



August 30, 2021

VIA EMAIL

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Re: FabKids Violating 2014 Stipulated Final Judgment

Dear Attorneys:

TechStyle, Inc. (f/k/a Just Fabulous, Inc.) and its subsidiary Personal Retailing, Inc. d/b/a FabKids (collectively "FabKids") are violating the 2014 Stipulated Final Judgment ("Stipulated Judgment") that they entered into with the State of California by deceptively advertising and illegally operating the FabKids brand.

As you may recall, in February 2020, TINA.org reported violations of this same order by TechStyle, Inc for its deceptive advertising of its Savage X Fenty brand.¹ TINA.org now has evidence that the FabKids brand is violating the order in many of the same ways. Indeed, it appears that the State of California's lawsuit has had no impact on the way the stipulating parties operate their businesses and advertise their products as they continue to lure hundreds of thousands of consumers into negative option offers through deceptive marketing tactics.²

Specifically, the Stipulated Judgment permanently prohibits FabKids from, among other things:

- making untrue or misleading statements about products or services;
- deceptively marketing product prices and discounts that are only available to consumers who are bound by the company's VIP membership without properly disclosing this fact;
- failing to present the terms of an automatic renewal or continuous service offer in a clear and conspicuous manner before the purchasing agreement for a membership program is fulfilled;

- failing to provide a timely cancellation mechanism as set forth in California Business and Professions Code §17602(b); and
- engaging in an unfair business practice as set forth in California Business and Professions Code §17200.³

Currently, FabKids, which has more than 250,000 VIP members and describes itself as an “online fashion playground where parents can let their kids’ style run free”⁴ is violating the above prohibitions in the Stipulated Judgment.⁵

A. Deceptive Advertising of Prices and Sales

FabKids advertises on television and social media platforms, including Instagram, Facebook, and YouTube. In addition to advertising on its own social media pages, the company purchases Facebook and Instagram ads, and pays social media influencers to market the brand on their personal accounts. The company also frequently sends consumers promotional newsletters.⁶

Throughout its marketing, FabKids promotes prices and sales that are only available to consumers who are bound by the company’s VIP membership program, but it does not generally disclose this fact clearly and conspicuously.

By way of example, a video posted on FabKids’ YouTube channel⁷ entitled “Why moms need to know about FabKids,” which has been viewed more than 43,000 times, violates the Stipulated Judgment by failing to orally state that the prices advertised are only available to members of FabKids’ VIP program, and failing to clearly disclose all of the material conditions of the negative option offer in writing.⁸

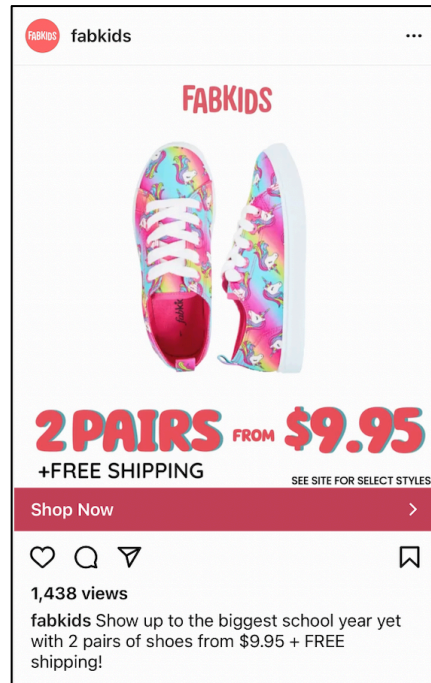
While the video states the membership conditions in barely legible fine print for a few seconds,⁹ the children featured in the 30 second commercial, as well as the voiceover, never mention the conditions when advertising the pricing:

“[Kids]: Mom! You’re buying shoes all wrong! You’re spending way too much on my shoes! Go to FabKids! Get two pairs of shoes for \$9.95! ... Two pairs of shoes for \$9.95? Who does that? ... [Voiceover:] Right now, get two pairs of shoes from just \$9.95 plus free shipping only at FabKids.com”

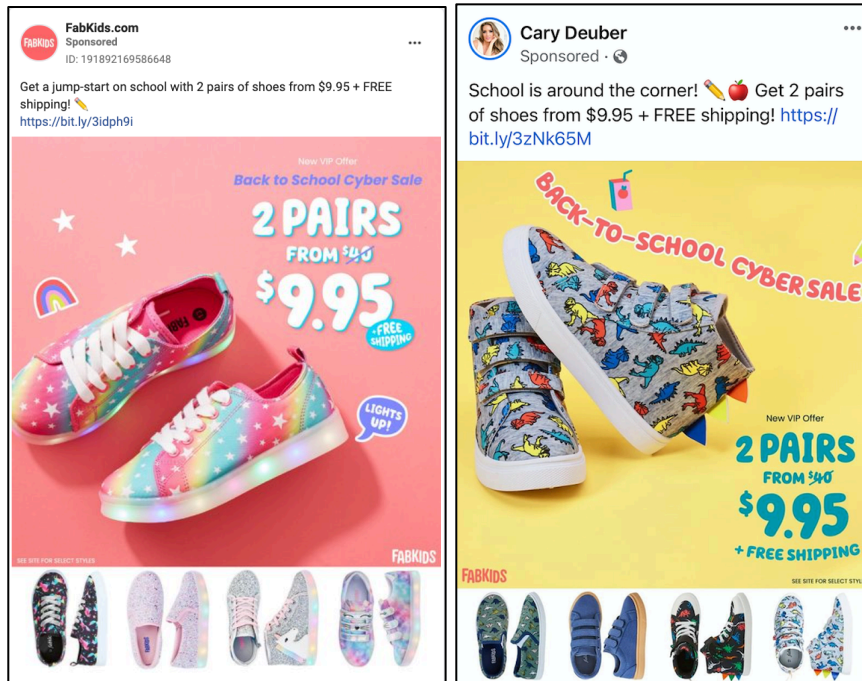


Screenshot

Similarly, other FabKids ads, such as the Facebook and Instagram ads below, promote a “2 pairs from \$9.95” sale that applies to new individuals that join the VIP membership program, but the only indicator of this limitation – if one exists at all – is the ambiguous phrase in small print stating “New VIP Offer” above large, bold, all caps print that states “2 PAIRS FROM \$9.95 + FREE SHIPPING.”

