



UNITED STATES OF AMERICA
Federal Trade Commission
Washington, D.C. 20580

Division of Marketing Practices

October 26, 2021

Via Federal Express

[address]

Re: Penalty Offenses Concerning Money-Making Opportunities

Dear Sir or Madam:

I am enclosing a copy of the Federal Trade Commission's Notices of Penalty Offenses Concerning Money-Making Opportunities and Endorsements and Testimonials. We recommend that you carefully review the notices and take any steps necessary to ensure that your company's practices do not violate the law.

The notices summarize Commission determinations in prior litigated cases that particular acts or practices are penalty offenses—i.e., that they are deceptive or unfair, unlawful under Section 5 of the Federal Trade Commission Act, and prohibited by a final cease and desist order. More details about the Commission determinations are contained at pages 2-8 of this letter below.

Receipt of these notices of penalty offenses puts your company on notice that engaging in the conduct described therein could subject you to civil penalties of up to \$43,792 per violation.¹

Staff is not singling out your company or suggesting that you have engaged in deceptive or unfair conduct. We are widely distributing similar letters and the notices to business opportunities, franchises, multi-level marketing companies, coaching companies, gig companies, and others. Copies of the case decisions discussed in the synopsis are available on the Commission's website at ftc.gov/MMO-notice and ftc.gov/endorsement-notice-penalty-offenses.

We request that you distribute copies of the notices of penalty offenses and this letter to each of your subsidiaries that sells or markets products or services to consumers in the United States.

Please note that nothing in this letter or the attached notices alters, modifies, or impacts your obligations, if any, under the Business Opportunity Rule, the Franchise Rule, or any other federal rule or statute. This letter and the notices do not purport to list all of the

¹ See 15 U.S.C. § 45(m)(1)(B); 16 C.F.R. § 1.98(e).

deceptive or unfair practices that violate the Federal Trade Commission Act (“FTC Act”) or all the federal court cases addressing when an earnings claim is unfair or deceptive in violation of the FTC Act. The Commission’s website (ftc.gov) has other important resources concerning the Federal Trade Commission Act, the Business Opportunity Rule, and the Franchise Rule, including the *Endorsement Guides*, *Bogus Business Opportunities*, *Business Guidance Concerning Multi-Level Marketing*, *Amended Franchise Rule FAQ’s*, *Franchise Rule Compliance Guide*, and *.com Disclosures: How to Make Effective Disclosures in Digital Advertising*.

The Notices

I. Notice Concerning Money-Making Opportunities

The notice outlines determinations made by the Commission in litigated decisions in which the Commission also issued a final cease and desist order. These determinations are consistent with well-settled federal court and Commission precedent.

A. Earnings Claim Determinations

1. Legal Overview

The Commission has determined that it is an unfair or deceptive trade practice to make false, misleading or deceptive representations concerning the profits or earnings that may be anticipated by a participant in a money-making opportunity (i.e., a person who has been accepted or hired for, has purchased, or otherwise is engaging in the money-making opportunity).² Numerous courts have confirmed this determination.³

In determining whether an earnings representation is likely to mislead consumers, courts consider the overall “net impression” it creates.⁴ Claims of “potential” earnings imply that such earnings are representative of what the typical participant achieves.⁵ Before making such a claim regarding potential earnings (e.g., via a testimonial of a well-paid member), the advertiser must

² *National Dynamics Corp.*, 82 FTC 488, 512-13, 543-44, 568 (1973), as modified at 85 FTC 1052, 1059-60 (1975); *Universal Credit Acceptance Corp.*, 82 FTC 570, 591-600, 633 (1973); *Universal Elec. Corp.*, 78 FTC 265, 271-74 (1971); *Windsor Distrib. Co.*, 77 FTC 204, 212-17, 220 (1970); *Waltham Watch Co.*, 60 FTC 1692, 1710, 1724 (1962); *Washington Mushroom Indus., Inc.*, 53 FTC 368, 370, 376, 379-80, 383-84, 386 (1956); *Von Schrader Mfg. Co.*, 33 FTC 58, 63-65 (1941); *Macmillan, Inc., et al.*, 96 FTC 208, 232, 301-02, 326-29 (1980); *Holiday Magic*, 84 FTC 748, 948, 1032-1033 (1974), as modified at 85 FTC 90 (1975); *Abel Allan Goodman Trading As Weavers Guild*, 52 FTC 982, 988 (1956), order affirmed 244 F.2d 584 (9th Cir. 1957); *Encyclopaedia Britannica, Inc., et al.*, 87 FTC 421, 450, 486-88, 531-32 (1976); *Ger-Ro-Mar, Inc.*, 84 FTC 95, 113-14, 117-119, 123-125, 132-135, 138, 149-150, 160-162 (1974), affirmed in relevant part at 518 F.2d 33 (2d Cir. 1975), as modified at 86 FTC 841 (1975).

