Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

In the matter of:

FAST TRACK WORLDWIDE, INC.
SEC Company Reg. No. CS201902428

SEC CDO Case No. 05-20-065

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.
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RESOLUTION

For consideration of the Commission is a ***Motion to Lift Cease and Desist Order*** ("Motion to Lift")[1] filed by Fast Track Worldwide, Inc. ("FTW"), through counsel, praying that the Commission lifts the Cease and Desist Order dated 28 May 2020 ("CDO"), the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, **FAST TRACK WORLDWIDE, INC.**, its partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and on its behalf, are hereby directed to **IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT** from further engaging in, promoting and facilitating selling and/or offering for sale securities in the form on investment contracts and/or other activities/transactions, until the requisite registration statements are duly filed with and approved by this Commission, and the corresponding license and/or permit to offer/sell securities are issued.
>
> Finally, the Commission hereby **PROHIBITS** Fast Track, its partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and on its behalf from transacting any business involving the funds covered by this CDO in its depository banks, and from transferring, disposing, or conveying in any manner, all assets, properties, real or personal, including but not limited to bank deposits, of which the named persons herein may have any interest, claim or participation whatsoever, directly or indirectly, under its/their custody, to forestall grave damage and prejudice to all concerned and to ensure the preservation of the assets for the benefit of the investors."

RELEVANT FACTS

FTW is a corporation duly registered with the Commission with SEC Registration No. CS201902428 issued on 18 February 2019.[2] Article II of its Articles of Incorporation provides that the purpose of the corporation is:

> *"To engage in direct selling of goods and merchandises to consumers. Provided, the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts."* (Emphasis supplied)

On 30 May 2020, the Commission issued the CDO against FTW.

On 09 June 2020, FTW filed the instant Motion to Lift where it denied that it is engaged in the sale or offer for sale of unregistered securities bundled with health products, and maintained that it is engaged in the legitimate sale of the following products: (a) beauty and cosmetics (Instaglow, Instawhite and nature Skin Series); (b) health and nutrition (Instafir Series and Organi-C); (c) tees and apparel (Wear to Inspire Brand); and (d) other products like appliances, books, and car care products (the "Products"). FTW also denied that it is engaged in a pyramiding scheme which secures profits primarily through the efforts of others.

FTW avers that it adopts various legitimate marketing strategies intended to increase its sales, such as the utilization of its online stores which are manned by its resellers and/or affiliates. FTW maintains that its business model of providing discounts and incentives to resellers and affiliates is primarily intended to boost the sale of its Products through legitimate networking or multi-level marketing, which has long been recognized as valid.

FTW claims that its Products are legitimate and existing,[3] that they have secured a license to operate as Food Trader[4] and Cosmetic Trader[5] from the Food and Drug Authority (FDA), and their sale is consistent with its primary purpose. For this reason, FTW argued that the sale and/or offer for sale of its Products to the public does not fall within the purview of investments contracts. There is no investment in a common enterprise considering that resellers and affiliates are not required to infuse capital or to invest in order to sell FTW's Products. Resellers and affiliates register for free and buy the Products at a discounted price; this enables them to start

[2] Annex "B" of FTW's Entry of Appearance with Motion to Lift Cease and Desist Order dated 05 June 2020.
[3] Annex "D" of the FTW's Entry of Appearance with Motion to Lift Cease and Desist Order dated 05 June 2020.
[3] 28 May 2020.
[4] Annex "E" of the FTW's Entry of Appearance with Motion to Lift Cease and Desist Order dated 05 June 2020.

marketing the Products. FTW insists that (a) resellers and affiliates are not considered investors as they do not share in FTW's profits, (b) the profits earned by the resellers and affiliates are based on the sales that they make via the e-shop, and not based on the efforts of others, (c) its incentive schemes and networking strategy to market and sell its Products are valid, citing *SEC vs. Prosperity.com, Inc. (PCI)*[6], and (d) it does not guarantee returns or profits to its resellers/affiliates just by purchasing its package or on the basis of recruitment of members, instead, the same is dependent on their efforts to establish network and sell the Products.

FTW also maintained that its business does not employ a pyramiding scheme considering that its resellers/affiliates pay for the FTW's products. Hence, its resellers/affiliates receive compensation directly from sale of Products and not from the recruitment of others.