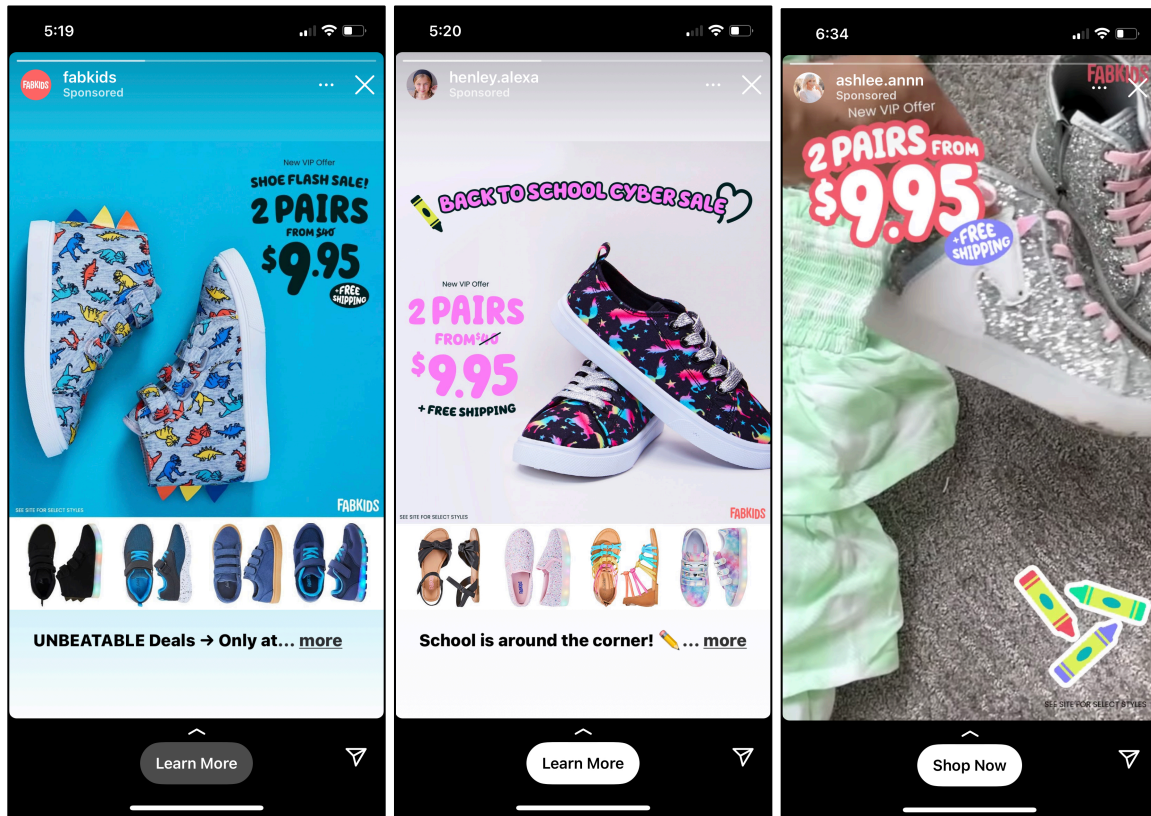


No disclosure of pricing conditions



Fine print states “New VIP Offer” with no disclosure of pricing conditions

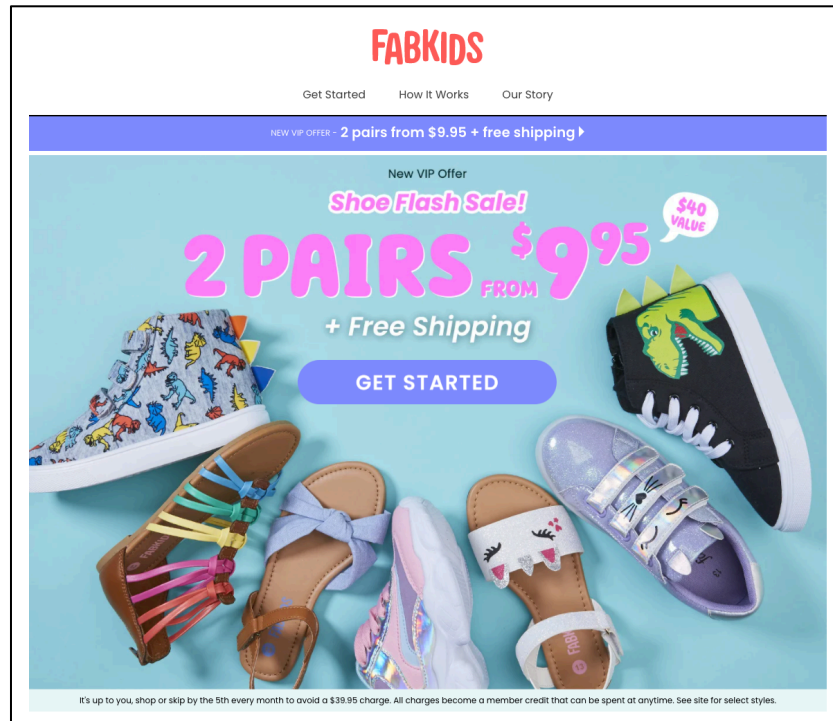
The same deceptive tactic is used in Instagram stories (both on FabKids' account as well as on FabKids influencers' accounts) where the images disappear within seconds, making the rather meaningless "New VIP Offer" language even more ineffective.



TINA.org has collected more than 80 examples of deceptive FabKids marketing materials that fail to clearly and conspicuously disclose the material conditions for obtaining the offered price, all of which violate the Stipulated Judgment, and are available at <https://www.truthinadvertising.org/fabkids-deceptive-pricing-database/>.

Unclear and Inconspicuous Negative Option Offer

Consumers whose interest has been piqued by the company's advertisements may then visit its website, www.fabkids.com. There, the home page boldly advertises a "Shoe Flash Sale! 2 Pairs From \$9.95 + Free Shipping" with a prompt to "Get Started."



