

Sawbones 381: Herbalife

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[theme music plays]

Justin: Hello everybody, and welcome to *Sawbones*: a marital tour of misguided medicine. Me? I'm your cohost, Justin Tyler McElroy.

Sydnee: And I'm Sydnee McElroy. Are you excited, Justin?

Justin: [sing-song] I'm excited to talk about business!

Sydnee: You, uh—

Justin: [sing-song] Finally, something that I know everything about, Mr. Business Boy... dot com.

Sydnee: You were a, uh, award-winning business writer, weren't you? For—

Justin: I was a AP... [pause] [holding back laughter] AP Award-winning...

Sydnee: [laughs]

Justin: ... business writer. I was the best business writer.

Sydnee: Best business boy.

Justin: Nationwide.

Sydnee: Yes.

Justin: [whispering] In Ohio. [normal volume] In 2007, or something like that.

Sydnee: Mm-hmm. I was very proud. You got a plaque and everything.

Justin: I got a plaque and everything. It's still proudly displayed in my home, because it's a real achievement that Grandpa Dan can appreciate.

Sydnee: [laughs]

Justin: And I can—

Sydnee: It's something tangible that he understands.

Justin: Tangible that Grandpa Dan can—

Sydnee: You wrote in a—in a newspaper. A physical newspaper—

Justin: About business.

Sydnee: —that you can hold with your hands, about business.

Justin: Business.

Sydnee: And you wrote so good you got an award.

Justin: Yeah. It's all very relatable, and practical, and real.

Sydnee: I know "well" was appropriate, not "good" there, but I felt like "good" fit the...

Justin: No, I gotcha.

Sydnee: ... energy better.

Justin: You don't have to make excuses here.

Sydnee: Well, you know, you get emails.

Justin: [simultaneously] It's a safe space. Safe space.

Sydnee: You get emails about grammar. You get those emails.

Justin: That's weird. I don't get emails about grammar. Is it—

Sydnee: Yeah. I don't know what the difference is between us.

Justin: So, Syd...

Sydnee: [laughs]

Justin: ... what's this week's episode about?

Sydnee: Uh, this week's episode... okay. The—I have gotten a lot of emails over time about, um, not just grammar, but about various products that are for sale, uh, that may or may not be real. There's a new one out there. I haven't gotten to that one yet. I've gotten a ton of articles that are—ton of emails that are all just subject line: "Boo," so we'll get into that. I know. We'll get into that eventually.

This is an older one. And there are lots of these companies, some of them MLM, some of them not, that sell things that are pseudoscientific, right?

Justin: Right.

Sydnee: Like, they're making claims that either they intentionally don't really mean anything so that they can skirt FTC regulation, or they say things that definitely mean something, but aren't really true.

Um, and this is one that I could have—I have let slide and could have continued to let slide, 'cause there's so many of these, right? I can't talk about all of them, and that wouldn't be very interesting if our podcast was just devoted to, "Here's something else that doesn't work."

Justin: Right.

Sydnee: Uh, there are lots of MLMs. Um, there's lots of pseudoscience. But not all of them show up in my hometown. [laughs quietly]

Justin: Yes, here!

Sydnee: In Huntington. And open up a physical location devoted to that product.

Justin: To this product, right. It's here! In our home! And the thing that I find really interesting is, it might be in your town, and you may not know!

Sydnee: I didn't! Uh, I have to—I have to thank Rileigh, my sister.

Justin: Oh.

Sydnee: For recommending we do a show on this, because she was the one who called to my attention, "Hey, do you know what this place is? This new place in town is?"

And I said, "No, I don't know. I don't know what it is." I had no idea. And then I started looking into it and realized that there are many, many places that might have similar nutrition clubs.

Justin: Hmm!

Sydnee: And not realize that that's what they are. So, uh, because of that, I had no choice.

Justin: It was out of your hands.

Sydnee: It was out of my hands. And it gave the opportunity for Justin...

Justin: Ohh.

Sydnee: ... to do a little investigative journalism.

Justin: Oh, my! Well, Sydnee, that's—

Sydnee: Call—calling on those skills.

Justin: Yeah, it—those—you've heard—a lot of people have been talking lately about my sort of investigative journalism background, and I think it's, you know, high time that we're finally, uh, talking about it.

That's right, Syd, I did a little investigative work, uh, of my very own on this one. I did a little—little kind of like a gumshoe...

Sydnee: Sleuthing?

Justin: ... sleuthing, yeah.

Sydnee: Kind of a Nancy Drew thing.

Justin: Yeah. Those—

Sydnee: Is that—[laughs]

Justin: I uncovered, uh... a lot of—[snorts] a lot of dirt.

Sydnee: Not really, but, uh—

Justin: No, I just—I—[through laughter] I just went to this place and got a milkshake. [wheezes]

Sydnee: [laughs] Justin went and got a milkshake, and we'll tell you about that.

Justin: [laughs loudly]

Sydnee: But first, let's—[through laughter] let's go through the history of Herbalife.

Justin: Okay.

Sydnee: So, Herbalife, uh, was originally conceived by Mark Hughes. This was a California native born in 1956 who, um, from a young age was—just the kind of guy who was, like, a good salesperson. Like, that's part of his sort of bio, is that he was good at selling stuff to people. Like raffle tickets in school, even. Like, just always had a knack for sales.

I envy people like that. I do not have that.

Justin: Me neither.

Sydnee: Totally—total—nope. Not—not a—not a single skill in that area. Uh, but he always did, and he was particularly motivated. And this story is one that has been sort of... I don't think it really matters if it's true or not, but I should say—I always like to put that caveat in there when I'm kind of giving a little bit of a biographical history that maybe has been called into question. And you'll find this—you know, when we talk about some of these products, these over-the-counter pseudo-medical kind of health, wellness products—we've talked about this before. You get these sort of stories about how the founder—like, what led them to come up with this product. You know—

Justin: Yeah.