On 22 June 2020, the EIPD filed its Comment/Opposition to FTW's Motion to Lift where it maintained that FTW's marketing platforms showed that the goal of the business/investment scheme is not the sale of its Products for use or consumption by its members and the public, but the sale and offer of the investment packages[7] to the public with the promise of guaranteed returns and income-generating recruitment activities. The use of FTW's Products and services is nothing but a way to ostensibly make it appear that it is engaged in the sale of consumer products when in fact it is offering the opportunity to earn profits by investing in its packages and bringing in new investors.

The EIPD argued that in the context of FTW's investment scheme, the primary motivation of the one who buys the investment packages is not to use and consume FTW's Products, but to invest in FTW with the expectation of receiving the guaranteed returns. The EIPD claimed that FTW is engaged in the sale of securities in the form of investment contract which is proscribed under Section 8 of the SRC for want of the required license.

On 03 July 2020, FTW filed its Reply/Rejoinder arguing that the CDO should be lifted on the ground that EIPD's findings are not credible as it was based on old, outdated, and discontinued promotional video, as well as on emails which are considered hearsay and cannot constitute substantial evidence since many of them were received after the publication of the Commission's Advisory which triggered the filing of complaints.

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[6] G.R. 164197, January 25, 2012.

[7] Builder Package – P1,499.00; Delux Package – P4,999.00; Premium Package – P14,999.00, and Executive Package – 49,999.00.

On 17 July 2020, the EIPD filed its Comment to FTW's Reply/Rejoinder praying for the denial of the Motion to Lift on the ground of FTW's admission of ownership over the outdated promotional videos which is accessible online. In claiming that it has already modified the terms of what it publicly offered during its pre-launched video presentation, EIPD argues that FTW in effect admitted that its use of the said presentation was fraudulent. The EIPD likewise argues that FTW's claims that profits are not guaranteed is without merit. Its video presentation described in detail how profits are earned, namely: (1) direct referral bonuses; (2) fast track bonuses; and (3) max pairing income. FTW's argument that only the Builder Package was launched and that the other product packages do not actually exist is negated by its express admission in its Motion to Lift relating to the list of the different product packages that it is offering to its members/affiliates.

ISSUE

Whether or not FTW presented sufficient grounds to overcome the findings in the Commission's CDO.

DISCUSSION

The Commission finds the Motion to Lift unmeritorious and hereby denies the same.

I. All the elements of an investment contract are present in FTW's investment scheme.

FTW claims that not all of the elements of the Howey Test[8] required to show existence of an investment contract are present in the instant case, alleging that its investment scheme does not involve an investment of money in a common enterprise as there is no capital required to become a reseller or an affiliate of FTW. It also argued that there is no expectation of profits from the efforts of others as the profits that a reseller or affiliate earns depend on his/her sales performance.

We do not agree.

The records of the case, which FTW did not dispute, show that member-investors, affiliates or resellers ALL purchased investment packages where they actually parted with their hard earned money with the expectation that they will receive the promised return of their investments. Their act of purchasing the investment package of FTW which enabled them to promote, market and sell the same constitutes an investment, and satisfies the first element of the Howey Test i.e. investment of money. Contrary to FTW's claim, this constitutes a contractual transaction involving an investment of money by an investor with FTW in an amount equivalent to the price of investment package purchased that allows the investor to avail of the profits and benefits provided in the package. The value/price of the Products that FTW are selling are conveniently fixed by it making it appear that the money invested in the packages is less than the value of the Products sold.

Moreover, the finding of this Commission that FTW's members expect to receive a guaranteed return of their investments from the entrepreneurial and managerial efforts of others i.e. they wait for their re-sellers and/or downlines to sell the Products and recruit new members, was not overcome by FTW. FTW failed to submit evidence showing that the profits/returns received by its members were solely based and dependent on the sale of its Products.

The promotional video on FTW's investment scheme (which is available in its website) that the EIPD submitted in evidence clearly shows that what is being promoted and sold is not the Product but the investment package itself, contrary to the assertion of FTW. It is the sale of the investment package which results in the generation of the profits which were ingeniously termed by FTW as bonuses, commissions or pairing income. A careful examination of FTW's investment package scheme will readily show that those who joined early and/or those who have sold the packages to new members get bigger income and most often, just wait for the output of their recruits. This is the primary motivation of those who are invited to invest, or those who have already invested in FTW, and not the purchase and use of its Products. The foregoing affirms the fact that under FTW's investment scheme, the member-investors need not do anything but simply bring in new members/affiliates to FTW who then takes care of sustaining the business and management of operations. In fact, in one of its presentations, FTW admitted that it makes use of "leverage" by means of which the investor is able to earn profits through the efforts of others.

