



Advertising and Promotions

Your Legal Guide to NFTs, the Metaverse, and Web3

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Agenda

Part I: Product Development and Monetization

Part II: Applying Truth in Advertising Principles to the Metaverse

Part III: Endorsements, Testimonials, Influencer Marketing

Part IV: Sweepstakes and Promotions

Part V: Where is Consumer Protection Regulation Headed?

Use Cases

How Brands Create Value in the Tech Universe

Digital Products / NFTs

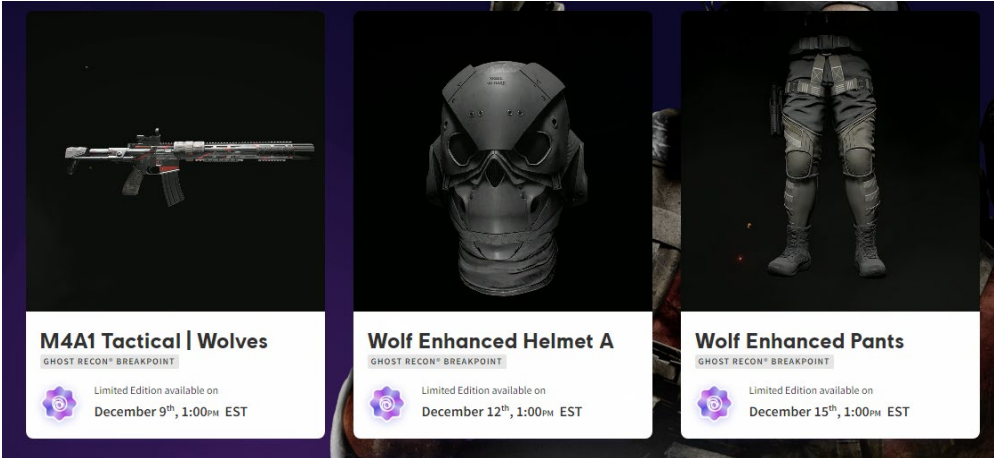
NBA Top Shot: NFT Collectible “Trading Cards”



- Record product information on the blockchain
 - Verifiable product origin information
 - Supply/production
 - Design: game and player stats, action description
- Results in a unique collectible/ Prevents counterfeit
- Secondary sales

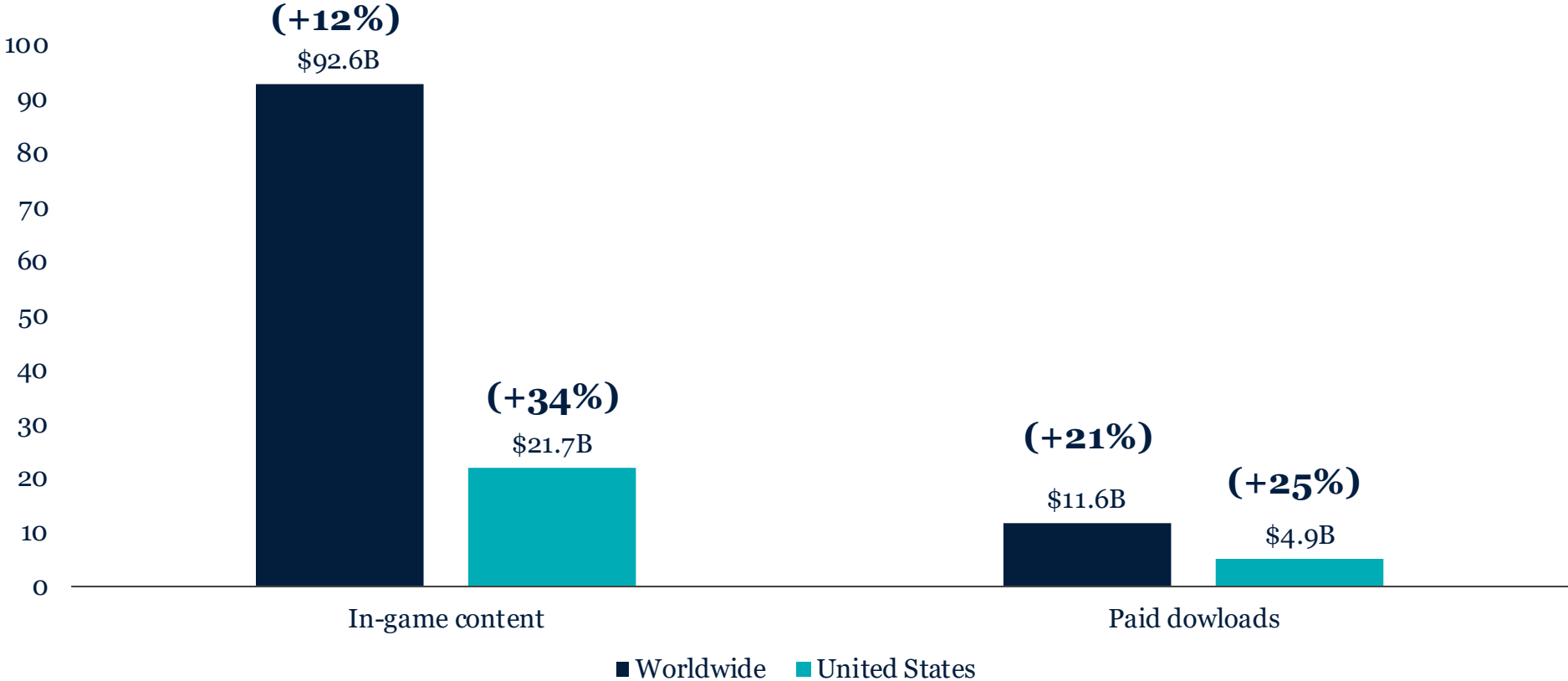
NFTs (non-fungible tokens) are blockchain-based assets that are non-fungible, indivisible, and uniquely identifiable. The movement of NFTs can be tracked from one blockchain address to another via smart contracts, which makes it possible to use NFTs to track ownership or licensed rights over assets.

NFTs in Video Games



Gamers have been purchasing digital assets for years

Digital Revenue, Jan to Oct 2020 (and year-over-year changes)



Source: Super Data, Archade

Promotional Virtual Environments

Virtual Products:

- Explore with an avatar
- Acquire digital versions of real-world goods
- Example: Buy the digital version of a real-world Gucci bag for 350,000 Robux crypto (~\$4,100 USD)

Gains for the Company:

- Monetization: Revenue / increased earnings
- Customer intelligence
 - Gauge appeal of a product look or design
 - Track customer participation

Roblox- Gucci Experience



The Roblox experience (bottom) mimics the physical exhibition (top). In Roblox, visitors can purchase digital clothing that is available only for limited periods each day, creating a sense of exclusivity and encouraging visitors to return. Roblox.

