

# Fortune Hi-Tech: American dream or pyramid scheme?

By [Jayne O'Donnell](#), USA TODAY

LEXINGTON, Ky. — Marie Richardson of Daytona Beach, Fla., has never been as excited about a business opportunity as she is about her new work for Fortune Hi-Tech Marketing. In her first week and a half as an independent sales representative this summer, she earned \$800 in bonuses for recruiting four customers who agreed to pay a fee to become salespeople and buy or sell products.

Kimberly Asper of [Missoula](#), Mont., however, says she sometimes has to feed her family cereal or ramen noodles for dinner since she was laid off from a job and spent thousands trying to build a business through Fortune. She soon realized it was all about "signing people up."

Richardson was one of several thousand salespeople who gathered here last month for a Fortune conference to learn how to recruit people and sell products including cell phone service and private-label vitamins for the company, which Fortune's top money earner, Ruel Morton, calls "the most lucrative financial opportunity in the history of the country." Asper, meanwhile, was one of the Montanans whose complaints led to a lawsuit filed by the state securities commissioner and settlement that required Fortune to tell current and new representatives that no compensation will be paid for recruitment. Fortune paid \$1 million to settle the charges, including \$840,000 to reimburse Montanans, but did not admit wrongdoing.

**'MESMERIZED':** [Paul Orberon touts benefits of multilevel marketing](#)

**HOW IT WORKS:** [Multilevel marketing sales reps urged to sign up others](#)

Multilevel or "network" marketing pays commissions to salespeople for the products they sell, on products sold by others they recruit, and often bonuses when their teams reach a certain level of sales. The Direct Selling Association, which represents companies that have multilevel compensation plans, estimates there were about 16.1 million of these "direct" salespeople in the U.S. last year, up from 15.1 million in 2008, thanks to high unemployment and the need for many to supplement incomes. Avon, [Amway](#) and [Mary Kay Cosmetics](#) are among the largest companies in multilevel marketing, but there are hundreds of lesser-known businesses that sell everything from jewelry to cell phone service.

Critics of Fortune, including the Montana Commissioner of Securities and the plaintiffs in a new lawsuit seeking class-action status, say Fortune is a "pyramid scheme" because salespeople are primarily paid for recruiting, not product sales, and more recent recruits can't earn anything close to what the early entrants do. Fortune has until Nov. 2 to respond to the lawsuit seeking class-action status.

"Presidential ambassadors" such as Morton average \$1,240,992 in income a year, yet make up just 0.07% of the company's representatives, according to a financial disclosure Fortune filed as part of its April settlement with Montana. The statement also shows 30% of Fortune representatives make nothing, and 54% of those with earnings average just \$93 a month, before costs. More than 99% of those who make money earn less than \$31,524 a year.

In a written response to questions, Fortune CEO Tom Mills stressed its independent salespeople's "success depends upon and requires successful sales efforts, hard work, leadership and teamwork." There's a big difference in what people make, because some people only work part time, he says.

To afford big payouts at the upper levels, former Fortune regional sales manager Joseph Isaacs says the company targets desperate unemployed people, Hispanic immigrants and others who are struggling to make ends meet. Joanne McMahon, a national sales manager speaking at a training session USA TODAY attended here, said it is the people who can't afford the fee to join Fortune who need the company the most.

"I heard testimony of people who had become millionaires in a matter of months," says Asper, 38, who once earned \$100,000 a year in retail management. "They led us to believe we'd be one of those people."

### **The reward for recruitment**

Fortune documents show its sales reps are paid \$100 to \$480 for recruiting customers who pay fees to become representatives and buy or sell a small number of products. They receive commissions of up to 1% — or less than \$1 on a \$100-a-month cell phone bill — on products and services, which they are often encouraged to buy for themselves or give away. Former sales managers including Isaacs and Yvonne Day, a plaintiff in the lawsuit seeking class-action status, say their product commission checks were often less than \$20, while income from bonuses totaled several thousand dollars. A lawsuit filed by Isaacs alleges 82% of 100,000 Fortune representatives last year "failed to earn a single residual commission over \$20 despite making personal purchases."

The company says it has about 104,000 salespeople and has customers in every state, Canada, Puerto Rico and the [United Kingdom](#). Mills says because its salespeople are "independent," they aren't required to notify the company when they have meetings. But there were still recruitment meetings in 12 states including [New York](#), Virginia and Alabama being publicized by Fortune on its website this week.

Fortune and its independent representatives also regularly promote the turnaround stories of its top earners in videotaped meetings, the conference here, a book written by its president and in interviews in *Success From Home* magazine. Matt Morse of Arkansas told the magazine his first child had hand-me-downs, but that after he joined Fortune he became debt free, got new things for his second child and started going to a country club twice a week and Disney World three times a year. Anna Chorost of Oklahoma said that

since she joined Fortune, she and her husband have flown to California "simply because we wanted a nice glass of wine." Companies that are featured on the cover of *Success From Home* agree to buy at least \$330,000 worth of issues, according to a description of the prerequisites obtained by USA TODAY.