On the basis of the foregoing, the Commission finds no cogent reason to disturb its finding that FTW is engaged in the sale or offer of securities in the form of investment contracts as all of the elements in the Howey Test are present in its investment scheme.

II. FTW's incentive scheme and networking is an MLM that is prohibited.

The finding of violation of Section 8 of the SRC suffices for purposes of sustaining and making permanent the CDO. However, the Commission finds it prudent to discuss why the MLM scheme that was admitted by FTW is prohibited for the proper instruction of the latter.

In its Motion to Lift, FTW heavily relied in *SEC vs. Prosperity.com, Inc.* (PCI Case)[9] to support its position that its investment scheme is valid, arguing that the same is a network marketing venture which enables consumers to buy their Products online, resells the same and earns commissions as a consequence.

FTW's reliance in the PCI Case is misplaced.

In the instant case, contrary to the business model of PCI where the sales generated are not used for purpose of running a business that would generate profits for investors, FTW needs its members to recruit more investors who will purchase the packages that it is offering to sustain the grant and payout of the guaranteed returns. In the PCI Case, the Court found that PCI clients' act of purchasing an internet website does not constitute an investment for which reason, not all the elements of the Howey Test required for an investment contract to exist were not present.

In the instant case, FTW's investment scheme shows that the Products are bundled in a package which is marketed, offered and sold to the public with a promise of guaranteed returns, incentives and bonuses, and where the focus and objective is clearly on recruitment of new investors. Unlike in the PCI Case where the referral and establishment of downlines are for the purpose of selling an internet website, the referral system in FTW does not result in the sale of the Products *per se*, but in the sale of investment packages (Starter Package, Builder Package, Deluxe Package, Premium Package, Executive Package)[10] with corresponding compensation plans. The more expensive the package bought, the higher the compensation and privileges given. The foregoing finds support in the promotional video that was submitted in evidence by EIPD and which was not refuted by FTW, to wit:

> **"(1) Direct Referral Bonus**
>
> *Get Php 120.00 Direct Referral **for every Builder Package purchased**. Example:*
>
> *Three (3) Direct Referrals per day*
> *DR Commission = Php120.00*

x 90 Directs per month
Total Earnings = Php 10,800 per month

(2) Fast Track Double Income

This incentive undertakes to double the direct referral income for members earning their first Php 1,000.00, Php 10,000.00, Php 100,000.00, and Php 1,000,000.00.

(3) Max Pairing Income

For every pair a member gets, there is a corresponding remuneration. For their introductory package, a member will get Php 150.00 pairing bonus. Thus, an individual is allowed to have a maximum of twenty (20) pairs per account." (Emphasis supplied)

The foregoing shows that what FTW and its members are actually selling are investment packages and not consumer products. What is valuable to FTW's members is the profit obtained from selling investment packages through recruitment of new investors as downlines. This is supported by the complaints received by the EIPD alleging that the Products were not delivered as promised. More importantly, the inapplicability of the PCI Case rests in the fact that as established earlier, all the elements of the Howey Test are present in the instant case.

Moreover, FTW's argument that it is engaged in MLM business which, under the PCI Case was sustained by the Supreme Court as legitimate is unavailing for the primary reason that FTW is not really engaged in a true MLM business but in the sale of securities in the form of investment contract.

In an MLM business, individuals sell products to the public, often by word of mouth and direct sales. Typically, distributors earn commissions, not only for their own sales, but also for sales made by the people they recruit.[11] Even assuming *ex gratia* that FTW is engaged in an MLM business, the same does not negate the fact that, as established by EIPD, it is engaged in an investment-taking activity which promises a guaranteed return of investments as high as 211.7% per day or 6,351% per month.