Image and caption source: <https://www.voguebusiness.com/technology/inside-gucci-and-robloxs-new-virtual-world>

Fractional Ownership/Investment

Otis has been acquired by stock and crypto investing platform Public.com. [More on Otis Magazine ->](#)

Otis

How It Works Assets List Magazine Cultured

★ Highest "Average 2021 ROI"
Among competitive fractional investing platforms
-Altan Insights

Invest in Culture

Buy and sell shares of collectibles, NFTs, and art.

i.e. 123 456 7890

Text Me The App

Download on the App Store GET IT ON Google Play

Start Investing

Example: Otis Collection LLC

- Sells SEC-secured fractional shares

Frequently Asked Questions

Our team is here to help. Read FAQs or contact us directly.

[View Full FAQ >](#)

How Does An Otis Investment Work?

Investors select an Otis asset and acquire fractional interests that represents an indirect ownership interest in that asset.

How does Trading work?

Trading on Otis is similar to the stock market, where anyone can buy and sell shares of cultural assets.

Can I See The Assets In Person?

Otis will host pop-ups and events where you can come to view your assets at our dedicated gallery space at 47 East 3rd Street, New York, NY.

Group Buying and Shared Ownership

- **Group buying**
 - Mid-range or premium brands
 - Gain information about customer demand, individual purchase patterns, browsing histories of people in the group
 - Allows brands to negotiate rates with manufacturers → better prices for consumers
- **Shared ownership**
 - Luxury brands / valuable items (jewelry, handbags)
 - Ownership is pass long through the group or treated as an investment to be later sold for profit

Applying Truth In Advertising Principals

Is the Metaverse really all that different from Real Life?

Three Elements of Deception

1. There must be a representation, omission, or practice that is likely to mislead the consumer
2. Examine the practice from the perspective of the consumer acting reasonably under the circumstance
3. The representation, omission, or practice must be a “material” one
 - *Does it affect the consumer’s conduct or decision with regard to a product or service?*
 - *If so, it is material*

FTC Policy Statement on Deception

DATE: October 14, 1983

Appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984).

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

What is Deceptive or Misleading in the Metaverse?

Lessons from Web 2.0

Case 1:22-cv-20925-XXXX Document 1 Entered on FLSD Docket 03/28/2022 Page 1 of 26

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Walter Coleman, Marco DiLeonardo,
Matthew Fox, and Madelyn Salzman on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

Burger King Corporation,

Defendant.

Case No.:

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

4. For example, Burger King currently represents that Burger King's Whopper looks as follows on its website and store menu ordering boards:



See https://www.bk.com/menu/picker-picker_5520.

5. However, Burger King's Whopper burger actually looks as follows:



See <https://www.insider.com/best-and-worst-burgers-at-burger-king-ranked#double-cheeseburger-199-4>.

What is Deceptive or Misleading in the Metaverse?

Product Claims

- Demonstrations of how a virtual product will “fit” or “look”
- Ample precedent in advertising law principles, case law, and competitor challenges

Case #6100 (07/20/2017)

**Kimberly-Clark Worldwide, Inc.
Depend Incontinence Underwear**

Challenger: *The Procter & Gamble Company*

Product Type: *Drugs/Health/Health Aids*

Issues: *Express Claims; Demonstrations*

Disposition: *Modified/Discontinued*

- **Although consumers may expect advertised products to be meticulously arranged by professional stylists who use techniques like camera angle, film, lighting or background to optimize the appeal of a product for a photograph, advertisers may not materially alter or artificially enhance the appearance or performance capability of the product beyond the scope of the supporting evidence.**

Basis of Inquiry: Claims made by Kimberly-Clark Worldwide, Inc. (“KC” or “the advertiser”) on product packaging, on its website, in free-standing inserts and online advertisements for its adult incontinence underwear were challenged by The Procter & Gamble Company (“P&G” or “the challenger”), maker of competing adult incontinence underwear. The following claims are representative of those that served as the basis for NAD’s inquiry:

Express Claims:

The demonstration depicting the products’ “look” when worn alone, reinforced by surrounding descriptive text such as “close-to-body fit”, “feminine design for a smooth, sleek fit” and “yoga pants approved.”

FTC Guidance

- **.com Disclosures: Information About Online Advertising** (May 2000): FTC provided guidance on how advertisers should approach consumer protection issues on the Internet, with an emphasis on how to make clear and conspicuous disclosures.
 - Updated in March 2013 to address technological advances, particularly social media, providing a non-exhaustive list with specific examples addressing technologies like Twitter and hyperlinks.
 - June 3, 2022: FTC announced that it is seeking public comment for another update.
 - Press release specifically cited concerns about companies that are burying disclosures behind hyperlinks and “dark patterns” (technology that operates to coerce users into taking actions without full, conscious knowledge of the action they are taking) as priorities.
 - Specifically states that it wants comments on advertising embedded in games and virtual reality.
- **Endorsement Guides**
- **Earnings Claims**—FTC Act Section 5, rulemaking

What is Deceptive or Misleading in the Metaverse?

Deceptive Earnings and Performance Claims / Investments



Five States File Enforcement Actions to Stop Russian Scammers Perpetrating Metaverse Investment Fraud

May 11, 2022 – Five state securities regulators simultaneously filed enforcement actions against a Russian organization allegedly promoting fraudulent metaverse investments to residents of the United States. The actions accuse Flamingo Casino Club of perpetrating the scam through the offer of nonfungible tokens, commonly referred to as NFTs, purportedly tied to a metaverse casino. The actions were filed by the **Alabama Securities Commission, Kentucky Department of Financial Institutions, New Jersey Bureau of Securities, Texas State Securities Board, and Wisconsin Division of Securities.**

The scheme is rooted in the metaverse – a term that generally refers to one or more interconnected virtual worlds that promote interactivity, entertainment, and commerce. Recent advances in technology permit users to access these virtual worlds through digital representations of themselves, often referred to as avatars, and socialize, play, shop or even work. Metaverses are becoming increasingly popular as corporations continue to invest in augmented and virtual realities that increasingly intersect with movies, video games and popular culture.

