<sup>94</sup> The defendants were running a payment service called Payza, which according to the government sought out high-risk clients. The Pretrial Detention Memorandum in the case states:

*"[Payza's] largest customers were merchants who operated Ponzi and pyramid schemes, many of whom have been the subject of law enforcement actions. Ponzi and pyramid scheme operators needed a method to share funds with downstream victims in the scheme, and to launder their illicit proceeds – Payza offered the ideal means to do so, as Payza collected little identifying information about its clients, and did not conduct legally required due diligence to prevent its platform from being used to transmit illicit proceeds... Other corporate documents revealed that multi-level marketing and similarly structured businesses consistently ranked among the top transactors for Payza, representing one of the primary sources of Payza's business."*<sup>95</sup>

To our knowledge, this case represents the first time that MLM schemes have come under scrutiny by law enforcement for their payment practices. It also highlights the unique netherworld that MLM companies, like marijuana dispensaries, occupy in the banking system. While such companies may be technically legal on the federal and/or state level, terms of service agreements for many payment processors frequently prevent them from accessing the banking network through traditional means.

94 *USA v. MH PILLARS LTD. et al*, District Of Columbia District Court, Case No. 1:18-cr-00053-KBJ.

<https://www.plainsite.org/dockets/3aad6pewe/district-of-columbia-district-court/usa-v-mh-pillars-ltd-et-al/>

95 *USA v. MH PILLARS LTD. et al*, District Of Columbia District Court, Case No. 1:18-cr-00053-KBJ, Document 10.

<https://www.plainsite.org/dockets/download.html?id=253346851&z=97e9fa40>

Key Term

Key Term

In the United States, money transmitters are subject to a number of state laws in virtually every state, and are also required to comply with the provisions of the **Bank Secrecy Act (BSA)**, a law that generally requires banks and other financial institutions to carry out **Anti-Money Laundering (AML)** procedures. For money transmitters, such procedures include, but are not limited to, registering with FinCEN,<sup>96</sup> and obtaining state licenses in every state where business is conducted and a license is required.<sup>97</sup>

These laws and regulations exist to prevent exactly the kind of activity Herbalife encourages, and in many cases requires, on a daily basis. After the 2008 financial crisis, various regulators began cracking down on banking practices found to be deficient. When Wells Fargo acquired the assets of Wachovia Bank, it was forced to inherit a deferred prosecution agreement because Wachovia had been accepting bulk cash deposits from representatives of drug cartels. Around the same time, HSBC was being investigated for providing banking services to drug cartels and terrorists on a massive scale; it was finally taken to task in July 2012 by the Office of the Comptroller of the Currency (OCC) in a hearing before the United States Senate.<sup>98</sup> In December 2012, HSBC paid a \$1.9 billion fine.<sup>99</sup>

In essence, Herbalife's track record includes the same kinds of activities that led to the HSBC and Wachovia consent orders. Since its early days, Herbalife has constructed a massive, global financial network suited perfectly to the needs of narcotraffickers and crooks of all varieties, having evaded the oversight that actual banks for narcotraffickers and crooks are burdened with.

Were Herbalife actually treated as a financial institution by the government, the company would have considerable difficulty maintaining many of its global distributors, and would very likely see its profits suffer.

## Material Weaknesses in Herbalife's Payment System

### *Failure to Verify Distributor ID/Nationality*

Problems with Herbalife's payment system are apparent from a distributor's first interaction with the company. A former Herbalife employee explained that the company asks new distributors for a Social Security number and for a credit card number upon sign up, but the company will accept any Social Security number and make no attempts to verify it. "You can have a bogus Social Security number," she said. The company does, however, check credit card numbers very carefully.<sup>100</sup>

96 31 U.S.C. § 5330. see <http://www.law.cornell.edu/uscode/text/31/5330>

97 18 U.S.C. § 1960. <http://www.law.cornell.edu/uscode/text/18/1960>

98 United States Senate Permanent Subcommittee on Investigations, Majority and Minority Staff Report, July 12, 2012, "U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History," <http://www.hsgac.senate.gov/download/report-us-vulnerabilities-to-money-laundering-drugs-and-terrorist-financing-hsbc-case-history>

99 *USA v. HSBC Bank USA, N.A. et al*, New York Eastern District Court, Case No. 1:12-cr-00763-JG.