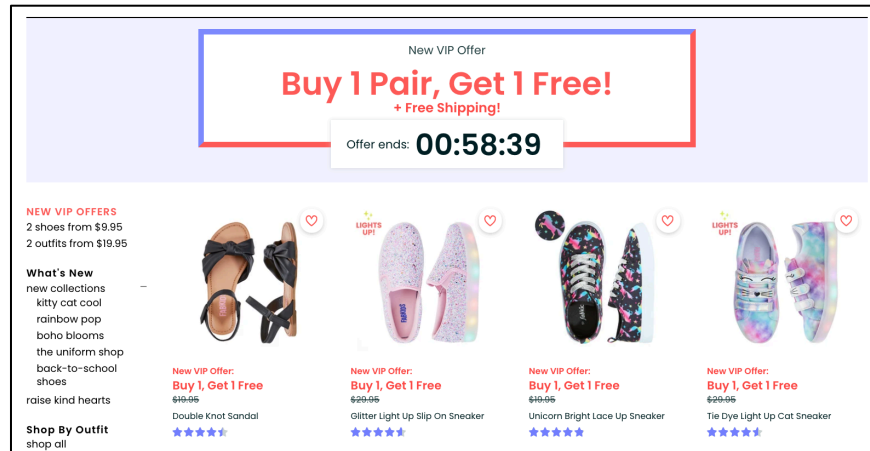
In miniscule black print beneath the colorful offer and the prompt to shop (i.e., in a place consumers will not see unless they do not click on the “Get Started” button and instead scroll down the page) the company states “It’s up to you: shop or skip by the 5th of every month to avoid a \$39.95 charge. All charges become a member credit that can be spent at anytime. See site for selected styles.” Similar fine print terms are disclosed near the bottom of the homepage.¹⁰

Clicking on the “Get Started” button leads consumers to a pop-up asking them to take or skip a quiz, followed by a prompt to enter an email address, as well as other information.

(Consumers cannot shop the website without entering the requested information)

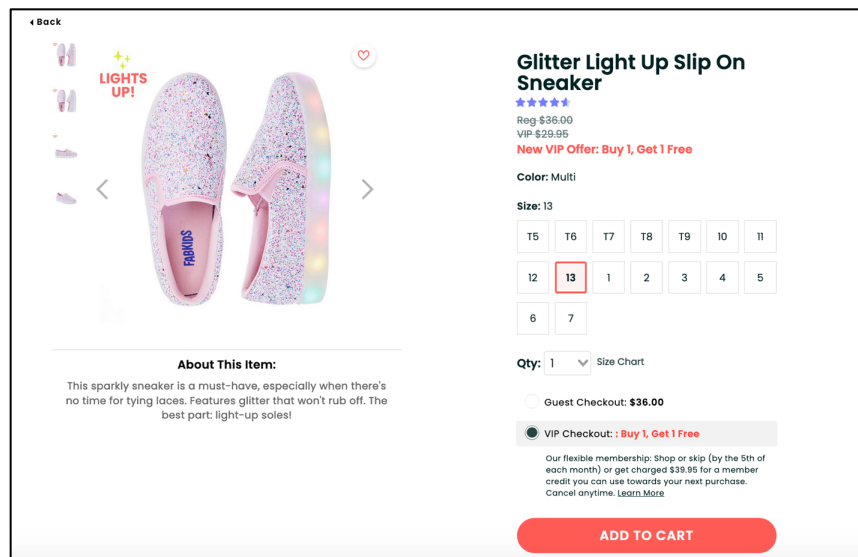
After entering the required information and clicking on “Shop Now,” consumers are led to a page with a prominent countdown clock at the top, apparently counting down the

remaining minutes and seconds before the advertised offer ends (but never actually ends), a type of dark pattern used to add a false sense of urgency to a sale.¹¹



On this same page, each product is shown with a red “Buy 1, Get 1 Free” offer but no ultimate price is shown.¹²

Clicking on a product, such as the Glitter Light Up Slip On Sneaker, brings consumers to an individual product page where the “New VIP Offer: Buy 1, Get 1 Free” language is repeated but the VIP price at the top of the page is crossed out (along with the regular price, though a “guest” price of \$36 is provided further down the page). At this point in the shopping process, it is unclear how much a consumer must pay to get the BOGO deal.



As the screenshot above shows, the “VIP Checkout” is preselected. Just below that grey box, select terms of FabKids “flexible membership” program are provided in fine print:

Our flexible membership: Shop or skip (by the 5th of each month) or get charged \$39.95 for a member credit you can use towards your next purchase. Cancel anytime. [Learn More](#)

However, there is nothing to affirmatively link the membership program to the “New VIP Offer.” Only if a consumer clicks on “Guest Checkout” do they get an inkling that there are conditions on the VIP offer when FabKids attempts to pressure consumers to rethink their decision by stating “I don’t want up to 40% off and VIP Perks,” another dark pattern known as confirmshaming.¹³

☒ Guest Checkout: **\$36.00**
I don't want up to 40% off and VIP Perks.

☐ VIP Checkout: **: Buy 1, Get 1 Free**

Our flexible membership: Shop or skip (by the 5th of each month) or get charged \$39.95 for a member credit you can use towards your next purchase. Cancel anytime. [Learn More](#)

ADD TO CART

Consumers who either do not notice the Guest Checkout option or opt for the VIP Checkout then click “Add to Cart” and are brought to the following screen, which finally indicates what the cost of the purchase will be.¹⁴ However, none of the financial or other material obligations of the VIP membership are disclosed on this page.

You've got free shipping!

New VIP Offer
Add a 2nd Pair for Free

Glitter Light Up Slip On Sneaker - 13
REG: ~~\$36.00~~
VIP: ~~\$29.95~~
\$5 OFF ANY SHOE: \$24.95

Starting Amount:	\$36.00
Shipping:	Free
Promo: \$5 Off Any Shoe	-\$5
Promo: \$10 Welcome Credit	-\$10
Subtotal:	\$14.95

[Continue Shopping](#) **CHECKOUT**

Guest Subtotal Shop all outfits and items at regular retail prices.	\$36.00
VIP Subtotal You're saving \$21.05	\$14.95

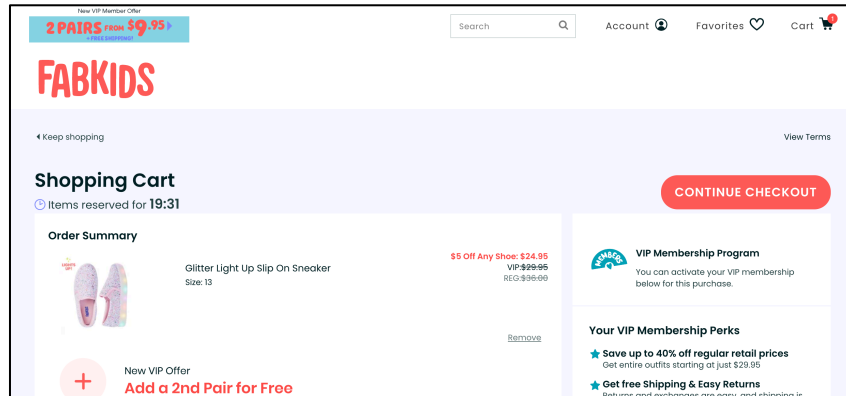
\$5 Off Any Shoe - New VIP Offer!
\$10 Welcome Credit - New VIP Offer!