Sydnee: —some of the ones we've talked about before. Um, this might be in that realm, or it may be true. But the story is that his mother used a lot of unsafe diet pills while he was growing up, and eventually, uh, she unfortunately overdosed on diet pills.

Justin: Oh my gosh.

Sydnee: And because of that, he was particularly motivated to try to find safe, healthy diet supplements, um, so that he could sell—use his talent for salesmanship to sell those to people, instead of a lot of the dangerous diet pills that were out there. And especially if you consider, like, the time period in which he's gonna start, like, entering the—the working world in the 70's, a lot of the diet pills of the time would've contained, like, various amphetamines that could've been dangerous, you know? Or that definitely were dangerous, that we know, that they've banned.

Justin: Yeah. We've talked about this in the past. Things got *wild* there for quite some time, in the diet pill world.

Sydnee: Absolutely. Um, and so he first—he first entered into sort of the diet industry by working for a company called Slender Now, um, which sold diet pills, and he did pretty well, except it was found to be a pyramid scheme, and shut down.

This is going to be a similar... this is gonna be a theme. [laughs]

Justin: Mm-hmm.

Sydnee: And a lot of the companies back then, like... we're in the time period before, like, the idea of it being a pyramid scheme automatically—you know what I mean?

Justin: Mm-hmm.

Sydnee: Like, people were still getting away with it. We're just entering in to where, like, there was all this regulation being created to be like, "Hey, look. If you're running a business that is solely based on getting other people to buy your stuff, and then recruit other people to sell it, and then they recruit other people to sell it, and nobody ever sells anything to anyone, they're just endlessly recruiting people... that's not okay." Like, this idea is just being sort of put out there.

So, he went on to another company called Golden Youth, which was another one that was eventually closed down. I tried to find, like—man, I tell you. Some of these names, you start trying to google to find, like, "Is this company still around?"

Justin: Yeah. Golden Youth also seems like it could get pretty sketchy pretty quickly. [laughs quietly]

Sydnee: Exactly.

Justin: With the wrong google.

Sydnee: Luckily there's, like, a band, and so that was mainly what I kept finding, was a band. [laughs quietly] Which was—

Justin: Thank you. Thank you, Golden Youth.

Sydnee: Phew. Thank you. Uh, these would be closed, and he would eventually decide he needed to venture out on his own. Um, and he got some partners from these other companies, by the way. Like, that's part of why I mention these other places that he worked, is he pulled [hesitantly] the best and the brightest, I guess you could say, from these other companies, uh, to help him form his own.

I want to give you an idea of who some of these partners were, just to give you, like, a feel for—I mean, here we are. It's the end of the 70's. This company is gonna launch in 1979, okay?

Justin: Mm-hmm.

Sydnee: You've got Mark Hughes, who I've already told you has this motivation to find a better diet pill and who is great at sales, and then you have his team: Richard Marconi, who for a long time said that he had a Ph.D in Nutrition. Um, that was not true. He eventually had to admit that what he had was a mail-order certificate from a correspondence school.

Justin: Ah.

Sydnee: Um...

Justin: Ah.

Sydnee: ... perhaps in Nutrition, but...

Justin: [quietly] Maybe a very good correspondence school.

Sydnee: It could've been. Not—

Justin: And maybe a very nice certificate, with some gold leaf!

Sydnee: [laughs quietly]

Justin: Or fancy handwriting. Or embossing. Ooh!

Sydnee: And let me tell you. [laughs quietly] As somebody who looked at the MD path and the Ph.D path and decided, "Ph.D seems much harder. I think I'll stick with MD." I doubt that it was equivalent to the work you would put into getting a Ph.D.

Justin: Yeah.

Sydnee: That is my—that's my two cents. Uh, Lawrence Thompson, who previously worked at Golden Youth. And before Golden Youth, he had worked at Best Line Products, which in 1973 was fined 1.5 million dollars for, you know, being a pyramid scheme.

Justin: [snorts]

Sydnee: Um—and then also, uh, Larry Stephen Huff, who—[laughs] who was involved in what would be called—

Justin: Stephen Huff is the last name. You're not talking about three people named Larry, Steve, and Huff, right?

Sydnee: No. No. Larry Stephen Huff.

Justin: 'Cause I'm really fixated on this Huff character, and I wanna know all about him.

Sydnee: [laughs quietly] Well, he was once involved in what was called the father of all pyramid schemes, Holiday Magic Inc.

Justin: Right, yes!

Sydnee: It's—yes.

Justin: Okay. We, uh—what was this... Holiday Magic Inc. That was in, um... um, um, um, *The Dream*, a podcast about MLMs I listen to.

Sydnee: Was it? Yeah.

Justin: Yes, it is.

Sydnee: Well, he—this guy was involved in that.

Justin: It was sort of like the Ur—[through laughter] the Ur-pyramid scheme, or the Ur-multi-level marketing.

Sydnee: Yeah. Back—back in '73 he, uh—his distributors were defrauded out of 250 million dollars. That's in '73 money.

Justin: That's—pew! [crosstalk]

Sydnee: Uh, so anyway, this was—so with this team... [amused] so, now we have assembled our *Ocean's Eleven*. [laughs quietly]

Justin: Yeah.

Sydnee: Our *Ocean's... Four*, I think I have here. Uh, and I'm sure there were some other people involved. But the company launched in '79, Herbalife, and it was an instant success. Um, it pulled on—and, like, why was it such a success? I mean, I think you have to, like... some—one of the themes we've talked about on this show is that when you give people the idea that something is more natural, that something is from Mother Earth, as it is intended to be—

Justin: To the natural fallacy.

Sydnee: —that it's safer, it's better for you. That intrinsically, that product is superior. And Herbalife, I think, was one of the first companies to jump on that in a big way, and really push that. You know? Um, and so the Herbalife plan was kind of the foundation of this company.

Um, and the Herbalife plan was, you eat one meal a day. You take, like, 20 or so pills... that they sell you, of course.

Justin: That's a lot of pills!

