



United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

November 13, 2023

Via Federal Express and E-mail

Mr. Adam Pecoraro



Dear Mr. Pecoraro:

The Federal Trade Commission (“FTC”) is an independent federal agency whose mission is to protect consumers by enforcing laws and rules that promote truth in advertising and fair business practices, and by educating consumers and businesses about their rights and responsibilities. We are writing to express concerns that your marketing practices on Instagram and TikTok may be deceptive or unfair in violation of the FTC Act.

You posted dietary advice on Instagram and TikTok endorsing the safety of aspartame. In July 1, 2023 posts to Instagram and TikTok, you stated, “Aspartame is a carcinogen? . . . This information . . . could not be further from the truth,” and “You would have to consume the equivalent of over 30 diet sodas, every single day, chronically, to see any kind of adverse effects, and even then, it wouldn’t kill you.” You disparaged guidelines from the International Agency for Research on Cancer (“IARC”), an arm of the World Health Organization (“WHO”). Among other things, you stated, “There are a few reasons why the IARC should be almost completely disregarded,” and “Let’s stop listening to stupid people. The IARC is basically satire at this point.” Then, in July 12, 2023 posts to Instagram and TikTok, you stated, “have your diet drinks and stop listening to people who don’t know what they’re talking about . . . While it is expected that IARC will classify aspartame as a class 2B carcinogen, that doesn’t really mean anything at all.” You again disparaged WHO guidelines regarding aspartame by stating that “this information was leaked to Reuters by the IARC, which is not an authority on food additive safety.” In July 13, 2023 posts to Instagram and TikTok, you stated, that “the FDA endorse[d] the WHO’s conclusion that aspartame does not cause cancer,” that “Every time the media misrepresents the data for clicks and views, the conclusion is always the same: that aspartame is safe,” and that “These [aspartame containing] products are safe.” Each of these posts included the tag “#safetyofaspartame.” Each Instagram post is available as both an Instagram Video and

as a Reel. It appears that you were paid by the American Beverage Association (“ABA”) to make those posts.

The FTC’s Endorsement Guides state that if there is a “material connection” between an endorser and the marketer of a product – in other words, a connection that might affect the weight or credibility that consumers give the endorsement – that connection should be clearly and conspicuously disclosed, unless the connection is already clear from the context of the communication containing the endorsement. Material connections could consist of a business or family relationship, monetary payment, or the provision of free products to the endorser. “Clear and conspicuous” means that a disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers. Consumers should be able to notice the disclosure easily, and not have to look for it.

We have a number of concerns about the adequacy of your disclosures regarding your apparent connection to the ABA.

First, your Instagram and TikTok posts of July 1 and July 12 and your TikTok post of July 13 did not include any disclosure or other indication of your apparent material connection to the ABA.

Second, although the July 13 Instagram post had disclosures, there was no disclosure in the video itself. Viewers can easily watch a video without reading disclosures in a post’s text description. There should be clear and conspicuous disclosures in the videos themselves, for example, by superimposing much larger text over the videos. In your videos, you made endorsements audibly, so the disclosures should also have been audible. (If the endorsements had been made through both visual and audible means, the disclosures should have been made both in the video’s visual and audible portions).

Third, you relied upon the “Paid partnership” disclosure tool in making your disclosure in your July 13 Instagram post. The Commission has previously expressed concerns about the conspicuousness of such built-in disclosure tools alone. We think it is too easy for viewers to miss seeing the “Paid partnership” disclosure in your posts. (That does not mean that you should not use such tools in addition to other disclosures).

Fourth, the “#ad” disclosure of your July 13 Instagram post appears on the 16th line of the post description, making it insufficiently conspicuous. When people view Instagram posts, longer descriptions are generally truncated, with only the first two or three lines displayed unless viewers click on the text description. Any required disclosure should be presented without having to click. We note that an Instagram Reel’s (or TikTok’s) text description is in small print, at the bottom of the screen, sometimes poorly contrasting, and doesn’t stand out. The accompanying video usually has many competing elements. Therefore, we do not think that a disclosure in the text description of such Reels or TikToks is clear and conspicuous.

