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GENERAL NOTICES

NOTICE 2926 OF 2002

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 1341 of 2001 as published in Government Gazette No.22327 dated 25 May 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 90

SKYBIZ, AN INTERNET SCHEME

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 unfair business practices. An unfair business practice is defined as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer, deceiving any consumer or unfairly affecting any consumer.

The Act is enabling and not prescriptive. The main body of the Act is devoted to various administrative procedures to be followed, the investigative powers of its investigating officials, the types of investigations the Committee can undertake and the powers of the Minister. In the pursuance of its objective, the Act confers wide investigative powers on the Committee. It provides for two types of investigations into the business practices of individual entities or businesses, namely "informal" section 4(1)(c) investigations or "formal" section 8(1)(a) investigations.

The usual procedure when the Committee receives a complaint from a consumer, is to undertake a section 4(1)(c) investigation. This type of investigation enables the Committee to make such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with, any unfair business practice which allegedly exists or may come into existence. Notices of section 4(1)(c) investigations are not published in the Government Gazette, whereas formal section 8(1)(a) investigations are. The Minister is not empowered to make any decisions about the discontinuance of a particular unfair business practice on the strength of a section 4(1)(c) investigation. He may do so in terms of a section 8(1)(a) investigation.

It is not required in the Act that a section 8(1)(a) investigation must be preceded by a section 4(1)(c) investigation. If the Committee is of the opinion that *prima facie* evidence of an unfair business practice exists, it usually dispenses with the section 4(1)(c) investigation.

Should the Committee, after a section 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action by the Minister to ensure the discontinuance of the unfair business practice. The powers of the Minister are set out in section 12 of the Act.

When the Committee has decided to undertake a preliminary investigation in terms of section 4(1)(c), or has issued a notice in terms of section 8(4) in relation to an investigation in terms of section 8(1)(a), it may at any time thereafter, in terms of section 9 of the Act, negotiate with any person with a view to making an arrangement which in the opinion of the Committee will ensure the discontinuance of a unfair business practice which exists or may come into existence.

A subsequent order of the Minister will be applicable to the particular individual(s) or business entity(ies). The order of the Minister is published in the Government Gazette. An infringement of the Minister's order is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both the fine and the imprisonment.

2. The SkyBiz advertisement

On 28 May 2000 an half page SkyBiz advertisement was placed in the Business Times. Because no physical address was mentioned in the advertisement, the Committee e-mailed a letter to the advertiser at 10h47 on 2 June 2000. The advertiser was informed about the Committee and its functions and the apparent exaggerated claims of earnings stated in the advertisement. In terms of the Code for Advertising of the Advertising Standards Authority of South Africa, advertisers must indicate their physical address and should substantiate claims of exaggerated earnings. The e-mail of 2 June 2000 was ignored and a draft press statement, which was to be released on 8 June 2000, was e-mailed to the advertiser at 10h17 on 7 June 2000. By 12 June 2000 the advertiser had not responded to the two e-mails.

In the ensuing press statement the vice-chairperson of the Committee warned consumers that, while advertising itself as a legitimate internet business, the SkyBiz scheme had some characteristics which are commonly encountered in pyramid promotional schemes. Pyramid marketing schemes were outlawed by the Minister of Trade and Industry on 9 June 1999. Consumers were cautioned to exercise utmost caution in this regard.

3. The scheme

At a meeting of the Committee on 23 June 2000, an associate of SkyBiz, Mr T Nel (Nel), gave a presentation of the SkyBiz scheme. Those who participate in the scheme are called associates. For \$100, plus a one time processing fee of \$10, participants receive a multi-faceted E-Commerce Web Package. This package consists of:

- A 15 Meg Website, including 2 web builders and a Frames Builder,
- A personalized, self-replicating Skynary Website,
- A personalized, self-replicating Go Site,
- A Web Site Builder Demo,
- A Web Site Builder tutorial,
- Links to Search Engines,
- Online Educational Software, consisting of :
 - Courses in usage of the Internet,
 - Courses in Windows 98, Windows 95, and Windows 3.1,
 - Course in Web Site building to teach one how to enhance one's web site
 - Instructions on how to create banners and buttons
 - Instructions on how to size images
 - Instructions on how to optimize one's computer settings
- And bonus features, such as
 - Free unlimited e-mail accounts,
 - Personalized literature that one can print and use to build one's business
 - Live Customer Support and Technical Support if one has questions or need help
 - Free Internet Service