Sydnee: Yeah. And then they also had protein powders that you could make into shakes and things like that, right? So that was kind of like the—that's how they launched. So already, by the way, from a medical standpoint, from a health standpoint, if you're thinking, "Encouraging people to only eat one meal a day and take lots of pills doesn't sound good... "

Justin: [laughs]

Sydnee: "... I would agree with you." No, it doesn't. Um, but we're—we're also in a time period where the—especially the diet craze was—you know, it was really taking off as we go into the 80's. So, uh, a lot of people were attracted to this plan. And also, it was a multi-level marketing company. So not only could you buy their stuff and use it to—I mean, the big thing was to lose weight. It had this whole, like, air of, like—it was like the... precursor to the wellness industry. This whole air of, like, being better, but also you'll lose weight, was the idea.

And, uh, you could also become a distributor, and sell it to other people. And—what do they say? Be your own boss.

Justin: Right.

Sydnee: Be in charge of your own destiny. Make some money. Have a side gig.

So, uh, they also got in early on the infomercial craze. They were one of the—one of the early companies to take advantage and get one of those big, hour-long infomercials.

Justin: Nice!

Sydnee: Um, and back then, you know, you got an hour of TV time, there's only so much on TV. [pause] A lot of people watched it.

Justin: Yeah!

Sydnee: They even had their own magazine at one point, that you could subscribe to.

Justin: Wow, really?

Sydnee: Yeah, to just tell you about the Herbalife life, I guess. [laughs]

Justin: I wonder if it had comics.

Sydnee: I—you know, I don't—I didn't look to see if it had comics.

Justin: My Disney World magazine has comics. You know, it's got Wally D, the squirrel that lives at Walt Disney World. He gets into all kinds of scrapes. So I figure if the Wal—the Walt Disney magazine can have that, why can't the Herbalife magazine have, like, Herbie. Herbie the Herb, or something. [laughs quietly]

Sydnee: I really appreciate what Wally D is doing, because it's so aggressively unfunny that it has to be intentional, and then it makes me question it as art. Like, is this art all of the sudden? And it really—it's magical.

Justin: You're—

Sydnee: No, it comes all the way around the other end where it starts to make me think. [laughs quietly]

Justin: You're—this is so mean. I can't—what if the Wally D guy is, like, listening to this? Have you ever thought about that?

Sydnee: No. [crosstalk]

Justin: What if he's, like, a big *Sawbone-r*?

Sydnee: Okay. Well, how about this? I don't think as a 38-year-old adult, I am the target audience for Wally D.

Justin: [laughs] That's fair.

Sydnee: Charlie and Cooper laugh every time.

Justin: They—yeah! They get—they—they love this guy.

Sydnee: So there you go.

Justin: This squirrel.

Sydnee: I, as a cat person, am also not the target audience for Marmaduke, but there are people out there who *love* Marmaduke.

Justin: It's true.

Sydnee: And that is fine.

Justin: That's great.

Sydnee: And I celebrate you, and your Marmaduke love. Uh, so anyway, the magazine was also, by the way, filled with testimonials. Testimonials was a big—and this is such an old, um, patent medicine theme. You get, uh—if you can't—if you don't have scientific proof, because you didn't get any, then just get a bunch of testimonials from people who say, "Hey, this worked for me." So, um, you could make, like, as much as \$200 for writing a testimonial in that they could use and print.

Justin: Hmm... this is a—that is a very common ploy with businesses that are less than reputable.

Sydnee: So, uh, their slogan, which you probably have heard before, "Lose weight now. Ask me how."

Justin: Hm.

Sydnee: And that's how you got new distributors, right? You recruited them to the company by... I mean, back then everybody was, I guess, trying to lose—I don't know. I hadn't been born yet, but that's the impression I get when I look at workout videos from the time.

By 1985, the company appeared on *Inc. Magazine's* list of fastest-growing private companies. Um, it was huge. So in just those few years, it went from 386,000 to 423 million.

Justin: Phew.

Sydnee: Yes. They had, like, 700,000 distributors from the US, Canada, the UK, Australia. They brought in, like, 500 million a year. I mean, it was huge by 1985.

Um, and Hughes was doing really well at the time. He was enjoying his success. He actually bought this big, giant, like, Beverly Hills mansion.

Justin: Hey!

Sydnee: And it used to be owned by Kenny Rogers.

Justin: [through laughter] Whoa!

Sydnee: So. [laughs]

Justin: The gambler himself! My, my, my!

Sydnee: [laughs]

Justin: That is quite the prestige symbol.

Sydnee: Yeah. Um, but, uh, just as all of this was hap—as early as 1981—so, I told you this company started in '79. Well, even as it's skyrocketing to success, in those early years you start to see another theme. Which is that the FDA, and eventually the FTC, and a lot of other people start taking a really hard look...

Justin: Those killjoys.

Sydnee: At what Herbalife is doing.

Justin: Gotta come ruin the party.

Sydnee: [through laughter] So I'm gonna tell you the—the story of the, uh, health and truth-concerned authorities. I mean, that's why they're going after 'em.

Justin: Well, yeah.

Sydnee: Who—yeah. Who—

Justin: Or they just don't want you to have the secret—

Sydnee: —who ruin the party.

Justin: —to incredible weight loss.

Sydnee: But first, let's go to the billing department.

Justin: Let's go!

[ad break]

Justin: Alright, Syd's about to kick all the kids out of the pool.

Sydnee: [laughs quietly]

Justin: And turn on the lights at the—at the prom. Kill all the fun. [crosstalk]

Sydnee: I know.

Justin: Cancel the parade.

Sydnee: I'm canceling—

Justin: That one's lit—that one's literal. Sydnee's canceled parades in Huntington before.

Sydnee: [laughs] Just—

Justin: That one's literal.

Sydnee: [through laughter] If that isn't a description of you and me. You threw an unauthorized parade in Huntington, and I canceled an authorized parade in Huntington.

Justin: Yeah, that's fair.

