

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 1:22-cv-23760

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DK AUTOMATION LLC, a limited liability
company,

AMZ AUTOMATION LLC, a limited liability
company,

THATLIFESTYLENINJA LLC, a limited liability
company,

PROFICIENT SUPPLY LLC, a limited liability
company,

DIGITAL NINJAZ LLC, a limited liability
company,

ZONBASE, INC., a Delaware corporation,

KEVIN DAVID HULSE, a/k/a Kevin David,
individually and as an officer of DK
AUTOMATION LLC, AMZ AUTOMATION
LLC, THATLIFESTYLENINJA LLC,
DIGITAL NINJAZ LLC, and ZONBASE, INC.,
and

DAVID SHAWN ARNETT, individually and as
an officer of DK AUTOMATION LLC, AMZ
AUTOMATION LLC, and PROFICIENT
SUPPLY LLC,

Defendants.

**COMPLAINT FOR PERMANENT INJUNCTION,
MONETARY RELIEF, CIVIL PENALTIES, AND OTHER RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

The FTC brings this action under Sections 5(a), (m)(1)(A)-(B), 13(b), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A)-(B), 53(b) and 57b, which authorize the FTC to seek, and the Court to order, temporary, preliminary, and permanent injunctive relief, monetary relief, civil penalties, and other relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC’s Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Business Opportunities” (“Business Opportunity Rule” or “Rule”), 16 C.F.R. Part 437, as amended, the Consumer Review Fairness Act of 2016 (“CRFA”), 15 U.S.C. § 45b, and prior Commission determinations concerning unfair and deceptive acts or practices in commerce. The amended Business Opportunity Rule became effective on March 1, 2012, and has since that date remained in full force and effect.

SUMMARY OF CASE

1. Since at least February 2020, Defendants Kevin David Hulse (“Hulse”) and David Arnett (“Arnett”) have lured consumers into purchasing business opportunities, promising to build purchasers a “100% Turnkey Amazon Empire” that “generates passive income on autopilot.”

2. Hulse, who appears prominently in marketing videos as Kevin David, holds himself out as an Amazon expert, an “eight-figure online business expert,” and a “mentor and coach to hundreds of thousands of entrepreneurs and students around the world.”

3. Hulse and Arnett promote themselves as experts with years of experience working with Amazon, offering to build consumers profitable online Amazon businesses under a variety of program names, including Amazon Autopilot, AMZ Autopilot, AMZDFY, Amazon Automation, Amazon Done For You, and Amazon Done With You. These programs range from \$5,000 to \$100,000, purportedly providing varying levels of service and access to products.

4. Defendants promise to help set up an Amazon store for purchasers of these Amazon programs, identify proven “home run products,” negotiate with suppliers, and order, process, and ship inventory to Amazon. They further promise to expertly manage the Amazon storefront on behalf of purchasers, while Amazon will provide customers for the store. Purchasers need only sit back and receive “passive income.”

5. Defendants advertise that the Amazon Done For You program typically generates 50% to 80% in annual returns, generally outperforms the stock market, and that purchasers can eventually sell their Amazon business for six-figures.

6. Defendants claim that their Amazon Done With You program is best for people looking to supplement or replace their 9 to 5 income. They promise to teach purchasers how to open and run a successful Amazon store, while Amazon will provide the customers.

7. Defendants’ earnings claims are false or unsubstantiated. Most purchasers are unlikely to earn the advertised income, and many, if not most, lose money.

8. In addition, since at least 2017, Defendant Hulse, under the name THATLifestyleNinja LLC, has offered several less expensive “training” programs on a variety of subjects, including how to become a successful seller on Amazon, Facebook, and Shopify, and how to create and sell digital course content online, with costs ranging from \$37 to \$1,997.

Defendants Hulse and THATLifeStyleNinja represent that purchasers are likely to earn hundreds of thousands of dollars per month and could become millionaires using these online training programs. These claims too are false or unsubstantiated. Purchasers of Hulse and THATLifeStyleNinjas' training programs are unlikely to earn the advertised income. Instead, they are likely to lose money.

9. Purchasers of Defendants' programs must agree not to post negative reviews about the programs. Defendants have threatened or harassed some purchasers for posting negative reviews. In addition, it appears that at least some of the positive reviews about Defendants on popular review websites, such as Trustpilot.com, are falsified.

10. From 2017 to 2021, Defendants have taken at least \$52 million from program purchasers.

11. On April 26, 2022, the FTC sent DK Automation LLC, Hulse, and Arnett a Notice of Penalty Offenses Concerning Money-Making Opportunities (the "Notice"), noting that Defendants could be subject to civil penalties for violations of the FTC Act in connection with their marketing claims, pursuant to 15 U.S.C. § 45(m)(1)(B); 16 C.F.R. § 1.98(e). The Notice stated that it is an unfair or deceptive trade practice to make false, misleading, or deceptive representations concerning the profits or earnings a participant in a money-making opportunity can expect or to engage in certain acts or practices related to consumer testimonials. Defendants have continued to use deceptive or unsubstantiated earnings claims in their marketing even after receiving the Notice.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1345.

13. Venue is proper in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. §§ 1391(b)(1) and 15 U.S.C. § 53(b).

PLAINTIFF

14. The FTC is an independent agency of the United States government created by the FTC Act, which authorizes the FTC to commence this district court civil action by its own attorneys. 15 U.S.C. §§ 41– 58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Business Opportunity Rule, 16 C.F.R. Part 437, as amended, which requires specific disclosures and prohibits certain misrepresentations in connection with the sale of a business opportunity, and the Consumer Review Fairness Act, 15 U.S.C. § 45b, which limits provisions in form contracts that restrict a consumers’ ability to communicate reviews about a business’ products or services.

DEFENDANTS

15. Defendant DK Automation LLC (“DK”) is a Nevada limited liability company with its principal place of business at 1111 S. Roop St., #100, Carson City, Nevada, 89702. DK transacts or has transacted business in this District and throughout the United States. At times relevant to this Complaint, acting alone or in concert with others, DK has advertised, marketed, distributed, or sold business opportunities to consumers throughout the United States.

16. Defendant Amz Automation LLC (“Amz”) is a Wyoming limited liability company with its principal place of business at 30 N. Gould St., Suite R, Sheridan, Wyoming 82801. Amz transacts or has transacted business in this District and throughout the United States. At times relevant to this Complaint, acting alone or in concert with others, Amz has advertised, marketed, distributed, or sold business opportunities to consumers throughout the United States.