In relation to the foregoing disquisition, the case of *Power Homes Unlimited Corp. vs. SEC*[12] is applicable, relevant and instructive, thus:

> "Prescinding from these premises, we affirm the ruling of the public respondent SEC and the Court of Appeals that the petitioner was engaged in the sale or distribution of an investment contract. Interestingly, the facts of SEC v. Turner[13] are similar to the case at bar. In Turner, the SEC brought a suit to enjoin the violation of federal securities laws by a company offering to sell to the public contracts characterized as self-improvement courses. On appeal from a grant of preliminary injunction, the US Court of Appeals of the 9th Circuit held that self-improvement contracts which primarily offered the

[11] https://www.ftc.gov/tips-advice/business-center/guidance/multilevel-marketing

buyer the opportunity of earning commissions on the sale of contracts to others were "investment contracts" and thus were "securities" within the meaning of the federal securities laws. This is regardless of the fact that buyers, in addition to investing money needed to purchase the contract, were obliged to contribute their own efforts in finding prospects and bringing them to sales meetings. The appellate court held:

> "It is apparent from the record that what is sold is not of the usual "business motivation" type of courses. Rather, **the purchaser is really buying the possibility of deriving money from the sale of the plans by Dare to individuals whom the purchaser has brought to Dare**. The promotional aspects of the plan, such as seminars, films, and records, are aimed at interesting others in the Plans. Their value for any other purpose is, to put it mildly, minimal.
>
> **Once an individual has purchased a Plan, he turns his efforts toward bringing others into the organization, for which he will receive a part of what they pay.** His task is to bring prospective purchasers to "Adventure Meetings."

The business scheme of petitioner in the case at bar is essentially similar. An investor enrolls in petitioner's program by paying US$234. This entitles him to recruit two (2) investors who pay US$234 each and out of which amount he receives US$92. A minimum recruitment of four (4) investors by these two (2) recruits, who then recruit at least two (2) each, entitles the principal investor to US$184 and the pyramid goes on.

We reject petitioner's claim that the payment of US$234 is for the seminars on leverage marketing and not for any product. Clearly, the trainings or seminars are merely designed to enhance petitioner's business of teaching its investors the knowhow of its multi-level marketing business. An investor enrolls under the scheme of petitioner to be entitled to recruit other investors and to receive commissions from the investments of those directly recruited by him. Under the scheme, the accumulated amount received by the investor comes primarily from the efforts of his recruits.

We therefore rule that the business operation or the scheme of petitioner constitutes an investment contract that is a security under R.A. No. 8799. Thus, it must be registered with public respondent SEC before its sale or offer for sale or distribution to the public. As petitioner failed to register the same, its offering to the public was rightfully enjoined by public respondent SEC. The CDO was proper even without a finding of fraud. As an investment contract that is security under R.A. No. 8799, it must be registered with public respondent SEC, otherwise the SEC cannot protect the investing public from fraudulent securities. The strict regulation of securities is founded on the premise that the capital markets depend on the investing public's level of confidence in the system." (Emphasis supplied)

III. FTW is engaged in a pyramiding scheme.

On numerous occasions, entities utilized and exploited the concept of MLM to their advantage to disguise a pyramiding scheme employed by them. Thus, in the US Case of *FTC vs. Koscot Interplanetary, Inc.,* a four (4) part test was formulated to determine whether an MLM business is a pyramid scheme. This is known as *"Koscot Test"* which comprises the following elements: (1) payment of money to the company; (2) the participant receives the right to sell a product [or service]; (3) the participant receives compensation for recruiting others into the program; and (4) the compensation is unrelated to the sale of products [or services] to the ultimate user.

In the instant case, FTW's business model satisfies the *Koscot Test.* Notably, in order to participate and earn through the FTW's investment scheme, one has to invest or place his/her money in its product packages through recruitment and referrals. This was in fact admitted by FTW which claimed to be an MLM company, which awarded discounts, incentives, and bonuses based allegedly on the sales made by its resellers/affiliates. FTW's resellers/affiliates receive additional compensation whenever they recruit new investors through its so-called *"For the Win"* system which offers Fast Track Double Income and Max Pairing Income. The rewards system for recruitment is completely <u>unrelated to the sales of FTW's products</u>. For Fast Track Double Income, FTW undertakes to double the direct referral income for those earning their first Php 1,000, Php 10,000, Php 100,000, and Php 1,000,000. For Max Pairing Income, however, a member is paid for every pair he/she gets and allows the investor to earn income from the efforts of others. Thus, FTW offers more rewards/benefits from its recruitment/referral program rather than from the sale of its Products. Stated otherwise, FTW's investment scheme is all about sale of securities in the form of investment contracts and recruitment, and never on the sale of Products.