Although metaverses are generating widespread public interest, bad actors are now leveraging the widespread public interest to perpetrate fraudulent investment schemes. Alabama, Kentucky, New Jersey, Wisconsin and Texas filed today's actions to proactively stop this type of fraud and protect the public from irreparable harm. The five state regulators are unanimous in strongly cautioning the public:

Although advances in technologies create exciting new opportunities for many businesses, scammers are already attempting to capitalize on the hype associated with metaverses and NFTs. They are developing high-tech ploys to create a facade of legitimacy and deceive victims – while playing on their emotions by falsely promising lucrative profitability, guaranteed income, financial security, and the once-in-a-lifetime opportunity to become metaverse millionaires. We are uncovering an increasing number of suspect solicitations for unregistered securities tied to the metaverse. Today's action may well be just the tip of the iceberg.

The five state actions against Flamingo Casino Club highlight the pitfalls associated with these virtual promotions. For example, Flamingo Casino Club allegedly started operating from Russia in March 2022. It has since been fraudulently soliciting NFTs that purportedly convey ownership of a metaverse casino and the right to share in the profits of the metaverse casino according to the orders. Investors purportedly profit when patrons, acting as avatars, pay to play virtual craps, blackjack, roulette, and other games.

TINA.org vs. Roblox

Complaint Filed with FTC



April 19, 2022

VIA EMAIL

Samuel A.A. Levine, Director, Bureau of Consumer Protection
Serena Viswanathan, Associate Director, Division of Advertising Practices
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580
slevine1@ftc.gov
sviswanathan@ftc.gov

Re: Deceptive Marketing on Roblox

Dear Mr. Levine and Ms. Viswanathan:

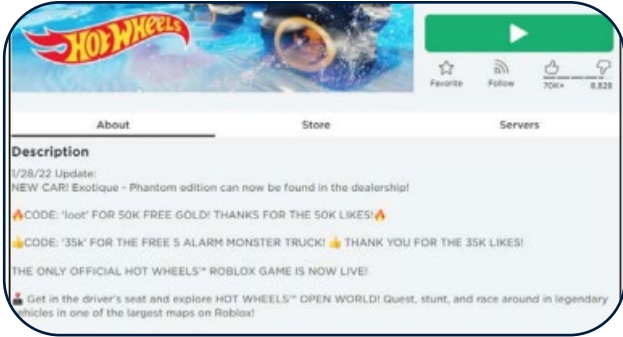
We write to the Federal Trade Commission concerning Roblox Corporation, a multibillion-dollar public company that operates a closed platform metaverse, where advertising is surreptitiously pushed in front of millions of consumers, including more than 25 million children and adolescents, by a multitude of companies and their avatar influencers. Such digital deception is possible because Roblox has failed to establish any meaningful guardrails to ensure compliance with truth in advertising laws, effectively

Allegations made by TINA.org:

- Consumers (including children) “lured to Roblox platform with unsubstantiated and atypical earnings representations that claims users can be financially successful game developers.”
- Robux (Roblox currency) used to buy avatar accessories, clothing, special abilities within games, premium subscriptions. Says TINA.org:
 - Not created or secured using blockchain technology
 - Not NFTs
 - Not a cryptocurrency
 - Therefore: lost account = lost assets

TINA.org v. Roblox

Allegations (Continued)



**Advergames
with deceptively
branded worlds**



**Undisclosed
sponsored content
within organic
worlds**



**Undisclosed Avatar
Influencers within
the Roblox
Metaverse**

Who is the Protected Consumer?

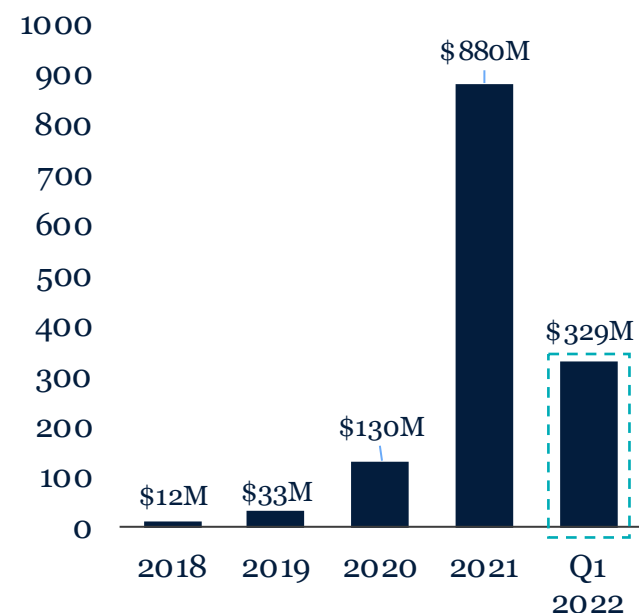
- Children and adolescents with the “inability to distinguish organic content from marketing.” (TINA.org, April 2022)
- Those “unfamiliar” with how digital assets really work. (Federal Trade Commission, June 2022)
- Research has found that “younger, lower-income investors tend to be overly optimistic about crypto’s trajectory.” (New York Times, May 2022) (referencing findings of University of Chicago professor of marketing)
- “Vulnerable fans” of celebrities. (*New York Times*, May 2022)
- Consumers and investors “vulnerable to fraud, manipulation, and abuse.” (House Financial Services Committee Majority, December 2021)
- “The typical cryptocurrency investor is under age 40 and lacks a college degree... [and] come from diverse backgrounds, as 44% of traders don’t identify as White and 41% are women.” (*Bloomberg*, November 2021) (reporting on a survey by NORC, at the University of Chicago)

FTC: “Scammers Cashing in on Crypto Craze”

(FTC Report – June 2022)

Reported cryptocurrency fraud losses by year

January 2018 - March 2022



These figures are based on fraud reports to the FTC’s Consumer Sentinel Network indicating cryptocurrency as the payment method. Reports provided by Sentinel data contributors are excluded.