- ★ Outfits start at just \$29.95, up to 40% off retail prices
- ★ Exclusive VIP pricing
- ★ Personalized outfit recommendations
- ★ Earn FabKids Reward Points

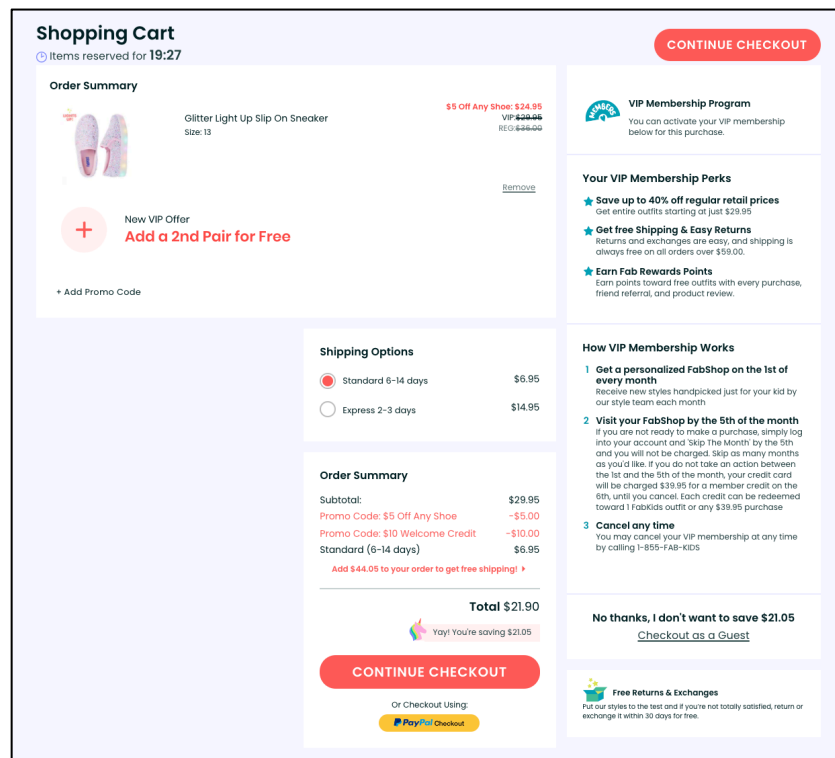
GUEST CHECKOUT **CHECKOUT**

Clicking on “Checkout” brings consumers to the following screen featuring another (fake) countdown timer in the upper left corner apparently showing how many minutes

the items in the cart are reserved. If consumers scroll down far enough on the page, they might see, in fine black print separated from the brightly colored “Continue Checkout” buttons, terms about the negative option offer. However, consumers can “continue checkout” without ever having to scroll down the page.



View of the Shopping Cart page without scrolling down



View of the Shopping Cart page after scrolling down to see “How VIP Membership Works”

“If you are not ready to make a purchase, simply log into your account and ‘Skip The Month’ by the 5th and you will not be charged. Skip as many months as you’d like. If you do not take an action between the 1st and the 5th of the month, your credit card will be charged \$39.95 for a member credit on the 6th, until you cancel. Each credit can be redeemed toward 1 FabKids outfit or any \$39.95 purchase”

At this point, any consumer wishing to checkout as a guest rather than continue with a VIP membership is faced with additional confirmshaming (“No thanks, I don’t want to save \$21.05”), as shown above.

Clicking on either “Continue Checkout” button leads consumers to a page that prompts consumers to enter “Billing & Shipping” information.

New VIP Member Offer
2 PAIRS ~~Value \$9.95~~
\$4.99 each

Search Account Favorites Cart Offer ends in 57:29

FABKIDS

Shipping Bag Billing & Shipping Order Complete

Billing & Shipping

1. Enter Address Information

Shipping Address * required fields

*First Name *Last Name

Please enter a valid name

*Address

Invalid - Address cannot be only letters

Apartment / Suite # (Optional)

*City

*Country
United States

*State *Zip Code

*Phone Number

Billing Info

☒ Same as Shipping Address
☐ Different from Shipping Address

2. Payment Information

CONTINUE CHECKOUT

Order Summary Member Status: VIP

	3D Dino High Top Sneaker Size: T7 Qty: 1	\$29.95
	Paint Splatter Slip On Light Up Sneaker Size: T7 Qty: 1	\$29.95
Subtotal		\$59.90
Promo Code: Buy 1, Get 1 FREE		-\$29.95
Promo Code: \$10 Welcome Credit		-\$10.00
Shipping: Standard (6-14 business days)		Free
Total Payment		\$19.95

Reward Points Earned This Order 500 Points

How VIP Membership Works

- 1 Get a personalized FabShop on the 1st of every month**
Receive new styles handpicked just for your kid by our style team each month
- 2 Visit your FabShop by the 5th of the month**
If you are not ready to make a purchase, simply log into your account and 'Skip The Month' by the 5th and you will not be charged. Skip as many months as you'd like. If you do not take an action between the 1st and the 5th of the month, your credit card will be charged \$39.95 for a member credit on the 6th, until you cancel. Each credit can be redeemed toward 1 FabKids outfit or any \$39.95 purchase
- 3 Cancel any time**
You may cancel your VIP membership at any time by calling 1-855-FAB-KIDS

View of page when prompting consumer to enter shipping information

View of page when prompting consumers to enter billing information

As shown above, when consumers are prompted for shipping information, certain terms of the VIP membership are disclosed in fine print on the side of the page rather than above the “Continue Checkout” button. And when consumers are prompted for billing information, there is an abbreviated summary of the terms of the VIP membership in fine print *after* FabKids has collected consumers’ credit card information. Neither disclosure is clear and conspicuous as defined and required by the Stipulated Judgment (i.e., “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.”)¹⁵

In sum, the material terms and conditions of the FabKids membership program are never clearly and conspicuously disclosed to consumers. The different language used throughout the marketing and shopping process to describe the “New VIP Offer” versus the material terms of the VIP membership program, which only appears in small font and in easy-to-miss locations, in combination with the use of dark patterns, including countdown timers and confirmshaming, ensures that the material terms of FabKids’ negative option offer are never adequately disclosed. In fact, numerous consumers have complained about unwittingly being signed-up for FabKids’ negative option offer.

