

April 4, 2019

Oregon House Business and Labor Committee

Re: Support for HB 3416: Provide Clarity for Direct Sellers

Dear Oregon House Business and Labor Committee:

Rodan & Fields, LLC (“Rodan + Fields”) would like to voice its support for HB 3416, sponsored by Representative Jeff Barker. **The bill would clarify direct sellers’ status as independent contractors under Oregon statute.**

Founded by Dr. Katie Rodan and Dr. Kathy Fields, the creators of Proactiv Solution, Rodan + Fields is a 10-year-old company headquartered in San Francisco that offers a full line of skincare products to address a variety of skin concerns, including the appearance of fine lines and wrinkles, acne, brown spots and sensitive skin. It has grown quickly to become the number one skincare brand in North America in 2017.¹ Annual sales in 2018 topped \$1.5 billion. In Oregon, we currently have more than 4,200 sales consultants and approximately 35,000 customers. Sales in Oregon were approximately \$25 million in 2018.

In Oregon, as in the rest of the country, individuals selling for direct selling companies are independent contractors – 90% sell on a part-time basis to their neighbors, relatives, and friends to supplement their family income, while 74% of the sales channels are women. They like the freedom and flexibility to build businesses on their own terms. Their direct selling activities are generally neither extensive nor sophisticated. Direct sellers are quintessential micro-entrepreneurs.

ORS 657.087 specifically defines direct sellers as independent contractors under the state unemployment compensation statute. The statute was enacted in 1977 and requires that in order to meet the requirements of the statute, sales must occur in-person and in the home.

ORS 316.209 is consistent with Internal Revenue Service Code (26 U.S.C. § 3508) that specifically defines direct sellers as independent contractors. The law was enacted in 1983 immediately following Congress passing the Tax Equity and Fiscal Responsibility Act of 1982, which included this language. This language more clearly and specifically defines direct sellers and does not contain the requirement that sales be made in the home.

In May 2018, the Supreme Court in *ACN Opportunity, LLC v. Employment Department* ruled ACN was responsible for unemployment compensation for a handful of distributors. The court said that only the sales they could show were made in person and in the home would be eligible for this exemption.

¹ Source Euromonitor International Limited; Beauty and Personal Care 2018 Edition, retail value RSP terms; all channels, Skincare includes Sets and Kits; North America defined as Canada and the United States.

In a concurring opinion, Chief Justice Balmer said “The requirements the legislature used to identify exempt direct sales in 1977—in-person solicitation and sales in the home---may no longer be appropriate to delineate some of the kinds of direct sales the legislature intended to reach when it enacted the exemption.”

Rodan + Fields requests your support for HB 3416 to update Oregon statute to be consistent with the Internal Revenue Service Code (26 U.S.C. § 3508) and ORS 316.209. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Leatham". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Michelle Leatham
Chief Legal Officer and Corporate Secretary
Rodan & Fields, LLC