Sydnee: There we are.

Justin: That's us in a nutshell.

Sydnee: So, despite this, all this success, the FDA had been looking at the company as early as '81. There had been reports of some various adverse GI effects from the different things that they sold, the supplements, the powders, whatnot.

Um, and then the Herbalife official career book was published a year later, and it had ingredients of everything in it.

Justin: Hmm! [through laughter] So you could make your own at home?

Sydnee: [laughs quietly] It was mainly for—well, it was for the distributors, right? It was your career book.

Justin: Right.

Sydnee: That's what you gotta remember. The—the—these companies aren't just selling whatever the product is. They're selling the idea that you could make a ton of money selling the product. So they're selling the business as much as they're selling whatever the business is selling. You know what I mean?

Justin: Yeah.

Sydnee: That's the whole thing. So, they, uh—they released this book. It had ingredients. The FDA got upset, because there was a lot of stuff in it that they thought was—made false claims, and ingredients that they had problems with. There was an herbal aloe drink that was said would help treat, like, stomach and kidney and bowel things. There was—they have these Formula 1, Formula 2, Formula—like, different numbered formulas that they sell. That's still true today, by the way. You can still find those Formula 1 things. Like, Formula 1 pies or something. Um...

Justin: [laughs quietly]

Sydnee: Uh, but they had, like, Formula 2, which they claimed treated 75 different conditions. Um... including cancer. Uh—

Justin: Ugh.

Sydnee: —and they had some ingredients that specifically the FDA was mad about. Um, one was pokeroot? Uh, we've had pokeroot, pokeweed, actually growing out back of our house before. I only know 'cause I took a picture and then put it on the internet once and said, "What is this growing out back of my house?" And finally figured out it was pokeweed. Don't eat it! 'Cause it can cause nausea, vomiting, diarrhea, abdominal pain, bloody... bowel movements, bloody vomiting, low blood pressure, seizures.

Justin: Ugh!

Sydnee: Um, so they had some of that in some of 'em. Um, some had mandrake in them. Which... if you've—

Justin: Poi—poison, right?

Sydnee: —read fantasy of any sort... [laughs] you may know. Mandrake is dangerous. It can cause all kinds of very dangerous symptoms. Blurry vision, dryness of your mouth, dizziness, vomiting, your heart racing. Um, you can have hallucinations. That's part of why mandrake has sort of its mystical connotation, because you can hallucinate while you're on it. Um, and, uh—and then they also had what was maybe not food-grade linseed oil. I guess linseed oil can definitely—like, the food-grade definitely can be in things. You can eat that. That's fine. But there's also, like, not food-grade, which is used for, like, I think var—like, varnishing wood or something. You put it on wood, something to that—

Justin: Mm-hmm?

Sydnee: —you might know this, Justin. This may be in your wheelhouse. Yeah.

Justin: Yep.

Sydnee: So maybe it wasn't—

Justin: Boiled linseed oil is typically what you—look, it's nice! You get a nice sort of aging, [quietly] it gets—it gets a nice patina.

Sydnee: Well—

Justin: Flaxseed oil is another—is another name.

Sydnee: Exactly.

Justin: That is more common.

Sydnee: And there was a question as to whether or not it was indeed food-grade, the oil they were using. So, um, because of all this, the company agreed to try to back off some of their claims, um, that were not backed by any science. Even—and to remove the ingredients that were, you know... deadly.

Uh, this didn't stop the Canadian Department of Justice, who brought a suit against them the next year for misleading, advertising false claims. Um, and, uh—and Hughes didn't like all this, 'cause he felt like all this stuff from Canada, all this, it was unfair. Like, basically the FDA was trying to make him an example. He felt like he was being targeted, his company was being targeted so that other comp—because this was in the middle of the diet pill craze, and that they were trying to make an example out of him, basically.

Justin: Right.

Sydnee: Um, and so he kind of went on the offense against the FDA and accused them of all this stuff. Publicly went out and said, like, "None of this is true. You know, they're just after me 'cause I'm successful, and... I don't know. They're jealous." [laughs quietly]

Um, but the—as soon as all this happens, and it culminates just as we see this, like, meteoric rise that sort of tops off in '85, you see a crash, because of all this bad press. And so people start to get nervous. Um, and then there was a lawsuit that was brought against them in California. Uh, Congress started investigating after that because of this big lawsuit in California. Um, as a result, like I said, they stopped selling so much. They had to lay off a bunch of people. They had to discontinue a bunch of products. They had to pay a lot of settlements. Um, and so things weren't going so well in the US, right?

Justin: Right.

Sydnee: The FDA, Congress, everybody was paying attention to 'em. So they took their company and went overseas. [sighs] And tried to make up their losses other places where they didn't have so much bad press yet, and it worked. They expanded to Japan, to Israel, to New Zealand, to Spain, to Mexico, to France, to Germany. All over the place. Um, selling their products, and selling the MLM structure, selling the business.

Um, and everywhere they went they would eventually run into trouble with the government. They had this kind of common theme where they would go somewhere, have explosive sales, do really well, the government would get involved, and things would take—would kind of peter out, right?

Um, so, like, in France they got accused of being tied to some sort of religious organization.

Justin: Whoa!

Sydnee: I don't know. There was something weird there.

Justin: Didn't see that comin'.

Sydnee: In Germany and Canada they got in trouble because they had Ephedrine in one of their products, and that was being banned at the time slowly, place-by-place.

Um, they got in trouble for various times for... being a... pyramid scheme. They were accused of that a lot. Um, a lot of different countries had different sort of definitions of that, and they kept having to try to tweak the model to avoid being labeled that based on the law in different parts of the world.

Justin: I get the sense that they're kind of, like, adjusting to whatever the law is. Like, kind of building, like a kudzu. Just sort of, like, growing *around* the law in sort of a law-like shape. [laughs quietly]

Sydnee: I have to imagine—and this is just me guessing. I don't know this to be fact. But I have—'cause I'm a doctor, I'm not a lawyer. I have to imagine they had a really good, effective legal team as they moved around the world who really understood this stuff and was able to sort of mold the company into something that was legal everywhere they went. You know what I mean?