<https://www.plainsite.org/dockets/s7wukx1o/new-york-eastern-district-court/usa-v-hsbc-bank-usa-na-et-al/>

100 Interview with Jody Torres, Former Oracle Senior Systems Administrator, November 13, 2011.

Another former compliance employee who worked at Herbalife's corporate headquarters in Los Angeles agreed. In a July 23, 2014 affidavit, she stated that Herbalife did not have any written policy or compliance procedure in place to verify the identity of the distributor or the source of the funds used to make a purchase:

*"I am aware that there are a number of distributor practices at Herbalife that made it impossible to track the source of money used to purchase Herbalife product. For instance, new distributors routinely signed up in the United States without a valid identification document. In fact, this was promoted to potential Herbalife recruits and new distributors as a way to earn money without needing to provide any identification documents. Thus, new distributors were allowed to sign up and purchase product and earn volume points (and, in turn, commission payments from Herbalife) without having to provide a Social Security Number or a Federal Employer Identification Number. This policy resulted in...thousands of fake or fabricated Herbalife distributorships."*

These policies and procedures, or the lack thereof, could put the company at risk of running afoul of 31 U.S.C. § 5318(i) (Due Diligence for United States Private Banking and Correspondent Bank Accounts Involving Foreign Persons).<sup>101</sup>

### **Failure to Prevent "Stacking" of Phony Accounts**

The former Herbalife compliance employee also explained that it was the rule rather than the exception for top distributors to create phony stacked accounts in order to earn more commissions than is officially permitted under company rules.

*"Based on all of the qualification and requalification reviews that I conducted as a Senior Associate in the Compliance Department as well as the numerous investigations I conducted, I discovered that every Chairman's Club and President's Team-level distributor that I investigated was engaged in some form of volume stacking."*

When a group has been constructed out of phony accounts or is made up of individuals working together as a financial unit, all the commissions effectively go to a single entity. These extra commissions total approximately 47% of the retail price, or about 63% of the amount the distributor has spent after receiving a 25% discount.<sup>102,103</sup>

The above lapses show that a single person can enter into the Herbalife business,

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<sup>101</sup> 31 U.S.C. § 5318(i). <https://www.law.cornell.edu/uscode/text/31/5318>

<sup>102</sup> For example, a product might have a retail price of \$1.00. A member of the group who is a distributor purchases that product at a 25% discount off retail and pays 75 cents. The upline members of the group receive 47 cents in commissions, or 47% of the \$1 retail price. In the end, Herbalife received 75 cents, but the purchasing group received back 47 cents, or 63% of the money put forth to buy the product. Herbalife earns 28 cents gross profit, or a 37% margin.

<sup>103</sup> If the group operates an Herbalife recruitment business in conjunction with its money laundering business (it is, after all, purchasing large volumes of Herbalife products that can be used to run a Nutrition Club focused on recruitment), it can leverage payments made by recruits to increase the proceeds of money laundering. Recruits only need to spend 28 cents on Herbalife products for every dollar spent on products by money launderers in order for the group to earn back 100% of its invested cash.

create a downline organization of fake distributors, put money into the system, and potentially take money out of the system—all without questions of any sort. In essence, Herbalife has created a system that allows individuals to anonymously convert cash of dubious origin into what appears to be income from a direct selling business—and to transfer that cash to any country in the world in the form of valuable U.S. dollars. If this is done under the cover of an Herbalife recruitment business, the group can leverage cash revenues obtained from pyramid scheme victims, mixing that “legitimate” money with money of criminal origin, at virtually no cost.

### ***Failure to Enforce Transaction Reporting Statutes***

Herbalife and its contractors do not always file IRS Form 8300 when distributors make cash purchases of \$10,000, as required by the BSA.<sup>104</sup> Often, distributors lack valid tax identification numbers. Financial institutions regulated by FinCEN, including MSBs, must also file a Suspicious Activity Report (SAR) in such circumstances.

These regulatory safeguards are ignored at Cura QRCs. As one researcher who visited the Cura warehouse in the Bronx noted:

*“On two separate occasions, using two separate [IDs], a distributor with no valid Tax ID can make a cash purchase in excess of \$10,000 dollars. Such a purchase should trigger the filing of a Form 8300. However, if you do not have the tax ID it is impossible to file an 8300.”*

Herbalife has the ability to closely monitor Cura’s operations and track its compliance. According to former employees, there are cameras recording all transactions in the Cura warehouse that feed directly into Herbalife headquarters. Yet, according to the former Herbalife compliance officer, “During my tenure at Herbalife, I was aware that, on almost a daily basis, there were purchases of Herbalife product using cash in excess of \$10,000. There was no attempt by anyone at the Herbalife warehouse or within Herbalife itself to track or monitor the source of these cash funds.”<sup>105</sup>

### ***Requiring Cash Transactions To Avoid Tax Authorities***

Herbalife has built its business to accommodate cash. Herbalife distributors can order product on-line or by phone and have it delivered via FedEx to their home or Nutrition Club. Alternatively, they can pay cash at one of Herbalife’s warehouses, located in Los Angeles, Memphis, Phoenix, Riverside, California, and Irving, Texas.<sup>106</sup>

<sup>104</sup> United States Internal Revenue Service, “Form 8300 and Reporting Cash Payments of Over \$10,000,” <https://www.irs.gov/businesses/small-businesses-self-employed/form-8300-and-reporting-cash-payments-of-over-10000>

<sup>105</sup> Senior Compliance Officer deposition., July 23, 2014.

<sup>106</sup> As of December 8, 2014, the Memphis warehouse told us that it accepted payment by cash or credit card. As of the same date, the Texas warehouse accepted cash, personal check and all major credit cards, though the credit card used to make the purchase had to be under the member’s name.