17. Defendant THATLifestyleNinja LLC (“THATLifestyleNinja”) is a Wyoming limited liability company with its principal place of business at 30 N. Gould St., Suite R, Sheridan, Wyoming 82801. THATLifestyleNinja transacts or has transacted business in this District and throughout the United States. At times relevant to this Complaint, acting alone or in concert with others, THATLifestyleNinja has advertised, marketed, distributed, or sold business coaching services to consumers throughout the United States.

18. Defendant Proficient Supply LLC (“Proficient Supply”) is a Wyoming limited liability company with its principal place of business at 207 20th St. SE, Suite 102, Hickory, NC 28602. Proficient Supply receives consumer payments, pays employees, and stores products related to Defendants’ business opportunities. Proficient Supply transacts or has transacted business in this District and throughout the United States. At times relevant to this Complaint, acting alone or in concert with others, Proficient Supply has advertised, marketed, distributed, or sold business opportunities to consumers throughout the United States.

19. Defendant Digital Ninjaz LLC (“Digital Ninjaz”) is a Wyoming limited liability company with its principal place of business at 30 N. Gould St., Suite R, Sheridan, Wyoming 82801. Digital Ninjaz transacts or has transacted business in this District and throughout the United States. At times relevant to this Complaint, acting alone or in concert with others, Digital

Ninjaz has advertised, marketed, distributed, or sold business opportunities to consumers throughout the United States.

20. Defendant Zonbase, Inc. (“Zonbase”) is a Delaware corporation with its principal place of business at 16192 Coastal Hwy, Lewes, DE 19958. Zonbase transacts or has transacted business in this District and throughout the United States. At times relevant to this Complaint, acting alone or in concert with others, Zonbase has advertised, marketed, distributed, or sold business opportunities to consumers throughout the United States.

21. Defendant Kevin David Hulse, also known as Kevin David, is the CEO and founder of DK, Managing Member and owner of Amz, CEO, President and Managing Member of THATLifeStyleNinja, President of Digital Ninjaz, and owner of Zonbase. He resides in Miami, Florida. Hulse narrates and appears in Defendants’ marketing videos and other marketing materials, and signs business documents on behalf of DK, Amz, THATLifeStyleNinja, Zonbase and Digital Ninjaz.

22. As the sole shareholder of THATLifeStyleNinja, Hulse receives all distributions and profits from the company. At all times relevant to this Complaint, acting alone or in concert with others, Hulse has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of DK, Amz, THATLifeStyleNinja, Digital Ninjaz, and Zonbase, including the acts and practices set forth in this Complaint. In connection with the matters alleged herein, Hulse has transacted business in this District and throughout the United States.

23. Defendant David Shawn Arnett is the President and COO of DK, , co-owner of Proficient Supply, and co-owner of AMZ. He resides in Miami, Florida. Arnett appears in Amz

marketing videos, other marketing materials for Amz and DK, and signs business documents on behalf of Amz, DK and Digital Ninjaz. Arnett is the signatory on Proficient Supply's corporate accounts where consumer payments are deposited. At all times relevant to this Complaint, acting alone or in concert with others, Arnett has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of DK, Amz, and Proficient Supply, including the acts and practices set forth in this Complaint. In connection with the matters alleged herein, Arnett has transacted business in this District and throughout the United States.

COMMON ENTERPRISE

24. Defendants DK, Amz, THATLifeStyle Ninja, Digital Ninjaz, Zonbase, and Proficient Supply (collectively, the "Corporate Defendants") have operated as a common enterprise while engaging in the deceptive acts and practices and other violations of law alleged below in this Complaint. Corporate Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, employees, business functions, products and office locations, and that commingled funds. For example:

- Hulse and Arnett are officers or managers of DK, Amz, Digital Ninjaz, and Zonbase;
- Amz, THATLifeStyleNinja, and Digital Ninjaz share the same corporate address;
- DK, Amz, Digital Ninjaz and Zonbase offer the same business opportunities;
- Corporate bank accounts for Amz and Proficient Supply were used to accept consumer payments for DK and Digital Ninjaz;

- THATLifeStyleNinja’s programs are often bundled together with the business opportunities, and DK, Amz, THATLifeStyleNinja, Digital Ninjaz, Zonbase, and Proficient Supply share employees; and
- Corporate bank accounts for Amz, THATLifeStyleNinja, and Digital Ninjaz are in Hulse’s name, Amz transferred millions of dollars to THATLifeStyleNinja, and THATLifeStyleNinja and Digital Ninjaz have commingled funds.

Because the Corporate Defendants have operated as a common enterprise, each of them is liable for the acts and practices alleged below.

COMMERCE

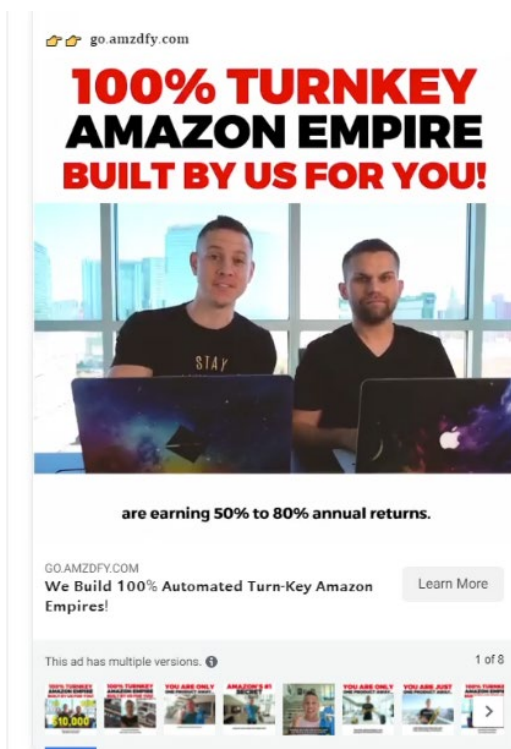
25. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

Defendants’ Business Opportunities

26. Since at least February 2020, Defendants Hulse, Arnett, DK, Amz, Digital Ninjaz, ZonBase and Proficient Supply have deceptively advertised, marketed, distributed, promoted, and sold business opportunities to consumers throughout the United States.