Justin: Mm-hmm.

Sydnee: Like a really effective legal team. I don't know that. That is my guess, based on what we saw. But anyway, they kept selling. Um, there were distributors who started to file suits against the company, basically saying, like, "Hey, um, we did this, and we followed the rules, and we followed your career guide, and we gave you money, and then we never made any money." And... yeah.

Justin: Yeah, it's worth noting I think, and Sydnee would probably agree to this, that, like, there—there... there are a lot of—of multi-level marketing companies that you would hear very similar stories from, and we are not, Sydnee and I, here in a position [laughs] where we can, like, fully—to say, like, whether or not they are—it would be a successful, you know, enterprise or not. Like, on the business end of it, [crosstalk]—

Sydnee: Oh, no. I...

Justin: We don't have a leg to stand on, there. [laughs]

Sydnee: No, and all I'm telling you in terms of the legal action is stuff that happened. I don't know the ins and outs or whatever anybody actually did. I know what the—what the late—what the case law—or what the cases were, what the suits said, what people claimed.

The actual things that are—I mean, this is all just documented. You can read this all over the internet. Um, this is not the result of any investigative journalism. [laughs quietly]

Justin: [laughs]

Sydnee: Um, on our part, anyway. Uh, so, um... Hughes had actually taken the company public back in 1986, and he tried—he made an attempt in '99 to pull it back to a private company. Um, and I think, like, his board was fine with it, but the shareholders threatened lawsuit, because they felt like they weren't gonna get... I guess if you take the company back private, each shareholder would get some sort of money in return.

Justin: [quietly] Yes, that's the [crosstalk]—

Sydnee: That is my guess.

Justin: Yeah.

Sydnee: And they didn't feel like they were getting a fair deal.

Justin: Yeah.

Sydnee: So it—it didn't happen.

Justin: Yeah.

Sydnee: Um, but by—

Justin: [crosstalk] shareholder—[quietly] and shareholders get to vote on that kind of thing.

Sydnee: Yeah. So, um... but with all this, they're still selling. So, like, you're hearing all these, like, rumbles of legal trouble, and all this kind of stuff. But, like, they're still growing. Like, there is no doubt that at that point the company was still growing. By 2001, 50 different countries were selling Herbalife products, um, and bringing in new distributors. And even at that—that year, um, the, um, unfortunately the founder of the company passed away. But that didn't stop the momentum. There was, like, a brief dip in activity, but they still continued to grow, even with all that kind of tumult surrounding it.

Um, new people got involved, and the company changed hands. Um, some things did change over the years, like throughout the 2000's Ephedrine would be removed. As was true—Herbalife was not the only company throwing Ephedrine and then, you know, stimulants and amphetamines and things into diet products.

Justin: Yeah. That was—again, that was a rough—[wheezes] it was a rough patch.

Sydnee: Yes. Lots of companies were doing that, and being shut down one-by-one, until finally it was banned everywhere because it was dangerous, and it could kill people. Um, the business models would keep being tweaked in response to these accusations of, you know, the MLM actually being some sort of, uh, either pyramid scheme or what was called an endless chain.

Justin: Hmm.

Sydnee: Have you heard about those? Like, basically it's just an endless chain of distributors that never ends at a customer, I guess was sort of the impression I got. That's a different structure.

Justin: Kind of a Ponzi—kind of like a Ponzi scheme, right?

Sydnee: Same sort of idea. I mean, I think we're just—they're all different terms for the same idea. It's the idea that there is a person at the top who's making all the money, and everyone else involved never makes anything.

Justin: It's there's a sucker born every minute, now let's profit off of it. [laughs quietly]

Sydnee: Yes. Um—

Justin: And also I am the sucker. [wheeze-laughs] I'm both the sucker and the suck-ee.

Sydnee: But they would keep growing. They would even, uh, have their own processing facilities eventually, in China, that they would make to, like, gather the herbs from different places. And, like, they pride themselves on, like, you can trace that. You can ask where each supplement, each herb that goes into all of their different things, they can tell you where exactly they source it, and where they process it, and how it ends up. So, like, a lot of that started to become baked in to what their—what their thing is, what their pitch is.

Um, the, uh—the lawsuits from distributors and from customers and everything eventually sort of culminated in 2016. Um, they got in big trouble with the FTC in 2016. And, like, actually leading up to that, by the way, there was a settlement in California and a settlement in West Virginia that was a precursor to this.

Justin: Hm.

Sydnee: Um, in West Virginia they were accused of violating the telephone consumer protection act. They were doing, like, robocalls to people.

Justin: Oh, right, right, right.

Sydnee: Anyway. The point is, the big lawsuit was in 2016. There was a huge settlement, and the FTC declared them... not necessarily not a pyramid scheme.

[pause]

Justin: Not... not not...

Sydnee: Not necessarily not.

Justin: [slowly] Not necessarily not a pyramid scheme. Okay.

Sydnee: Yeah.

Justin: Got it. Okay.

Sydnee: Really hedging your bets, there.

Justin: Yeah. [laughs quietly]

Sydnee: Um, made them pay out millions to distributors. Um, and they made the claim at that point—it was put in writing that, like, from their standpoint, it was virtually impossible for a person joining the company to make money, like, as a distributor, um, working for them.

Um, along with the FTC issues, there has also been these claims that have hounded the company throughout the 2000's about, um, liver failure. That there were certain, uh, ingredients in some of their products that had caused this liver toxicity and liver failure. There was a warning that was, um, put out about that in Spain. There were some papers published in the US. There was a lawsuit in Israel related to these claims. Um, none of it was ever completely substantiated, though. Like, the—the various journal articles that were published kind of said, like, "We can see how these ingredients, this specific here or there might have been toxic to the liver. Like, we can see how this might have happened," but they couldn't prove a definitive link between the product and the patient. Does that make sense?