In the U.S., Herbalife distributors also have the option to pay cash at 7-Eleven<sup>107</sup> and Dollar Store locations.

Cash payments by distributors at overseas warehouses are common as well. An internal Herbalife presentation from 2009 stated that the most common method of payment in Russia was to pay cash at a warehouse. The presentation noted: "The potential reason why [third-party operators] do not accept credit cards is that some importers are not properly registered with tax authorities and thus do not want to increase the visibility of their activities by using the banking system."

Furthermore, Herbalife has created a method for distributors in Colombia to purchase products in cash.<sup>108</sup> Distributors place their orders on-line or over the phone and take their order number to either Banco de Bogota or Bancolombia where they pay the exact amount of the invoice in cash. In turn, the bank notifies Herbalife (or an agent of Herbalife) to process the order, which can either be delivered to the distributor or picked up at a warehouse.



An internal Herbalife presentation describing how direct deposit payments work at Colombian banks.

Herbalife's instructions specifically state that a distributor can do multiple orders in this manner, transacting one after the other. This suggests that a single distributor can pay for orders for multiple distributors at the bank.

## Suspicious Non-Profit Accounting

Starting around 2006, Herbalife introduced the "Herbalife Family Foundation," a 501(c)(3) non-profit organization that nominally helps children with nutritional deficiencies around the world. The Foundation's annual report includes financial statements that are combined with a separate entity about which very little information is available: the Herbalife International Family Foundation (HIFF), a Bermuda trust.

CHANGE IN NET ASSETS		(135,164)	(1,791,586)
NET ASSETS AT BEGINNING OF YEAR		7,752,929	7,617,765
NET ASSETS AT END OF YEAR		\$ 7,617,765	\$ 9,409,351

Portions of the financial information presented are excerpted from the audited combined financial statements of HFF and Herbalife International Family Foundation. This financial information does not contain all the disclosures required by generally accepted accounting principles and, as such, is not a substitute for reading the audited financial statements as a whole. The audited financial statements are available upon request.  
Note: All figures are in U.S. dollars.

**Part IV Identification of Related Organizations Taxable as a Corporation or Trust** Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related organizations treated as a corporation or trust during the tax year.

Name, address, and EIN of related organization	Primary activity	501(c)(3) status (check or begin number)						
HERBALIFE LTD LUGANO HOUSE SOUTH CHURCH STREET BRAND HAVEN CT 06182-0001	SALE OF HEALTHY NUTRITIONAL PRODUCTS	501	PUBLICLY TRADED	C				

Above: The 2016 Herbalife Family Foundation annual report is careful to point out that the financial statement is co-mingled with the Herbalife International Family Foundation, a possibly-defunct Bermuda Trust that discloses no information.

Below: The 2016 Herbalife Family Foundation IRS Form 990 does not make any mention of the Herbalife International Family Foundation, even as a "Related Organization" on Schedule R, Parts I-IV.

In the Herbalife Family Foundation's IRS Form 990 tax filings through 2015, no mention of the Herbalife International Family Foundation has ever been made, despite the clear existence of a section on Form 990 for related foreign entities. The filings, prepared by an outside Los Angeles accounting

<sup>107</sup> See Appendix A, PayNearMe.

<sup>108</sup> Yahoo! Groups. <https://es.groups.yahoo.com/neo/groups/NotiHBL/conversations/topics/1185>



- 7500 Bliss Way, Kissimmee, FL 34747  
Map data © 2018 Google
- ① Fernando Rancel & Juan Mendoza
  - ② Raquel Cortes
  - ③ Eduardo Cuellar & Raquel Cortes
  - ④ Guillermo Luna
  - ⑤ Andre LaFaye & Edgar Balbas

firm, do show pages upon pages of large wire transfers to countries worldwide, with little in the way of additional information or evidence that the funds were used to assist anyone’s nutritional needs. Shortly after we informed the IRS about the existence of HIFF, Herbalife reported in its 2016 Form 990 that, “HIFF elected to dissolve its operations. HIFF liquidated its investment holdings and distributed the net cash proceeds of \$638,860 to HFF.”

In 2016, the former head of the Herbalife Family Foundation resigned with no mention from Herbalife.

### Florida Real Estate Deals

In an interesting happenstance, several Herbalife Latin America Strategy and Planning Committee members own property in the same development in Kissimmee, Florida at 7500 Bliss Way. Real estate records reveal the names of Guillermo Luna, Juan Mendoza, Edgar Balbas, Veronica Hein, Andre LaFaye and Eduardo Cuellar as property owners. Herbalife Chairman’s Club member Raquel Cortes also owns two properties in the development.

