



August 24, 2022

VIA EMAIL

Michael Rhodes
Cooley LLP
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Re: Justin Bieber's Deceptive NFT Promotions

Dear Mr. Rhodes:

I write to follow-up on your July 1, 2022 letter in which you acknowledged that Mr. Bieber has a material connection with NFT company inBetweeners and informed us that Mr. Bieber would be updating his posts promoting inBetweeners NFTs to disclose his connection with the company. It has now been more than seven weeks since you made this statement and yet Mr. Bieber's inBetweeners posts remain unchanged and continue to lack clear and conspicuous disclosures of his material relationship to the company.

Your letter also states that "Mr. Bieber's affiliation with inBetweeners is public knowledge and has been repeatedly disclosed by Mr. Bieber and the company on multiple platforms." However, your letter fails to acknowledge Federal Trade Commission guidance indicating that a material connection should be disclosed in each marketing material as consumers may not see the original post(s) where the connection is disclosed.¹

¹ The FTC's Endorsement Guides: What People Are Asking, <https://www.ftc.gov/business-guidance/resources/ftcs-endorsementguides-what-people-are-asking>.

Of note, one of the FTC's proposed updates to its Endorsement Guides is the following example:

“Example 9: An influencer who is paid to endorse a vitamin product in their social media posts discloses their connection to the product's manufacturer only on the profile pages of their social media accounts. The disclosures are not clear and conspicuous because people seeing their paid posts could easily miss the disclosures.”

FTC Proposed Changes to Guides Concerning the Use of Endorsements and Testimonials in Advertising, https://www.ftc.gov/system/files/ftc_gov/pdf/P204500%20Guides%20Concerning%20Endors%20and%20Testimonials.pdf.

As for disclosing the risks associated with purchasing NFTs, the FTC has made clear that “an endorsement may not convey any express or implied representation that would be deceptive if made directly by the advertiser,”² and that advertising that omits material information is deceptive.³ As such, promoting NFTs on social media platforms, particularly to preteens, teens, and young adults, without including any information about the price volatility and associated financial risk is misleading.

Please let me know when Mr. Bieber’s posts at issue will be updated in accordance with your July 1 representations.

Sincerely,



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

² FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising, §255.1, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>.

³ Advertising FAQ’s: A Guide for Small Business, <https://www.ftc.gov/business-guidance/resources/advertising-faqs-guide-small-business>.