Justin: Right, yeah.

Sydnee: So, like, they didn't—they never proved that, but there definitely were concerns about this that were raised throughout the years.

Um, but this didn't—again, this didn't seem to slow 'em down. They continued to sell new pills, new powders, new shakes, um, and, you know, I've seen some of the breakdowns for, like—'cause this company of course is still around today, and eventually into this new form that Justin will [holding back laughter] give you his insider's view on.

Justin: Yeah.

Sydnee: But, uh, the big breakdown—one of the big breakdowns for this as a multi-level marketing company that I saw, in terms of, like, who makes the money—'cause, like, the idea with these is that everybody should be making money, right?

Justin: Right.

Sydnee: Everybody. Um, but what they found when they looked at it once was that the bottom 30% make nothing. The next 48% made on average about \$292

a year. The next 14% made about \$2,216 a year. And the remaining 8% were kind of divided up into the upper levels of earning.

So—I mean, it's that similar structure that you see a lot when you get involved with these companies, and this is just the truth. This isn't me accusing them of anything illegal. This is just how the companies are structured.

Justin: Right.

Sydnee: The people at the bottom... usually don't make that much. There are some people who will climb to those higher levels, but a lot of people don't. And, um, in some cases in some of the companies we've covered before—and this is—I have seen this accusation leveled at Herbalife, although I didn't find the numbers to back it up. But we talked about this when we talked about the essential oil companies.

Justin: Right, yes.

Sydnee: In some of those companies, the bottom tier distributors actually lose money. Not only do they make zero—

Justin: Because they're buying product and [crosstalk]—

Sydnee: [simultaneously]—but they're buying product and—yeah.

Justin: Yeah.

Sydnee: So I've seen that. But again, this is one of so many companies that are structured this way, not just in the wellness and health space but in every space. So Herbalife is just one more of them.

Um, the, uh—one interesting side note before we get into the nutrition clubs. Um, in 2012, Bill Ackman tried to publicly short the company.

Justin: Ah, yes.

Sydnee: Um, by... basically he came out and said publicly—so he didn't just—and you can explain what a short is. But basically he came out and said, "I'm going to do this thing that Justin is gonna describe to you, called a short, for this company, because I believe they are a pyramid scheme." This is his belief. "And I believe that because of that, they will eventually go to zero."

And he said it publicly, and he gave, like, a talk listing all his reasons why.

Justin: Now, Syd, is this the same Bill Ackman that runs Pershing Square and recently tried to buy out a significant portion of UMG with its back?

Sydnee: I don't—he's, like, a famous... guy who does shorts.

Justin: Yeah.

Sydnee: So yeah.

Justin: It is. It was rhetorical. You know.

Sydnee: [laughs]

Justin: Bill Ackman. He's kind of a superstar, so. I mean, everybody knows Bill Ackman. I mean, he's no, like... he's no Warren Buffet. He's not the Oracle of Omaha.

Sydnee: Do people like him?

Justin: What? That's—like—terms like—once you get into people who are this rich, terms like "like" and "dislike" [through laughter] tend to lose their meaning.

Sydnee: Okay. He sounded like a super rich guy who took a really big bet against Herbalife and lost.

Justin: I mean, that's the—you know, you... pay your money, you take your chances. That's the big—that's the game that we call finance.

Sydnee: The reason I—

Justin: [simultaneously] In the business world.

Sydnee: The reason I wanted to bring this up is because his attempt to short the company—so, like—I mean, can I just say he bet against them? Using the stock market, he bet against them.

Justin: So you said I was gonna explain, and then you actually decided you don't wanna use a portion of the show for me to explain shorting stocks.

Sydnee: Can't they just watch *The Big Short*?

Justin: [sighs heavily]

Sydnee: [laughs quietly] Do you need to—go ahead. Can you do it in 30 seconds or less?

Justin: Oh! Interesting question. [pause] I don't know. Yes, I can. Yes! I can do that.

Sydnee: What did he do to the company?

Justin: Okay. If you're long on a company, that means you buy a share of it and say, "This is going to go up in value, and so I'll have more money later."

When you short a company, you buy a stock in it and say, "This is gonna go down in value." And basically what you're doing is you're borrowing shares, okay? To sell now. And you tell the bank, "I'll pay you for these shares later," with the hope that you will have to pay less for them, because the value of the company will have gone down when you actually have to pay for these shares that you sold.

Sydnee: Okay.

Justin: So, uh, let's say Google is worth... I don't know, three grand per share. You say, "I heard Google's gonna go downhill, so I'm gonna short it." Which means, I'm gonna sell a share that I don't have for three grand, and when the price does drop, then I'll pay the bank back for that share it loaned me. So I'll have—

Sydnee: But you won't have to pay the bank three grand.

Justin: But I won't have to pay the bank three grand, 'cause the share price fell to one dollar. So I just made \$2,199.

Sydnee: Okay.

Justin: On the difference.

Sydnee: Well, Bill Ackman tried to do this.

Justin: But, the problem that you get into is this. If the stock doesn't do what you think it's gonna do, if it goes up, then you just sold a \$3,000 share that you are now going to have to pay the bank \$4,000 for, 'cause it skyrocketed, and you can really end up in hot water. That's what happened with Gamestop recently, and some other—it's called a short squeeze, it's happened.

Sydnee: So he—so he did this, but it didn't work, and he supposedly lost a lot of money because of this.

Justin: You get in trouble with that. It's dangerous.

Sydnee: And he, like, manages hedge funds.

Justin: [simultaneously] Options are risky.

Sydnee: Which are, like, big buildings full of money, of other people's money, basically. Anyway. So—

Justin: You indulged me—

Sydnee: [laughs]

Justin: —and so I will let that slide!

Sydnee: Anyway, so, um, he went out publicly and did this. And then he was losing, right? Like, he was losing on this bet. It was becoming very obvious. The stocks were continuing to climb. They were definitely not going to zero. Um, and because of this, this all plays into sort of the mythology behind the company, sort of the story that evolved around it.