By way of example, the complaints below were posted to the BBB's review page for FabKids in July and April 2021:¹⁶

I am absolutely beyond mad to find out that Fabkids has been charging me \$39.99 per month!! I bought my Daughter some shoes for X-Mas. THAT WAS 7 MONTHS AGO!!!! This company is a huge scam!!! I just lost out on almost \$300! This should be a crime and will be reporting this to my bank!

I purchased a few months back not realizing that I would be signed up for vip charging me ***** monthly. I just realized it today... I've been charged the last 3 months...

They charge your card \$39 every single month even if you do not shop that month. I would have never even shopped on their website if I known that. No where did I see I would be charged \$39. I think it's sneaky and not good business. And I also see I'm not the only one who had this problem. I would have never known they were taking money out if it wasn't for me checking my bank statement because they don't send you a receipt to your email like they do when you order something.

Further, according to FabKids' Terms of Service, it automatically enrolls consumers in the VIP Membership program when they purchase any item from the website, indicating that the company may not be obtaining consumers' informed consent.¹⁷ Specifically, the Terms of Service state:

To become a FabKids VIP Member, simply purchase any FabKids item on this Site or through an applicable FabKids Service and you will be automatically enrolled in the FabKids VIP Membership Program (including the monthly, automatic purchase feature).

In short, it is clear that FabKids pushes consumers into a negative option offer without clearly and conspicuously disclosing all material terms and conditions and without obtaining consumers' affirmative consent, in violation of the Stipulated Judgment.

B. Material Store Credit Limitation is Hidden

Consumers who read through the FabKids homepage¹⁸ and "How It Works" page¹⁹ are repeatedly told that those who sign up for the VIP membership and accumulate store credit can use that store credit "any time, on anything."

**Become a VIP and get up to 40% off
all day, every day**

How it works: It's so easy...

- 1 Get personalized picks!**
Shop our limited-edition monthly collections with **outfits and shoes** curated just for kids!
- 2 Shop, skip or save**
Choose to shop, skip or rack up a member credit to spend later. If you don't shop or skip by the 5th (we'll send you reminders!), your credit card will be charged **\$39.95** on the 6th until you cancel. This charge is a member credit in your VIP account to use any time, on anything.
- 3 Put it to the test**
Hit the playground! Try out **the new styles** and if you're not totally satisfied, you can **return or exchange** within 30 days.
- 4 No strings attached**
It's easy to cancel! Call Member Services 24/7 at 1-855-FAB-KIDS or use our online Live Chat Service from 9AM-9PM EST.

Your membership is always in your hands!

Screenshot from FabKids homepage

2

Shop, skip or save

Choose to shop, skip or rack up a member credit to spend later. If you don't shop or skip by the 5th (we'll send you reminders!), your credit card will be charged **\$39.95** on the 6th until you cancel. This charge is a member credit in your VIP account to use **any time**, on anything.

Screenshot of text on How It Works page

Member Credits: 0


**Credits can be used
anytime, on anything.**

Screenshot from video on How It Works page

In reality, however, FabKids significantly limits when consumers may use their accumulated unused store credits, and only discloses this in two different fine print statements. First, the fine print terms in the bottom right corner of the Shopping Cart page and Billing & Shipping page – pages that both include a countdown timer – state that store credit can be “redeemed toward 1 FabKids outfit or any \$39.95 purchase.”²⁰

Shopping Cart

Items reserved for 19:05



Glitter Light Up Slip On Sneaker
Size: 13


\$5 Off Any Shoe: \$24.95
VIP \$24.95
REG \$49.95

[Remove](#)

New VIP Offer
Add a 2nd Pair for Free

[+ Add Promo Code](#)

[CONTINUE CHECKOUT](#)



VIP Membership Program
 You can activate your VIP membership below for this purchase.

Your VIP Membership Perks

- Save up to 40% off regular retail prices**
 Get entire outfits starting at just \$29.95
- Get free Shipping & Easy Returns**
 Returns and exchanges are easy, and shipping is always free on all orders over \$50.00.
- Earn Fab Rewards Points**
 Earn points toward free outfits with every purchase, friend referral, and product review.

How VIP Membership Works

- Get a personalized FabShop on the 1st of every month**
 Receive new styles handpicked just for your kid by our style team each month.
- Visit your FabShop by the 5th of the month**
 If you are not ready to make a purchase, simply log into your account and 'Skip the Month' by the 5th, and you will not be charged. Skip as many months as you'd like. If you do not take an action between the 1st and the 5th of the month, your credit card will be charged \$39.95 for a member credit on the 6th, until you cancel. Each credit can be redeemed toward 1 FabKids outfit or any \$39.95 purchase.
- Cancel any time**
 You may cancel your VIP membership at any time by calling 1-855-FAB-KIDS

No thanks, I don't want to save \$21.05
[Checkout as a Guest](#)

Free Returns & Exchanges
 Put our styles to the test and if you're not totally satisfied, return or exchange it within 30 days for free.

Shipping Options

☒ Standard 6-14 days \$6.95

☐ Express 2-3 days \$14.95

Order Summary

Subtotal: \$29.95

Promo Code: \$5 Off Any Shoe -\$5.00

Promo Code: \$10 Welcome Credit -\$10.00

Standard (6-14 days) \$6.95

Add \$44.05 to your order to get free shipping! >

Total \$21.90

Yay! You're saving \$21.05

[CONTINUE CHECKOUT](#)

Or Checkout Using:

[PayPal Checkout](#)

Red underline added by TINA.org

Second, more than 700 words into the company’s Terms of Service,²¹ which are accessible at the bottom of the FabKids homepage, the company states that store credit can “be redeemed toward the purchase of FabKids items (totaling \$39.95 or higher) during your purchase checkout in any future month.”

