



June 10, 2022

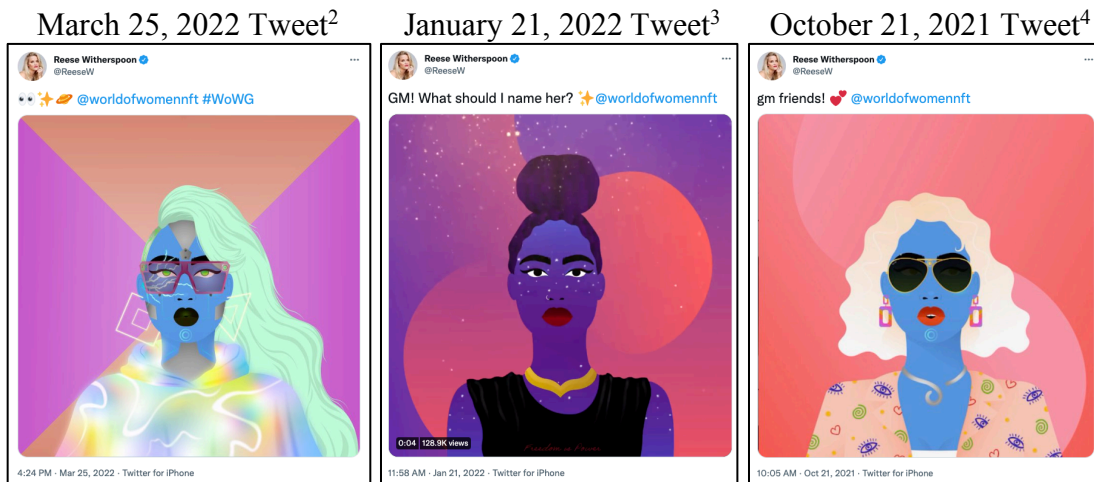
VIA EMAIL

Theane Evangelis, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
tevangelis@gibsondunn.com

Re: Reese Witherspoon's Deceptive NFT Promotions

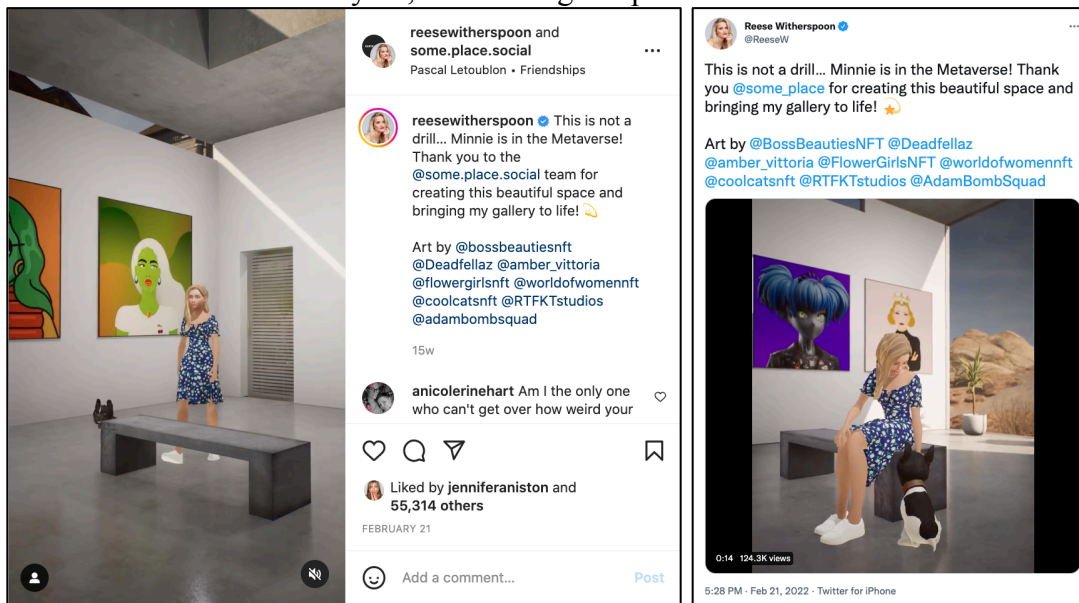
Dear Ms. Evangelis:

I am writing to you on behalf of Truth in Advertising, Inc. ("TINA.org"), a nonprofit consumer advocacy organization dedicated to protecting consumers from deceptive advertising. We have found that Reese Witherspoon has engaged in deceptive marketing for certain non-fungible tokens (NFTs) created by World of Women. Specifically, as shown below, Ms. Witherspoon promotes World of Women NFTs on her social media accounts without disclosing that she has a material connection to the company or that the posts are advertisements.¹



¹ See e.g., Feb. 17, 2022 Tweet, <https://twitter.com/worldofwomennft/status/1494436372819722241> (indicating that Ms. Witherspoon and her company Hello Sunshine are partners with World of Women).
² <https://twitter.com/ReeseW/status/1507453462862131201>.
³ <https://twitter.com/ReeseW/status/1484571176122740739>.
⁴ <https://twitter.com/ReeseW/status/1451187938323169287>.