27. Defendants post video advertisements on the Internet and social media – including on Google, Facebook, Instagram and YouTube – pitching a “100% turnkey Amazon Empire Built By Us For You.” A screenshot from one of Defendants’ video ads on Facebook featuring Hulse and Arnett, taken in October 2021, is depicted below.



28. Many of Defendants’ ads emphasize Hulse’s purported success. Hulse presents himself as a self-made multimillionaire with the “biggest community [or family] in the world of Amazon business owners,” and “a million followers worldwide [on YouTube].” He claims that, before he became a successful entrepreneur, he was an accountant working 9 to 5 in a cubicle. Defendants’ ads feature luxury cars and mansions, purportedly financed by Hulse’s successful Amazon businesses. They also state that Hulse is featured in well-known business publications, including Forbes, Entrepreneur, Business Insider, Nasdaq, Yahoo Finance, and the Wall Street Journal.

29. Defendants’ ads present Hulse and Arnett as Amazon experts who have helped “tens of thousands of people just like you.” They show purported examples of Hulse’s and Arnett’s Amazon accounts, “pulled directly from Amazon’s API [Application Programming Interface],” with average monthly revenues of \$165,000, and “conservative” profit margins of

25% for just one of the many purportedly profitable products they sell. The ads promise that Defendants will choose similar “homerun” products for program purchasers to sell on Amazon. A screenshot from one such video advertisement, taken in September 2021, is depicted below.

Watch This Video Now to Discover How We'll Help You Build Your *Autopilot* Amz Business!
 🔊 **Click Play and Turn ON the Volume to Watch This SHORT Life Changing Video!**

Product Page One Averages
 Average Monthly Revenue **\$ 165,015** Conservative Profit Margin **25%**
 Average Monthly Units Sold **796**

Product	Price	Units Sold	Revenue	Profit	Margin	Rank
Home & Kitchen	\$ 439.99	144,538	\$ 51,479	NA	23	
Home & Kitchen	\$ 279.99	190,598	\$ 66,616	NA	33	
Home & Kitchen	\$ 399.99	12,109	\$ 176,484	NA	56	
Home & Kitchen	\$ 299.99	2,802	\$ 838,377	NA	67	
Office Products	\$ 239.99	43,041	\$ 31,858	NA	77	
Office Products	\$ 399.99	11,221	\$ 138,797	NA	84	

Average Monthly Revenue: \$165,015
Average Monthly Units Sold: 796

Conservative Profit Margin: 25%

KEVIN DAVID Kevin and David are experienced eCommerce sellers and marketers and their results are not typical. Their experiences are not a guarantee you will make money; you may make more, less, or the same.

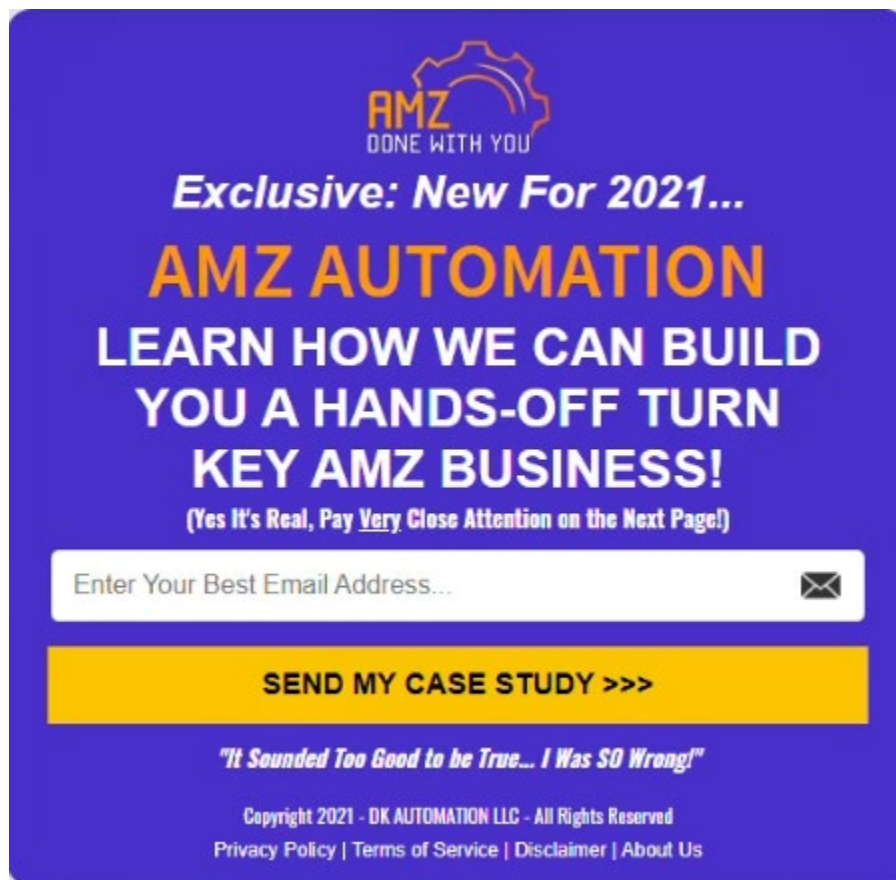
AMZ DONE WITH YOU

Click Here to Become Our Next Partner!
 Space is Extremely Limited

30. Defendants market their business opportunities as an “exclusive partnership” with “one of the best, if not the best, partnership in the world at creating Amazon businesses” and an easy way to make “passive income.” For example, Defendants’ advertisements feature statements such as: “What if I told you that if you qualify, we will do 100% of the work while you sit back and relax and watch us build you an Amazon empire?” or “WE DO 99% OF THE HEAVY LIFTING FOR YOU.”

31. In numerous instances, Defendants' ads tell consumers to take advantage of their offer quickly because this may be the last time this deal will be offered.

32. Defendants' ads invite consumers to click on a link that redirects them to Defendants' website, amzdfy.com, where consumers are instructed to enter their email address and request a "case study." A screenshot of the sign-up link, taken in September 2021, is depicted below.



33. Underneath the sign-up link, in small font, are links to a privacy policy, terms of service, and disclaimer (see *infra*), but it is not necessary to click on any of those links to receive the case study. The purported disclaimer states:

David and Kevin do not track the typical results of our customers or verify the accuracy of publicly available student testimonials . . . Where income figures are mentioned (if any), those income figures are anecdotal information passed on to us concerning the results achieved by the individual sharing the information. We have performed no independent verification of the statements made by those individuals. Please do not assume that you will make those same income figures.