HOW VIP MEMBERSHIP PROGRAM WORKS

Upon enrollment in the VIP Membership Program, you will receive new monthly customized selections of merchandise on the first (1st) day of every month. **You must make a purchase or log into your account and select the 'Skip the Month' option between the 1st and 5th day of the month. If you do not make a purchase and do not 'Skip the Month' your credit card will be charged an automatic monthly membership fee of \$39.95 for a member credit on the 6th until you cancel.** You may cancel your FabKids VIP Membership at any time by calling one of our customer service representatives at 1-855-322-5437. Each FabKids credit will be applied to your Account and can be redeemed toward the purchase of FabKids items (totaling \$39.95 or higher) during your purchase checkout in any future month. You may 'Skip' as many months as you like, there is no obligation to buy. Even if you decide to 'Skip' any month, you may return to your Account at any time to make a purchase. As discussed below, any unused membership credits will be automatically converted into an electronic FabKids gift card twelve (12) months following issuance. The electronic gift cards never expire and work the same as membership credits, except that they are transferrable and can be used to purchase FabKids items of any price.

You may cancel your FabKids VIP Membership Account at any time. If you wish to cancel your Account, simply call our Fashion Consultants at 1-855-322-5437 anytime, 24 hours a day, 7 days a week. There is no cancellation fee. Please be advised that your Account may only be canceled by the registered FabKids VIP Member or the holder of the valid credit card on file related to your Account.

Red underline added by TINA.org

FabKids’ Terms of Service also state, more than 1,300 words into the document, that “Membership credits may only be redeemed in one transaction” and, worse, that the company “expressly reserves the right to impose inactivity or dormancy fees on membership credits and gift cards in some or all states...”²²

In other words, FabKids conceals – deep within a document that most customers will never read – that it might charge consumers *more* than \$39.95 for forgetting to skip a

month, and that consumers' store credit is not actually free to use "any time, on anything." In fact, TINA.org was unable to find any FabKids marketing materials that disclose these material facts. This deception violates the Stipulated Judgment.²³

C. Difficulty Canceling Subscription

Countless consumers also report experiencing great difficulty when trying to cancel their FabKids VIP Memberships, which can only be done by calling the company, or possibly via online chat,²⁴ despite the fact that joining the subscription service only takes the click of a button online. For example,²⁵

I have been calling the company to ask for my VIP membership refund as promised. Every time I call to ask where my refund is, they say the same thing, "waiting for back office" and "need to get a supervisor". The total amount they agree to refund changes every single time I talk to someone. Every time! I feel like they are either a scam company or they are really trying to delay doing anything so that I'll have to pay another \$29.95 for VIP. Which by the way, I didn't realize I signed up for. Tricky tricky. I cannot cancel the membership until I use up my credits, which I can't even use until they refund the part they agreed to. I'm tired, I just want my refund. (7/20/21)

I would give 0 stars if it was an option. This company is such a scam. I ordered one thing off their site and was charged \$39 a month going forward. I called in March 2021 to cancel the membership that I never signed up for, only to find out in July that they have still be charging me. This cannot be legal. (7/14/21)

I am aware this is subscription based but I cancelled my subscription in October 2020. Then, since January 2021 I've been getting charged monthly with no authorization from myself. I have called to get the fees credit back, and they do credit me back but it is a pain to be calling every month to have these fees credit back. I have asked multiple times to stop charging me. I am very upset at the way they do business. I will never be buying anything from here ever again. (3/16/21)

If you buy any item of clothing, they sign you up for a membership and then they charge you \$39.95/month after that on your card to go and buy clothes from their site with. Then they do not let you cancel the membership!! Do not buy here! (2/6/21)

No doubt the tactics used by FabKids customer service representatives, as reported by consumers, are employed to dissuade, or even prevent, VIP members from canceling their memberships. This practice violates the Stipulated Judgment.

D. Deceptive Social Media Influencer Ads

Finally, many FabKids influencers are marketing the company's products without clearly and conspicuously disclosing their material connections to the company. TINA.org has

identified a sampling of more than 45 social media influencer posts by more than 25 different influencers that deceptively advertise FabKids' products. These posts do not contain adequate disclosures of the influencers' material connections to the company either by failing to include any disclosure at all, using inadequate and unclear language to disclose the relationship, or placing the disclosure in a place that it will easily be overlooked by consumers. Below are examples of each of these deceptive influencer marketing issues.

FabKids influencer ad without disclosure of influencer's connection to the company:²⁶



FabKids influencer ad using unclear language (i.e., “#myfabkids”) to disclose connection to the company:²⁷



FabKids influencer buries influencer's material connection so it is easily overlooked by consumers:²⁸



TINA.org's sampling of deceptive social media ads for FabKids is available at <https://www.truthinadvertising.org/fabkids-influencer-database/>.

Conclusion

FabKids deceives consumers in a multitude of ways, all of which violate the Stipulated Judgment, in order to persuade them to purchase children's clothing and shoes, much like TechStyle's Savage X Fenty brand does to persuade consumers to purchase lingerie. TINA.org urges your office to re-open its investigation into TechStyle and its subsidiary Personal Retailing, Inc. d/b/a FabKids and take appropriate enforcement action.²⁹

Sincerely,

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

Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.

Cc via email: Matt Fojut, General Counsel, TechStyle Fashion Group
Edward Shapiro, Reed Smith

¹ See TINA.org February 10, 2020 Complaint, available at https://www.truthinadvertising.org/wp-content/uploads/2020/02/2_10_20-TINA-ltr-to-CA-DAs-re-Savage-X-Fenty_Redacted.pdf.

² TechStyle Fashion Group's Fabletics is reportedly preparing for an initial public offering (IPO) with an aim at valuation of more than \$5 billion. <https://sgbonline.com/report-fabletics-exploring-ipo/>.

³ *California v. Just Fabulous, Inc. et al.*, Case No. 114CV272293, Oct. 24, 2014 Stipulated Final Judgment, available at <https://www.truthinadvertising.org/wp-content/uploads/2020/02/Just-Fabulous-Stipulated-Judgment-filed-10-24-14.pdf>.

⁴ FabKids How It Works, <https://www.fabkids.com/how-it-works>; FabKids Customer Satisfaction, <https://www.fabkids.com/customer-satisfaction>.

⁵ In addition to the violations explained in detail in this letter, FabKids appears to also be violating Section IV. I. (the provision pertaining to the misleading use of the term “free shipping”) of the Stipulated Judgment by misleadingly offering “Free Shipping” that is only available to those who become bound by the company's VIP Membership.

