

**BBB NATIONAL PROGRAMS, INC.**  
The Direct Selling Self-Regulatory Council

Case Number: 1-2019 – Monitoring Inquiry - Wildtree, Inc.

**COMPANY DESCRIPTION**

Wildtree, Inc. (“Wildtree” or the “Company”) is a multi-level direct selling company that specializes in healthy meal solutions for families.

**BASIS OF INQUIRY**

The Direct Selling Self-Regulatory Council (“DSSRC”) is a national advertising self-regulation program administered by BBB National Programs, Inc. This inquiry was commenced by the DSSRC pursuant to its ongoing independent monitoring of advertising and marketing claims in the direct selling industry.

Specifically, DSSRC identified several core earnings claims being disseminated on the Facebook pages of certain Wildtree representatives as well as success story testimonial videos located on the Wildtree website (<https://www.wildtree.com/rep/homeoffice/join-wildtree>)

The representative earnings claims that were the subject of this review are as follows:

A. Express and Implied Earnings Claims – Representatives’ Social Media Posts

- *Wildtree Sales Representative Facebook Post:*

“💰JOINME!

*Last but certainly not least join the Wildtree movement! The best thing I can offer you is our income opportunity. It means different things to everyone that uses it. For me it has been a way to get out of the house and have adult time. As well as allow me to purchase extra little things through out the month, like a fancy \$5 coffee drink 😊 or put a little extra toward those student loans! For others it means earning enough to purchase groceries and gas every month. And others join to replace their full time corporate income to stay home with their kiddos and have the freedom to work when they want!”*

- *Wildtree Sales Representative Facebook Post:*

*“Ahhhh I have to brag just a little bit! Thanks to Wildtree, I was able to buy myself a brand new treadmill with my extra income I have made in two months 😍😍😍👏👏👏”*

*“You guys, there are so many reasons to join my team!! So ask yourself....  
★Do you need to pay off some credit card debt or maybe a student loan?  
★Do you want fun money?! Go on a family vaca, buy a treadmill like me 😊:)maybe do a house remodel?”*

☆Do you maybe want to start saving for the future? Maybe save up for a house, your kids college, weddings, etc.”

B. Express and Implied Earnings Claims – Video Testimonials on Company’s Website

- *Video testimonial from a Wildtree representative: “Honestly, that’s the number one question. I remember at a workshop a husband of my host asked me ‘this isn’t a hobby for you?’ and when we sat down and started talking about it he was shocked that not only have I replaced my nursing income but I don’t work forty hours a week, I get to be home with my family, I get to travel a ton. So yeah you honestly can make money and that I think is the biggest thing that people don’t understand.”*
- *Video testimonial from a Wildtree representative: “You can absolutely make money at Wildtree. I am firm, firm proof of that. You don’t have to have a background in sales and direct sales, anything like that. I didn’t, I knew nothing about it. And within several months I was making a substantial income with Wildtree and continue three years later and will continue down the road.”*
- *Video testimonial from a Wildtree representative: “You hear it all the time that people don’t make money at this and that is absolutely not true. I’m I think living proof, I don’t have this “wow I made 5 million dollars last year” story but I have a pretty, like, I’m a normal person and I make about three times what I did as a labor and delivery nurse and I’m working part time hours so I certainly am making respectable money at this job.”*
- *Video testimonial from a Wildtree representative: “There’s no limit, there’s no ceiling to how much you could make with this business so you need to set, you know, a desired amount with your up line and they will train you on how to meet or succeed that number every month.”*
- *Video testimonial from a Wildtree representative: “Absolutely, you can make money with Wildtree. You can make whatever you think you’re worth, you can make whatever you are willing to work toward. The sky is truly the limit here and there aren’t many industries you can say that about um, so it’s very exciting to know that I can determine how much I make.”*
- *Video testimonial from a Wildtree representative: “If someone asks me can they make money at Wildtree, I’d say absolutely. The question really is how much money do you want to make.”*
- *Video testimonial from a Wildtree representative: “One of the things that I accomplished with my Wildtree business is that I honestly never even fathomed when I first signed up to be a Wildtree rep is that I would replace my nursing income. I not only replace it but go beyond my nursing income to be able to be adventurous and go out and have tons of flexibility with my family at the same time as building a business.”*
- *Video testimonial from a Wildtree representative: “So with Wildtree, one of the things that I never knew was possible that now I have achieved and just absolutely love is that I really*

*can have it all. All! I can have flexibility, I can have freedom, I can have income, I get it all. I schedule around my kids' schedule, around my family schedule, we go on trips, we've bought a second home. It's amazing. So it's possible with Wildtree."*