When negative stuff came out, um, about the company, a lot of people would say, "Well, that's just Bill Ackman. They're just basing it on what he—and it's to support his stock position."

Justin: Right.

Sydnee: Like, e—and then it'd begin to make you question everything you would hear about it. 'Cause if you heard something negative, is it just somebody trying to manipulate the stock market? Or is it true? And that plays out to today. Like, even to today, when anything negative, like *Last Week Tonight with John Oliver*

did a thing about it, and the response was like, "Well, they're just basing it on stuff that Ackman put out there."

Justin: Hm.

Sydnee: I mean, like, that—because of that, its perpetuated this, like—

Justin: It set up an antagonist.

Sydnee: Yes.

Justin: Basically. Right.

Sydnee: So anyway, now they have nutrition clubs. So they started doing this actually prior to the FTC settlement in 2016, but because of that there are tons of rules around these things that are called nutrition clubs. If you—if you—you would think it was like a smoothie place, or like a shake place.

Justin: Certainly, yeah.

Sydnee: A healthy shake place is what you would assume that these places are. But, um, they only sell Herbalife products. And they have really strict rules, because they're not restaurants, they're not cafes, they're not shake shops or smoothie shops, so they're governed differently. Like, legally differently. Um, and they can't, like—there are certain rules around, like, what they have to put on the walls. They have to tell you what they are on the walls, like, have very clear signage.

Um, as far as I can tell, I found nutrition club rules from 2019, and I don't know if they've changed since then. But they talk about things like you can't, from the street, you shouldn't be able to see any signage.

Justin: Mm-hmm.

Sydnee: Um, and you shouldn't, uh, post, like, prices anywhere. That's—you're not allowed to do that. Um, and you can't really, like—and they have very specific, like, naming constructs, how you can name them and what is okay and what isn't okay. Um, and what you're allowed to talk to your customers about, and what you're not allowed to talk to them about.

Uh, you're not really supposed to advertise them. You're just supposed to, like, use social media and word of mouth, basically. I don't know. But you can rea—I mean, it's all... transparent. Like, you can read about it all online.

It's just that you might now know your local... whatever, shake, smoothie shop, *is* this, unless you looked into it.

Now, my assumption is, Justin, you can tell us about your experience, that walking in and looking at all the products on the walls, like, you would figure this out pretty fast.

Justin: Um, I don't know. I had a pretty normal, like—it would not have seemed off to me. Like, if I was a layman and just a regular, um, AP Award-winning business reporter, I would've walked in there and not really thought anything was awry.

And, I mean, you could make the argument that it's not, right? I walk in, there's a bunch of different smoothies or energy teas that they will sell me.

Sydney: Oh yeah, they have energy teas also.

Justin: Energy teas, yes. And they'll—the—the, um... you know, there's lots of different flavors, and I got a smoothie that was Snickers flavored. Um... it was—it was a very nice interaction, and the lady working there was nice, and...

Sydney: And they don't—and this was your experience. Nobody tries to recruit you to be a distributor. You didn't have to join a club.

Justin: It was not in any way—I thought it would—I was very excited. I thought it would be very, like, "Now we got—" you know what I mean? Like, 'cause there is weird—there are weird clubs like that. Like, there's—there's weird stuff. I thought this would be a lot weirder than it was.

No. It's just—it was just a place where I bought a s—a smoothie.

Sydney: Right. Um, and I think—

Justin: I got a little card that said if I bought ten of 'em I could get one for free, or something like that.

Sydnee: It also had something about a free wellness check, or free wellness consult or something.

Justin: So, there—there is—you can log on to the website, and if you go to, like, the dis—I think the woman running it was a distributor for Herbalife, and if you go to her website you can, like, plug in your information, and it tells you, like... basically it tells you what your plan should be for eating, which ironically, which is a great shock, [through laughter] includes a lot of Herbalife products.

Um, it reminds me of the Vicks thing that we talked about where, like, "Actually, the best plan for fighting colds is this, this, this... "

Sydnee: Vicks.

Justin: Um, it did recommend for me 160 grams of protein per day, which seems like so mu—[wheezes] seems like a lot!

Sydnee: Lot of protein. [laughs quietly]

Justin: A lot of protein!

Sydnee: I—so I think at the end of the day, um, these—like, if you go into these, if it's anything like ours, these sorts of places, these nutrition clubs technically what they are, um, you're just gonna buy a smoothie. And you might like it, or you might not. I don't know. I guess it depends on your palate. And that'll be that. Um, I looked through the Herbalife line of products, which is like—the way that they make these smoothies and teas and shakes and things using their products, right? I think they're only allowed to use their products at the place. And, um, it's—it's like anything else! I mean, there's not—it's no worse or better than any of the other sorts of companies that do this, I think. Right?

Like, there's a lot of protein-y things. There's probably a lot of—there's not—they don't wanna do sugar, so there's probably a lot of fake sugars in there, which, you know, whatever, whatever your feelings on those, that's fine. Some of 'em give me headaches. Some of 'em might give you diarrhea. [laughs quietly] I don't know.

But, um—but, like, that's true for a lot of different products that are supposed to result in weight loss, or promote—like, be meal replacement. That's the other big thing, right? Meal replacement-type things.

Um, they have tons of different flavors, and then they have all kinds of pills. And all the different, like, supplements have the same kind of idea. Like, here's one for digestive health, and here's one for if you're going through menopause, and here's one to help you relax. And, um... all kinds of, you know, things like that. Um, there's an ultimate prostate formula, Justin.

Justin: Uh, perfect. What? What a wild sentence to say to me, Sydnee!

Sydnee: There's an ultimate prostate formula.

Justin: "Justin," is how you punctuated it last time.

Sydnee: Well, you have a prostate. I don't.

Justin: Oh, okay.