³ *See, e.g., FTC v. Vemma Nutrition Co.*, No. 2:15-CV-1578, 2015 WL 11118111, *5 (D. Ariz. Sept. 18, 2015); *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1292 (D. Minn. 1985); *FTC v. Sage Seminars*, No. 95-CV-2854, 1995 WL 798938, *3-5 (N.D. Cal. Nov. 2, 1995); *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1139-40 (9th Cir. 2010); *FTC v. Tashman*, 318 F.3d 1273, 1277-78 (11th Cir. 2003); *FTC v. Freecom Comm’s, Inc.*, 401 F.3d 1192, 1203-04 (10th Cir. 2005).

⁴ *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009).

⁵ *See FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528-529 (S.D.N.Y. 2000); *see also* FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising 16 C.F.R. § 255.2(b).

possess adequate substantiation that the experience described is representative of what participants will generally achieve.⁶ If the claim is not representative, the advertisement must avoid giving that impression. It is important to bear in mind that disclaimers are not always effective⁷ and are not a defense if the net impression is still misleading.⁸ Companies should ensure that any independent salespeople also steer clear of deceptive earnings claims.⁹

2. Federal Trade Commission Litigated Determinations

National Dynamics:¹⁰ Respondents' ads for franchises to sell a battery additive attributed earnings to named distributors in the amounts of "\$1554 one week; \$148 one day; \$2316.96 one week; [and] \$1028 one month."¹¹ The Commission held that these advertisements falsely communicated to consumers "that a substantial number of distributors" will "regularly earn"

⁶ *FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 8 (1st Cir. 2010); *FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1067 (C.D. Cal. 2012) (advertiser needs "some recognizable substantiation for the representation prior to making it") (quoting *FTC v. Direct Mktg. Concepts, Inc.*, 569 F. Supp. 2d 285, 298 (D. Mass. 2008)); *FTC v. Johnson*, 96 F. Supp. 3d 1110, 1120 (D. Nev. 2015).

⁷ Indeed, research by the Commission has found that even clear and prominent disclosures of 'Results not typical' or the stronger 'These testimonials are based on the experiences of a few people and you are not likely to have similar results,' are not sufficient to dispel the implication that a testimonial depicts typical results. "Although the Commission would have the burden of proof in a law enforcement action, the Commission notes that an advertiser possessing reliable empirical testing demonstrating that the net impression of its advertisement with such a disclaimer is non-deceptive will avoid the risk of the initiation of such an action in the first instance." FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising 16 C.F.R. § 255.2(b) n. 105.

⁸ *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006) (fine print disclaimer no defense if net impression is still misleading); *FTC v. Connelly*, No. 6-CV-701, 2006 WL 6267337 at *10 (C.D. Cal. Dec. 20, 2006) (disclaimers are particularly inadequate when they appear in a different context than the claims they purport to repudiate); *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 924 n.15 (N.D. Ill. 2006), *aff'd*, 512 F.3d 858 (7th Cir. 2008) ("Defendants' inconspicuous small-font statement appearing just six times during the 30-minute infomercial that 'this product is not intended to diagnose, treat, cure or prevent disease' is wholly inadequate to change the net impression of the pain relief claims made in the infomercial."). Disclaimers must be "prominent and unambiguous to change the apparent meaning and leave an accurate impression... [a]nything less is only likely to cause confusion by creating contradictory double meanings." *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989). No disclosure can cure a false claim—it "can only qualify or limit a claim to avoid a misleading impression." FTC .com Disclosures, p. 5 (March 2013); *see also* FTC Policy Statement on Deception (October 23, 1984) (appended to *Cliffdale Assocs. Inc.*, 103 FTC 110, 180-81 (1984)). If a disclosure "contradicts a material claim, the disclosure will not be sufficient," rather, "the claim itself must be modified." FTC .com Disclosures, p. 5. And qualifications that clarify otherwise deceptive statements must be likely to come to the attention of the person who sees the basic claim; for that reason, small print or its equivalent are unlikely to be effective. *FTC v. Grant Connect, LLC*, 827 F. Supp. 2d 1199, 1214, 1220-1221 (D. Nev. 2011), vacated in part on other grounds, 763 F.3d 1094 (2014); Deception Policy Statement, 103 FTC at 180-81.