- *Video testimonial from a Wildtree representative: "Before I came to Wildtree I was a registered nurse in the labor and delivery department and I've been building my Wildtree business for a little over three and a half years. So I got invited to a Wildtree workshop just like everyone does and I fell in love with the easy dinner time solutions. I was suffering from the double whammy of being recently post-partum with baby number three and working the graveyard shift at the hospital, so super exhausted. Dinner time had gone out the window, like, a long time ago so it was magic solution for me. Four or five months in, I started to respect it as a job and treat it like a job and then that's when everything changed and I started earning about the same as I was at the hospital and I really caught the scent, right, that it could be something so much more and so that's when it became a business for me and not just a side gig... I was making enough money to be able to have this job where I work part-time hours when I choose and I didn't have to take a pay cut but instead got a pay raise and living life on my own terms. When I first found Wildtree, I don't think that was even on my radar. I was not familiar enough with this business to understand that that was realistic for someone so as soon as that became a reality for me that was my first huge celebration moment of like "I get to leave and be an entrepreneur." Never would have thought that in a million years, that that would be where I am today."*

C. Incentive Trip Claims – Video Testimonials on Company's Website

- *Video testimonial from a Wildtree representative: "So I never ever in a million years dreamed that I would be on an all-expense paid trip. I never have in my wildest dreams thought we'd be in an all-inclusive hotel where you can eat and drink and be merry. So earning this incentive trip was on my radar but never something I thought in a million years that I would earn or get to do."*
- *Video testimonial from a Wildtree representative: "Wildtree has taken me to Jamaica and Panama, never thought that was possible. For free. That's amazing. And staying home and homeschooling my children and having an income. That was not—when I joined Wildtree I really did it as "oh, it'll be a side job" or "oh it'll be an extra couple hundred dollars a month" and, um, did not see the potential for an income. And now that I have it, I'm so—I'm proud of myself for being able to do that and grow a business and have that potential and the freedom."*

In the Facebook posts and testimonial videos on Wildtree's website, the Wildtree representatives communicate various unqualified income representations regarding the amount of money and incentive trips that they have earned. In its inquiry, DSSRC informed the Company of its concern that the reasonable consumer may interpret these claims to mean that the success claimed by the Wildtree representatives would be the typical results that a Wildtree representative will generally achieve.

## COMPANY'S POSITION

Wildtree submitted a written response to DSSRC's initial inquiry letter. In accordance with DSSRC Policies and Procedures, DSSRC sent Wildtree a reply letter identifying remaining questions and concerns and affording the Company an opportunity to make an additional written submission. Wildtree did not make such a submission. Accordingly, the Company's position set forth herein is based on Wildtree's initial written submission into the case record before DSSRC.

As to the Facebook posts identified above, Wildtree noted that the such posts were personal posts by the Wildtree representatives and not corporate posts made by the Company. The Company also stated that the claims made by the representatives are factual, that there are no claims of guaranteed income or level of effort required and that such social media posts indicated that the Wildtree opportunity can mean different things to different individuals. Wildtree also noted that the social media claims touted the flexibility offered by Wildtree.

As to the earnings claims contained in the testimonial videos on the Wildtree website, the Company stated that the success stories profiled were true and that the video clips are of successful representatives discussing their own experiences with the Company. The Company also stated that while the videos spoke to an income opportunity they did not expressly quantify an amount of money earned. With respect to claims that a representative was able to replace her nursing income and another representative did not take a pay cut from her income as a labor and delivery nurse, the Company stated that neither representative specifically stated how much they had earned as a nurse or how much they earn working as a Wildtree representative.

With respect to a claim that a Company representative purchased a second home, Wildtree stated that the comment could be perceived as implying that the second home was purchased with the representative's Wildtree income and that the Company would ask the representative to delete that reference.

Wildtree's position on the video testimonials highlighting Wildtree representatives who earned incentive trips was that the videos are factually correct and that each the videos were recorded while the representative profiled was on an incentive trip.

## **ANALYSIS AND RECOMMENDATION**

### **A. Express and Implied Earnings Claims – Representatives' Social Media Posts**

An advertiser has the burden to support all reasonable interpretations of its claims and not simply the messages it intended to convey. Verizon Communications, Inc. (Verizon Wireless Services ("First to 5G")), Report #6258, *NAD/CARU Case Reports* (May 2019); FTC Advertising Substantiation Policy Statement, appended to Thompson Medical Co., 104 F.T.C. 648 (1984), *aff'd* 791 F.2d 189 (D.C. Cir. 1986). In the direct selling context, the DSSRC self-regulatory program makes clear that the responsibility of the direct selling company extends to the claims disseminated by members of a direct selling company's salesforce. While the social media claims identified by DSSRC were made personally by Wildtree representatives and were not claims made by the Company itself, such claims must nonetheless be truthful, accurate and presented in a manner that

is not false, deceptive or misleading. FTC Guide Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR §255.1(d).<sup>1</sup>

While Wildtree is correct that the social media posts tout the flexibility afforded by selling Wildtree and that there are no express claims of guaranteed income or the amount of effort required to earn a certain income, DSSRC remains concerned that these posts also make implied earnings/income claims that must be substantiated. Specifically, one post states that “For others it [Wildtree] means earning enough to purchase groceries and gas every month. And others decide to replace their full time corporate income to stay home with the kiddos and have the freedom to work when they want.” The other post asks “Do you need to pay off some credit card debt or maybe a student loan? ☆ Do you want fun money?! Go on a family vaca, buy a treadmill like me 😊:) maybe do a house remodel? ☆ Do you maybe want to start saving for the future? Maybe save up for a house, your kids college, weddings, etc.” DSSRC determined that such posts may reasonably communicate to consumers that a sales representative’s direct selling income will be enough to do things such as pay certain monthly bills (groceries and gas), replace the income of a full-time job, pay off debts and loans, take a family vacation or a remodel a home. Consistent with FTC guidance, if such results are not what would be expected by the typical representative of Wildtree, that fact must be disclosed along with the typical earnings that can be expected by a representative of Wildtree. Specifically, the FTC Guide Concerning the Use of Endorsements and Testimonials in Advertising provides that:

An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser’s experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser’s experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.

