

## United States v. Avon Products, Inc. (S.D.N.Y. 2014)

### United States v. Avon Products (China) Co. Ltd. (S.D.N.Y. 2014)

#### Nature of the Business.

Avon Products, Inc. is a U.S.-based corporation headquartered in New York focusing on the sale of beauty, home, and health products. Avon Products (China) Co. Ltd. is an indirect subsidiary of Avon that manufactures and sells Avon products in China. Avon China's books-and-records were consolidated into Avon's financial statements.

#### Influence to be Obtained.

According to court documents, between 2004 and 2008, Avon China engaged in a regular practice of providing government officials with expensive gifts, travel, and entertainment in exchange for license approvals, avoiding fines, avoiding negative media reports, obtaining favorable judicial treatment, and obtaining government approval to sell certain Avon products that did not yet meet government standards. According to the DOJ, the gifts, travel, and entertainment expenses were recorded as business-related expenses on Avon's book-and-records but in fact, the majority of the expenses were related to leisure activities.

In addition to gifts, travel, and entertainment, the DOJ claims that Avon China paid Chinese officials money by submitting false reimbursement reports for expenses that were never incurred or by paying Chinese officials money for a government fine that did not actually exist. The DOJ's pleadings also describe an instance where, to avoid the publication of a negative press article related to Avon's recruiting practices, Avon China paid approximately \$77,500 to become a "sponsor" of the relevant newspaper at the request of the government official in charge of determining whether the newspaper would run the article. Finally, according to the DOJ, Avon China retained a "Consulting Company" to interact with Chinese officials. Avon China allegedly paid the Consulting Company thousands of dollars without conducting due diligence and knowing that the Consulting Company did not provide any legitimate services. Much like the gifts, travel, and entertainment expenses, the DOJ claims that none of the other payments were properly recorded on Avon's and Avon China's books-and-records.

Throughout the period between 2004 and 2008, the DOJ claims that Avon did not maintain proper internal controls. According to the DOJ, the company lacked a dedicated compliance officer and personnel and failed to make its subsidiaries aware of the Company's code of conduct which prohibited bribery. The DOJ claims that upon discovering the improper payments through an internal audit, Avon executives attempted to cover up the activity and failed to take action to prevent any potentially illegal conduct from reoccurring.

#### Enforcement.

On December 17, 2014, the DOJ announced that it had settled charges against Avon and Avon China for violating the FCPA's books-and-records provision. Avon China pleaded guilty to one count of conspiracy to violate the FCPA's books-and-records provisions and agreed to pay \$67,648,000 in criminal penalties. Avon entered into a three-year deferred prosecution agreement with the DOJ, agreeing to appoint an independent compliance monitor for 18-months. Following the end of the monitorship, Avon agreed it would supply regular compliance reports at 6-month intervals for the remainder of the agreement. In a parallel action by the SEC, Avon agreed to pay corporate penalties in excess of \$67 million.

#### Key Facts

**Citation.** *United States v. Avon Products, Inc.*, No. 1:14-cr-00828 (S.D.N.Y. 2014); *United States v. Avon Products (China) Co. Ltd.*, No. 1:14-cr-00828 (S.D.N.Y. 2014).

**Date Filed.** December 17, 2014.

**Country.** China.

**Date of Conduct.** 2004 – 2008.

**Amount of the Value.** Approximately \$8 million.

**Amount of Business Related to the Payment.** Not Stated.

**Intermediary.** Consultant.

**Foreign Official.** Unspecified Chinese Government Officials.

#### FCPA Statutory Provision.

- **Avon Products Inc.** Books-and-Records; Internal Controls.
- **Avon Products (China) Co. Ltd.** Conspiracy (Books-and-Records).

**Other Statutory Provision.** None

#### Disposition.

- **Avon Products Inc.** Deferred Prosecution Agreement.
- **Avon Products (China) Co. Ltd.** Plea Agreement.

**Defendant Jurisdictional Basis.** Issuer

**Defendant's Citizenship.** United States

**Total Sanction.** \$67,648,000.

**Compliance Monitor/Reporting Requirements.** Compliance Monitor.

**Related Enforcement Actions.** *SEC v. Avon Products, Inc.*

**Total Combined Sanction.** \$135,013,013.