⁹ Companies may be liable for deceptive claims made by such salespeople. *See e.g.*, *Abel Allan Goodman Trading As Weavers Guild*, 52 FTC 982, 988 (1956), order affirmed 244 F.2d 584, 592-593 (9th Cir. 1957); *Holiday Magic*, 84 FTC 748, 948, 1032-1033 (1974), as modified at 85 FTC 90 (1975); *Waltham Watch Co.*, 60 FTC 1692, 1710, 1724 (1962); *Five-Star Auto*, 97 F. Supp. 2d at 527; *FTC v. Partners In Health Care Ass'n, Inc.*, 189 F. Supp. 3d 1356, 1365-66 (S.D. Fla. 2016); *FTC v. Skybiz.com, Inc.*, No. 01-CV-396-K(E), 2001 WL 1673645, at *9 (N.D. Okla. Aug. 31, 2001), *aff'd*, 57 F. App'x 374 (10th Cir. 2003); *FTC v. Vemma Nutrition Co.*, No. CV-15-1578, 2015 WL 11118111, at *7 (D. Ariz. Sept. 18, 2015).

¹⁰ *National Dynamics*, 82 FTC 488, 511-13, 543, 564, 568 (1973); 85 FTC 1052, 1059-60 (1975).

¹¹ *Id.* at 511-12.

these amounts.¹² The Commission ordered respondents to stop “[r]epresenting, directly or by implication, that persons purchasing respondents’ products can or will derive any stated amount of sales profits,” barred them from “[m]isrepresenting in any manner the past, present, or future sales profits or earnings from the resale of respondents’ products,” and required that testimonials from atypically successful purchasers include numerous disclosures, including the actual average of purchasers’ earnings or the percentage of purchasers earning the stated amount.¹³

Holiday Magic:¹⁴ The Commission determined that the respondent, a multi-level marketing company, and its distributors, had used false and deceptive earnings claims, including “misleading illustrations of the manner in which an individual ... could build a large sales organization, with substantial ... volume producing hefty profits,” “false representations of the earning potential of distributors,” and “representations concerning the ease with which [they]... could recoup their investments by recruiting other[s].”¹⁵ In truth, most distributors “would not have a reasonable chance” of earning the represented earnings.¹⁶ The Commission ordered the respondent to stop “[r]epresenting, directly or by implication, or by use of hypothetical examples that participants in any marketing program ... will earn or receive, or have the potential or reasonable expectancy of earning or receiving, any stated or gross or net amount,” and barred representations of participants’ past earnings unless they “are those of a substantial number of participants in the community or geographic area in which such representations are made” and “clearly indicate[] the amount of time required” to achieve the earnings.¹⁷

Encyclopedia Britannica:¹⁸ The Commission found that respondents deceptively advertised a substantial “guaranteed income” to job-seekers, but those who accepted a position “seldom, if ever, receive the guaranteed income,” in part due to undisclosed limitations and conditions.¹⁹ The Commission ordered respondents to stop misrepresenting “the amount of income to be earned by any person or that may be earned by any person, the method of payment, or any condition or limitation imposed upon the compensation of any person.”²⁰

Von Schrader:²¹ The Commission determined that representations by a seller of rug-cleaning machines “with respect to amounts earned by operators of their machines, including those specifically set out in the complaint—‘\$200 to \$400 a month is an easy average’ and ‘\$200 my first week’—are false and misleading in that respondents have no knowledge of what the actual average profits or earnings of purchasers of their machines may be, and such knowledge as they do have with respect thereto is limited to verbal and written statements made to them or their

¹² *Id.* at 511-13, 543, 564.

¹³ 85 FTC 1052, 1059-61 (1975). The order included numerous other related prohibitions.

¹⁴ *Holiday Magic*, 84 FTC 748, 948, 980-984, 1032-1034, 1065, 1069-71 (1974), as modified at 85 FTC 90 (1975).

¹⁵ *Id.* at 980-984, 1032-33; 1065.

¹⁶ *Id.* at 981.

¹⁷ *Id.* at 1069. The order included additional related prohibitions.

¹⁸ *Encyclopaedia Britannica, Inc., et al.*, 87 FTC 421, 445-50, 486-87, 505, 510, 532 (1976).

¹⁹ *Id.* at 445-50, 486-87, 505, 510.

²⁰ *Id.* at 532.