34. In many instances, Defendants’ website, amzdfy.com, indicates there are over one thousand positive reviews of Defendants’ programs on the popular consumer review website Trustpilot.com, and contains hundreds of purported client testimonials, such as the testimonials depicted below (captured in December 2021):

“From a recreational therapist to successfully escaping the 9-to-5 Grind”

Sean found us when he made up his mind to do something different that would give him financial freedom.

He was a recreational therapist stuck in the vicious cycle of paychecks, which made him realize he did not want to kill himself in the corporate rat race and wait until he is 60 to be financially free.


Instead of compromising and suffocating with his current situation, he decided to take solid action now and start his entrepreneurial journey.

With zero experience and knowledge in selling on Amazon, he decided to take our help and automate the Amazon business for him.

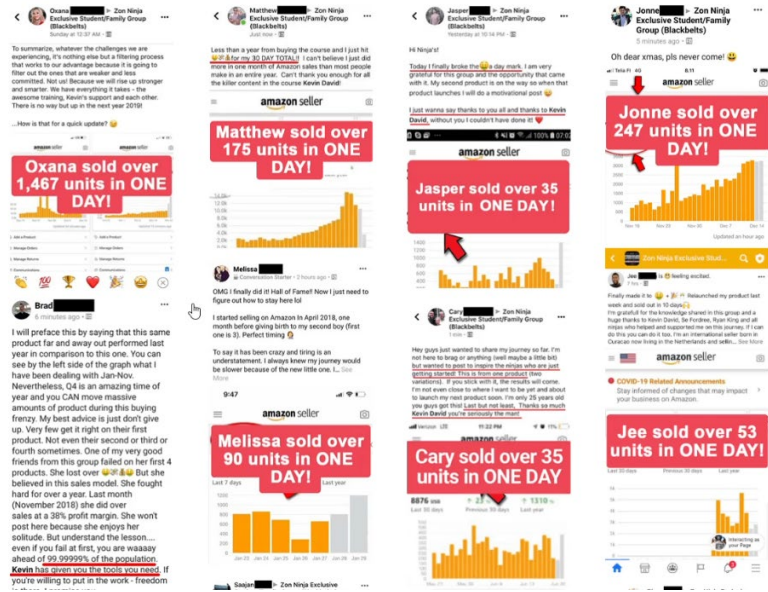
We are so proud of Sean, he decided to take action, and refused to give up no matter what!

[Yes, I'm Ready For The Next Steps](#)

“If you are having any doubts, I had those too. Just take the leap of faith and they will prove to you that they can do what they can do.”
- Sean



Check Out Even More Proof We Know Amz! (Check Out of These Real People!)



35. In numerous instances, on Defendants’ website, consumers view another, longer video, typically narrated by Hulse, that explains the business opportunities in more detail. The video highlights several products Hulse purportedly sells on Amazon that generate between \$60,000 and \$165,000 monthly each, with a “conservative profit margin” of 25%.

36. In the video, Hulse explains that purchasers do not need any experience or time to devote to this opportunity because he and his team will pick “homerun” products for them, pick the top supplier in the world to make those products, and create optimized product listings to sell those products. He emphasizes his team does “99% of the heavy lifting,” while Amazon handles the purchaser’s website, getting the customers, shipping, packaging, and everything else for the purchaser.

37. Towards the end, the video states: “EXTREMELY LIMITED SPACES AVAILABLE” and “TIME IS RUNNING OUT.” At the end of the video is a link to click to become a “partner” and consumers are prompted to provide their name, email address, and phone

number, and answer questions about their net worth. They can also sign up for a free sales strategy session with an “Amazon Success Manager.”

38. In numerous instances, before consumers meet with the Amazon Success Manager, Defendants bombard them with additional marketing videos and emails touting the exponential returns of the business opportunities. For example, emails are titled “How This Former English Teacher Makes 30k/Month” and “What would you do with a blank check?” Text messages provide testimonials such as: “This product is in the fitness niche and can do \$20k to \$40k in revenue in one month alone! . . . I was able to retire my mother, buy her a house, quit my 9 to 5 job, support my sisters through nursing school and so much more.”

39. Earnings claims Defendants use throughout the sales process include statements about the amount of money or profit consumers can make and purported testimonials from successful clients, such as:

- “Our students inside of our Amazon Automation Program are earning 50 to 80% annual returns and when you compare that to the stock market, which is 5-7%--that’s more than 10 times as much.”
- “I ENDED UP MAKING \$50,000 IN ONE MONTH SELLING ON AMAZON . . .”
- “Earn 10x More Than What You Earn Annually From The Stock Market!”
- “We Made \$50,000-\$100,000 Per Month in Revenue in Just 6 to 12 Months or Sooner in Our Stores!”
- “Gert literally borrowed money to get started . . . He made more on Amazon this past year than he had ever made before in his entire life combined.”
- “In that short time, you can see right here on the right, [Matt] made over \$150,000 in revenue in just a single month . . . He made more in one month than he would make in years in the marines.”

40. In addition, Defendants make earnings claims regarding the success of Hulse’s and Arnett’s Amazon accounts. For example, in marketing videos posted online, Arnett shows two of his and Hulse’s accounts that purportedly made approximately \$400,000 in the last 30 days, and Hulse shows three of their accounts that made over \$510,000 in the first 21 days of the month. Hulse also shares a “Case Study of Kevin and David’s Past Account Performance” that shows an estimated total return on investment including potential sale of the business of 273%.

41. Defendants also provide consumers with a Case Study titled “How the Amazon Wholesale Model Works – The Numbers!,” a screenshot of which (taken in January 2021) is depicted below, and presents purported levels of sales and profits that purchasers of the Amazon Done For You Program can expect to earn with the Amazon business opportunities. The chart shows that a consumer who invests \$50,000 of “working capital” in this opportunity can expect \$140,458.01 in store revenue after 13 months, \$10,913.59 in profit and potentially over \$200,000 from the sale of the business.



How the Amazon Wholesale Model Works - The Numbers!