While there is nothing inherently wrong with owning property in Florida, it is well established that Florida real estate is a popular way to launder money. On February 23, 2017, FinCEN renewed its Geographic Targeting Orders requiring additional disclosures about property purchases in six major metropolitan areas, one of which is Miami-Dade County.<sup>109</sup> Especially due to the cluster of purchases by so many related parties, we believe that as opposed to sharing collective Disney World vacations, high-level distributors are putting their money into bulk purchases of real estate.<sup>110</sup>

In particular, Guillermo Luna appears to have adopted a real estate investment strategy to a degree above and beyond his fellow distributors. At various points he owned at least 14 Florida properties through Guillermo Luna Investments, LLC.

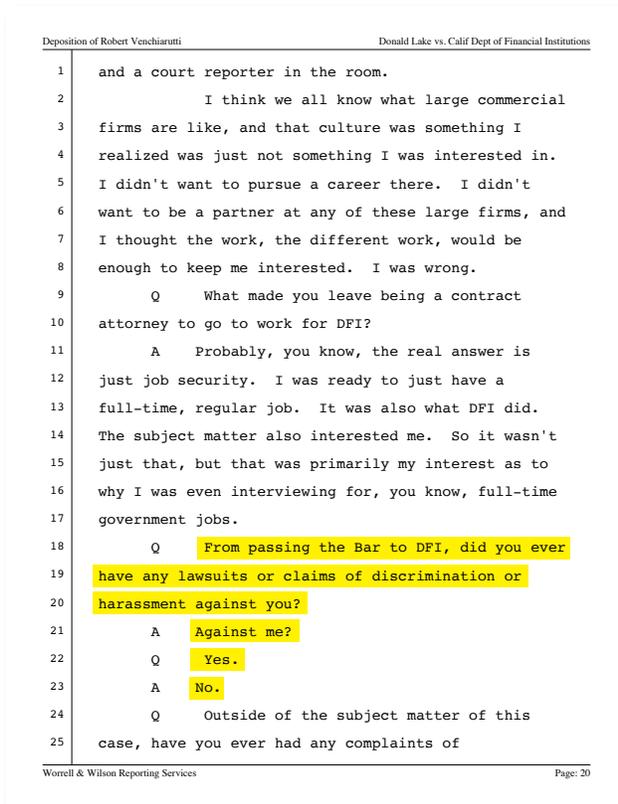
109 FinCEN Press Release, February 23, 2017, “FinCEN Renews Real Estate “Geographic Targeting Orders” to Identify High-End Cash Buyers in Six Major Metropolitan Areas.”  
<https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-identify-high-end-cash>

110 The contact name on Florida state property records is Global Resort Homes, which, according to its website, offers short-term vacation rentals for families visiting Disney World. The company is linked to Global Real Estate Services, Inc., which, according to its President’s LinkedIn profile, specializes in vacation home sales as well as “sales of bulk distressed units to domestic and international markets.”

# Why No One Noticed

## Regulatory Complexity and Corruption

Since the 2008 financial crisis sent world economies reeling, financial regulation has focused mainly on the activities of banks and mortgage lenders. Money transmission, with the successful former startup PayPal as its poster child, has earned relatively little scrutiny. Illegal money transmitters are rarely caught or prosecuted unless they have some obvious connection to terrorism or virtual currency such as Bitcoin.<sup>111</sup>



In 2010, as part of the Lake litigation, California's top money transmission regulator lied under oath about whether he had ever been sued previously. He was named in a malpractice lawsuit on March 12, 2003.

With financial regulation in the United States so balkanized, few politicians or journalists fully understand the complex maze of laws and regulations. Congress has taken no action on money transmission since 2001, though the regulatory system's confusing and fragmented nature—the product of lobbyists for Western Union, MoneyGram, Travelex, and American Express (together, the Money Services Round Table)—has produced fodder for numerous lawsuits between regulators and potential regulators themselves.<sup>112,113</sup>

Compounding these factors, Herbalife's American subsidiaries are based in California. As it happens, California's Deputy Commissioner for Money Transmission, Robert "Bob" Venchiarutti, earned his title no more than twelve days after settling a legal malpractice lawsuit in 2004,<sup>114</sup> and was later sued by his own employees.<sup>115</sup> In a July 23, 2010 deposition, he committed perjury by lying under oath about

111 Even much of the debate over Bitcoin in Congress has taken place without regard to the laws that are actually most germane to the issue.

112 *CONFERENCE OF STATE BANK SUPERVISORS v. OFFICE OF THE COMPTROLLER OF THE CURRENCY et al*, District Of Columbia District Court, Case No. 1:17-cv-00763-DLF. <https://www.plainsite.org/dockets/3517fbqc/district-of-columbia-district-court/conference-of-state-bank-supervisors-v-office-of-the-comptroller-of-the-currency-et-al/>

113 *Vullo v. Office of the Comptroller of the Currency et al*, New York Southern District Court, Case No. 1:17-cv-03574-NRB. <https://www.plainsite.org/dockets/35ch7syn1/new-york-southern-district-court/vullo-v-office-of-the-comptroller-of-the-currency-et-al/>

114 *Roosevelt Bates v. Philip J. Halvorson, Robert R. Venchiarutti et al*, Superior Court of California, County of Los Angeles, Case No. SC076324. <https://www.plainsite.org/dockets/2dplm3f6z/superior-court-of-california-county-of-los-angeles/roosevelt-bates-v-philip-j-halvorson-robert-r-venchiarutti-et-al/>