February 21, 2022 Instagram post⁵ and Tweet⁶



The Federal Trade Commission requires that social media influencers such as Ms. Witherspoon clearly and conspicuously disclose when they have any financial, personal, or other material relationship with a brand.⁷ (In fact, in October 2021, the FTC sent Notices of Penalty Offenses to hundreds of advertisers putting them on notice that the misleading use of endorsements could lead to significant financial penalties.⁸ This Notice is attached hereto as Appendix A.) And the U.S. Securities and Exchange Commission has stated that celebrity endorsements on social media “may be unlawful if they do not disclose the nature, source, and amount of any compensation paid, directly or indirectly, by the company in exchange for the endorsement.”⁹

In addition, Ms. Witherspoon markets an NFT company (in which she has a personal stake) without ever disclosing the risks associated with investing in such speculative digital products, and the financial harm that can result from such investments. This

⁵ <https://www.instagram.com/p/CaOq-SthMFd/>.

⁶ <https://twitter.com/ReeseW/status/1495888247616315396>.

While some of Ms. Witherspoon’s NFT promotions were originally published some months, they are still in publication today and are easily accessible on the internet to be viewed by consumers and therefore remain current violations of law.

⁷ FTC: Disclosures 101 for Social Media Influencers, https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf; Guides Concerning the Use of Endorsements and Testimonials in Advertising, https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf. Note that the material connection should be disclosed in each marketing material is consumers may not see the original post(s) where the connection is disclosed. See The FTC’s Endorsement Guides: What People Are Asking, <https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking>.

⁸ FTC: Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials, https://www.ftc.gov/system/files/attachments/penalty-offenses-concerning-endorsements/notice-penalty_offenses-endorsements.pdf.

⁹ SEC Statement Urging Caution Around Celebrity Backed ICOs, Nov. 1, 2017, <https://www.sec.gov/news/public-statement/statement-potentially-unlawful-promotion-icos>.

omitted material information is particularly important in light of Ms. Witherspoon's widespread popularity among fans of varying degrees of financial experience.¹⁰

Based on this information, we reserve the right to notify regulatory agencies that Ms. Witherspoon is engaged in a deceptive marketing campaign unless the issues described above are fully corrected by June 17, 2022 by clearly and conspicuously disclosing that all applicable posts – past, present, and future – are paid advertisements and/or the result of material connections between Ms. Witherspoon and World of Women,¹¹ as well as the risks associated with investing in the promoted products.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.

Cc: Julia Loiseau, Legal Counsel, World of Women

¹⁰ According to Forbes, Ms. Witherspoon is the highest-ranking female entertainer of 2022. Lisette Voytko, The Highest-Paid Entertainers 2022, Feb. 9, 2022, <https://www.forbes.com/sites/lisettevoytko/2022/02/09/the-highest-paid-entertainers-2022/?sh=368756b4331a>; YouGovAmerica: Reese Witherspoon, <https://today.yougov.com/topics/entertainment/explore/actor/Reese-Witherspoon>.

¹¹ Ms. Witherspoon also promotes NFTs created by other companies, including, for example, 1,989 Sisters and Boss Beauties. *See e.g.*, <https://twitter.com/ReeseW/status/1483250051375714305>; https://www.instagram.com/p/Ca-S6_5JPRN/. To the extent Ms. Witherspoon has a material connection to these companies/creators, or any other companies she promotes, she would need to clearly and conspicuously note that connection in each marketing material.

APPENDIX A



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

Division of Advertising Practices

[DATE]

Via Federal Express

[NAME]

Re: Unlawful practices relating to the use of endorsements and testimonials

Dear [NAME]:

I am enclosing the Federal Trade Commission's Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials. Companies use endorsements and testimonials in many forms to advertise and market their products and services, both in traditional and social media, as well as in the form of online reviews. As reflected by the Commission's enforcement actions and other efforts, some companies use these advertising tools in a manner that deceives consumers. We recommend that you carefully review the notice and take any steps necessary to ensure that your company's practices do not violate the law.

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: falsely claiming an endorsement by a third party; misrepresenting that an endorser is an actual user, a current user, or a recent user; continuing to use an endorsement without good reason to believe that the endorser continues to subscribe to the views presented; misrepresenting that an endorsement represents the experience, views, or opinions of users or purported users; using an endorsement to make deceptive performance claims; failing to disclose an unexpected material connection with an endorser; and misrepresenting that the experience of endorsers represents consumers' typical or ordinary experience. Note that positive consumer reviews are a type of endorsement, so such reviews can be unlawful, e.g., when they are fake or when a material connection is not adequately disclosed.

Receipt of the notice puts your company on notice that engaging in conduct described therein could subject the company to civil penalties of up to \$43,792 per violation.¹

We request that you distribute copies of the notice of penalty offenses and this letter to each of your subsidiaries that sells or markets products or services to consumers in the United States.

¹ See 15 U.S.C. § 45(m)(1)(B).

[NAME]

[DATE]

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FTC staff is not singling out your company or suggesting that you have engaged in deceptive or unfair conduct. We are widely distributing similar letters and the notice to large companies, top advertisers, leading retailers, top consumer product companies, and major advertising agencies.

Copies of the case decisions discussed in the notice are available on the Commission's website at www.ftc.gov/endorsement-notice-penalty-offenses.

The Commission's website has other important resources designed to ensure that advertisers know their responsibilities under the FTC Act. These resources include a staff business guidance document, *The FTC's Endorsement Guides: What People Are Asking*, available at www.ftc.gov/endorsements. That document contains a link to the FTC's *Guides Concerning the Use of Endorsements and Testimonials in Advertising*, 16 CFR Part 255.

If you have any questions about this letter or the enclosed materials, please contact Michael Ostheimer at mostheimer@ftc.gov or (202) 326-3556 or Michael Atleson at matleson@ftc.gov or (202) 326-2962.

Very truly yours,

Serena Viswanathan
Associate Director

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).