It appears from a video at the disposal of the Committee (Steve McCullough, SA Tour, recorded at the Christian New Harvest Church on 5 June 1999, hereafter referred to as the 5 June video), that the business planning of SkyBiz is performed by an American company, World Services Corporation and the marketing of SkyBiz is conducted by Direct Approach Inc. According to Steve McCullough, whose brother Richard put

together the SkyBiz package, the mission of SkyBiz is to become the world's largest website provider by 1 January 2001 and the world's largest network distributor by 1 January 2002.

To receive commission, an associate, one needs to sell two web sites. These are assigned to two downlines or legs, labeled *left* and *right*. Any additional sites sold by an associate, are assigned below the associate's left or right leg. One cannot place them anywhere other than on the outer sides of the tree, in other words, no matter how many sites the associates sell, if none of an associate's downline sells any sites, the tree (or genealogy) will only have two branches. To add more nodes, people in the associate's downline must sell sites. Selling is largely done by introduction. The associate introduces someone by getting him or her to come to a presentation presented by a cell leader who does the actual hard sell.

SkyBiz calls its commission structure or "compensation plan" a "binary unlimited matrix". The binary refers to the two legs and the "unlimited" means that there is no limit to how deep the downline is. Associate receive commission for all sales, no matter how many levels there are in their downlines. The commission structure is based on 5 groups of nine and one of five, with every cycle of 50 comprising one "orbit", thus:

First step	First nine sales (total 9 sales)	\$70
Second step	Second nine sales (total 18 sales)	\$35, a total of \$105
Third step	Third nine sales (total 27 sales)	\$35, a total of \$140
Fourth step	Fourth nine sales (total 36 sales)	\$70, a total of \$210
Fifth step	Fifth nine sales (total 45 sales)	\$70, a total of \$280
Sixth step	Final five sales (total 50 sales)	<u>\$140</u> , a total of \$420
50 sales of web packs = called an orbit =		\$420

The sales of web packs not credited to a current pay cycle are moved to the next cycle. The monetary rewards are dependent on SkyBiz's "1/3 rule". The "1/3 rule" requires that in order to receive payments for steps and orbits during any pay cycle, at least 1/3 of the sales credited to an associate's downline must come from one of the two legs.

SkyBiz pays 70 per cent of the selling price (excluding the processing fee of \$10) of a website as commission to the associates. There are two limits on the commission payable. These limits are a maximum of \$600 commission per orbit (50 sales) and a maximum of \$25 000 per week commission payable to any one "business centre" (associate).

4. Objections from associates

At this stage the Committee had not yet taken a decision to investigate the business practices of SkyBiz in terms of the Act. Nevertheless, officials of the Committee were inundated with e-mails, faxes, letters and calls, from SkyBiz associates about the Committee's "unnecessary" involvement with SkyBiz. Many of the objections quoted the opinion of two legal officers of the South African Police Services in the Eastern Cape as to the "legality" of SkyBiz. The two officers, who have legal backgrounds, made a number of elementary mistakes in their "advice" to a prospective SkyBiz associate. For example, they stated that the Harmful Business Practices Act (the predecessor of the Act) "... governs the legality of business enterprises". They also

stated "For the scheme not to be a pyramid scheme the product should be furnished at cost or less ...", and "There should thus be a product, and the value of the product should be of similar value than the joining price. If the member doesn't get any people to join under him/her the value of the product should cover his joining fee or buying price". These statements indicate a lack of understanding regarding the functions and powers of the Committee. Nevertheless, it appears that the "opinion" of these two officers contributed significantly to the perceived "legality" of SkyBiz.