Year 1 Applied Working Capital		50,000.00				
Month	Store Revenue	Product Inventory	Profit	30% Profit	70% Profit	Cash Needed For Inventory
1	\$ -	Onboarding	\$0	\$0	\$0	\$0
2	\$ -	Inventory Purchasing	\$0	\$0	\$0	\$50,000
3	\$ -	Inbound to Amazon	\$0	\$0	\$0	Inbound to Amazon
4	\$75,000.00	\$50,000.00	\$5,827.50	\$1,748.25	\$4,079.25	Profit Reinvestment
5	\$81,118.88	\$54,079.25	\$6,302.94	\$1,890.88	\$4,412.06	Profit Reinvestment
6	\$87,736.96	\$58,491.31	\$6,817.16	\$2,045.15	\$4,772.01	Profit Reinvestment
7	\$94,894.98	\$63,263.32	\$7,373.34	\$2,212.00	\$5,161.34	Profit Reinvestment
8	\$102,636.98	\$68,424.66	\$7,974.89	\$2,392.47	\$5,582.43	Profit Reinvestment
9	\$111,010.62	\$74,007.08	\$8,625.53	\$2,587.66	\$6,037.87	Profit Reinvestment
10	\$120,067.43	\$80,044.95	\$9,329.24	\$2,798.77	\$6,530.47	Profit Reinvestment
11	\$129,863.13	\$86,575.42	\$10,090.36	\$3,027.11	\$7,063.26	Profit Reinvestment
12	\$140,458.01	\$93,638.67	\$10,913.59	\$3,274.08	\$7,639.51	Profit Reinvestment
Passive Income Cash Flow						
13+	\$140,458.01	\$93,638.67	\$10,913.59	\$3,274.08	\$7,639.51	Passive Income Cash Flow

*According to Popular Online Business Brokerage Empire Flippers - Amazon Businesses Sell for Generally 30x - 36x Net Profit on a Trailing 12 Month Average.

42. After reviewing the videos, marketing materials and case study, consumers speak with an “Amazon Success Manager,” a representative of Defendants. The Amazon Success Manager typically explains the various Amazon Automation Programs offered to consumers – Amazon Done For You (frequently called Diamond, Platinum, and Standard packages) or Amazon Done With You (frequently called Silver, Gold, and Emerald packages). Defendants also offer variations on the Platinum package, including Platinum Pro, Platinum Max, and Platinum Pro Max. These additional packages combine the Amazon business opportunities with a cryptocurrency service.

43. The Diamond package typically costs \$100,000 for the initial set up fee, requires an additional \$50,000 in working capital, and purportedly includes access to Defendants’ most exclusive products and exclusive relationships with multimillion dollar brands so that consumers become “the SOLE seller” of those exclusive products. Defendants tell consumers that the “year 1 revenue goal” for this package is \$2,000,000.

44. The Platinum package typically costs \$40,000 and requires an additional \$15,000 in working capital. It includes similar benefits to the Diamond package. The “year 1 revenue goal” for the Platinum package is \$670,000.

45. The Standard package typically costs \$25,000 and an additional \$7,500 in working capital. It includes an Amazon seller account and a shared virtual assistant. The revenue target is \$350,000 for the Standard package.

46. Despite Defendants’ representations to the contrary, consumers who purchase the Done For You packages are typically provided with products that are also sold by other Amazon

sellers, including other clients of Defendants, and they typically do not earn the advertised revenue and profit.

47. The Done With You packages typically range in cost from \$5,000 to \$20,000 for the initial investment and \$5,000 to \$15,000 for working capital. Defendants advertise the Gold, Silver, and Emerald packages to consumers who are looking to “create a new stream of online passive income” and “subsidize or replace a 9-5 income” and for “beginners on a budget.” Defendants promise different levels of service for each package, including product exclusivity, “two handpicked home-run potential products” for consumers to choose one from, a “proven blueprint” for finding home run Amazon products consistently, and finding world class manufacturers.

48. Defendants typically require purchasers of their Amazon business opportunities to sign an Account Management Service Agreement with DK or Digital Ninjaz (the “Account Agreement”). The Account Agreement for the Done For You programs provides that DK will receive 30% of the net profits of the purchaser’s Amazon store on a monthly basis.

49. After purchasers sign the Account Agreement and pay the fees to Defendants, including the initial fee and working capital, they are required to pay additional fees, including fees for opening an LLC, state licensing, and Amazon storage. Once consumers’ Amazon stores are set up, Defendants label them “onboarded.”

50. As of at least May 23, 2022, Defendants also offer business opportunities that function as a hybrid between the Amazon Done For You and Amazon Done With You programs, called the ZonBase Program. Defendants advertise on Facebook using sponsored ads under the name Zonbase. The terms and conditions on zonbase.com tell consumers that Zonbase is a trade

name for Digital Ninjaz. Defendants represent that they will “do 75% of the heavy lifting” in creating a successful Amazon business for purchasers.

51. The ZonBase Program includes ZonBase Pro and ZonBase Elite, both of which offer “1 or 3 Exclusive Picked for you[] products,” “help with listing your products,” “live Q&A’s twice per week,” Kevin David’s FBA Masterclass, access to the ZonBase platform, a software suite that allows purchasers to research “hot” Amazon products, access to a private Facebook group and “24/7 extensive support.” The ZonBase packages typically cost from \$4,800 to \$24,500. Defendants claim this program will allow a purchaser to quit their 9 to 5 job, earn a net profit of 41% on a typical product, and build a successful Amazon business.

52. Defendants’ earnings claims regarding the business opportunities are false or unsubstantiated. Few, if any, purchasers earn the income Defendants advertise and many, if not most, lose money. Many purchasers experience long shipping delays, inactive products, low revenues, and a loss of their initial investment.

Defendants Fail To Provide Disclosure and Earnings Claim Statements

53. Defendants do not provide prospective purchasers who sign their Account Agreements with disclosure documents required under the Business Opportunity Rule at least seven calendar days before signing a business opportunity contract or making a payment for the business opportunity.

54. Defendants have failed to disclose in writing:
- a. the seller’s identifying information, including name, business address, and telephone number;
 - b. whether the seller makes earnings claims, along with an “Earnings Claims Statement” required by the Rule;
 - c. a list of civil, criminal, and FTC actions within the last 10 years;
 - d. the seller’s cancellation or refund policy; and

- e. a list of purchasers and contact information of individuals who purchased the business opportunity within the last 3 years.