FTW's assertion that any profit earned by its resellers/affiliates are based on their ability to market, promote, and sell products is unmeritorious. As correctly pointed out by the EIPD, FTW's claim that it does not guarantee profits is negated by its promotional videos which show how it undertakes to pay its affiliates Direct Referral Bonus, Fast Track Bonus, and Max Pairing Income. Such bonuses and income are not earned from the sale of FTW's Products, but from the sale of its investment packages with the corresponding compensation plans. To sustain this kind of investment scheme, FTW has to engage in a continuing recruitment program in order to pay its ever-expanding base of investors their guaranteed/promised profits. As a natural consequence, however, it can be inferred from the said scheme that as the number of investors increases, the chances of having to secure new recruits diminishes resulting in the ultimate collapse of the entire scheme where all the investors are left empty handed.

IV. The finding that FTW is engaged in the sale of securities without the requisite license warrants making permanent of the CDO.

In its Motion, FTW assailed the issuance of the CDO alleging that the same was not supported by substantial evidence considering that the findings of the EIPD were "almost entirely based on the surveillance conducted by the EIPD". FTW insists that EIPD failed to present evidence that its Products do not exist or do not have any value to those who purchase the same.[14]

FTW's position and argument are not supported by the evidence on record.

At the outset, FTW's attempt to muddle the issue by arguing that the Commission failed to see that its business is limited to the sale of Products is unavailing. That they are selling their Products is uncontested; what is at issue which was properly resolved in the CDO was the way that FTW carried out the sale of Products i.e. the sale of its Product was carried out as part of an investment package that guaranteed returns and added bonuses by recruitment of new members. This is what converted the activity into a sale of securities in the form of investment contracts.

The records will show that in support of its Motion for issuance of a CDO, the EIPD verified the email complaints it received from *I-Message Mo* Facility; verified FTW's status from the CRMD, MSRD, and CGFD; gathered all relevant information available in the internet which FTW was using as a platform to carry out its operations; the Facebook accounts of its directors, officers, members and agents; and conducted an ocular inspection and surveillance operations.

Contrary to FTW's claims, the various email complaints received by the EIPD from the public and the video presentations accessed by the EIPD online are not hearsay evidence because they were made by persons who actually invested in FWT but were denied of the guaranteed profits that were promised to them.[15]

In relation to the alleged outdated video presentation, the EIPD was able to show: (1) that FTW is the author and publisher when it admitted the

[14] Par. 76 of the Motion

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same in its Reply to EIPD's Comment[16]; (2) that the video presentation is fraudulent after FTW's admission that it modified the terms of its public offering (from a maximum of 63 accounts to only 8 accounts); (3) that the video presentation continued to be publicly accessible online even after the date when EIPD's Motion for Issuance of CDO was filed. The records show that FTW has not, to date, withdrawn the outdated video online in violation of the CDO.

On account of the foregoing, the Commission finds that FTW was not able to overcome the finding in the CDO that its investment packages which are sold/offered to the public are securities in the form of investment contracts. The failure of FTW to show that it has secured from the Commission the requisite registration statement in compliance with Sections 8 and 12 of the SRC warrants the dismissal of the Motion to Life. We reiterate the doctrine in the case of *SEC vs. CJH Development Corporation,*[17] where the Supreme Court held that fraud is attendant in the act of selling and/or offering securities without the requisite license, thus:

> **"The act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities.** Section 8.1 of the SRC clearly states that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer." (Emphasis supplied)

WHEREFORE, premises considered, the ***Motion to Lift Cease and Desist Order*** filed by Fast Track Worldwide, Inc. is hereby **DENIED** for lack of merit. The CEASE AND DESIST ORDER issued against Fast Track Worldwide, Inc., its officers, directors, agents, representatives, conduits, assigns, and any and all persons/entities claiming and acting for and in behalf and under their authority is hereby **MADE PERMANENT**.

The Enforcement and Investor Protection Department is hereby DIRECTED to: (a) serve this *Resolution* to the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of Fast Track Worldwide, Inc., and (b) post copies of the *Resolution* at the entrance of the main offices and/or branches, if any, of Fast Track Worldwide, Inc.

Let a copy of this *Resolution* be also posted in the Commission's website, published in a national newspaper of general circulation and furnished to all operating departments and offices of the Commission for their information and appropriate action.

The EIPD, in coordination with other concerned departments, is FURTHER DIRECTED to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* WITHIN TEN (10) DAYS from receipt of this *Resolution.*

SO ORDERED.

Pasay City, 20 August 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

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