The Committee e-mailed or faxed a standard letter to all the associates who responded to the Committee's involvement with SkyBiz. The purpose of the letter was to give them a brief background and update about the matter. They were *inter alia* informed that the merits of the SkyBiz product was not discussed at the meeting of the Committee on 23 June 2000 and that this did not imply that the Committee "recognized" the value of the SkyBiz "product". They were further informed that the Committee "... often deals with issues where the marketing rather than the product is the problem. In any investigation undertaken by the Committee, the emphasis is placed on the marketing strategy followed by the entity being investigated. The "value" of the product sold or the "service" allegedly rendered is of minor concern to the Committee in any of its investigations. It is, however, a fallacy to assume that the existence of a product or service implies the absence of a pyramid promotional scheme".

The Committee informed the associates that it would continue with its enquiries about SkyBiz and that it would raise its concerns with the attorney of SkyBiz, Mr C Cleveland (Cleveland), and not with each and every South African associate of SkyBiz.

5. The Committee's concerns about SkyBiz

At its meeting held on 21 July 2000 the Committee resolved that the Committee's concerns about SkyBiz, should be e-mailed to Cleveland. The Committee expressed its concerns about:

The product Some consumers alleged that the equivalents of the components of the SkyBiz product are available, free of charge or for much less than \$100, from internet companies in South Africa. Although SkyBiz put all these together in a single package, some consumers claimed that the product is not worth "thousands of dollars". This in itself suggests that the product price exceeds its value, hence a smoke screen for a "money revolving scheme" as set out in Government Notice 1135 of 9 June 1999.

The product or the opportunity to make money The Committee suspected that most associates joined the scheme to take advantage of the business opportunity and not necessarily to build their own websites. The Committee wanted to establish how many associates have in fact built their own websites. A prospective SkyBiz associate informed the Committee that as part of his investigation into SkyBiz, he made a random sampling of 50 sites and only 5 were in any degree active.

Another associate told investigating officials of a presentation held in Midrand. A speaker at this convention allegedly asked those present: "Who are here for the product? Put up your hands". A small number of hands went up. The speaker next asked: "Who are here for the money?" Amid a roar of laughter the hands of 99 per cent of those present went up.

During telephone conversations with a number of associates, the general impression of the investigating officials was that people buy into the system primarily to earn money and not to build websites.

The terms and conditions It appeared that SkyBiz's "Terms and Conditions" have limited practical value when it comes to enforcing them. For example, it is stated in the terms and conditions that "Associate shall not make any income representations except those set forth herein or otherwise specifically set forth in official SkyBiz 2000 material". Yet the Committee received the following letter from a consumer:

"This SkyBiz scam is currently being pushed by the church I attend. I have been to a demonstration. My problem with this thing is that poor, uneducated people in the church are being promised great riches, if they buy one of these sites, they are told they don't even need a computer to buy a site! How then will educational software help them? and free email? and web pages? I think this scheme is going to end up hurting a lot of people who can least afford to be hurt".

It is also stated in the "Terms and Conditions" that SkyBiz is in the business of selling web sites and any person who has a need for more than one web site may buy as many web sites as desired. However, under the heading "program misrepresentation" in the "Terms and Conditions" it is stated that SkyBiz does not encourage the purchase of more than one web site in order to participate in the compensation plan or even to maximize potential compensation. It is further said that any associate who advises potential associates otherwise is in violation of these Policies & Procedures and subject to penalty as set forth herein. This is apparently a mockery. In a video at the disposal of the Committee, and distributed in South Africa, potential associates are encouraged to purchase three websites.

Numbers The numbers quoted in the 5 June video contained many indications of the unsustainability of the SkyBiz concept. For example, McCullough said that 850 000 sites have been sold and that the sales are doubling every 4 to 6 weeks. Assuming that the sales are doubled every six weeks, then in just over a year 435 million sites would be sold. This is more than one site for every internet user and in 18 months, every man, woman and child on the planet would have a site.

Returns In the 5 June video it was showed that one can, starting with only \$110 "investment", expect to earn about \$68 670 after 12 months. Thus, it stands to reason that for every participant who makes \$68 670 from an investment of \$110, there have to be 624 (68 670 divided by 110) consumers who make nothing. When one takes into account SkyBiz's share of a minimum of \$40 out of every \$110, then there have to be 981 (68 670 divided by 70) consumers who will make nothing.