²¹ *Von Schrader Mfg. Co.*, 33 FTC 58, 63-66 (1941).

representatives by a limited number of purchasers of the machines sold by them.”²² The Commission ordered respondents to stop representing that profits made by operators of its machines “average \$200 or \$400 per month, or any other sum in excess of the actual average net profits of such operators,” and barred representations of atypical earnings “in a manner which imports or implies that ... [they] represent the usual and ordinary course of business.”²³

Washington Mushroom:²⁴ Respondents represented that their mushroom spawn would “produce large financial returns to purchasers,” that growing mushrooms was easy, and that no experience was needed to “earn a substantial income in this field.”²⁵ The Commission determined these claims were deceptive, and ordered respondents to stop asserting that “the usual or customary earnings or profits ... is any amount in excess of the average amount actually earned by users of said products ... under usual or normal conditions.”²⁶

Universal Credit:²⁷ The Commission found that respondents had deceptively represented that “franchisees selling memberships in respondents’ program can expect to receive profitable earnings,” when, in fact, most did not receive a return on their initial investment.²⁸ The Commission ordered respondents to stop representing that franchisees will or can expect to earn “any stated or gross or net amount of earnings or profits,” and barred them from “representing, in any manner, the past earnings of franchisees unless in fact the past earnings represented are those of a substantial number of franchisees ... and accurately reflect the average earnings of said franchisees under circumstances similar to those of the person to whom the representation is made.”²⁹

Universal Electric:³⁰ The Commission determined that respondents, sellers of vending machines (containing TV tube testers), had deceptively represented that “[p]ersons investing from \$1,895 up to \$3,695 can earn up to \$400 per month” and that purchasers are “assure[d] exceptional and profitable income.”³¹ The Commission ordered respondents to stop “[r]epresenting, directly or by implication, that: ... [p]ersons investing in respondents’ products, franchises or dealerships will receive any stated amount of income or gross or net profits,” and barred representations of “past earnings of investors or purchasers” unless the amounts “are those of a substantial number of purchasers and accurately reflect the average earnings of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.”³²

²² *Id.* at 64.

²³ *Id.* at 66.

²⁴ *Washington Mushroom Indus., Inc.*, 53 FTC 368, 370, 376, 379-380, 383-84, 386 (1956).

²⁵ *Id.* at 370.

²⁶ *Id.* at 370, 379-80, 383-84, 386.

²⁷ *Universal Credit Acceptance Corp.*, 82 FTC 570, 591-600, 632-33, 669-70 (1973).

²⁸ *Id.* at 592-93, 595, 632-33.

²⁹ *Id.* at 669-70.

³⁰ *Universal Elec. Corp.*, 78 FTC 265, 267-69, 273-74, 294-95, 297 (1971).

³¹ *Id.* at 273-74, 297.

³² *Id.* at 294, 297.

Waltham Watch:³³ Respondents sold franchises for placing display cases of fake branded watches in retail stores.³⁴ Their advertising “clearly made two points: (a) that earnings of 25% to 100% could be made without interfering with the distributor’s regular work, and (b) that the repurchase of inventory and bonus plan protected the investment in the event the distributor wished to retire,” but in fact, neither was true.³⁵ The Commission determined that this conduct was deceptive and ordered respondents to stop falsely representing that purchasers’ investments are guaranteed, that “[a]ny percentage will be earned on an investment in a franchise,” and that “[a]ny designated profit will be earned.”³⁶

Macmillan, Inc.:³⁷ Respondent trade school published advertisements that “relied heavily on endorsements by satisfied LaSalle graduates ... [which] created the impression that such success was ordinary and typical,” and that “graduates could expect to receive high wages or salaries.”³⁸ The Commission determined that these representations were deceptive, as the testimonialists’ results were not typical, and disclaimers that the students were “exceptional” or the “most successful” did not dispel the misleading contrary impression.³⁹ The Commission ordered respondents to stop misrepresenting “by any means the prospective earnings” of students, “or that persons completing said courses will or may earn a specified amount of money.”⁴⁰ The order required that any earnings claims be accompanied by a detailed breakdown of graduates’ actual earnings, and barred testimonials unless they “reflect[] the experience of the typical and ordinary LaSalle student” or have a prominent disclaimer.⁴¹

Windsor Distributing Co.:⁴² The Commission determined that respondents, who operated a vending machine business, falsely claimed that previous purchasers had made substantial earnings and deceptively represented that purchasing one vending machine “will produce a minimum \$35 gross profit during each month of operation” and that one purchasing 50 machines “could reasonably expect a return ... of \$9,000 net per year” when in fact most purchasers made “little or no profit.”⁴³ The Commission ordered respondents to stop representing that purchasers “will earn any stated or gross or net amount; or representing, in any manner, the past earnings of said purchasers unless in fact the past earnings represented are those of a substantial number of purchasers and accurately reflect the average earnings of these purchasers” under circumstances similar to those of the person to whom the representation is made.⁴⁴

³³ *Waltham Watch*, 60 FTC 1692, 1704-05, 1710-11, 1716, 1724-25, 1727-28, 1730 (1962).