<https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze>

According to FTC:

- Since 2021, more than 46,000 consumer reports totaling over \$1 billion in losses to crypto scams
- Features attractive to scammers:
 - No bank or other centralized authority to flag suspicious transactions or stop fraud
 - Crypto transfers can’t be reversed
 - Unfamiliarity with how crypto works

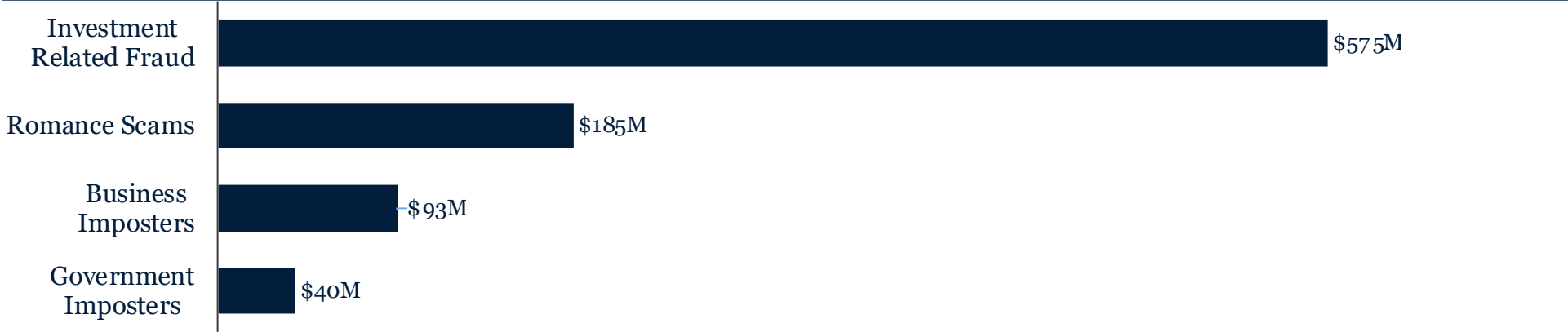
Connection to Social Media

(FTC Report – June 2022)

- Nearly 50% of people who reported losing crypto to a scam in 2021 said it started with an ad, post, or message on social media.
- Nearly four out of every ten dollars reported lost to a fraud originating on social media was lost in crypto, more than any other payment method.

Top Frauds by Reported Cryptocurrency Losses

January 2021 - March 2022

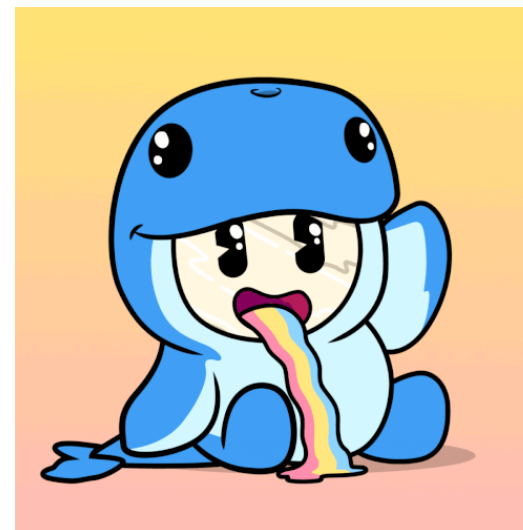


These figures are based on fraud reports to the FTC’s Consumer Sentinel Network indicating cryptocurrency as the payment method. The investment related fraud category included the following fraud subcategories; art, gem and rare coin investments, investment seminars and advice, stocks and commodity futures trading and miscellaneous investments. Reports provided by Sentinel data contributors are excluded

<https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze>

“Rug Pulls” and Fraud

- **Rug pull**= “a project launching, garnering investment, and subsequently being shut down without delivering on its promises.”
- January 9, 2022: Frosties NFT collection launched on the OpenSea NFT Platform selling utility NFTs (a form of NFT that offers buyers added benefits such as rewards, giveaways, or early access) that consisted of a Frosties cartoon ice-cream-scoop themed character and early access to metaverse game.
- Sales generated over one million dollars in cryptocurrency value.
- A few hours after the launch, however, founders “Frostie” and “heyandre” shut down the Frosties NFTs website and all related social media accounts and transferred the money to a series of separate cryptocurrency wallets, then disappeared.
- US Attorney for the Southern District of New York charged with conspiracy to commit wire fraud and conspiracy to commit money laundering. Each charge carries a maximum sentence of up to 20 years in prison.
- FBI has set up a “Virtual Asset Exploitation Unit devoted to blockchain analysis and virtual asset seizure.




Endorsements, Testimonials, and Influencers

Celebrities [and the Rest of the Influencer World] Are [Were?] All In

crypto.com NFT Prices Products Company Learn

Highlights:

LeBron James and the LeBron James Family Foundation Announce Multi-Year Partnership With Crypto.com



We're partnering with LeBron James and the LeBron James Family Foundation (LJFF) to support educational and workforce development opportunities focused on Web3. Building on a strong basis of educational empowerment, the partnership will give students and families connected to the I PROMISE programme access to the tools and educational resources needed to participate and succeed in building Web3, the future of the Internet. More details [here](#).

Cointelegraph @Cointelegraph

Melanie Brown @OfficialMelB and her views on Bitcoin are in our "People Talk" project. Find out more here:


quotes.cointelegraph.com/celebs

"I love how new technology makes our lives easier, and to me that's exciting. Bitcoin unites my fans around the world using one currency. They can just pay using bitcoins."

CoinDesk, December 2011

Mel B
Singer, model (Melanie Brown)

cointelegraph.com



9:43 AM · Aug 29, 2019 · Twitter Web App

← Tweet

Reese Witherspoon @ReeseW

Crypto is here to stay. I'm committed to supporting creators who have pioneered the NFT space, and encouraging more women to be a part of the conversation.

bobbyhundreds.eth @bobbyhundreds · Dec 5, 2021
Reminder that twice as many men invest in crypto than women, and women only make up 16% of the NFT market. Thanks @ReeseW and other women leaders in the space who are committed to changing that.