The "binary" system By its very nature the binary system requires a substantial administrative infra structure and the demands on the structure obviously increases with the addition of each new associate.

Domicillium SkyBiz has no offices and thus no physical address in South Africa. In terms of the "Terms and Conditions", it is stated that the agreement between SkyBiz and its associates shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Oklahoma and causes of

action between the parties to the "Terms and Conditions" shall be heard exclusively in a court of competent jurisdiction in Tulsa County, Oklahoma.

Is credibility bought? The 5 June video was recorded, as stated earlier, at the Christian New Harvest Church. It also came to the attention of the Committee that SkyBiz gives away websites to churches. It is assumed that the relevant churches, and its pastors, preachers and priests, then become associates in their own right. The indications are that a large number of churches in South Africa and its clerics are involved with SkyBiz. The Committee is of the view that SkyBiz is attempting to buy credibility.

The sustainability of SkyBiz

Associates maintain that the business of SkyBiz is sustainable because, although the world will run out of potential new associates, the existing website owners will renew. Most sites will obviously not be renewed because more than 90 per cent of the existing sites are unused, and bought solely to enable the owners to participate in SkyBiz. The only source of income for the scheme will be from new SkyBiz associates, who will then be circulating their money amongst themselves with 30 per cent of the annual fees going to SkyBiz.

6. A further press statement by the vice-chairperson of the Committee

Cleveland responded to the Committee's concerns in lengthy e-mails. His response gave rise to further questions and concerns of the Committee. This resulted in a lengthy enquiry process. Because of other matters that required the urgent investigation of the Committee's extremely limited number of investigating officials, the Committee resolved at its meeting held on 24 January 2001 that a press statement be issued by the vice-chairperson of the Committee.

The press statement referred to the Committee's press statement issued during June 2000, the concerns of the Committee and the protracted correspondence between the Committee and Cleveland. It was stated that the Committee resolved not to pursue the matter further at this stage in view of (a) "A Green Paper on Electronic Commerce for South Africa", coordinated and compiled by the Department of Communications, November 2000 and (b) the fact that entities similar to SkyBiz are operating on the Internet and a general investigation into these types of businesses would be more appropriate. It was clearly stated in the press statement that the decision of the Committee neither implies that the Committee soon intends undertaking a general investigation in terms of the Act into the business practices of entities similar to SkyBiz schemes nor does it rule out a future investigation by the Committee into SkyBiz and/or similar schemes.

7. The Committee resolves to undertake a section 8(1)(a) investigation into the business practices of SkyBiz in South Africa

SkyBiz was again discussed by the Committee at its meeting on 10 May 2001. The Committee was of the opinion that *prima facie* evidence indicated that SkyBiz was involved in an unfair business practice, and because a number of the other urgent

matters which required the attention of the Committee and its investigating officials were concluded, it resolved to undertake a section 8(1)(a) investigation into the business practices of SkyBiz in South Africa.

The Committee also resolved that Mr J Brown, the President of Skybiz, be afforded the opportunity to sign an undertaking in terms of section 9 of the Act in which he, on the behalf of SkyBiz, undertake not to, directly or indirectly, accept any applications for SkyBiz memberships from South Africans living in South Africa. The Committee further resolved that Cleveland should be invited to address the Committee at its meeting on 13 or 14 June 2001 as to why the Committee should not undertake the proposed section 8(1)(a) investigation. Cleveland was informed that the notice of the section 8(1)(a) investigation would not be published before he has had the opportunity to address the Committee. However, should the suggested undertaking not be signed and should SkyBiz inform the Committee not later than 24 May 2001 that it does not intend to address the Committee on 13 or 14 June 2001, the notice will be published as soon as possible after 24 May 2001.

Cleveland accepted the invitation to address the Committee and said that if he was unable to do so, another representative would address the Committee.

The following notice was published under Notice 1341 in Government Gazette 22327 of 25 May 2001:

"In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No 81 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 -

SkyBiz, a company conducting business from the United States of America who conducts business on the Internet, in the Republic of South Africa.

