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GENERAL NOTICES

NOTICE 1322 OF 2003

DEPARTMENT OF TRADE AND INDUSTRY CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 2215 of 2001 as published in Government Gazette No. 22794 dated 2 November 2001, as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

**REPORT IN TERMS OF SECTION 10(1) OF THE CONSUMER AFFAIRS
(UNFAIR BUSINESS PRACTICES) ACT, 1988 (ACT NO 71 OF 1988)**

REPORT NO 105

**Investigation in terms of section 8(1) (a) of the Consumer Affairs (Unfair
Business Practices) Act, 1988, into the business practices of Gold Coin
Investment also known as Coinbusiness.net**

1. THE CONSUMER AFFAIRS COMMITTEE

The Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act), is administered by the Consumer Affairs Committee (the Committee), a statutory body in the Department of Trade and Industry. The purpose of the Act is to provide for the prohibition or control of certain business practices. An unfair business practice is defined as any business practice which could harm the relationship between businesses and consumers or which will unreasonably prejudice, deceive or unfairly affect consumers.¹

The Act is enabling and not prescriptive. The main body of the Act is devoted to various administrative procedures, the investigative powers of its investigating officials, the types of investigations the Committee can undertake and the powers of the Minister of Trade and Industry (the Minister). The Act confers wide investigative powers on the Committee. There are two types of investigations which the Committee may undertake when examining the business practices of an individual or a particular business namely: an "informal" section 4(1)(c) investigation² or a "formal" section 8(1)(a) investigation³. The usual procedure when the Committee receives a complaint from a consumer, is to undertake a 4(1)(c) investigation. This investigation enables the investigators to make preliminary enquiries in order to establish how the business operates. Notice of a 4(1)(c) investigation is not published in the *Government Gazette* details of the investigation are not made public. However, if the Committee is of the view that there is evidence of an unfair business practice and it decides to investigate the matter further, notice of the 8 (1) (a) investigation is published in the *Government Gazette*.⁴ The Minister is not empowered to make any decisions about the discontinuance of a particular business practice on the strength of a 4(1)(c) investigation. He may do so following an 8(1)(a) investigation.

The Act does not stipulate that an 8(1)(a) investigation must be preceded by a 4(1)(c)

¹ See section 1 for the definition of an unfair business practice

² These investigations are commonly referred to as 4(1) (c) investigations

³ These investigations are commonly referred to as 8 (1) (a) investigations

⁴ In many instances the Committee is able to resolve the matter and it is not necessary for the matter to proceed to a formal investigation.

investigation. If the Committee is of the opinion that *prima facie* evidence of an unfair business practice exists, it usually dispenses with the 4(1)(c) investigation.

Should the Committee, after an 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action to the Minister to ensure the discontinuance of that practice.⁵ The Minister's order is published in the *Government Gazette*. An infringement of the order is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both a fine and imprisonment.

2. Events leading to the investigation

This matter came to the attention of the investigating official on 20 September 2001 and 16 pages printed from the web site of Gold Coin Investments also known as Coinbusiness.net (Coinbusiness) were submitted to the Committee for discussion at the Committee's meeting held on 3/4 October 2001. From the information on the web site it appeared this entity was Gold Charity Fund⁶ in disguise. Gold Charity Fund invited persons to a meeting, at which meeting such persons were encouraged to partake in or become members of Gold Charity Fund Investments Ltd. Members were then

- (i) paid compensation related to recruitment based on false or misleading representations to consumers and/or
- (ii) paid compensation related to the purchase or sale of products based on false or misleading representations to consumers.

Payments were based on a so-called multi-level marketing plan and on the principle that participants are required to sell two products to two other participants who are in turn each required to sell to two further participants and where these sales occur in so-called right and left legs wherein the sales must be in a particular ratio before monetary rewards are paid.

The Committee found that under the best of circumstances, at least 87.54 % of the Gold Charity participants will receive no compensation. These 87.54 % of the participants will contribute towards the money made by the remaining 12.46 % of the participants. This is clearly not in the public interest. The Peters in the scheme are

⁵ The powers of the Minister are set out in section 12

⁶ Report No 95 published in Government Gazette No 24055 of 8 November 2002

robbed to pay the participating Pauls. If the Peters were aware of this, they would probably not buy the package.

On the web site of Coinbusiness the founder members of Gold Charity Fund in South Africa were especially welcomed and to show their appreciation to each and every member, 1 000 company shares as co-owners of the business were offered to the members. Those shares were to be calculated with the shares the members already had in Gold Charity Fund. Gold coins were marketed through a network, the income opportunity in Coinbusiness was the same as in Gold Charity Fund and other binary pyramids⁷. The reason for Coinbusiness' existence is stated to be in support of the less fortunate.