³⁴ *Id.* at 1702-07.

³⁵ *Id.* at 1710, 1730.

³⁶ *Id.* at 1724-25, 1728, 1730.

³⁷ *Macmillan, Inc., et al.*, 96 FTC 208, 232, 235-36, 245-46, 254-55, 301-02, 325-29, 331 (1980).

³⁸ *Id.* at 232, 235-36, 245-46, 254-55, 301.

³⁹ *Id.* at 301-302.

⁴⁰ *Id.* at 326, 331.

⁴¹ *Id.* at 326-329, 331. The order included additional related prohibitions.

⁴² *Windsor Distrib. Co.*, 77 FTC 204, 214-17, 221, 223 (1970).

⁴³ *Id.* at 214-217, 223.

⁴⁴ *Id.* at 221, 223.

Abel Allan Goodman Trading As Weavers Guild:⁴⁵ Respondent and its salesmen claimed that consumers who took respondent's reweaving course could reasonably expect to earn "\$25.00 per week for spare time work and from \$50.00 to \$200.00 per week."⁴⁶ The Commission found such claims deceptive because in practice the amount consumers could earn was relatively small.⁴⁷ The Commission ordered respondent to stop representing "potential earnings of persons completing respondent's course and engaging in the reweaving business are greater than they are in fact."⁴⁸

The Commission also found that Respondent's advertising for sales positions was deceptive because it touted earnings for the salesmen that were "exceptional" and not "typical of the earnings which might reasonably be expected."⁴⁹ The Commission ordered Respondent to stop representing that "the typical earnings of persons selling respondent's course of instruction are greater than they actually are in fact."⁵⁰

Ger-Ro-Mar, Inc.:⁵¹ The Commission found that respondent, a multi-level marketing company, misrepresented "to all potential participants that it was not difficult for participants in the ... program to ascend to higher levels of distribution increasing their earnings..., that every participant had the reasonable expectancy of large profits or earnings, and that the [MLM] program was commercially feasible for all recruits."⁵² The Commission determined these representations were "false, misleading, and deceptive."⁵³ The Commission ordered the respondents to stop misrepresenting, directly or by implication, "the financial gains reasonably achievable by participants," and to stop representing the amount participants will or can expect to earn (including by "hypothetical examples or representations of past earnings of participants"), unless a majority of participants have made such earnings and the time required to do so is accurately disclosed.⁵⁴

B. Determinations Concerning Other Common Money-Making Opportunity Claims

The notice of penalty offenses also includes determinations that the Commission has made regarding several other types of deceptive representations that have been used by sellers or marketers of money-making opportunities. These are:

⁴⁵ *Abel Allan Goodman Trading as Weavers Guild*, 52 FTC 982, 988 (1956), order affirmed 244 F.2d 584 (2d Cir. 1957).

⁴⁶ *Id.* at 987.

⁴⁷ *Id.* at 988.

⁴⁸ *Id.* at 992, 996-97.

⁴⁹ *Id.* at 984, 991.

⁵⁰ *Id.* at 992, 996-97.

⁵¹ *Ger-Ro-Mar, Inc.*, 84 FTC 95, 113-14, 135, 138, 149-150, 160 (1974).

⁵² *Id.* at 134-135, 149-150, 160.

⁵³ *Id.*

⁵⁴ *Id.* at 138.

- Misrepresenting that sales of a money-making opportunity will be made to only a limited number of prospective participants.⁵⁵
- Misrepresenting that prospective participants will be screened or evaluated for suitability.⁵⁶
- Misrepresenting that participants do not need experience in order to earn income.⁵⁷
- Misrepresenting that a prospective participant must act immediately to purchase or to be considered for a money-making opportunity.⁵⁸
- Misrepresenting that purchasing a money-making opportunity is risk-free or involves little risk.⁵⁹
- Misrepresenting the position being offered to prospective participants, such as by failing to disclose that it is a sales position when such is the case.⁶⁰
- Misrepresenting the amount or type of training that will be given to participants.⁶¹

II. Notice Concerning Endorsements and Testimonials

Companies use endorsements and testimonials in many forms to advertise and market their products and services, both in traditional and social media, as well as in the form of online reviews. As reflected by the Commission's enforcement actions and other efforts, some companies use these advertising tools in a manner that deceives consumers.