Any person may within a period of twenty one (21) days from the date of this notice make written representation regarding the above-mentioned investigation to: The Secretary, Consumer Affairs Committee, Private Bag X84, Pretoria, 0001. Ms L van Zyl"

The Committee did not hear from Cleveland again and on 12 June 2001 he was informed that SkyBiz was under no obligation to respond to the notice of the investigation published in the Government Gazette. The Committee, however, found it strange that an entity under investigation does not avail itself of the opportunity to convince the Committee why it should be allowed to continue doing business in South Africa.

8. The section 8(1)(a) investigation

The Committee received 12 comments from SkyBiz associates after the publication of the notice of the section 8(1)(a) investigation. These SkyBiz associates complained that they lost their investments and they wanted to know what they should do to recoup these investments.

- Eight of these associates supported SkyBiz and most of them stated that

since becoming SkyBiz associates, they have mastered their personal computers.

- An attorney wrote to the Committee on behalf of four SkyBiz associates. They wanted to know whom they should contact to recoup their money.
- Another associate wrote that he "invested" R2 400 and the person who sold him the website "... guaranteed that I would make a profit".
- An elderly gentlemen, who does not own a computer, from a retirement home wrote that he bought five websites at R800 each - one for himself, one for his wife and three for each of his children. The websites was sold to him by his pharmacist who told him that he would make a lot of money.
- An elderly lady, also from a retirement home, said that her only income was interest on a fixed investment. She had approximately R900 available from selling home baked liver cakes, and because her son was unemployed and the seller of the website told her that she would make a fortune, she parted with R800 of the R900 which she had available. She does not own a computer.

On 6 June 2001 the Federal Trade Commission (FTC) requested the United States District Court, Northern District of Oklahoma, for "... a temporary restraining order, freezing assets and appointing a Temporary Receiver and providing additional equitable relief". It appears that on the same day, at the same court, the FTC brought a "Complaint for permanent injunction and other equitable relief".

The FTC also forwarded the "Declaration of Dr Peter J Vander Nat", a FTC economist, which served as "Plaintiff's Exhibit 2" in the court case referred to above. In his declaration Vander Nat stated *inter alia*:

"I am aware that in the above analysis I have not addressed the value of the product. I have no expertise in evaluating the technical characteristics of a web site, and I have not reached a conclusion about the market value of the Sky Biz web pack. For purposes of this declaration, I tacitly allow the assumption that the web pack may have some positive market value. If a pyramid uses a product that is generally worth what the company claims, it may seem all the more plausible to general participants that the operation is a legitimate business and that, ostensibly, the rewards are being funded from the sale of the product. But such a view misunderstands the funding mechanism that a pyramid uses. Unbeknown to general participants - and whatever the product may or may not be worth - the terms of the pyramid compensation plan secure the result that the vast majority will fail to obtain monetary rewards, so that the company can use the net monies paid by those who are not entitled to rewards and give that money to those who are entitled under the same plan. If, in addition, the pyramid promoters also misrepresent the value of the product and can thereby extract additional funds from the participants, the net transfer becomes all the greater for the 'winners,' while the losses for others increase correspondingly. In my opinion, the value of the product addresses the extent of harm, not whether a pyramid exists".

The table below page is based on a table in Vander Nat's declaration. In the interpreting the table, the reader has to keep in mind that:

- each participant has to enroll two new members and to avoid the complexities of the $\frac{1}{3}$ and $\frac{2}{3}$ balance requirement on each of the legs to qualify for payment, it is assumed that each participant succeeds in canvassing two other participants,
- the preceding assumption means that this outcome for "YOU" is the best possible scenario,
- the pay steps which are set out in section "3. The Scheme" above, and
- 50 sales equals an orbit which pays \$420.