3. Publication in the Government Gazette

On 3/4 October 2001 the Committee resolved to undertake a section 8(1)(a) investigation into the business practices of Gold Coin Investments in South Africa and the relationship between this entity and Gold Charity Fund Investments Ltd as it was clear from the information at the Committee's disposal that this scheme is typical of the other binary pyramid schemes under investigation by the Committee.

On 25 October 2001 a letter was forwarded (by e-mail as well as by post) to the Director / Manager, Gold Coin Investments, 46 Old Street, Roseau, Commonwealth of Dominica, West Indies informing him that his company's operations/activities as outlined in its web site Coinbusiness.net came to attention of the Committee. A brief background of the Committee and its functions was given to him and he was also informed that in 1999 the Minister has, after accepting the recommendations of the Committee, following a general investigation into money revolving or pyramid schemes, promulgated regulations (the regulations were attached) outlawing pyramid promotion schemes⁸.

⁷ Skybiz, Report No 90 published in Government Gazette No 24053 of 8 November 2002;
Core Club, Report No 92 published in Government Gazette No 24052 of 8 November 2002;
Zibycom, Report No 93 published in Government Gazette No 24054 of 8 November 2002;
PILL, Report No 98 published in Government Gazette No 24051 of 8 November 2002

⁸ Report 76 published in Government Gazette No 20169 dated 9 June 1999

He was informed that the information on its web site (as on 20 September 2001) was submitted to the Committee at its meeting held on 3/4 October 2001 and that the Committee with the information at its disposal resolved to undertake a section 8(1)(a) investigation into the activities of Gold Coin Investments. He was also informed that the following notice will be published in the South African Government Gazette on 2 November 2001:

"In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of -

Gold Coin Investments, a company conducting business from 46 Old Street, Roseau, Commonwealth of Dominica, West Indies, who conducts business on the Internet, in the Republic of South Africa.

Any person may within a period of thirty (30) days from the date of this notice make written representations regarding the above-mentioned investigation to..."

It was explained that the Committee's decision is based on the view that the operations of Gold Coin Investments are in contravention of the regulations published by the Minister and the statement made on the web site that "subscribers have to keep in mind that they must comply with their specific Government's Legal requirements".

He was invited to provide the Committee with any information that would in his view assist the Committee in its consideration of his company's activities before the Committee made a recommendation to the Minister as to what steps needed to be taken by him. He or an official representative of Gold Coin Investments were also invited to the Committee at its meeting to be held on 28 and 29 November 2001.

He was requested to forward any information he wishes to bring to the attention of the Committee by not later than 14 November 2001.

The Notice referred to above was published under Notice 2215 in Government Gazette No 22794 of 2 November 2001. On 5 November 2001 the following press statement was released:

"The Consumer Affairs Committee has resolved to undertake an investigation into the activities of Gold Coin Investments, a company conducting business from 46 Old Street, Roseau, Commonwealth of Dominica, West Indies. The company conducts business on the Internet in South Africa. Notice of the investigation was published in the Government Gazette of 2 November 2001. Any person may make written representations regarding the above-mentioned investigation to the Secretary, Consumer Affairs Committee, Private Bag X84, Pretoria, 0001.

The Committee also warned consumers to be very careful of investments in coins. Consumers are usually promised very high returns which are seldom realized. Consumers may also be invited to participate in schemes where the selling of the coins is linked to compensation for introducing other persons into the schemes. Such schemes may be disguised as pyramid schemes which are illegal."

4. Investigation

The web site of Coinbusiness begins as follows:

"The world's **leading** home based gold coin business.

Your **business opportunity** to obtain and sell

unique, rare and valuable coins.

Make an investment in limited and special

edition commemorative coins."

The web site describes the compensation plan as follows:

"Gold Coin Investments decided on the best and fairest way of distributing its products, through Network Marketing. The Binary System, as a business recipe,

not only creates an enormous amount of excitement, it is also very fair in that it keeps earnings until you have qualified for these earnings and it renders very useful in what we propagate as a People Helping People Business.

The binary system encourages teamwork, is simple to understand and implement, there are no monthly quotas to meet and create residual income if managed properly. The Company believes in that he who does the work should get the pay. The binary network system is fair in developing a solid business structure. "

A certain Mr Wimpie van der Merwe (who was actively involved in the offices of Gold Charity Fund) forwarded a letter dated 31 October 2001 to the Committee stating that he had received authority to act on behalf of Mr Forbes Warrington, director of Coinbusiness. The Committee then forwarded a letter to the Director / Manager of Gold Coin Investments explaining that the Committee had received a letter from a Mr W van der Merwe wherein he claimed that he was authorized to represent the company in negotiations with any government or regulatory authority. The "Resolution", on an undated document, not on a letterhead, was signed by "Forbes Warrington - Director" and "Tamara St Amie - Secretary". Mr Van der Merwe's letter was also not on a letterhead and was forwarded by fax to the Committee's office from the office of Gold Charity Fund Investments Ltd. The Committee informed Mr Forbes Warrington that it could not accept information provided by Mr W van der Merwe as information officially provided by the company. The Committee needed to know exactly what Mr Van der Merwe's position was in the company and whether or not he has been given the authority to represent the company. In this regard, the Committee needed to receive the information formally from the company on a company letterhead.