As set forth in more detail in the notice, the Commission has determined that the following acts and practices are deceptive or unfair, and unlawful under Section 5 of the FTC Act : falsely claiming an endorsement by a third party;⁶² misrepresenting that an endorser is an actual user, a current user, or a recent user;⁶³ continuing to use an endorsement without good

⁵⁵ *Washington Mushroom*, 53 FTC 368, 370-71, 379-380, 386 (1956); *Universal Elec. Corp.*, 78 FTC 265, 267-69, 274, 295-97 (1971); *Windsor Distrib. Co.*, 77 FTC 204, 214-17, 221, 223 (1970); *Waltham Watch*, 60 FTC 1692, 1704-05, 1710-11, 1723, 1725, 1727-28, 1730 (1962).

⁵⁶ *Macmillan*, 96 FTC 208, 272-73, 320, 327, 331 (1980); *Universal Credit*, 82 FTC 570, 608-09, 633, 637, 668, 673 (1973); *Windsor Distrib. Co.*, 77 FTC 204, 213, 215, 217, 221, 223 (1970); *Waltham Watch*, 60 FTC 1692, 1704-05, 1710-11, 1725, 1727-28, 1730 (1962).

⁵⁷ *Universal Elec. Corp.*, 78 FTC 265, 267-69, 273-74, 295-96, 297 (1971); *Washington Mushroom*, 53 FTC 368, 370-71, 378-80, 386 (1956).

⁵⁸ *Universal Credit*, 82 FTC 570, 610, 637-38, 668, 673 (1973).

⁵⁹ *Universal Credit*, 82 FTC 570, 594, 611-12, 633, 637-38, 668, 673 (1973).

⁶⁰ *Encyclopaedia Britannica, Inc., et al.*, 87 FTC 421, 486-88, 505, 510, 531 (1976).

⁶¹ *Id.* at 486-88, 505, 510, 532.

⁶² *Mytinger & Casselberry, Inc.*, 57 FTC 717 (1960); *Ar-Ex Cosms., Inc.*, 48 FTC 800 (1952); *A. P. W. Paper Co., Inc.*, 38 FTC 1 (1944); *Wilbert W. Haase Co., Inc.*, 33 FTC 662 (1941).

⁶³ *R. J. Reynolds Tobacco Co.*, 46 FTC 706 (1950); *Cliffdale Assocs., Inc.*, 103 FTC 110 (1984).

reason to believe that the endorser continues to subscribe to the views presented;⁶⁴ misrepresenting that an endorsement represents the experience, views, or opinions of users or purported users;⁶⁵ using an endorsement to make deceptive performance claims;⁶⁶ failing to disclose an unexpected material connection with an endorser;⁶⁷ and misrepresenting that the experience of endorsers represents consumers' typical or ordinary experience.⁶⁸ Note that positive consumer reviews are a type of endorsement, so such reviews can be unlawful, e.g., when they are fake or when a material connection is not adequately disclosed.

If you have any questions about this letter or the enclosed materials, please contact Andrew Hudson at (202) 326-2213 or ahudson@ftc.gov or Melissa Dickey at (202) 326-2662 or mdickey@ftc.gov.

Very truly yours,

Lois C. Greisman
Associate Director
Division of Marketing Practices

⁶⁴ *Nat'l Dynamics Corp.*, 82 FTC 488 (1973), as modified at 85 FTC 1052 (1975).

⁶⁵ *R. J. Reynolds Tobacco Co.*, 46 FTC 706 (1950).

⁶⁶ *Cliffdale Assocs., Inc.*, 103 FTC 110 (1984); *Macmillan, Inc.*, 96 FTC 208 (1980); *Porter & Dietsch, Inc.*, 90 FTC 770 (1977), *aff'd*, 605 F.2d 294 (7th Cir. 1979).

⁶⁷ *Cliffdale Assocs., Inc.*, 103 FTC 110 (1984).

⁶⁸ *Id.*; *Porter & Dietsch, Inc.*, 90 FTC 770 (1977), *aff'd*, 605 F.2d 294 (7th Cir. 1979); *Nat'l Dynamics Corp.*, 82 FTC 488 (1973).