

Washington, D.C. 20580

November 12, 2022

[REDACTED]

[REDACTED]

Washington, D.C. 20580

...the Federal Trade Commission ("FTC")...
...business practices, and by educating consumers and businesses about
...may be deceptive or unfair in violation of the FTC Act.

You posted dietary advice on Instagram endorsing the safety of aspartame. In a video

...Association ("ABA") to make this post.

Ms. Mary Ellen Phipps

November 13, 2023

Page 2

audible means, the disclosure should be made in the communication's visual and audible portions. 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, the video itself did not include any disclosures. 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 video, you made endorsements through both visual and audible means, so the disclosures should have been made in both the visual and audible portions.

Second, although you disclose "#ad" in the text description, on Instagram Reels, the 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 a Reels post's text description is clear and conspicuous.

Third, you relied upon the "Paid partnership" disclosure tool in making your disclosure. 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).

Finally, we are concerned that even if viewers read the "Paid partnership" and "#ad" disclosures, they may be inadequate in the context of your post because you did not identify the sponsor of the post. Viewers might not understand that the sponsor is promoting aspartame or products containing it. 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 e2.94cs0 (t)-2 (c)4or osb2 e3.34cs

Ms. Mary Ellen Phipps
November 13, 2023
Page 3

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.