16 CFR § 255.2(b). Accordingly, DSSRC recommends that Wildtree have its representatives remove these earnings claims from Facebook or modify them by clearly and conspicuously disclosing the typical earnings that can be expected by a representative of Wildtree. Such a typical earnings disclosure must be substantiated by competent and reliable evidence demonstrating its typicality.

#### B. Express and Implied Earnings Claims – Video Testimonials on Company’s Website

As an initial matter, DSSRC notes that Wildtree stated that it would ask its representative to delete a reference to purchasing a second home in her video testimonial. By its review, DSSRC believes that action is necessary and appropriate but notes that this video resides on Wildtree’s own website and that the reference to the purchase of a second home remains in this video.

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<sup>1</sup> This responsibility is also expressly recognized by the Direct Selling Association’s Code of Ethics. DSA Code of Ethics, § 8(b)(1)

Accordingly, DSSRC recommends that Wildtree modify this video to remove the reference to purchasing a second home or to remove this video testimonial in its entirety.

As to the other earnings testimonials on Wildtree's website, DSSRC was concerned that the testimonials imply a significant income can be expected by a typical a representative of Wildtree. The implied income claims in the video testimonials include "I replaced my nursing income," "within several months I was making a substantial income," "I don't have this 'wow I made 5 million dollars last year' story but... I make about three times what I did as a labor and delivery nurse," "I honestly never even fathomed when I first signed up to be a Wildtree rep is that I would replace my nursing income," "I started earning about the same as I was at the hospital... "I didn't have to take a pay cut but instead got a pay raise and living life on my own terms." While these testimonials do not expressly state that the representatives earn a specific amount of income, DSSRC believes that they do imply a substantial level of income earned. Before disseminating an advertisement, the advertiser must substantiate all claims – express and implied – that are conveyed to a reasonable consumer. FTC Advertising Substantiation Policy Statement, appended to Thompson Medical Co., 104 F.T.C. 648 (1984). Further, even truthful testimonials from representatives "who do earn career-level income or more will likely be misleading unless the advertising or presentation also makes clear the amount earned or lost by most participants." FTC Business Guidance Concerning Multi-Level Marketing, §13 (January 2018). *See also*, FTC Guide Concerning the Use of Endorsements and Testimonials in Advertising. Accordingly, DSSRC recommends that Wildtree remove the implied earnings claims contained in the video testimonials or modify the videos to clearly and conspicuously disclose the typical earnings that can be expected by a representative of Wildtree.

### C. Incentive Trip Claims – Video Testimonials on Company's Website

Wildtree states that testimonials of representatives regarding earned incentive trips are true and that the videos were recorded while the representatives were on the trips. Consistent with the FTC Guide Concerning the Use of Endorsements and Testimonials in Advertising, DSSRC recommends that, if the Company does not have substantiation that the experience of these individuals is representative of what consumers will generally achieve, that Wildtree remove the incentive trip testimonials from its website or modify the testimonials to "clearly and conspicuously disclose the generally expected performance in the depicted circumstances" *i.e.*, what percentage of Wildtree representatives earn an incentive trip. 16 CFR §255.2

## CONCLUSION

DSSRC determined that the express and implied earnings claims made on social media by Wildtree representatives and in video testimonials on Wildtree's website may reasonably communicate to consumers that a typical Wildtree representative would earn a significant income selling Wildtree. DSSRC recommends that such claims be discontinued or modified to clearly and conspicuously disclose to consumers the typical earnings that can be expected by a Wildtree representative.

Similarly, DSSRC determined that the incentive trip claims made in video testimonials on Wildtree's website may reasonably communicate to consumers that a typical Wildtree

representative would earn such trips. DSSRC recommends that such claims be discontinued or modified to clearly and conspicuously disclose to consumers how typical it is for a Wildtree representative to earn an incentive trip.

### **COMPANY STATEMENT**

“Wildtree denies that there is anything misleading or otherwise untoward in testimonial videos and its website regarding its direct sales operations. That said, there has been a change in Wildtree’s business strategy unrelated to your [DSSRC’s] inquiry. Specifically, Wildtree is in the process of shifting from direct sales to wholesale and retail channels of distribution. As a result, Wildtree will no longer be offering its products through direct sales. As a result of this change, Wildtree will be removing all testimonials and other website claims of income potential resulting from direct sales of Wildtree products from its website, effective August 1, 2019.”

(Case No. 1-2019 HJS, closed on 8/1/2019)

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