### **Fortune president defends company**

The Federal Trade Commission considers a company a pyramid scheme even if it has products for sale if it's clear during recruitment that "the real way to make money isn't by selling that product but by recruiting other people to pay money for the right to sell that product," says Monica Vaca, assistant director for the FTC's division of marketing practices.

The FTC Act also prohibits "deceptive and misleading practices," which may include claims about what people make that don't make "clear if it's not typical of what everyone who joins is making," Vaca says.

In an interview at the conference, Fortune founder and President Paul Orberson defended his company against the charges it is a pyramid scheme: "If it were illegal, I wouldn't be standing here."

As with laws enforced by the FTC, at least 46 states also ban the payment of money to reward the act of recruiting another participant, says Gerald Nehra, a multilevel marketing defense attorney who headed Amway's legal division from 1982 to 1991.

Nehra says he advises his clients that "80% or more of money that moves around the enterprise should be directly related to sales of products or services." Nehra would not comment on any particular company.

Diane Graber, a former executive sales manager from Montana who is a supporter of Fortune, acknowledges that "if you were not recruiting, your business was dying." The checks from product sales were "not good enough to live on," says Graber, who was a defendant in the Montana lawsuit.

"All compensation is based on sales, and sales alone," Mills said in his written response. "There is never any compensation for recruiting, only for the acquisition and retention of customers."

"Customer acquisition bonuses," he says, "reward the (independent representatives) for acquiring new customers."

### **Qualifying for bonuses**

Fortune only pays these customer-acquisition bonuses to those who bring in people who pay the \$99 fee to join and agree to buy or sell some products or services. Once that new

representative makes enough sales to get five "customer points," they are qualified to get bonuses themselves for bringing in others.

A customer, Nehra says, is a person who "has no expectation of making money and just receives the product or service for the value paid." They don't provide Social Security numbers or taxpayer ID numbers and sign independent contractor agreements, he says.

Most recurring purchases — such as cell phone service, satellite TV or regular deliveries of vitamins — count for one or two points. A "First Day Packet," distributed to new Fortune salespeople as recently as last June, says three customer points could be easily obtained by the new salesperson by paying a monthly fee to have a Fortune website and a travel website. The packet noted that the "goal" is to have 10 points with at least two or four points representing sales to another person.

Mills says the company didn't produce or endorse the packet, but a similar suggestion is made by Fortune presidential ambassador Todd Rowland in a videotaped presentation viewed by USA TODAY and sold by Fortune last year. Rowland noted the Fortune website is the first point and that new recruits could buy nutritional or beauty products or switch their family's cell phone service and TV to satellite service offered by Fortune to earn their points, as his family did.

Former managers, including Asper, Isaacs and Day, all say they were encouraged to become customers themselves.

"You could sell the products to others, but nobody ever does that," says Isaacs, who is being sued by Fortune for trademark infringement and filed a counterclaim calling Fortune an "unlawful pyramid scheme." "In reality, it isn't taught that way. All new managers buy their first three, five or 10 points to immediately qualify their business."

Kevin Mullens, a Pentecostal preacher and Fortune national sales manager in Crawfordville, Fla., used the Bible in a videotaped presentation last fall to emphasize why the downtrodden need a plan that includes Fortune: "The Scripture says without a vision, people perish."

Fortune, he said, is "a ministry that can produce whatever it is that you need."

### **State officials step in**

Some government officials aren't so sure. What states are doing:

- Montana Commissioner of Securities Monica Lindeen says she was pitched to join Fortune by her brother. He recruited her mother and other family members before she learned her office was investigating. She called Fortune a "pyramid scheme" when she filed suit against the company in March. Along with prohibiting Fortune from paying people for recruiting and insisting that bonuses only be based on product sales outside the home, Montana's consent agreement requires Fortune to lower its entry fee from \$299 at

the time to \$75 and to give every representative a "disclosure document" that explains how long it takes to earn different levels of income. All of Lindeen's family members have left Fortune.

- The Texas Attorney General's office sent Fortune a "civil investigative demand" letter on Aug. 26. The letter asked for the names of all state residents enrolled in Fortune, how much they paid to get in and got in return, along with the gross product sales in the state. The letter also asks the names and earnings of the highest-ranking managers of the company, who is below them on their teams and how much comes from direct product sales as opposed to "commissions, bonuses or sales by others." Jerry Strickland, a spokesman for Texas Attorney General [Greg Abbott](#), says the office is reviewing Fortune's response, and the "investigation is ongoing."

- Kentucky Attorney General [Jack Conway](#)'s office is also investigating, according to former Fortune managers Day and Isaacs, who have been interviewed. The office doesn't confirm or deny investigations and wouldn't comment about Fortune. In an interview, however, Conway said it could violate the state's anti-pyramid scheme law if product sales alone couldn't "sustain the people at the lower end of the chain." And it could be considered an "unconscionable act" under the state's consumer protection law to not disclose how unlikely it is for new salespeople to make anything close to what more senior managers do.