Table to illustrate the number of consumers who are at risk in the SkyBiz scheme

(a) Enrol- ment level (n) beneath YOU	(b) Asso- ciates residing at level n	(c) Total sum of asso- ciates in matrix	(d) Orbits and remaining sales (pay steps in brackets) Column (c), from last row up, divided by 50	(e) Amounts received by associates in column (b)
(n=0)	YOU	1	40 orbits, 47 sales (5)	1 [(40 x \$420) + \$280]
1	2	3	20 orbits, 23 sales (2)	2 [(20 x \$420) + \$105]
2	4	7	10 orbits, 11 sales (1)	4 [(10 x \$420) + \$70]
3	8	15	5 orbits, 5 sales (0)	8 (5 x \$420)
4	16	31	2 orbits, 27 sales (3)	16 [(2 x \$420) + \$140]
5	32	63	1 orbit, 13 sales (1)	32 [(1 x \$420) + \$70]
6	64	127	31 sales (3)	64 x \$140
7	128	255	15 sales (1)	128 x \$70
8	256	511	7 sales (0)	256 x \$0
9	512	1 023	3 sales (0)	512 x \$0
10	1 024	2 047	0 (0)	1 024 x \$0

* It is assumed that "YOU" receives commission on his own purchase. This assumption has no influence on the conclusion reached

In the table there are 2 047 participants on all 10 levels, including "YOU", in the pure symmetrical structure which resembles a pyramid.

- This means that "YOU" would have achieved 40 times \$420 (2 047÷50) plus 47 sales, or \$280.
- The two associates on level 1 will each have 1 023 associates in their downlines. They will each receive 20 times \$420 (1 023÷50) plus 23 sales or \$105.
- The four associates on level 2 will each have 511 associates in their downlines. They will each receive 10 times \$420 (255÷50) plus 11 sales or \$70.
- The eight associates on level 3 will each have 255 associates in their

downlines. They will each receive 5 times \$420 (255+50) plus 5 sales which do not qualify for any payment, the first pay step being for nine sales.

- The 16 associates on level 4 will each have 127 associates in their downlines. They will each receive 2 times \$420 (127+50) plus 27 sales or \$140.
- The 32 associates on level 5 will each have 63 associates in their downlines. They will each receive 1 times \$420 (63+50) plus 13 sales or \$70.
- The 64 associates on level 6 will each have 31 associates in their downlines. They will each receive \$140 for being on pay step 3.
- The 128 associates on level 7 will each have 15 associates in their downlines. They will each receive \$70 for being on pay step 1.
- The persons on levels 9, 10 and 11, that is 256 and 512 and 1 024, or a total of 1 792, will receive no payments. They comprise 87.54 per cent of 2 047, the total number of participants in the symmetrical matrix.

One can therefore conclude that, under the best of circumstances, at least 87.54 per cent of the SkyBiz associates will receive no compensation. These 87.54 percent of the associate will contribute towards the money made by the remaining 12.46 of the associates. This is clearly not in the public interest. The Peters in the scheme are robbed to pay the participating Pauls.

On 4 July 2001 the Committee received a copy of the Temporary Receiver's Report from the FTC. It appears from this report that the sales of SkyBiz were discontinued immediately when the Temporary Receiver took over the affairs of SkyBiz on 7 June 2001. The report stated that 1 801 830 (92.56 per cent) out of 1 946 630 SkyBiz participants received **no compensation** and that **228 individuals received 23 per cent** of all the commissions paid. These figures confirm that the overwhelming number of SkyBiz associates will receive no compensation.

Vander Nat also mentioned in his declaration a report from the Canadian Police (RCMP) that about 85 per cent of Sky Biz associates identified in a certain experiment did not use their personal web sites.

9. Consideration

The business practices of SkyBiz constitute unfair business practices. There are no grounds justifying these practices in the public interest. The following are the reasons for this standpoint:

- 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 per cent of the Newport *en commandite* partners would not recoup their investments. In fact, 61 per cent of the partner did not recoup any of their payments and another 30 per cent recovered less than their investment. Thus, 91 per cent did not recoup their payments, compared with only 9 per cent who have done so.

Also in the case of SkyBiz there is evidence to show that most of its members (associates) are at risk and have suffered loss. These associates and future SkyBiz associates would be unreasonably prejudiced. This is not in the public interest.

- The product is a smokescreen because associates need not possess a computer to become a SkyBiz associate. Evidence suggests that about 85 per cent of Sky Biz associates did not use their personal web sites.
- Consumers are led to believe that they will receive large sums of money. These consumers are misled.