115 *Donald H. Lake v. California Department of Financial Institutions*, Superior Court of California, County of San Diego, Case No. 37-2009-00102604-CU-DE-CTL. <https://www.plainsite.org/dockets/2bo2lumrc/superior-court-of-california-county-of-san-diego/donald-h-lake-v-california-department-of-financial-institutions/>

the existence of his malpractice lawsuit, and generally admitted that he had no qualifications for his job.<sup>116</sup>

Were the California Department of Business Oversight (DBO) attentive to Herbalife's routine international money transmission activity coordinated from its Los Angeles headquarters, the government might have halted numerous illicit funds transfers. Instead, Herbalife's primary financial regulator is known for attending expensive retreats sponsored by the industry he supposedly regulates.<sup>117</sup> While the DBO's predecessor organization did write a strongly-worded letter in regard to the Payza case, it took at least eight years—from 2010 to 2018—for the company and its principals to actually be indicted, and one of the defendants had already been indicted for money laundering once before.<sup>118</sup>

Herbalife does business in plenty of other states, but in a game of regulatory “chicken,” most money transmission regulators wait for another regulator with clear jurisdiction to take the lead before deciding to take any kind of enforcement action. To date, almost none have paid any attention to the problems posed by MLM compensation.

## Paying Off Critics

In 2008, Herbalife's business came under attack by Barry Minkow, a convicted felon who had defrauded investors of a publicly traded carpet cleaning company he founded as a teenager called ZZZZ Best.<sup>119</sup> After leaving prison, Minkow set up the Fraud Discovery Institute to publish research he funded by selling target companies' stocks short. Minkow claimed that as a “liar and a thief” he had an advantage in ferreting out bad actors, and he zeroed in on the MLM industry.<sup>120</sup>

Minkow accused Herbalife of being a pyramid scheme and said its children's shake mix contained dangerous levels of lead. A drumbeat of accusations by Minkow coincided with a sharp decline in Herbalife's shares. Among the issues Minkow publicized was an accusation brought to him by a former employee that Herbalife was failing to disclose to investors that its sales in Venezuela were being boosted, not by genuine

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116 In June 2013, Deputy Commissioner Venchiarutti decided to crack down on Bitcoin—by sending a lobbying group, the Bitcoin Foundation, a strongly-worded cease and desist letter; despite that group's utter lack of any relevant financial activity. Meanwhile, Mt. Gox depositors lost more than \$400 million worth of virtual currency, much of which went through an unlicensed money transmitter over which the DBO had clear jurisdiction.

117 Think Computer Foundation, “California Department of Business Oversight E-Mails and Documents II,” Pages 389-394. <https://archive.org/stream/california-dbo-emails-ii/Production%20for%20Aaron%20Greenspan%208-1-2014#page/n389/mode/2up/search/smoketree>

118 The Pretrial Detention Memorandum states, “On June 7, 2012, co-defendant Firoz Patel was indicted in the U.S. District Court for the Middle District of Tennessee on two counts of money laundering associated with his use of AlertPay to launder illicit proceeds derived from the importation and distribution of anabolic steroids and other controlled substances.”

119 *USA v. Minkow, et al*, California Central District Court, Case No. 2:88-cr-00022-DT. <https://www.plainsite.org/dockets/hzbp5t0h/california-central-district-court/usa-v-minkow-et-al/>

120 The Fraud Files Blog, June 3, 2008, “Article on Barry Minkow's Herbalife Investigation.” <http://www.sequenceinc.com/fraudfiles/2008/06/article-on-barry-minkows-herbalife-investigation/>

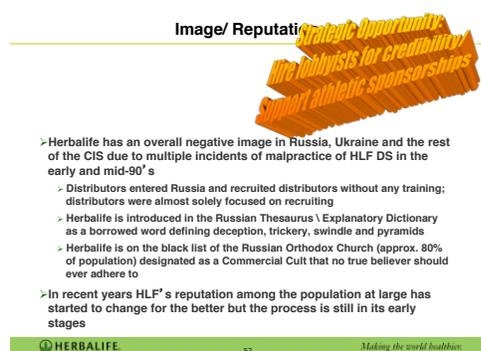
interest in the products, but by Venezuelan currency arbitrage.<sup>121</sup>

Minkow later retracted his statement about the safety of Herbalife's products in a press release and removed his research on the company from the Internet. It wasn't until May 2012 that CNBC's Herb Greenberg revealed Herbalife had paid Minkow \$300,000 to stop publishing on the company.<sup>122,123</sup>

Minkow was later sent back to prison after he admitted to publishing fabricated research on a home builder and that he had been paid to publish by an individual with a grudge against the company's founder.<sup>124</sup>

## Lobbying and Spin

For years, Herbalife has made its presence around the world, and especially in Latin America, known through sponsorships of athletic teams. An internal presentation explains why that is: the company knows that it is widely regarded as a scam. In Russia, where Herbalife has had serious image problems (including an apparent clash with the Russian Orthodox Church), a PowerPoint slide screams in three-dimensional orange font, "Strategic Opportunity: Hire lobbyists for credibility/Support athletic sponsorships."