⁶ Milled: FabKids, <https://milled.com/fabkids>.

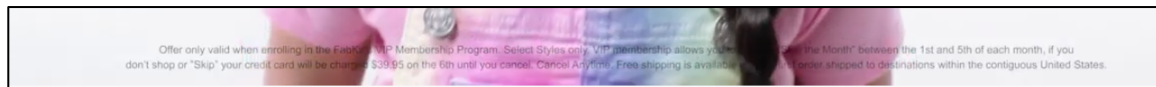
Of note, a review of the company's daily email newsletters indicates that the company may, in addition to the numerous deceptive practices outlined in detail in this letter, be running perpetual – and therefore fabricated and deceptive – sales on their products for new VIP Members.

⁷ FabKids YouTube channel, <https://www.youtube.com/channel/UCm3KrVC1B7CPYhuyaTrMBpg>.

⁸ Paragraph 5.A.2 of the Stipulated Judgment states:

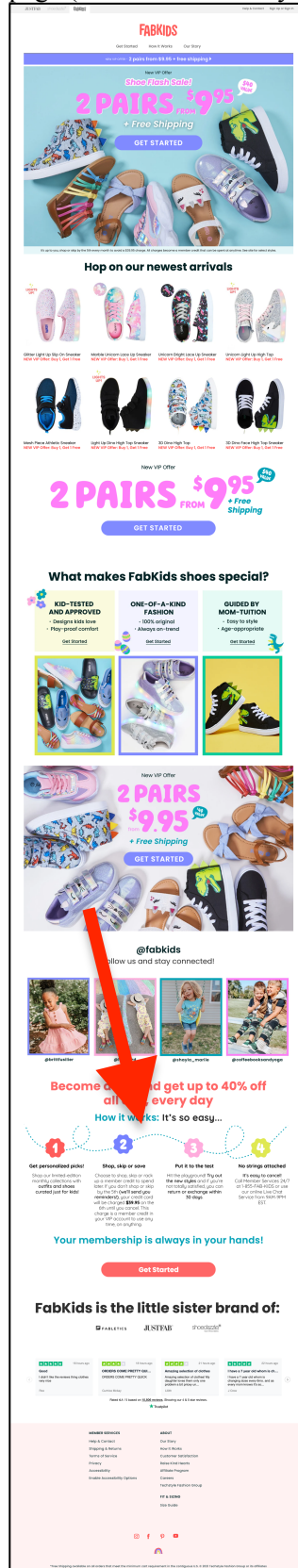
...DEFENDANTS shall be and are permanently enjoined and restrained within the State of California from: Making oral or written statements concerning products or services that are untrue or misleading as set forth in California Business & Professions Code § 17500 and as follows: ... If oral, the price of products and the discount on products without qualifying description that VIP Membership is required immediately following and in a volume and cadence sufficient to be readily audible and understandable or in a clearly readable font size and color.

⁹ The fine print that appears at the bottom of the screen for a brief few seconds states:



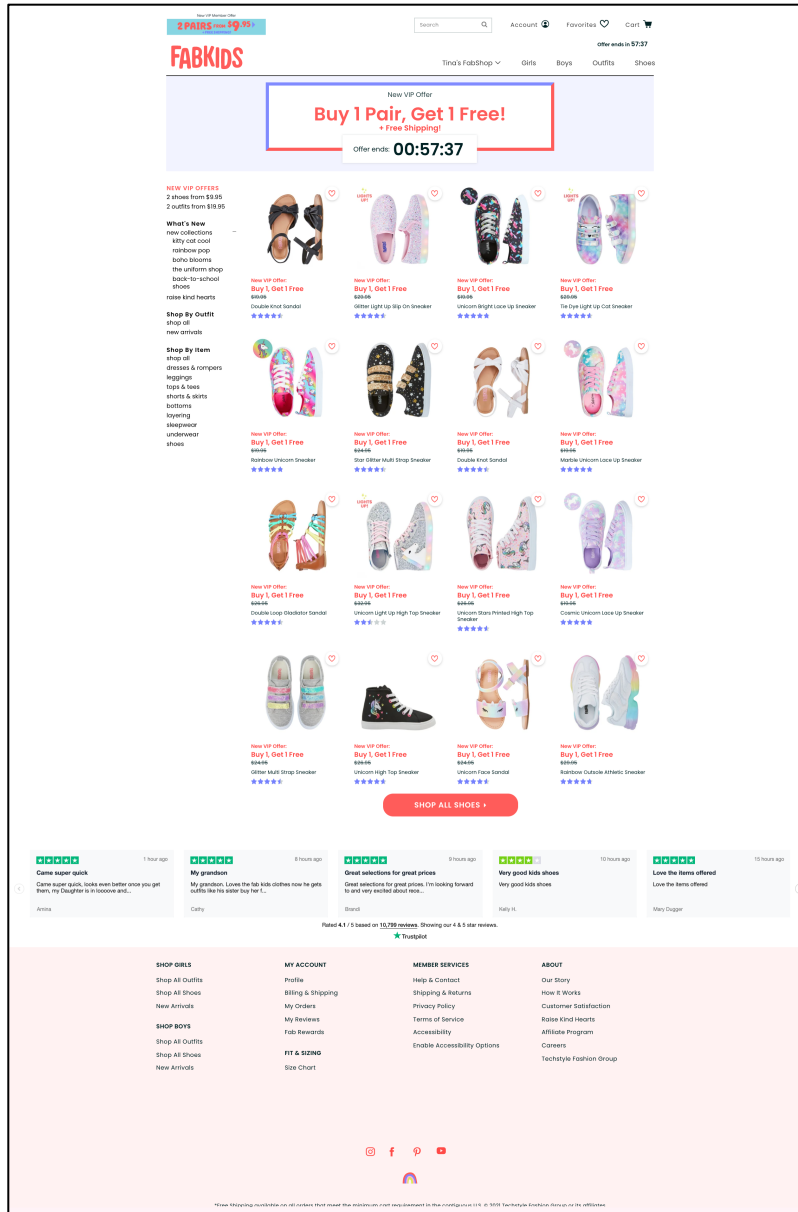
“Offer only valid when enrolling in the FabKids VIP Membership Program. Select Styles only. VIP Membership allows you to shop or “Skip the Month” between the 1st and 5th of each month, if you don’t shop or “Skip” your credit card will be charged \$39.95 on the 6th until you cancel. Cancel Anytime. Free shipping is available on your first order, shipped to destinations within the contiguous United States.”