- North Dakota Attorney General [Wayne Stenehjem](#) issued a cease-and-desist order last December against Fortune for violations of several state laws. Fortune agreed to pay a \$12,500 fine and to voluntarily comply with state laws. But Stenehjem said the state's consumer protection division would continue to investigate whether Fortune violates the state's anti-pyramid, consumer fraud and home-solicitation laws.

- North Carolina Attorney General Roy Cooper's office has received "a number of complaints" about Fortune, and the consumer protection division launched an investigation, according to spokeswoman Noelle Talley.

- At least four other states — Missouri, South Carolina, Illinois and Florida — have followed up on complaints from disgruntled former Fortune representatives.

### **Non-English speakers vulnerable**

Some say Fortune goes too far in targeting vulnerable Hispanics who aren't fluent in English. Ilse Bustamante, a printing company executive from Deland, Fla., filed a complaint with her state after a friend tried to strong-arm her into joining Fortune because of her Latin connections. She says Fortune is determined to tap into the growing Hispanic market to fuel its own growth and targets bilingual people like her to lure non-English-speakers.

"The way they (Fortune) present this info is misleading, and with them not knowing English that well, they're going to fall for it," Bustamante says.

Mary Jude Ramirez, whose son-in-law left Fortune because of the high monthly fees, agrees. "These are people who really have an American dream," Ramirez says. "The Fortune people tell them they only need a great desire to get ahead, and if they spread the word of this program, riches will pour into their lap."

A central part of the Fortune pitch, as heard at the conference here and explained by several former managers, is that it's easy to recruit other managers because the brands and products it sells are ones almost everyone already needs and uses. But nearly all of the household names, including [Travelocity](#), [Citibank](#), [Allstate](#) and [Home Depot](#), that the company listed on its website as recently as this summer are no longer named.

Currently, Fortune representatives can sell satellite TV through [Dish Network](#). Although it had a large display at the conference, Dish downplayed its relationship with Fortune and told Montana officials that it didn't have a partnership with Fortune, which it called a "third-party independent contractor," according to the Montana cease-and-desist order against Fortune. Dish didn't reply to a request for comment.

Fortune representatives can also sell cellphone service for most major carriers through a company called The Wireless Shop, which is owned by Reston, Va.-based Simplexity. Other products include Fortune's private-label vitamin line, True Essentials, private-label skin-care products, online music downloads, roadside assistance and home-security systems.

Fortune often notes that its commissions are up to 25%, but those who choose that route forfeit the "customer points" necessary to advance in the company and receive bonuses in bringing in other salespeople who are also customers. And the larger commissions are only available on its private-label products.

### **Fortune lowers fees after complaints**

Fortune has been changing its national policies, including lowering the entrance fee outside Montana from \$299 to \$199 to \$99 in the last four months — following complaints and legal charges. In a taped conference call with his team members on Sept. 29, Morton said the company would no longer pay recruitment bonuses until managers have 12 people on their teams, which places them at the regional sales manager level. To have 12 people on a team, a person has to recruit three people who recruit three people who get three more people who bring in another three. USA TODAY listened to the call.

Commissions on products were also increased from 0.25% to either 0.50% or 1%, which would boost residuals from product sales but still make Fortune's product commissions extremely low compared with other companies using multilevel compensation plans. Nehra says even 25% commissions would be low in multilevel marketing, as many companies pay up to 45% commissions because they sell such high-margin products. Kenyon Meyer, the attorney who filed the lawsuit seeking class-action status, says such a small change doesn't change the legality as it's still far more lucrative to recruit. "If you create a system where recruitment is rewarded more than the sale of products, what is a

rational person going to do?" says Meyer, whose law firm has represented subsidiaries of [Gannett](#), the parent company of USA TODAY.

Lou Abbott, an advocate of multilevel marketing and founder of the website MLM-thewholetruth.com, says he believes Fortune is in "a gray area and always has been."

"For a company to stand legal scrutiny, distributors cannot in any way, shape or form be compensated for recruiting other distributors," Abbott says. The lawsuit seeking class-action status is asking the court to force Fortune to pay back the money that representatives paid the company and to stop Fortune from operating as an "illegal pyramid scheme."

Richardson, who has a kettle corn business at a flea market and sells real estate, found the story of a former dishwasher in Mexico who is now a presidential ambassador was compelling at the conference. She's also motivated by the [Lexus](#) vehicle Fortune is now making payments on for the person who recruited her. Fortune agrees to make payments on certain luxury vehicles when representatives reach the executive sales manager level — which means they have 90 people on their teams — as long as they remain at that level.

"That's my goal," Richardson says.

Kimberly Asper and her husband were both laid off more than a year ago and lost their home in a foreclosure this summer. She's now working up to 10 hours a week for minimum wage in a coffee shop. She estimates she spent about \$5,000 to join Fortune, buy products, hold meetings and pay for travel to Fortune conferences. "The people in the company who are higher up keep benefiting from people who are struggling to be at the same level," Asper says.

When Asper met Orberson at a Canadian conference, however, she says he told her it didn't have to be that way: "He wanted to know why I wasn't on stage, and when was I going to be his next millionaire."

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