An internal Herbalife presentation details the brand's serious image problems in Russia and suggests both lobbyists and athletic sponsorships as solutions.

Aside from paying for more positive brand connections, the company has also paid to suppress negative ones. According to the *Washington Post*, Herbalife hired the controversial research firm Fusion GPS as part of its battle with Pershing Square Capital.<sup>125</sup> It also hired a lobbying firm to purchase tickets to the premiere of the documentary film *Betting on Zero*—in order to keep seats empty. "Exactly half of the tickets purchased appeared to be made by ten

employees of Heather Podesta & Partners, a DC-based lobbying firm that works with Herbalife," read the *New York Post* in October 2016.<sup>126</sup>

121 The Fraud Files Blog, May 9, 2008, "Former Herbalife Director of Venezuela and Columbia Comes Forward With Fraud Claims, Reports Fraud Discovery Institute."

<http://www.sequenceinc.com/fraudfiles/2008/05/former-herbalife-director-of-venezuela-and-columbia-comes-forward-with-fraud-claims-reports-fraud-discovery-institute/>

122 *CNBC*, May 2, 2012 (Updated May 3, 2012), "Why Did Herbalife Pay Felon Barry Minkow \$300,000?: Greenberg" <https://www.cnbc.com/id/47266789>

123 That revelation was contained in a 2010 deposition that was part of a lawsuit by Medifast—also a target of Minkow's short research.

124 *Bloomberg News*, December 19, 2013, "American Hustle: The CEO, the Ex-Partner, the Pastor, and the \$1 Billion Shakedown." <https://www.bloomberg.com/news/articles/2013-12-19/how-lennar-fought-an-extortion-attempt-and-won-a-1-billion-judgment>

125 *The Washington Post*, December 11, 2017, "Journalism for rent: Inside the secretive firm behind the Trump dossier." [https://www.washingtonpost.com/investigations/journalism-for-rent-inside-the-secretive-firm-behind-the-trump-dossier/2017/12/11/8d5428d4-bd89-11e7-af84-d3e2ee4b2af1\\_story.html](https://www.washingtonpost.com/investigations/journalism-for-rent-inside-the-secretive-firm-behind-the-trump-dossier/2017/12/11/8d5428d4-bd89-11e7-af84-d3e2ee4b2af1_story.html)

126 *New York Post*, October 10, 2016, "There's something shady with sellout DC screening of anti-Herbalife film." <https://nypost.com/2016/10/10/theres-something-shady-with-sellout-screening-of-ackmans-new-anti-herbalife-film/>

# Conclusion

Multi-Level Marketing schemes promise participants the world: an opportunity to be your own boss, sell life-changing products, obtain financial freedom, and travel the globe in style. Whether they deliver or not is another matter. For those with more nefarious schemes in mind, such as Tohmes Peter or Joaquin Senderos, it turns out MLMs offer something more: the opportunity to move money free of regulatory scrutiny and under the cover of a legitimate-seeming business.

Herbalife is one of the few MLMs that is publicly traded and therefore required to provide meaningful disclosure to the investing public. The company can boast of connections to Washington insiders—it employs a former FTC Commissioner, a top Obama administration official, and its largest shareholder, Carl Icahn, was for a while President Trump's key advisor on regulation. It claims to be operating successfully under an FTC consent order and says it has become a model in the MLM business regarding consumer protection. It has a presence in countries around the world, where it sells a variation of the American Dream to people aspiring to better their lives. It has even successfully fended off a five-year-long attack by a famous short seller and become one of the most scrutinized companies in the world.

And yet despite all this, the most interesting aspects of Herbalife's business are the ones below the fold—the remarkable, inexplicable details that manifest when, slowly and painstakingly, you follow the money.

# Appendix A: Moving The Money

Herbalife is hardly the only enterprise that has been successful at evading the mostly dysfunctional (and even where useful, understaffed and overworked) money transmission regulatory system largely designed by financial lobbyists. In order to pay commissions to the various members of its ever-expanding pyramid, Herbalife has relied on a slew of other banks and money transmitters, almost all of which have been accused of serious violations of financial laws, are too small for their infractions to be noticed, or are no longer in business.

## Anres Technology Corporation (First Federal Bank of California)

Anres Technology Corporation provided pre-paid debit cards to Spanish-speaking Herbalife distributors. Commissions earned by distributors could be loaded onto its cards and subsequently accessed from ATMs.

Founded in June, 2002, Anres was a small vendor of credit card processing and pre-paid debit card services based in Texas. Its CEO, Tony E. H. Serna, claims to have a doctorate in "Naturopathy" from "PANAM University in the Caribbean and The University of Natural Medicine in the USA." Before it shut down, Anres's services were offered contingent upon an arrangement with First Federal Bank of California.