¹⁰ Screenshot of the FabKids home page (red arrow added by TINA.org):



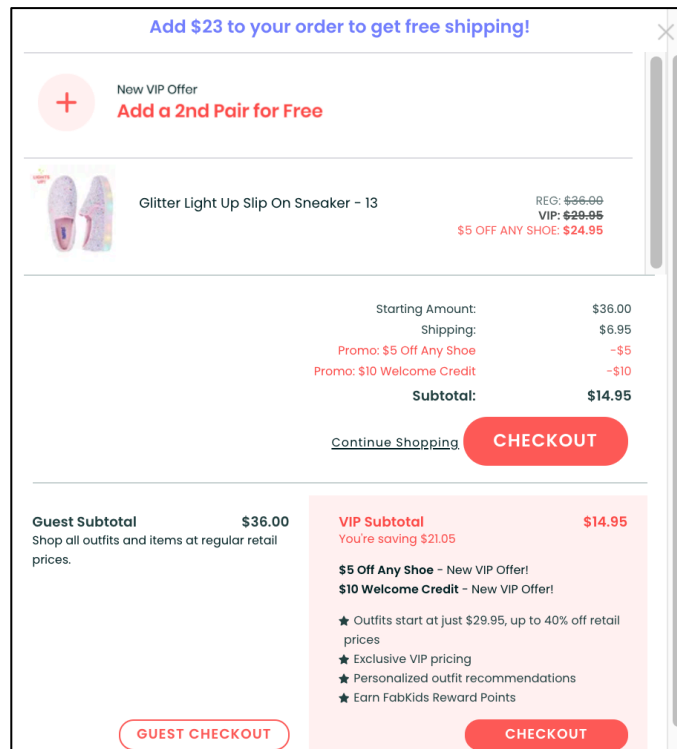
¹¹ See Hayley Peterson, *Retailers ‘exploit’ shoppers with fake countdown clocks, sneaky charges, and other ‘dark pattern’ tricks that lure people into spending more money online – here’s what to watch out for*, Nov. 25, 2019, available at <https://www.businessinsider.com/how-shoppers-are-lured-into-spending-more-money-online-2019-11>; Reed Steiner, *Dark Patterns: A New Scientific Look at UX Deception*, Feb. 14, 2020, available at <https://www.fyresite.com/dark-patterns-a-new-scientific-look-at-ux-deception/>.

¹² <https://www.fabkids.com/fabshop?newleadreg=1>.



¹³ Dark Patterns, <https://www.darkpatterns.org/types-of-dark-pattern/confirmshaming>.

¹⁴ Even if you click on “Guest Checkout” and then “Add to Cart,” the following pop-up populates, forcing consumers to re-select the less colorful “Guest Checkout.”



¹⁵ While FabKids’ disclosure of certain VIP membership terms on the billing page is in a different color from the surrounding text, it is not done in a manner that “clearly calls attention to the language” and its location – i.e., beneath the prompt for credit card information – does not comply with the Restore Online Shoppers Confidence Act (ROSCA), 15 U.S.C. §§ 8401-8405.

¹⁶ BBB FabKids page, <https://www.bbb.org/us/ca/san-francisco/profile/childrens-clothing-stores/fabkids-1116-440970/customer-reviews>.

¹⁷ FabKids Terms of Service, <https://www.fabkids.com/terms>.

¹⁸ <https://www.fabkids.com/>.

¹⁹ <https://www.fabkids.com/how-it-works>.

²⁰ <https://www.fabkids.com/terms>.

²¹ *Id.*

²² *Id.*

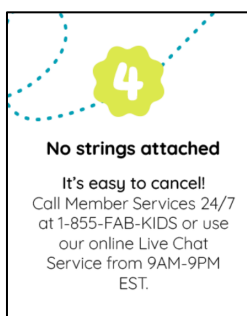
²³ In addition to this store credit issue, at least one consumer has also reported their store credit disappearing.

I purchased a few months back not realizing that I would be signed up for vip charging me ***** monthly. I just realized it today... I've been charged the last 3 months... that blame is on me as I didn't read the fine print but what they didn't tell me today when canceling is that my points would be removed as well...I called customer service asking why they informed me that they were removed due to canceling my vip... I've been

paying them almost \$40 for the last 3 months the least they could do is allow me to either use my points for refund me money!! He said he couldn't do that but what he could do was re enroll me to start earning points again...really? I opted out because I never use it but they'll take your money in a heartbeat!! They only want your money!!

See <https://www.bbb.org/us/ca/san-francisco/profile/childrens-clothing-stores/fabkids-1116-440970/customer-reviews>.

²⁴ FabKids' homepage states that membership cancelation can be done over the phone or through an online live chat (see screenshot below), while the company's Terms of Service contains conflicting information about cancelation stating that canceling can only be done over the phone. <https://www.fabkids.com/terms> ("You may cancel your FabKids VIP Membership at any time by calling one of our customer service representatives at 1-855-322-5437.")



Screenshot from FabKids homepage

²⁵ <https://www.bbb.org/us/ca/san-francisco/profile/childrens-clothing-stores/fabkids-1116-440970/customer-reviews>.

²⁶ https://www.truthinadvertising.org/wp-content/uploads/2021/08/FabKids-farnsworthdaisy-IG-6_17_21-combined.pdf.

²⁷ https://www.truthinadvertising.org/wp-content/uploads/2021/08/FabKids-therockymtnmomma-IG-5_26_21-tags.png.

The FTC advises social media influencers to use "simple and clear language," such as "advertisement," "ad," and "sponsored," rather than "vague or confusing terms like 'sp,' 'spon,' or 'collab,'" and to "stay away from other abbreviations and shorthand when possible." See FTC: Disclosures 101 for Social Media Influencers, https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf.

²⁸ https://www.truthinadvertising.org/wp-content/uploads/2021/08/FabKids-lindyjboymom-IG-7_20_21-tags.png.

The FTC cautions that "[d]isclosures are likely to be missed if they appear ... at the end of posts or videos, or anywhere that requires a person to click MORE." See FTC: Disclosures 101 for Social Media Influencers, https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf.

²⁹ TINA.org has also sent a complaint letter regarding FabKids to the Federal Trade Commission.