



Division of Marketing Practices

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

October 26, 2021

Via Federal Express

deceptive or unfair practices that violate 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 Opportunity Business Guidance Concerning Multi-Level Marketing, Amended Franchise Rule FAQs, 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 a fair or deceptive trade practice to make false, misleading or deceptive presentations concerning the profits for earnings that may be anticipated by a participant in a money-making opportunity (i.e., a person who has been accepted

possess adequate substantiation that the experience described is representative of what participants will generally achieve. 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 impression is still misleading.⁸ Companies should ensure that any independent salespeople also steer clear of deceptive earnings claims.

2. Federal Trade Commission Litigated Determinations

National Dynamics:¹⁰ Respondents' ads for franchises to sell 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, 65 F. Supp. 2d 1052, 1067 (C.D. Cal. 2012) (advertisements "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.

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 substantial income in this field.”²⁵ The Commission

Waltham Watch:³³ Respondents sold franchises for ~~plac~~ 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 ~~bonu~~ plan protected the investment ~~the~~ 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 ~~plac~~ 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 ~~adver~~ 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 wages or salaries.”³⁸ The Commission determined that these representations were deceptive, as the testimonialists’ results were not typical, and ~~dis~~claimers 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~~ may earn a specified amount of money.”⁴⁰ The order required that any earnings ~~claims~~ be accompanied by a ~~table~~ 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, ~~fa~~lscelaimed that previous ~~pur~~chasers had made substantial earnings and deceptively represented that ~~pur~~chasing one vending machine “will produce a minimum \$35 gross profit during each month of operation” and ~~at~~ one purchasing 50 machines “could reasonably expect a return . . . of \$9,000 ~~per~~ year” when in fact ~~at~~ most purchasers made “little or no profit.”⁴³ The Commission ordered respondents to stop representing that purchasers “will earn any stated or gross ~~net~~ amount; or representing, ~~in~~ any manner, the past earnings of said purchasers unless in fact ~~the~~ past earnings represented ~~base~~ of a substantial number of purchasers and accurately reflected ~~the~~ average earnings of these purchasers” under circumstances similar to those of the person to whom the representation is ~~made~~ 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 c 10.03uat c ,-5.6 (30.0013.6 (30.1J EM0.0Th.6 (30.he rd.6 (30.hs)59 th) fa6 (30.cl0.0006 Tw 2.0028 Tw 38.8 0 Td

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." 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 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 expectation of large profits or earnings, and that the [MLM] program was commercially feasible for all recruits." The Commission determined these representations were "false, misleading, and deceptive."⁵² 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 presentations that have been used by sellers or marketers of money-making opportunities. These are:

⁴⁵ Abel Allan Goodman Trading as Weavers Guild