Sydnee: That was the only reason I said that. I just don't have a prostate, so. I mean, it would—it would [laughs] be of no use to me. Um, they have skin products as well. Um, like I said, the Formula stuff is still in there.

Um, and I don't—I don't wanna sit here and act like that they are a standout in terms of their claims.

Justin: There's all kinds of things like this.

Sydnee: This is the wellness industry. It's just a bunch of stuff that is probably harmless, now. Like, I mean, probably.

Justin: Maybe? [crosstalk]

Sydnee: Maybe. Um, they—they also probably won't do a lot of the stuff you might want 'em to do, because there is no science to back it up, right? 'Cause if somebody had created a pill that gave you, like, a perfect—like, the perfect sports complex in a pill that would make you the best at all sports all the time, then it would be selling for lots and lots of money, you know? You wouldn't put it in a shake that you can get for \$8.

So, I mean, I don't know. It just—

Justin: I will—I will say this. I do think—the reason I thought this was interesting is, I do think it's worth knowing that if you see a smoothie store...

[laughs quietly] it may be a basically... a front for [through laughter] Herbalife distribution. I think that that's something that's worth—if you get something out of this podcast episode, that's something that you can know, that maybe if you see a place that has smoothies, or a nutrition club, [quietly] that maybe it's just a front for Herbalife distribution. [normal volume] Front—front makes it sound even sketchier than it actually is.

Sydnee: It's not—I mean, it's really like—

Justin: It's not a front. It is—this place had Herbalife on the counter. Like, it's not, like, a secret.

Sydnee: Right. Like, they don't wanna—

Justin: But I do think it's an interesting—they're not being very direct about it. Let's say that.

Sydnee: No. I mean, I think if you asked them, like, "Do you sell Herbalife products?" They'd say, "Yes."

"Do you distribute Herbalife products?"

"Yes."

Like, they're not gonna l—nobody's lying about anything. They're just also not putting that on the front of the building, right? Like, they're not making it clear that that's what it is. Um, and, uh—

Justin: This place absolutely did. Again, the one in Huntington, Herbalife products on the counter. Not in any way trying to, like, pull a fast one or whatever. But I do think it's worth knowing that, like, other places may be more discrete than that. I got the sense of reading the rules that you sent that, like, Herbalife would maybe prefer that you're not super clear about... well, hold on. I'm reading too much into their motives with that.

I will just say that, like, my impression of it is that Herbalife would prefer that you, uh... maybe conceal the sources [crosstalk].

Sydnee: In the rules that were published in 2019, um, it says, "Signage may not imply that Herbalife nutrition products are available for purchase."

Justin: So, yeah. I mean...

Sydnee: I mean—so, like—

Justin: [through laughter] I'm not reading into it that much, I guess.

Sydnee: Yeah. I mean, it just says—and, I mean, their rationale is not here. Like, it doesn't—I can't tell you why they would want you to think—you know what I mean?

Justin: Right.

Sydnee: Uh, but anyway, I don't know. I think that, like... I am a proponent of eating a well-balanced diet that provides you with all of the nutrients you need, and that is difficult to do for a lot of people, because of, um... financial reasons, or because they live in areas where it's hard to get all the foods that they need. Um, I don't necessarily think that shakes and powders and pills are the answer there. Um, I think the widespread availability of all the various types of foods for a well-balanced diet is what everybody needs. Um, that's always my proponent when it comes to nutrition. Um, and I'm also—you know, we have talked about on the show before, I'm not a fan of these diet companies, and weight loss plans at all, period. Any of them. Um, so that includes any company that will tell you, "We have the secret to weight loss."

I think it's a really dangerous culture that you perpetuate with that, and there have been lots of products in history that have been dangerous because of that. I'm not saying that these are, certainly, but I also think that, again, nobody is selling—nobody has this secret... [laughs quietly] formula that's gonna make you feel great, and perfect, and be the answer to all of your health and wellness dreams. They just don't. Because it's way more complicated than that, and we all know that, so. So that's your experience, my experience with Herbalife?

Justin: There you go. Uh, do with that what thou wilt. Uh, and again, just to reiterate for Herbalife lawyers, this program is for entertainment purposes.

Sydnee: [laughs]

Justin: Only. [laughs quietly] Nothing in it should be [mumbles unintelligibly].

Sydnee: Again, everything that I have read is freely available to anyone. We didn't do—there was no—[laughs quietly] there were no FOIA requests. There was no—Justin went in and bought a shake. The, uh—the—

Justin: And it was good. It was fine.

Sydnee: —proprietor was very nice and pleasant to you, right?

Justin: Mm-hmm.

Sydnee: Like, you had a very wonderful experience. It was a good shake. You enjoyed it.

Justin: Yes.

Sydnee: I don't know if you're healthier for it. But I don't think you're less healthy! [laughs]

Justin: I don't think I'm less healthy! I'm "one shake more" Justin! That's it!

Sydnee: But it was a yummy experience for you.

Justin: Yes! The shake [through laughter] and I became one, and I moved on with my life! Uh, thank you so—

Sydnee: But that was that.

Justin: [through laughter] Thank you so much for listening.

Thanks to The Taxpayers for the use of their song, "Medicines," as the intro and outro of our program, and thanks to you, for listening. We really appreciate it.

Um, oh! Uh, we're gonna be doing a li—a live show, a virtual, uh—

Sydnee: A virtual live show.

Justin: A virtual live show. Um, if—it—we're opening for a hit podcast coming up, *My Brother, My Brother, and Me*.

Sydnee: What is that, now?

Justin: It's—uh... that live show is going to be September 24th. It starts at 9 PM. Tickets are on sale now for \$10! Go to bit.ly/mbmbamvirtual, and you'll be able to watch that for two weeks after the show, so check it totally out. Bit.ly/mbmbamvirtual.

That's gonna do it for us this week, so until next time, my name is Justin McElroy.

Sydnee: I'm Sydnee McElroy.

Justin: And, as always, don't drill a hole in your head!

[theme music plays]

[chord]

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