4:20 PM · Dec 6, 2021 · Twitter for iPhone

1,888 Retweets 2,303 Quote Tweets 11.9K Likes

Twitter Tweet

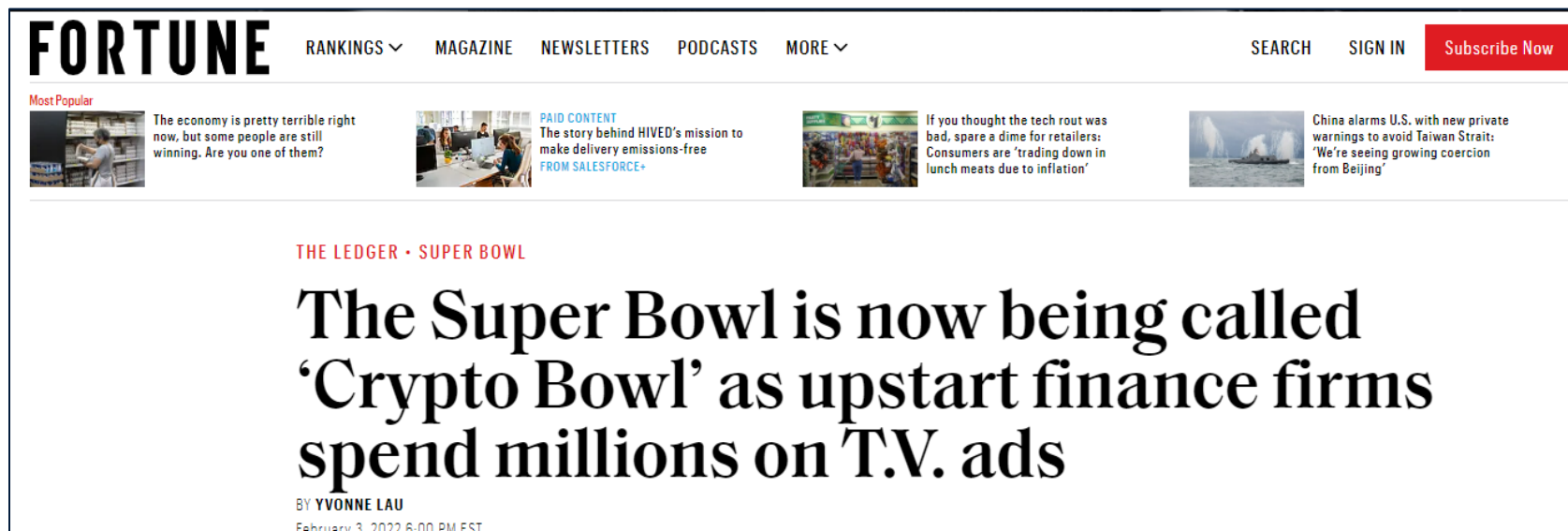
Sign up

Log in

Drew Carey @DrewFromTV





Just tried to buy breakfast w bitcoins.
Refused.
[#whenwilltheworldcatchuptomyhipness?](#)

Crypto Advertising Spend



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Most Popular

-  The economy is pretty terrible right now, but some people are still winning. Are you one of them?
-  **PAID CONTENT**
The story behind HIVED's mission to make delivery emissions-free
[FROM SALESFORCE+](#)
-  If you thought the tech rout was bad, spare a dime for retailers: Consumers are 'trading down in lunch meats due to inflation'
-  China alarms U.S. with new private warnings to avoid Taiwan Strait: 'We're seeing growing coercion from Beijing'

THE LEDGER • SUPER BOWL

The Super Bowl is now being called 'Crypto Bowl' as upstart finance firms spend millions on T.V. ads

BY YVONNE LAU
February 3, 2022 6:00 PM EST

According to the *New York Times* (May 2022)

- Crypto advertisers spent \$7 million for a 30 second Super Bowl ad
- In March 2022, Crypto.com spent an average of \$109,000/day on digital advertising
- FTX spent \$26,400/day in March 2022

FTC Endorsements and Testimonials Guide

Points most relevant to influencers and endorsers in the metaverse:

1. Endorsements must reflect the honest opinions, findings, beliefs or experiences of the endorser.
2. The endorsement cannot convey an express or implied representation about the product that would be deceptive if made directly by the advertiser.
3. The advertiser must possess and rely upon adequate substantiation (including, when appropriate, competent and reliable scientific advice) to support the claims made through the endorsements in the same manner the advertiser would be required to do so if it had made the representation directly.
4. Endorsements represented to be from “actual customers” should utilize actual customers in both the audio and video, or clearly and conspicuously disclose that the persons in such advertisements are not actual customers of the product.
5. Endorsers must have been a bona fide user of the product at the time the endorsement was given. The endorsement may continue to be used only so long as the advertiser has good reason to believe that the endorser remains a bona fide user of the product.
6. Advertisers must disclose material connections between themselves and their endorsers (e.g., the advertiser paid the endorser, or gave free product to the endorser, or otherwise compensated the endorser).
7. Advertisers cannot 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.
8. 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.

FTC Endorsements and Testimonials Guide

The FTC's Endorsement Guides: What People Are Asking
<https://www.ftc.gov/business-guidance/resources/ftc-endorsement-guides-what-people-are-asking>

A famous athlete has thousands of followers on Twitter and is well-known as a spokesperson for a particular product. Does he have to disclose that he's being paid every time he tweets about the product?

It depends on whether his followers understand that he's being paid to endorse that product. If they know he's a paid endorser, no disclosure is needed. But if a significant portion of his followers don't know that, the relationship should be disclosed. Determining whether followers are aware of a relationship could be tricky in many cases, so we recommend disclosure.

A famous celebrity has millions of followers on Twitter. Many people know that she regularly charges advertisers to mention their products in her tweets. Does she have to disclose when she's being paid to tweet about products?

It depends on whether her followers understand that her tweets about products are paid endorsements. If a significant portion of her followers don't know that, disclosures are needed. Again, determining that could be tricky, so we recommend disclosure.

I'm a video blogger who lives in London. I create sponsored beauty videos on YouTube. The products that I promote are also sold in the U.S. Am I under any obligation to tell my viewers that I have been paid to endorse products, considering that I'm not living in the U.S.?

To the extent it is reasonably foreseeable that your YouTube videos will be seen by and affect U.S. consumers, U.S. law would apply and a disclosure would be required. Also, the U.K. and many other countries have similar laws and policies, so you'll want to check those, too.