10. Recommendation

The business practices of SkyBiz, in the Republic of South Africa, constitute unfair business practices. There are no grounds justifying these practices in the public interest. It is accordingly recommended that the Minister declares the unfair business practice 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 SkyBiz.
- (b) directly or indirectly, operates, conducts or promotes participation in or membership of SkyBiz.
- (c) transmits in any way whatsoever, money to any account, whether in the Republic of South Africa or abroad, destined for the credit of SkyBiz.

PROF T A WOKER

VICE-CHAIRPERSON: CONSUMERS AFFAIRS COMMITTEE

NOTICE 2929 OF 2002**DEPARTMENT OF TRADE AND INDUSTRY
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 1341 of 2001 published in Government Gazette No. 22327 of 25 May 2001, which report was published in Notice No. 2926 in Government Gazette No. 24053 of 8 November 2002, and being of the opinion that an unfair business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(l)(b) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

In this notice, unless the context indicates otherwise -

"unfair business practice" means the business practice 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 SkyBiz.
- (b) directly or indirectly, operates, conducts or promotes participation in or membership of SkyBiz.

(c) transmits in any way whatsoever, money to any account, whether in the Republic of South Africa or abroad, destined for the credit of SkyBiz.

1. The unfair business practice is hereby declared unlawful.
 2. This notice shall come into operation upon the date of publication hereof.
-

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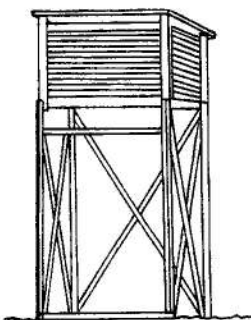
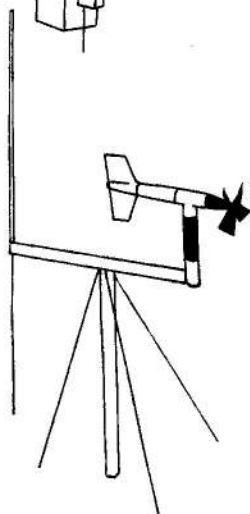
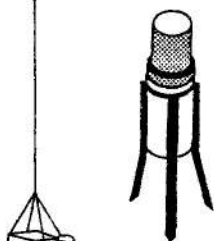
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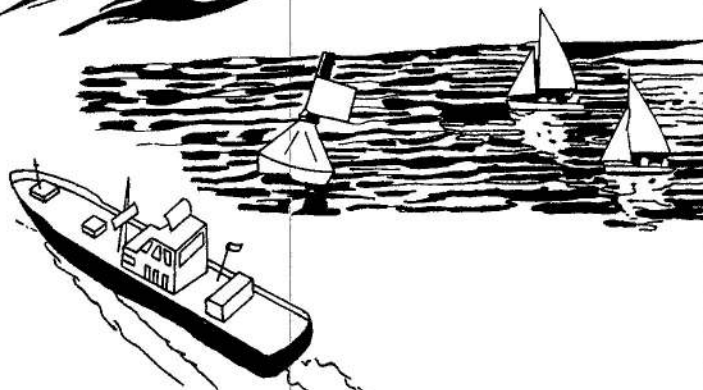
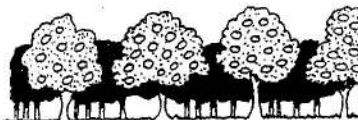
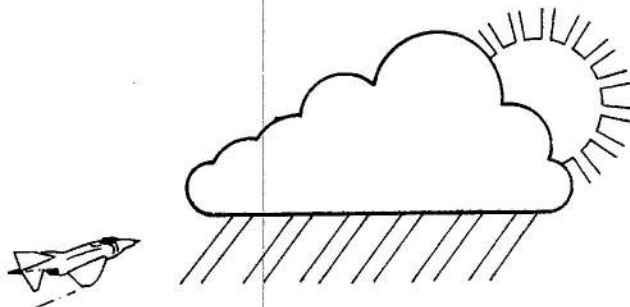
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