With its headquarters in Canada, hyperWALLET ships Herbalife-branded Visa pre-paid debit cards worldwide from its nominal San Francisco address. The cards utilize HSBC's banking network. Photographs: Instagram and Twitter social media accounts

First Federal Bank of California was shut down on December 18, 2009 by the FDIC, which arranged for the sale its assets to OneWest Bank, FSB. (At the time, the CEO of OneWest was current Treasury Secretary Steven Mnuchin.) Anres does not appear to have operated for several years.

## hyperWALLET Systems, Inc. (The Bancorp Bank/MetaBank)

hyperWALLET Systems, Inc. is the current operator of Herbalife's pre-paid debit card solution for distributors, "Herbalife Pay," previously known as MyHLPay (<https://www.herbalifepay.com>). Based in Vancouver, Canada, its founder Lisa Shields claims to have a goal of enabling seamless global payments to individuals, regardless of whether or not they have a bank account.<sup>127</sup> The company also has an office in San Francisco, California, which it

<sup>127</sup> YouTube, April 4, 2012, "Visit at Hyperwallet, Vancouver, Kanada." <https://www.youtube.com/watch?v=4ZGYPNJVIk>

Overview	
AVAILABLE FUNDS	
	\$120.34
	\$145.67
RECENT TRANSACTIONS	
Transfer from Card Nov 1, 2016	\$30.00 >
Transfer to Card Oct 31, 2016	\$41.50 >
Transfer to Bank A... Oct 17, 2016	\$52.00 >
Transfer to Bank A... Oct 8, 2016	\$35.50 >
Transfer to Card Sep 30, 2016	\$22.00 >

*hyperWALLET's white-labeled "Herbalife Pay" app, available for iPhone and Android, allows risky direct transfers from one payment card to another.*

lists as its address when distributing Herbalife-branded Visa debit cards.

Although hyperWALLET's card offerings were at one point backed by The Bancorp Bank<sup>128</sup> and later by MetaBank, both of which are exempt from money transmission laws as a chartered banks, hyperWALLET's foreign currency exchange functionality and inter-account transfer abilities still render the company a Money Services Business under United States federal and state laws. Accordingly, its United States subsidiary, HSI USA, Inc., has applied for money transmission licenses in several states. In both California<sup>129</sup> and Florida<sup>130</sup>, HSI USA voluntarily withdrew its first license applications, which were not initially granted. It continued to operate for some time regardless in both states without licenses, even with Florida's notorious reputation as a center for money laundering due to its close proximity to South America.<sup>131</sup> During that time, both HSI USA, Inc. and hyperWALLET Systems, Inc. were unlicensed money transmitters willfully violating 18 U.S.C. § 1960. HSI USA, Inc. was not licensed in New York until December 22, 2017, despite allowing Herbalife to use its technology in New York for years prior to that date.<sup>132</sup>

Herbalife is not hyperWALLET's only questionable customer. The company seems to have specifically targeted MLM companies due to their pervasive need for international payments.<sup>133</sup> hyperWALLET AML personnel roles have been vacant numerous times over the past several years; one former employee in the position of "Chief Legal, Risk and Compliance Officer" lasted five months.

For its part, The Bancorp Bank has been the subject of two FDIC consent orders: one dated August 7, 2012<sup>134</sup> and another dated June 13, 2014<sup>135</sup>. These orders were supposed to severely restrict the Bank's ability to issue pre-paid debit cards through third-party providers, but since hyperWALLET already had an existing business relationship with the Bank, its activities were allowed to continue with minimal scrutiny. The Bank was also instructed to begin implementing BSA procedures, which it should

<sup>128</sup> HSI USA, Inc. Florida Money Transmission License Application. <https://www.plainsite.org/realitycheck/hlf/20130000.flmtlapplication.pdf>

<sup>129</sup> California Department of Business Oversight Monthly Bulletin, November 2014. <https://www.plainsite.org/realitycheck/hlf/20141100.cadbo.pdf>

<sup>130</sup> Florida Office of Financial Regulation Public License Search. <https://www.plainsite.org/realitycheck/hlf/20150209.floripr.pdf>

<sup>131</sup> Since rejection of a money transmission license application in one state can lead to the rejection of license applications in other states, regulators will frequently encourage problematic entities to withdraw their applications, rather than risk rejection.

<sup>132</sup> New York Department of Financial Services Weekly Banking Bulletin, December 22, 2017. <https://www.dfs.ny.gov/reportpub/wb171222.htm>

<sup>133</sup> International Direct Selling Technology Corporation Press Release, November 15, 2014; "IDSTC ANNOUNCES PARTNERSHIP WITH HYPERWALLET." <https://dstc.com/mlm-software-news/idstc-and-hyperwallet-celebrate-their-partnership/>

<sup>134</sup> Federal Deposit Insurance Corporation, *In The Matter Of The Bancorp Bank*, Case Nos. FDIC-11-698b, FDIC-11-703k. <https://www.plainsite.org/realitycheck/hlf/20120807.bancorpconsentorder.pdf>

<sup>135</sup> Federal Deposit Insurance Corporation, *In The Matter Of The Bancorp Bank*, Case No. FDIC-13-0479b. <https://www.plainsite.org/realitycheck/hlf/20140613.bancorpconsentorder.pdf>

have implemented long before.