55. Although Defendants and their representatives have routinely made claims to prospective purchasers about likely earnings, they have failed to provide prospective purchasers with an Earnings Claim statement, as required by the Business Opportunity Rule, which includes the beginning and ending dates when the represented earnings were achieved, and the number and percentage of all persons who purchased the business opportunity and achieved the stated level of earnings. Defendants have also failed to disclose written substantiation of their earnings claims as required under the Business Opportunity Rule.

56. Defendants admitted in a Q and A session and in phone calls during the sales process that they do not maintain or provide a written disclosure document or Earnings Claim statement to consumers.

Defendants' Cryptocurrency Program

57. In January 2022, Defendants launched a cryptocurrency program that, in many instances, is bundled with a business opportunity, the Platinum Amazon Automation program. Hulse narrates the videos and offers consumers a “Crypto Automation” package, which is “[b]est for people who want to build CRYPTO WEALTH but don’t want to look at charts all day.” The videos include statements such as: “How To Make a Full Time Passive Income On Autopilot” and “Automated Crypto Passive Income.”

58. Defendants offer consumers use of Defendants’ “#1 secret passive income crypto trading bot,” an automated trading program, in which Defendants promise “[o]ver 80% of [their] Trades Are Profitable.” Hulse states that the crypto trading bot allowed him to profit every single

day and “make absolute insane returns,” even during the crypto crash in January 2022 and that consumers do not need any technical skills or experience with cryptocurrency to make a profit.

59. As of at least May 23, 2022, Defendants started offering their automated crypto trading bot to purchasers under their Autocoinbot Tier 1 and Autocoinbot Tier 2 Programs. Defendants market their trading bot as “a fully automated, fully-automatic algorithm” attached to a purchaser’s trading account that “will trade for you 24-7 so you will generate your profits even while you sleep.” Defendants claim that purchasers should expect “65% to 84% [in returns] per year as profit,” and state that returns may be as high as 125%. The Autocoinbot Tier 1 Program typically costs \$9,800 plus a fee of \$297/month, and the Autocoinbot Tier 2 Program costs \$19,800. In some instances, Defendants charge between \$20,000 to \$85,000 to access their crypto trading bot. Defendants claim that purchasers who buy both the ZonBase and Autocoinbot programs will be able to replace their 9 to 5 jobs immediately with earnings from these programs.

60. Hulse narrates videos on YouTube where he purports to teach consumers how to trade cryptocurrency. For example, Hulse narrates videos titled, “Easy Way to Make \$1,000 PROFIT DAILY Using Crypto Trading Bots,” “Easy \$500 A Day Crypto Day Trading for Beginners (Step by Step Guide),” “How to Make \$5k Per Month Staking Crypto,” “My 100x Gains Playlist,” and “Simple Method to Make \$100 A Day Trading Crypto Coins as a Beginner (10x Gains).”

61. After viewing Defendants’ cryptocurrency videos, consumers are directed to the website for Defendants’ cryptocurrency program. At the very bottom of the website, below the fold, in small typeface, are “Earnings and Legal Disclaimers” that state:

Earnings and income representations . . . are aspirational statements only of your earning potential. The success of AutoCoinBot, testimonials and other examples are exceptional, non-typical results and are not intended to be and are not a guarantee that you or others will achieve the same results.

62. Below that disclaimer, in small typeface, is a link to a separate disclaimer page that a consumer must affirmatively click on to view, but the consumer is not required to do so.

The THATLifeStyleNinja “Training” Programs

63. Since at least July 2017, in addition to offering business opportunities, Defendants Hulse and THATLifeStyleNinja have marketed “training” programs through YouTube, Facebook, Instagram, mobile communications, or their websites, <https://www.officialkevindavid.com>, under the brand names Digital Course Secrets, Facebook Ads, Marketing Agency, Amazon Agency, Ecom Agency, Amazon FBA Ninja Masterclass, and Infinity Mastermind trainings.

64. These trainings typically cost \$1,997 and purport to teach consumers how to make money online. For example, the ads for the Digital Course Secrets training promise to teach consumers how to create and sell a digital course on any topic they are familiar with – from weight loss to social media. No prior experience is necessary to be successful.

65. Consumers view Hulse’s marketing videos online or on social media and are directed to click the sign-up link for more information. Below the sign-up link, at the bottom of the screen, is a disclaimer that states: “We do not track the typical results of our customers or verify the accuracy of publicly available student testimonials . . . All information is mentioned for informational and educational purposes only.” In addition, in small typeface, below the fold, is a link to a separate “Disclaimer” page that a consumer must affirmatively click on to view, but the consumer is not required to do so.

66. Consumers click the sign-up link or are automatically directed to THATLifeStyleNinja's website, <https://www.officialkevindavid.com>. Thereafter, consumers are prompted to enter their credit card information and check a box to agree to certain Terms of Service. Consumers do not have to view the Terms of Service in order to check the box or purchase a program, and they must affirmatively click a link to review the Terms of service. The Terms of Service state that refunds for courses such as Digital Course Secrets will only be granted if less than 40% of the course has been reviewed and imposes "action-based" requirements to receive a refund. THATLifeStyleNinja's website and videos, however, heavily advertise a 100% money-back guarantee without mentioning any of those "conditions."

67. The Digital Course Secrets and Infinity Mastermind trainings include earnings claims, such as:

- "Many of these people started from zero, these people that had a 9-5 job, a full-time job making forty or fifty grand a year, they've become millionaires from this program, multiple of them."
- "So this is a real stripe account, this isn't like a screenshot or something weird like that. You can see that's yesterday. So yesterday is \$49,400 [in profit]."
- "Jose Pena . . . grew up from nothing in the Dominican Republic, and ended up making \$96,000 in a single month with his course."
- "He [a client] even sent me a screenshot of one of his stores that did just shy of four million dollars."
- "We can talk about Earnest. He made \$54,373 in profit from his digital product [in 30 days]."

68. THATLifeStyleNinja's earnings claims are false or unsubstantiated. Purchasers are unlikely to earn the advertised income, and instead typically lose their entire investment.

Defendants Lack Substantiation For Their Earnings Claims for All Programs

69. Defendants' purported disclaimers are not clear and conspicuous, and do not cure their misrepresentations regarding the earnings that purchasers are likely to realize.

70. At the very bottom of amzdfy.com, below the fold, in small typeface that consumers might notice only if they scroll down past dozens of purported positive consumer testimonials are certain “Earnings and Legal Disclaimers.” They state:

Earnings and income representations made by DK Automation LLC and their advertisers/sponsors/members/owners are aspirational statements only of your earnings potential. The success of DK Automation, testimonials and other examples used are exceptional, non-typical results are not intended to be and are not a guarantee that you or others will achieve the same results.