Pitfalls for Influencers/Endorsers and Sponsors

- Typically, not disinterested or impartial
 - Failing to mention financial ties (receipt of a large allocation of monetary consideration, coin, tokens, etc.)
 - Failing to mention a close personal relationship
- Online backlash: undisclosed conflicts of interest
- Securities regulation: Must publicly disclose payments for securities promotions

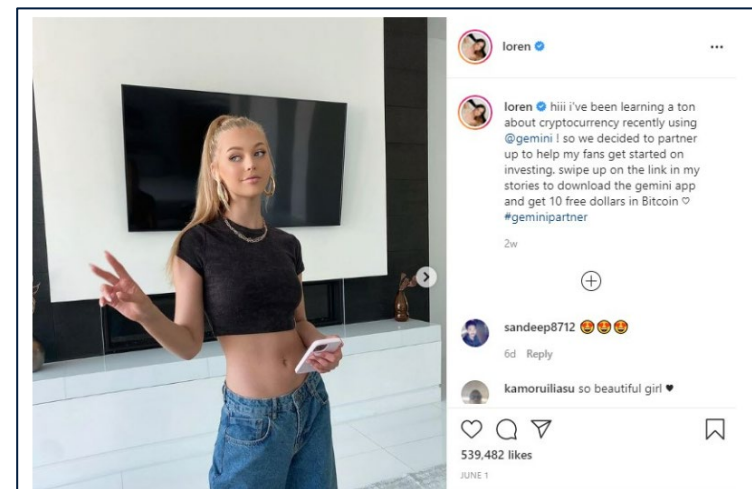
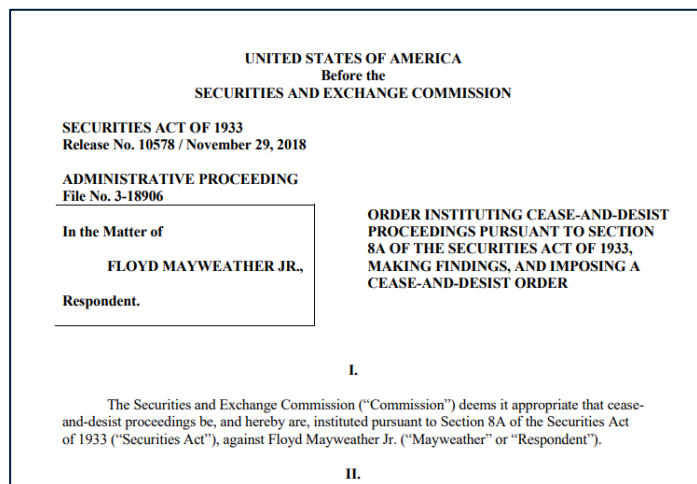


Image source: <https://cryptocurrencynews.com/daily-news/why-is-kim-kardashian-pumping-ethereum-max/>

Next Wave—CGI Influencers in the Metaverse

- CGI influencers and avatars such as Lil Miquela (now just Miquela) have been in use since approximately 2018.
- Newer avatars like Prada's Candy and Yoox's Daisy are being introduced to promote the brands on multiple platforms, including in the metaverse—predicted \$1.5bn this year.
- Virtual avatars like Daisy cost less than regular influencers, are 100 per cent controllable, can appear in many places at once, and are ideal spokespeople for brands when they want to communicate their views on topics such as diversity and inclusion or sustainability.
- FTC's recently proposed updates to the Endorsements Guides expands definition of influencers to include virtual influencers.
- Disclosures may look different in the metaverse—what is clear and conspicuous?



NFTs, Sweepstakes, and Gaming Issues

What is the legal framework when giving away NFT's—or giving away something in conjunction with the purchase of NFTs?

- **Legal framework:**
 - Federal/State Gambling and Lottery laws
 - State laws Regulating Sweepstakes
 - Unlawful Internet Gambling Enforcement Act (UIGEA)
 - Wire Act and Travel Act
 - RICO
- Unlawful **lotteries** comprise three elements:
 - Prize
 - Chance
 - Consideration
- For gambling violation, a **bet or wager** is also required
- For **skill contests/competitions** (no chance)
 - States have different rules regarding whether a fee-based skill contest is unlawful
 - Avoid mixed games of chance and skill
 - In some states, certain aspects of a game may need to be altered, e.g., tie breakers
- **Key issue: Are NFTs a thing of value?**
 - **When players pay to purchase**
 - **If NFT can be freely traded on secondary market—or if there is some restriction**

Sweepstakes, NFTs, and Cryptocurrency

Seeing increasing use of NFTs and cryptocurrency as prizes in sweepstakes. These may trigger additional issues—starting with the need for clear definition of terms—as well as:

- **Consideration:**
 - Any requirement to purchase an NFT or cryptocurrency is consideration and may trigger lottery laws if chance is involved in how NFTs or crypto is allocated.
 - May be additional hidden fees (e.g., in opening wallet) as well; certainly, the requirements must be disclosed.
 - May provide free AMOE, but must clearly and conspicuously disclose it. ***Suski v. Coinbase Global, Inc.***
- **Intellectual property:** NFTs are unique, one-of-a-kind digital files, which may trigger IP considerations regarding copyright and reproduction rights. Must be clear what rights winners are receiving with NFT.
- **Prize value:** How does one state “ARV” as required under state law when crypto or an NFT is being given away? Cryptocurrency may rise and fall in value over the course of a sweepstakes, and NFTs may have no value at all, except as determined by the secondary market.

Skins Betting, Loot Boxes and NFTs

- In gaming, players often gather “skins” (virtual tokens such as weapons or tools) during game play, or some games include ability to purchase “loot boxes” with one or more unidentified items in them
 - Does this add “chance” to what would otherwise be a game of skill?
 - Are the loot boxes or skins/items a “prize” or a “thing of value”?
 - If there is no clear real-world value, or it is speculative, some courts have refused to find gambling violations
 - BUT if players are able to purchase skins, in game or on secondary market, may trigger issues
 - Crucial in several cases on appeal in 9th Circuit now -- *Taylor v. Apple*, *Coffee v. Google*, and *G.G. v. Valve*– where defendants defeated various claims in lower courts that loot boxes constitute illegal gambling
 - 2020 FTC Workshop examined loot boxes and focused on issues such as: importance of clear disclosures of odds/costs; children’s use

Gaming, Gambling and NFTs

- Analysis re: skins and loot boxes easily translates to the world of NFTs and the metaverse (*e.g.*, Roblox, Axie Infinity).
- Sports/fantasy sports platforms have set up exchanges where consumers can purchase NFTs of their favorite sports personalities and/or other sports-related “utility NFTs” with different functions attached (*e.g.*, NBA Topshots).
 - Similar to dynamic with trading cards, which was addressed in a series of class actions around the country (2005-2012).
- *E.g.*, Fortnite and NBA project that featured competition where 15,000 players per team were able sign up for NBA teams and to participate in a series of challenges that were fed into a leaderboard to choose winner(s).
- NFTs are also often being sold or given away in packs or with utilities, where the purchaser may not know what exactly they will get.
 - May be similar to loot box mechanic in video games, which has drawn scrutiny from regulators and created class action risk.
 - Importance of disclosures.