In reply to the Committee's letter Mr Forbes Warrington informed the Committee that his company (Gold Coin Investments) which was formed under the Commonwealth of Dominica International Business Company Act of 1996 and which was registered on 2 September 2001, acquired Coinbusiness. He further stated that he would like the Committee to note the following:

- "1. Coinbusiness does not contract any business in South Africa, You can be referred to the notice on our home page at www.coinbusiness.net.

5. Any South African agents in the network who joined Coinbuisness since the 22nd of August 2001 will be reimbursed their money.
6. Coinbusiness bought the database of Gold Charity Fund and there are South Africans on this list. Due to restrictions placed on this group of South Africans they are thus of no value for Coinbusiness anymore. South Africans will not be able to participate in the business anymore.
7. Since the Company made a quality decision to end its operations in South Africa there will be no need for anybody in South Africa to represent Coinbuisness with your Department."

5. Consideration

The binary system of Coinbusiness is the same as all the other binary systems investigated by the Committee. The Committee defines a binary scheme as a scheme in which:

- (a) a participant is required to sell at least two of an entity's products or packages (hereafter called products) to two different persons who are in turn each required to sell to two further participants who are in turn required to sell to two further participants and the process is repeated,
- (b) each participant is assigned to two downlines or legs, which could be labelled *left* and *right*, or A and B, whatever the case may be,
- (c) any additional products sold by a participant are assigned below these left and right legs in the first available node, from top to bottom and left to right in the matrix,
- (d) participants receive commission for all sales, or batches of sales, no matter how many levels there are in their downlines,
- (e) the commissions paid are dependant on a particular ratio that must be maintained between the sales on the left and right legs, such as a " $\frac{1}{3}$ -rule". The " $\frac{1}{3}$ -rule" would require that, in order to receive commissions, at least $\frac{1}{3}$ of the sales credited to a participant's downline must come from one of the two legs,

- (f) the maximum earnings per week or month per participant are limited to a certain amount but this need not be the case,

The Committee found with binary systems that under the best of circumstances at least 87.54 % of the participants will receive no compensation. These 87.54 % of the participants will contribute towards the money made by the remaining 12.46 % of the participants. This is clearly not in the public interest.

The business practices of Coinbusiness constitute unfair business practices. There are no grounds justifying these practices in the public interest. The Committee provides the following reasons for its decision:

- The Rainbow, Newport, Dunamus and Itereleng schemes (See Report 55: Rainbow Business Club and Others published under Notice 1958 dated 12 December 1997; Report 56: Newport Business Club (Pty) Ltd and Others, published under Notice 1349 dated 17 September 1997; Report 60: Dunamus Marketing CC and Others, published under Notice 963 dated 12 June 1998; and Report 62 AJ van Rensburg & Associates CC, also known as JVR & Associates CC, trading as Itereleng published under Notice 2797 dated 20 November 1998 respectively) were all closed down by the Minister because in all four reports the former Business Practices Committee (BPC) expressed the opinion that their members would be unreasonably prejudiced. The most important reason for this point of view was that at any time the overwhelming majority of its members were at risk. For example, in the Newport case, the BPC theorised that at least 75% of the Newport *en commandite* partners would not recoup their investments. In fact, 61% of the partner did not recoup any of their payments and another 30% recovered less than their investment. Thus, 91% did not recoup their payments, compared with only 9% who have done so.
- There is evidence to show that most of its participants in Coinbusiness are at risk and will suffer loss. These participants and future Gold Charity participants will be ***unreasonably prejudiced. This is not in the public interest.***

- Participants were misled into believing that they would earn commissions but the fact is that at least 87.54% will receive no compensation. This cannot be justified in the public interest.

Although Mr Forbes Warrington informed the Committee that Coinbusiness does not contract any business in South Africa anymore, it is necessary to prohibit the operation of the scheme in South Africa through South African legislation.

6. Recommendation

It is accordingly recommended that the Minister declare the following unfair business practice to be unlawful in terms of Section 12(1)(b) of the Act whereby any juristic or legal person

- (a) invites, procures the attendance or attempts to invite or to procure the attendance of any person to a meeting, at which meeting such persons are invited or encouraged in any way, directly and indirectly, to partake in or become members of Gold Coin Investments or Coinbusiness.net;
- (b) directly or indirectly, operates, conducts or promotes participation in or membership of Gold Coin Investments Ltd or Coinbusiness.net;

- (c) transmit in any way whatsoever, money to any account, whether in the Republic of South Africa or abroad, destined for the credit of Gold Coin Investments or Coinbusiness.net

Signed by

PROF T A WOKER

VICE-CHAIRPERSON: CONSUMERS AFFAIRS COMMITTEE