Finally, even if viewers read the words “Paid partnership with ameribev” and “#ad” disclosures, they may be inadequate in the context of your post because you may not have

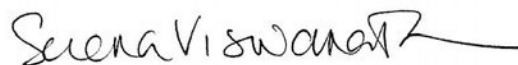
adequately identified the sponsor. Viewers might not understand that the sponsor is promoting the sale of aspartame or products containing it. Also, many viewers may not understand what “ameribeve” is. Without knowing who the sponsor of the post is, viewers might not be able to adequately evaluate the weight and credibility of your endorsement.

I am enclosing the Federal Trade Commission’s Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials. The notice of penalty offenses consists of Commission determinations in prior litigated cases that certain practices are deceptive or unfair and are unlawful under Section 5 of the Federal Trade Commission Act. As set forth in more detail in the notice, these acts and practices include failing to disclose a connection between an endorser and the seller of an advertised product or service, if such a connection might materially affect the weight or credibility of the endorsement and if the connection would not be reasonably expected by consumers. Copies of the case decisions discussed in the notice are available on the Commission’s website at www.ftc.gov/endorsement-notice-penalty-offenses. **In addition, receipt of the enclosed notice puts you on notice that engaging in conduct described therein could subject you to civil penalties of up to \$50,120 per violation.**¹

We strongly urge you to review your Instagram, TikTok, and other social media posts as to whether they contain sufficiently clear and conspicuous disclosures of any material connections. To help guide your review, please see the Endorsement Guides² and the staff publication *FTC’s Endorsement Guides: What People Are Asking*.³ Violations of the FTC Act may result in legal action seeking a federal district court injunction or an administrative cease and desist order.

Please notify Cassandra Rasmussen via electronic mail at crasmussen@ftc.gov within fifteen working days of receipt of this letter of the specific actions you have taken or will be taking to address FTC staff’s concerns. If you have any questions regarding compliance with the FTC Act, please contact Ms. Rasmussen by email or at 202-684-0175.

Very truly yours,



Serena Viswanathan
Associate Director
Division of Advertising Practices

Enclosure

¹ See 15 U.S.C. § 45(m)(1)(B).

² See 16 C.F.R. § 255 (Jul. 26, 2023), <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-255>.

³ *FTC’s Endorsement Guides: What People Are Asking*, <https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking>.

Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials

The Federal Trade Commission has determined that the following acts or practices in the use of endorsements and testimonials are deceptive or unfair and are unlawful under Section 5 of the Federal Trade Commission Act.

- It is an unfair or deceptive trade practice to make claims which represent, expressly or by implication, that a third party has endorsed a product or its performance when such third party has not in fact endorsed such product or its performance.¹
- It is an unfair or deceptive trade practice for an advertiser to misrepresent that an endorsement represents the experience, views, or opinions of users or purported users of the product.²
- It is an unfair or deceptive trade practice to misrepresent an endorser as an actual user, a current user, or a recent user of a product or service.³
- It is an unfair or deceptive trade practice for an advertiser to continue to advertise an endorsement unless the advertiser has good reason to believe that the endorser continues to subscribe to the views presented in the endorsement.⁴
- It is an unfair or deceptive trade practice for an advertiser to use testimonials to make unsubstantiated or otherwise deceptive performance claims even if such testimonials are genuine.⁵
- It is an unfair or deceptive trade practice to fail to disclose a connection between an endorser and the seller of an advertised product or service, if such a connection might materially affect the weight or credibility of the endorsement and if the connection would not be reasonably expected by consumers.⁶
- It is an unfair or deceptive trade practice to misrepresent explicitly or implicitly through the use of testimonials that the experience described by endorsers of a product or service represents the typical or ordinary experience of users of the product or service.⁷

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

² *R. J. Reynolds Tobacco Co.*, 46 F.T.C. 706 (1950).

³ *Id.*; *Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984).

⁴ *Nat'l Dynamics Corp.*, 82 F.T.C. 488 (1973).

⁵ *Cliffdale Assocs., Inc.*, 103 F.T.C. 110; *Macmillan, Inc.*, 96 F.T.C. 208 (1980); *Porter & Dietsch, Inc.*, 90 F.T.C. 770 (1977), *aff'd*, 605 F.2d 294 (7th Cir. 1979).

⁶ *Cliffdale Assocs., Inc.*, 103 F.T.C. 110.

⁷ *Id.*; *Porter & Dietsch, Inc.*, 90 F.T.C. 770; *Nat'l Dynamics Corp.*, 82 F.T.C. 488 (1973), *modified at* 85 F.T.C. 1052 (1975).