In addition to United States financial regulators, hyperWALLET is regulated by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), but FINTRAC has not made any enforcement actions public to the extent that they exist.

## PayNearMe

hyperWALLET announced a partnership with the PayNearMe cash transaction network in November 2013. PayNearMe allows consumers to pay in cash for goods and services at participating 7-Eleven convenience stores.

In February 2014, PayNearMe, Inc. and PayNearMe MT, Inc. were the subject of a Cease and Desist order issued by the State of Illinois Department of Financial and Professional Regulation, Division of Financial Institutions.<sup>136</sup> In other words, Herbalife, an unlicensed money transmitter, had contracted with hyperWALLET and its United States subsidiary—both unlicensed money transmitters at the time—which in turn had partnered with a third set of entities—the PayNearMe companies—in a chain of unlicensed money transmitters.

## JPMorgan Chase & Co.



Public filings and Herbalife marketing materials show that Herbalife has long relied on JPMorgan Chase & Co. (as well as its predecessor, Bank One, NA) for its operational bank accounts. For many years, international distributors were encouraged to send funds to bank accounts held at Bank One and/or JPMorgan. In addition, Herbalife Europe Ltd. has maintained several accounts and complex transactional agreements with JPMorgan.

## ProPay (MetaBank)

Another long-time Herbalife pre-paid debit card issuer, ProPay is now a division of the processing giant TSYS. ProPay's plastic cards are backed by MetaBank. MetaBank, in turn, was the subject of a July 15, 2011 cease and desist order issued by the Office of Thrift Supervision (OTS) instructing it to step up its risk management and stop working with third-parties to issue risky cards.<sup>137</sup> It was instructed to formulate a Third Party Risk Management Program. The bank was also forced to pay a civil penalty of \$400,000.

<sup>136</sup> State of Illinois Department of Financial & Professional Regulation, Division of Financial Institutions, Case No. 13CC393, *In the matter of Paynearme, Inc; Paynearme MT, Inc.*, January 29, 2014, Cease and Desist Order. <https://www.plainsite.org/realitycheck/hlf/20140129.ceaseanddesist.pdf>

<sup>137</sup> Office of Thrift Supervision, *In The Matter of Metabank*, Order No. CN 11-25. <https://www.plainsite.org/realitycheck/hlf/20110715.metabankceasesdesist.pdf>

ProPay is listed as a payment option on Herbalife's Point of Sale app for distributors, and also offers the ability to accept credit card payments using a card dongle that attaches to an iPhone, which makes use of the TSYS card processing network.

## EarthPort PLC

Both ProPay and hyperWALLET make use of services offered by EarthPort PLC to transmit funds around the world.<sup>138,139</sup> EarthPort is a British company led by Hank Uberoi, a Goldman Sachs veteran, and Philip ("Phil") Hickman, who according to the company's website is a 32-year veteran of HSBC. EarthPort has a long-term contract with HSBC that allows it to move funds worldwide for its customers.<sup>140</sup> The EarthPort name does not appear on any hyperWALLET or Herbalife marketing materials, but its bank connections do appear to be critical to the operation of hyperWALLET's technology.

An HSBC/Herbalife payment form for distributors allows funds to be deposited directly to a bank account or an "International Earnings Card" provided by the bank.

## HSBC



After paying a \$1.9 billion fine for helping terrorists and criminals move funds for decades, HSBC became effectively synonymous with drugs and organized crime. For years until approximately 2010, HSBC was one of Herbalife's primary banking partners, helping Herbalife cut checks and issue pre-paid cards to its distributors around the world.

For many years, if upline Supervisors claimed to live in a country other than the country in which the product was purchased (not a difficult endeavor since IDs are not verified), their commission payments were processed by HSBC, which issued these distributors' checks denominated in U.S. dollars or on international debit cards. It is possible that after the bank faced increased scrutiny after disclosures about its criminal business practices, HSBC informed Herbalife that it could no longer maintain its business relationship.

In summary, Herbalife has churned through a number of financial firms, all with serious compliance problems, in order to keep its operations functional.

<sup>138</sup> London Stock Exchange RNS Press Release, June 10, 2008, "Earthport plc ('Earthport' or the 'Company') Agreement with ProPay Inc ('ProPay')"

<sup>139</sup> Earthport PLC Press Release, July 25, 2013, "hyperWALLET Chooses Earthport to Enhance Cross-Border Payments Service." <http://www.earthport.com/pr/hyperwallet-chooses-earthport-enhance-cross-border-payments-service/>

<sup>140</sup> Earthport PLC "Global Contract with HSBC," May 6, 2014. <https://www.plainsite.org/realitycheck/hlf/20140506.hsbccontract.pdf>