



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

November 13, 2023

Via E-mail

Ms. Jenn Messina
[REDACTED]

Dear Ms. Messina:

The Federal Trade Commission (“FTC”) is an independent agency of the United States government 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 may be deceptive or unfair in violation of the FTC Act.

In at least the four Instagram videos described below, each of which is available as an Instagram Video and as a Reel, you posted dietary advice endorsing the consumption of sugar-containing products. It appears that the Canadian Sugar Institute paid you to do so.

In one video posted to Instagram on October 11, 2022, you displayed the following superimposed captions: “How to handle Halloween Candy like a Dietician”; “A REGISTERED DIETICIAN’S CHEAT SHEET”; “Halloween night and the day after...allow UNLIMITED amounts”; “Then instead of being the candy police”; “Let them pick 2-3 pieces and add it to meals or snacks”; and “Then enjoy some candy yourself once the little monsters ... are asleep!”

In a second video posted to Instagram on November 29, 2022, you displayed the following superimposed caption: “If your kid is obsessed with sweets watch this.” Then, while the video shows the candy aisle of a store, the caption says, “Bring your kids to the shops once a week and allow them use [sic] their own \$\$ to buy sweets.” The video then shows children holding candy while the caption reads, “Talk about these foods neutrally and let them eat as much as they want.”

In a third video posted to Instagram on January 5, 2023, you displayed the following superimposed captions: “Stop bribing your kids to eat their dinner with dessert!” and “Serve dessert WITH dinner to prevent sweets obsession,” and “This also promotes a healthy relationship with food.”

In a fourth video posted to Instagram on February 14, 2023, you have a soundtrack repeatedly saying, “What’s a scam that’s been so normalized we don’t realize it’s a scam anymore?” while you point at a superimposed caption reading, “Telling people sugar is addictive.” The text of your post stated, “Sugar addiction doesn’t exist” and “Research suggests that it’s in fact prolonged restriction of sugar/carbs that causes our brain to become programmed to have an obsession with thinking about them.”

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 whether your posts contain adequate disclosures of your apparent connection to the Canadian Sugar Institute.

First, the videos did not include any disclosures in the videos themselves. 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 first three videos, you made endorsements visually, so the disclosures should have been made visually. In the fourth video, the endorsement was made through both visual and audible means, so the disclosure should have been made both in the video’s visual and audible portions.

Second, you relied upon the “Paid partnership” disclosure tool in three of your posts. 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).

Third, the #sponsored disclosures appear in or below the seventh line of each post description, making them 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. In addition, an Instagram Reel’s text description is in small print, at the bottom of the screen, sometimes poorly contrasting, and doesn’t stand out. Videos have many competing elements. We therefore do not think that a disclosure in the text description of such posts is clear and conspicuous.

Finally, even if viewers of your posts read “Paid partnership with @cndnsugarnutr” and “#sponsored,” they may be inadequate in the context of your posts because you may not have

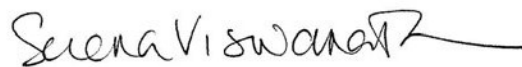
adequately identified the sponsor of the posts. Consumers are unlikely to know that “cndnsugarnutr” means the Canadian Sugar Institute. Without knowing who the sponsor of the post is, viewers might not be able to adequately evaluate the weight and credibility to give your endorsement.

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 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).