71. Defendants include the same disclaimer, in small typeface, at the end of a video for their Crypto Program.

72. Similarly, Hulse and THATLifeStyle Ninja’s training programs, available on <https://www.officialkevindavid.com>, include earnings disclaimers that consumers can, but are not required to, view by affirmatively clicking a link titled “Disclaimer” located at the bottom of the page. The “Disclaimer” states that:

Where income figures are mentioned (if any), those income figures are anecdotal information passed on to us concerning the results achieved by the individual sharing the information. We have performed no independent verification of the statements made by those individuals.

73. Hulse and THATLifeStyleNinja’s videos also contain small, almost illegible language at the bottom of the segment of the video featuring consumer testimonials:

Disclaimer: Results may not be typical nor expected for every person, we do not track or verify typical results of our students. This is not a "get rich quick" scheme. All information provided is based on best practices and for educational-purposes only.

74. While neither clear nor conspicuous and not designed to be noticed or opened by prospective purchasers, Defendants’ disclaimers acknowledge that they have not collected any data to substantiate whether the earnings claims they make are truthful, typical, and representative.

Defendants' Attempts to Suppress Negative Reviews and Falsify Positive Reviews

75. In numerous instances, DK's Account Agreement, a form contract, includes a mutual non-disparagement clause, which requires the following:

both Parties agree not to disparage or denigrate either Party orally or in writing and that neither Party nor anyone acting on either Party's behalf will publish, post, or otherwise release any material in written or electronic format, make speeches, gain interviews or make public statements that mentions the company.

76. In July 2021, Defendants threatened a dissatisfied purchaser who paid them \$150,750 for the Amazon Done For You Program, and did not make any net operating profit over the course of two years, with a lawsuit for violating the non-disparagement clause. The purchaser previously received a mass email from DK to numerous DK clients. He "replied all" to the email and asked the other clients about their profitability with the program. Many clients responded that they were not making a profit and discussed Defendants' poor management of the clients' Amazon stores. Several months later Defendants emailed the group and said that clients were not allowed to talk to each other. Thereafter, Defendants emailed the purchaser claiming that he had violated the non-disparagement clause of his Account Agreement and threatened that Defendants "will litigate for damages . . . that will be far in excess to that of the original joining fee."

77. In approximately February 2022, Defendants included an addendum to their Platinum Package agreement titled, "Non-Disclosure Agreement." This separate addendum must be signed by purchasers in addition to signing the contract. Clause I.F states, "[t]he Client agrees not to disparage, defame or demean DK Automation, its owners, managers, or development of products to any third-party in any manner whatsoever."

78. THATLifeStyleNinja's website requires program purchasers to enter into a form

contract online that includes a mutual non-disparagement clause that bars or restricts the ability of the consumer from providing reviews, performance assessments, and similar analyses of the company's goods, services, or conduct.

79. The mutual non-disparagement clause states:

The parties agree that they neither will engage in any conduct or communications with a third party . . . designed to disparage the other. Neither Client nor any of Client's associates . . . will directly or indirectly. . . communicate in any way . . . any remark. . . that might reasonably be construed to be derogatory or critical of, or negative toward, the Company or any of its programs, members, owner[,] directors, officers, Affiliates, subsidiaries, employees, agents or representatives.

80. Many dissatisfied consumers have requested refunds from THATLifeStyleNinja.

The company has often denied such requests. Some dissatisfied purchasers have filed complaints with the Better Business Bureau (the "BBB"). The company at times has agreed to provide refunds to purchasers who complained to the BBB on the condition that they remove their complaints.

81. The online consumer review platform Trustpilot.com includes many positive reviews about Hulse's and THATLifeStyleNinja's programs. However, Trustpilot notified Hulse and THATLifeStyleNinja that it received hundreds of falsified positive reviews about their programs. In addition, Hulse and THATLifeStyleNinja have routinely flagged negative reviews that automatically result in TrustPilot removing the review until the consumer responds with documentation to verify their negative review. This onerous process often results in TrustPilot removing those negative reviews permanently because consumers either do not respond or cannot provide the type of documentation necessary.

82. The BBB's business page for THATLifeStyleNinja has an alert that says, "BBB received a significant volume of customer reviews about this business that we were unable to

authenticate” and “[b]ecause BBB is unable to establish a reasonable degree of confidence about the validity of these reviews, we are not able to publish them.” In addition, the BBB alert says, “it has come to BBB’s attention that the business is offering compensation or incentives to individuals who post reviews.”

Hulse’s Central Role in Defendants’ Scheme

83. Hulse is the signatory on the bank accounts for Amz, THATLifeStyleNinja, and Digital Ninjaz, opened all the payment processing accounts to process consumer payments for Amz, DK, THATLifeStyleNinja, and Digital Ninjaz, and registered Defendants’ domains, including amzdfy.com, officialkevindavid.com, zonbase.com, and digitalninjaz.io. He narrates Defendants’ marketing videos, signs Defendants’ marketing correspondence, and promises consumers that he can make them significant earnings via Defendants’ business opportunities or other training programs. A screenshot from Hulse’s marketing video for AMAZON FBA, taken in December 2021, is shown below:

MY PROMISE TO YOU....

**DURING THIS TRAINING I WILL
MAKE YOU A BELIEVER...**



I Will Prove To You That **ANYONE** Can Create A Successful Amazon FBA Business, Completely From Scratch **Even if They Have ZERO Experience** or Technical Skill...



