

MONEY-MAKING SCHEMES

“Pyramid” Schemes

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates unfair and deceptive business practices. DATCP has adopted a rule to prohibit “pyramid” schemes (also known as “chain distributor” schemes). This rule is found in Wisconsin Administrative Code chapter ATCP 122.

- In a “pyramid” scheme, a person pays for the right to recruit, for profit, other persons who pay for a similar right. The scheme promises an ever-growing “chain” or “pyramid” of recruits. Recruits advance to higher levels as the “pyramid” expands. Those at higher levels receive payments financed by newer recruits at the expanding “base” of the pyramid. “Pyramid” schemes may take many forms, including “chain” letters, “gifting” clubs, and some multi-level marketing plans.
- “Pyramid” schemes lure participants with the promise of eventual (and possible exponential) profit, as long as new participants are recruited to fund the payoff to those already in the plan. But the exponential growth cannot be sustained and the “chain” inevitably breaks. When it does, the newer recruits lose their investment. In most pyramid schemes, the newer recruits make up the majority of participants.
- A “pyramid” scheme differs from a normal distribution system, whose primary purpose is to sell products or services to customers. A “pyramid” scheme is characterized by a profit lure based on a continuously expanding “pyramid” of “downline” recruits.
- A “pyramid” scheme may also constitute an illegal lottery (see below), because it has the key elements of *prize* (eventual payoff financed by payments from lower level recruits), *chance* (the uncertainty of payoff, depending on when the “chain” breaks) and *consideration* (investment).

Rule Background

DATCP adopted ATCP 122 is a *general order* (rule) adopted under Wisconsin’s Unfair Business Practices Law, Wisconsin Statutes section 100.20. DATCP adopted this rule in 1970 (DATCP Docket No. 856).

Rule Enforcement

Private Remedy

A person who suffers a monetary loss because of a violation of ATCP 122 may sue the violator under Wisconsin Statutes section 100.20(5), and may recover twice the amount of the loss, together with costs and attorneys fees.

Injunction and Restitution

DATCP may seek a court order, under Wisconsin Statutes section 100.20(6), enjoining violations of ATCP 122 and ordering the violator to pay restitution to consumers. The Department of Justice or a district attorney may represent DATCP in court.

Civil Forfeiture

DATCP or any district attorney may start a court action, under Wisconsin Statutes section 100.26(6), to recover a civil forfeiture from a person who violates ATCP 122. The court may impose a civil forfeiture of up to \$10,000 per violation. The Department of Justice or a district attorney may represent DATCP in court.

Criminal

A district attorney may start a criminal prosecution, under Wisconsin Statutes section 100.26(3), against a person who violates ATCP 122. A violator may be fined up to \$5,000 or sentenced to as much as a year in jail, or both.

Selected Court Cases

HM Distributors of Milwaukee, Inc. v. Department of Agric., 55 Wis. 2d 261 (Wis. Supreme Court, 1972)

- DATCP did not exceed its statutory authority when it adopted ATCP 122.
- DATCP used proper rulemaking procedures to adopt ATCP 122.
- ATCP 122 is not vague or overbroad.
- ATCP 122 does not violate any constitutional right of freedom to make economic investments or freedom of speech.
- Wisconsin's Unfair Business Practices Law, Wisconsin Statutes section 100.20, protects consumers and investors, not just competitors.

State v. Lambert, 68 Wis. 2d 523 (Wis. Supreme Court, 1975)

- DATCP properly exercised its delegated authority, under Wisconsin Statutes section 100.20, by adopting ATCP 122.
- Wisconsin's Unfair Business Practices Law, Wisconsin Statutes section 100.20, delegates rulemaking authority to DATCP in a constitutionally valid manner and is not void for vagueness.
- ATCP 122 does not violate "free speech" guarantees under the Wisconsin or U.S. Constitutions.

State v. Fortune in Motion, Inc., 214 Wis. 2d 148 (Wis. Court of Appeals, 1997)

- Discussion of what constitutes an illegal “chain distributorship” scheme.