Charitable Promotions

- **Two ways to execute:**
 1. Work with existing charity—lower cost, name recognition and halo effect *but* need to comply with Commercial Coventure (CCV) rules, do due diligence on charity and confirm it is registered.
 2. Set up own foundation—more flexible, have more control, can work with multiple charities, but costly, trigger state registration requirements for charities, IRS rules, independent governance requirements.
- **Charitable Promotion or Commercial Co-Venture (CCV)** – Arrangement between a charity and a business in which the business advertises in a sales or marketing campaign that the purchase or use of its goods or services will benefit a charity or charitable purpose
 - Tied to purchase of goods/services (*MA)
 - Benefit charity or charitable purpose
 - 26 states with specific laws
- **CCV regulatory requirements:**
 - Registration/bonding (4 states)
 - Written contract
 - CCV contract should always include trademark license for use of charity’s name in promotion, but with NFT promotions must be particularly careful to license and negotiate all IP rights.
 - Advertising disclosures, e.g., amount/minimum donation, dates, fundraising registration number
 - Accounting and recordkeeping
 - *How will the charity receive the funds from the sale of the NFTs?*

Charitable Promotions

- In celebration of new label design, Campbell's dropped limited-edition collection of 100 NFTs in collaboration with street-style artist Sophia Chang.
- All proceeds went to benefit Feeding America.
- Additionally, Campbell's worked with Aerial to offset the carbon footprint of NST as part of its commitment to sustainability.

AmeriCANA: Campbell's x Sophia Chang - Limited Editions

73 owners | 100 total | 84 favorites

Sale ends March 7, 2022 at 5:03pm EST

Current price
0.99 (\$2,662.88)

Buy now | Make offer

Price History

All Time Avg. Price: 0.1011

Buyer acknowledges and agrees that Campbell Soup Company ("sponsor") owns all legal right, title and interest in and to any art, design, drawings and/or other content included in and/or associated with the Artwork including without limitation the limited-edition work of Campbells Soup Inspired Artwork contained in the NFT (collectively, "Content"), including, without limitation, all copyrights and other intellectual property rights therein.

Each Buyer's right to use the Content is limited to the ability

About AmeriCANA: Campbell's x Sophia Chang

Details

| Contract Address | 0x495f...7b5e |
|------------------|---------------------|
| Token ID | 1132728320299479... |
| Token Standard | ERC-1155 |
| Blockchain | Ethereum |
| Metadata | Frozen |

| Unit Price | USD Unit Price | Quantity | Expiration | From | |
|------------|----------------|----------|------------|------------|-----|
| 0.99 ETH | \$2,662.88 | 1 | 3 days | JPEGHODL | Buy |
| 4.2069 ETH | \$11,315.64 | 1 | 5 months | KingKitega | Buy |

Privacy

NFTs often require collection of data (e.g., crypto wallet information, device information, location data, usage patterns); consider privacy and data security. Standards are still being established, but:

- Brands using NFTs will need to follow privacy laws (California's CCPA/CRPA, Europe's GDPR, new state laws being passed around country including Virginia, Colorado, Utah, Connecticut).
- Post a privacy policy that discloses data practices and explains how users can exercise data rights.
- Consider how/where a brand uses its website to promote NFT collection, and functionality of website—e.g., tracking technologies, email marketing, hashed addresses, targeted advertising.
- Are there other platforms being used? (E.g., Discord, third party brand/fundraiser/fulfillment company, etc.) You need to disclose their involvement as well as, if required, comply with the relevant platform's terms, community guidelines, and privacy policy.
- Consider who is using the data, for how long, where is it being stored (and if it is being stored) and address in both smart contract and any contracts between parties and third parties.
 - Note that data appended to public blockchain, however, is not PII and is thus exempt from access/correction/deletion obligations under CCPA.
- Consider how to protect the digital wallet and the wallet's private keys, against hacking, as well as other data security issues.
- Consider whether your NFTs/marketplace/platform is attractive to children—you may be required to comply with the Children's Online Privacy Protection Act.

Consumer Protection Regulation

Where is it headed?

Proposed Updates to FTC Endorsements Guides

- Proposed updates to Guides Concerning the Use of Endorsements and Testimonials in Advertising: (Announced May 2022)
 - Expand definition of “endorser” to include computer-generated influencers (i.e., not real people)
 - Tagging a brand in a social media post will be expressly considered to be an endorsement
 - Updated definition of “clear and conspicuous” disclosure: one that is difficult to miss and easily understood by “ordinary people”
 - Disclosures in ads targeting specific audiences would be evaluated through the lens of that group
 - Additional guidance on material connections between advertisers and endorsers
 - Endorsements in advertising directed toward children
 - Guidance on when advertisers, endorsers, intermediaries, and platforms can be held liable under FTC Act for misleading endorsements
 - Development of built-in disclosure tools on social media platforms

Updates to FTC .com Disclosure Guides

FTC Warns of Dark Patterns



The screenshot shows the FTC website header with the logo and navigation menu. The main content area features a breadcrumb trail, a 'For Release' tag, the article title, a sub-headline, the date, social media icons, tags, and a 'Topics' section.

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Enforcement ▾ Policy ▾ Advice and Guidance ▾ News and Events ▾ About the FTC ▾

Home / News and Events / News / Press Releases

For Release

FTC Looks to Modernize Its Guidance on Preventing Digital Deception

As Companies Wrongly Invoke the Guide to Justify Deception, Agency Seeks Public Input on Possible Revisions Around Dark Patterns and Other Deceptive Tactics

June 3, 2022

Tags: [Consumer Protection](#) | [Bureau of Consumer Protection](#) | [Advertising and Marketing](#) | [Online Advertising and Marketing](#)

Topics

[Protecting Consumers](#)

The staff of the Federal Trade Commission is seeking the public's input on ways to modernize the agency's business guidance titled ".com Disclosures: How to Make Effective Disclosures in Digital Advertising." First published in March 2013, this resource provides [guidance to businesses on digital](#)

FTC focus on:


- Use of sponsored and promoted ads in social media
- Advertising embedded in games and virtual reality and microtargeted advertisements
- The ubiquitous use of dark patterns, manipulative user interface designs on websites and mobile apps, and in digital advertising
- Disclosures on mobile devices
- Multi-party selling arrangements involved in online commerce and affiliate marketing arrangements

Proposed FTC Rules for Earnings Claims

Principles Underlying FTC Action:

- Earnings claims are material
- Representations regarding possible earnings are not mere puffery, and will usually imply such earnings are typical
- The representation that an amount or degree of earnings is likely can be implied, including through testimonials from successful participants and examples of hypotheticals or past profits
- Earnings claims must be substantiated (the maker must have reasonable basis for the claim before making it)

Proposed rule would enable FTC to seek monetary relief and civil penalties.


| | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------|
|  | | 13951 |
| Proposed Rules | | Federal Register Vol. 87, No. 48 Friday, March 11, 2022 |
| <p>This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.</p> | | |
| FEDERAL TRADE COMMISSION | | |
| 16 CFR Part 462 | | |
| Deceptive or Unfair Earnings Claims | | |
| AGENCY: Federal Trade Commission. | | |
| ACTION: Advance notice of proposed rulemaking; request for public comment. | | |
| SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is considering proposing a rule to address deceptive or unfair marketing using earnings claims. The Commission is soliciting written comment, data, and arguments concerning the need for such a rulemaking. In addition, the Commission solicits comment on how the Commission can ensure the broadest participation by affected interests in the rulemaking process. | | |
| DATES: Comments must be received on or before May 10, 2022. | | |
| ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the SUPPLEMENTARY INFORMATION section below. Write "Earnings Claims ANPR, R111003" on your comment, and file your comment online at https://www.regulations.gov . If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. | | |
| FOR FURTHER INFORMATION CONTACT: Melissa Dickey (202-326-2662), mdickey@ftc.gov , or Andrew Hudson | | |
| SUPPLEMENTARY INFORMATION: The Commission is publishing this notice pursuant to section 18 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 57a, and the provisions of part 1, subpart B of the Commission's Rules of Practice, 16 CFR 1.7 through 1.20. The FTC Act authorizes the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). | | |
| I. Background | | |
| Misleading earnings claims have long been a significant problem for consumers. ¹ The use of such claims both deprives consumers of the ability to make informed decisions and unfairly advantages bad actors in the marketplace at the expense of honest businesses. The promise of significant earnings is a powerful inducement to purchase or invest time or money. The Commission has extensive law enforcement experience challenging misleading earnings claims under section 5 of the FTC Act, 15 U.S.C. 45, ² resulting in a long line of federal court opinions holding that the use of false, unsubstantiated, or otherwise misleading earnings claims violates Section 5. ³ The Commission has also | | |
| issued litigated rulings in a number of cases dealing with misleading earnings claims and has repeatedly determined that such claims violate Section 5. ⁴ | | |
| The cases establish, among other things: (a) Earnings claims are material; ⁵ (b) representations regarding possible earnings are not mere puffery, ⁶ and will usually imply that such earnings are typical; ⁷ (c) the representation that an amount or degree of earnings is likely can be implied, including through testimonials from successful participants and examples of | | |
| <small>¹ As discussed further below, consumers encounter such claims in many contexts, including in seeking work, business and other money-making opportunities, education, and more.</small> | | |
| <small>² See, e.g., Press Release, Federal Trade Commission, Statement on the FTC's "Operation Income Illusions" sweep (2020), https://www.ftc.gov/news-events/press-releases/2020/10/scammers-leverage-pandemic-fears-ftc-law-enforcement-partners; Press Release, Federal Trade Commission, Statement on the FTC's "Operation Lost Opportunity Sweep" (2012), https://www.ftc.gov/news-events/press-releases/2012/11/ftc-expands-fight-against-deceptive-business-opportunity-schemes; Press Release, Federal Trade Commission, Statement on the FTC's "Operation Bottom Dollar" enforcement sweep (2010), https://www.ftc.gov/news-events/press-releases/2010/02/ftc-cracks-down-con-artists-who-target-jobless-americans; Press Release, Federal Trade Commission, Statement on the FTC's "Operation Short Change" enforcement sweep (2009), https://www.ftc.gov/news-events/press-releases/2009/07/ftc-cracks-down-summers-trying-to-take-advantage-economic</small> | | |
| <small>³ See Notice of Penalty Offense Authority Concerning Money-Making Opportunities, available at https://www.ftc.gov/MMO-notice.</small> | | |
| <small>⁴ John Beck Amazing Profits, 865 F. Supp. 2d at 1065-76 (claims of quick and easy substantial income were material); see also, e.g., FTC v. Noland, No. 2:20-cv-0047, 2020 WL 954958, *12-14 (D. Ariz. Feb. 27, 2020); FTC v. World Patent Mktg., No. 17-cv-20848, 2017 WL 3508639, *11-12 (S.D. Fla. Aug. 16, 2017); FTC v. Vonma Nutrition Co., No. 15-cv-01578, 2015 WL 1118111, *5 (D. Ariz. Sept. 18, 2015); Holiday Enterprises, No. 1:06-cv-2939, 2008 WL 953538, *6-7; FTC v. Med. Billers Network, Inc., 543 F. Supp. 2d 283, 308-08 (S.D.N.Y. 2008).</small> | | |
| <small>⁵ Grant Connect, 827 F. Supp. 2d at 1225-26 (rejecting puffery defense and finding claims that "fiches range from a few hundred dollars a month to \$50,000 or more a year" were deceptive), affirmed in relevant part at 763 F.3d 1094 (9th Cir. 2014); see also, e.g., FTC v. Fedor, No. 94-cv-3025, 1996 WL 396117, *2 (N.D. Ill. Jul. 3, 1996); Noland, No. 20-cv-00047, 2020 WL 954958, *12-13; World Patent, No. 17-cv-20848, 2017 WL 3508639, *12.</small> | | |
| <small>⁶ Five Star Auto Club, 92 F. Supp. 2d at 528 (11/11/07).</small> | | |

Congressional Hearings



Representative Maxine Waters, the chairwoman of the House Financial Services Committee, called Wednesday's hearing on cryptocurrency. Sarahbeth Maney/The New York Times

← Thread

 **Luke Russert** ✓
@LukeRussert

Has Congress had a single hearing about the Metaverse? If polled right now I'd guess 80% wouldn't know what it is. Probably should get on it



rollingstone.com
Someone Spent \$450,000 for 'Land' Next to Snoop Dogg's NFT House
Crypto fans are scrambling to buy and monetize metaverse land plots as Snoop Dogg, Adidas, and other brands start building virtual worlds.

9:43 AM · Dec 10, 2021 · Twitter for iPhone

Source: <https://www.nytimes.com/2021/12/08/business/house-financial-services-crypto.html>

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