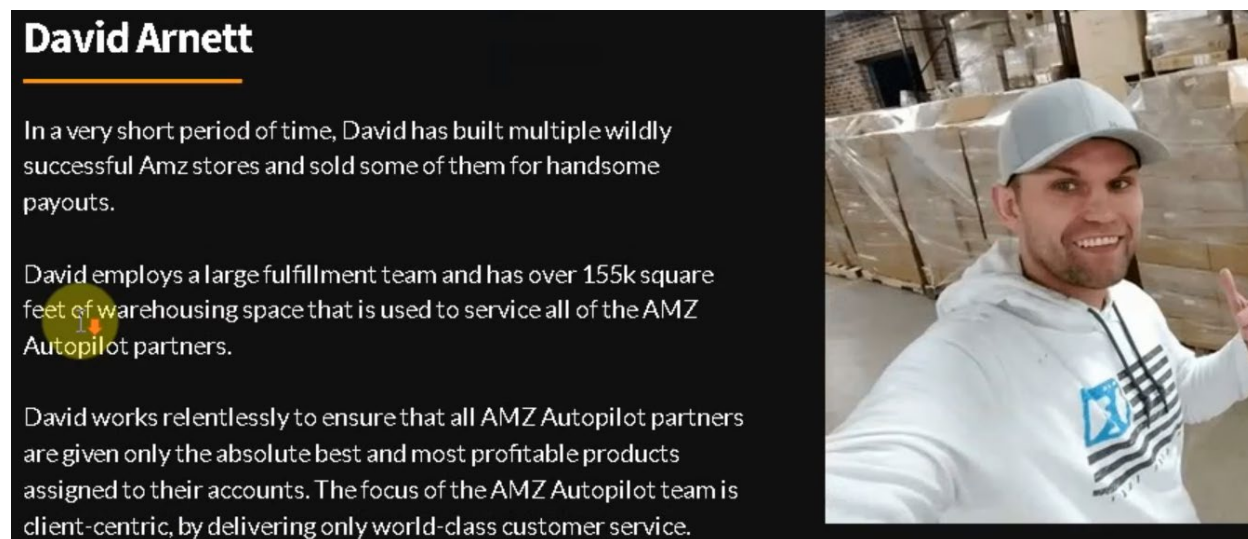
KEVIN DAVID

AMAZON FBA NINJA MASTERCLASS

84. Hulse is aware of complaints from dissatisfied purchasers filed with the BBB and he has responded directly to the BBB about such complaints. He is also aware of the BBB's and Trustpilot's concerns about falsified positive reviews and incentives provided for positive reviews. As the signatory on Amz, THATLifeStyle Ninja, and Digital Ninjaz's bank accounts, Hulse is also aware of the high number of chargebacks filed with consumers' credit card companies requesting the return of their payment to Defendants, and the termination of corporate payment processing accounts due to high chargebacks. He is also aware of the requirements imposed by the Business Opportunity Rule on the sellers of business opportunities. When asked by a consumer during an online "Q&A Session" on May 4, 2021 whether Defendants provide the required Disclosure Document and Earnings Claim Document, Hulse responded that Defendants were not offering a business opportunity.

Arnett's Central Role in DK and Amz's Scheme

85. Arnett is Hulse's business partner, and mostly handles employees, warehouse, shipping, and fulfillment duties. He appears in the marketing videos for Amz and Defendants' cryptocurrency programs, the marketing materials for Amz and DK (including emails and "case studies" highlighting the performance of Defendants' business opportunities), and signs business documents on behalf of Amz, DK, Digital Ninjaz, and Proficient Supply. Arnett is the signatory on the Proficient Supply corporate account that takes purchasers' working capital deposits. Below is a screenshot, taken in December 2021, of DK's website featuring Arnett and his purported successes:



86. Arnett is aware of complaints from purchasers of Defendants' business opportunities regarding not receiving the advertised income and losing money, and he has personally responded to such complaints.

87. Arnett signed account agreements with consumers on behalf of DK and Digital Ninjaz. DK and Digital Ninjaz's Account Agreements typically contain a form contract that includes a non-disparagement clause. Arnett, on behalf of DK, threatened at least one consumer

with a lawsuit for communicating with Defendants' clients about their experiences with Defendants' programs in violation of the non-disparagement clause.

Defendants Continue to Violate the Law

88. On April 26, 2022, the FTC sent letters to Defendants with copies of the Notice of Penalty Offenses Concerning Money-Making Opportunities and Notice of Penalty Offenses Around Endorsements and Testimonials (attached hereto as Attachment A). The letters and Notices of Penalty Offenses identified specific acts or practices that the Commission has determined are unfair or deceptive and violate Section 5 of the FTC Act.

89. As detailed in the Notices, the Commission determined, in a series of litigated decisions, that it is an unfair or deceptive trade practice to make false, misleading, or deceptive representations concerning the profits or earnings that may be anticipated by a participant in a money-making opportunity (*i.e.*, a person who has been accepted or hired for, has purchased, or otherwise is engaging in the money-making opportunity). It is also an unfair or deceptive trade practice to use testimonials to make unsubstantiated or deceptive performance claims or to state that the experience described by the endorsers represents the typical or ordinary experience of users of the product or service.

90. The above acts or practices were prohibited by final cease and desist orders issued in cases in which the Commission determined these acts were unfair or deceptive and unlawful under Section 5(a)(1) of the FTC Act. The letters warned Defendants of their potential liability for civil penalties under Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B), for knowingly engaging in acts or practices determined by the Commission to be unfair or deceptive and unlawful, as described in Paragraph 88 of this Complaint.

91. Despite learning of the FTC’s investigation and despite receiving the Notices of Penalty Offenses, Defendants continue to make false or unsubstantiated earnings claims and claims regarding performance and experience through testimonials.

92. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to believe that Defendants are violating or are about to violate laws enforced by the Commission.

VIOLATIONS OF THE FTC ACT

93. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

94. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

95. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

96. As set forth below, Defendants have engaged and continue to engage in violations of Section 5(a) of the FTC Act in connection with the advertising, marketing, and sale of their business opportunities and training programs.

COUNT ONE

False or Unsubstantiated Earnings Claims

97. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of Defendants’ business opportunities and training programs,

Defendants represent directly or indirectly, expressly or by implication, that purchasers of Defendants' business opportunities and Defendants' training programs are likely to earn substantial income.

98. The representations set forth in Paragraph 97 are false, misleading, or were not substantiated at the time the representations were made.

99. Therefore, the making of the representations as set forth in Paragraph 97 of this Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

Unfairness

100. In numerous instances, Defendants have used manipulation, threats, intimidation, and non-disparagement clauses to discourage purchasers from speaking about or publishing truthful or non-defamatory, negative comments or reviews about Defendants and their services. Defendants have also falsified positive reviews, artificially removed negative reviews through flagging, and intimidated purchasers who reach out to fellow purchasers about their experiences with Defendants' services.

101. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

102. Therefore, Defendants' acts or practices as set forth in Paragraph 100 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a), (n).

VIOLATIONS OF THE BUSINESS OPPORTUNITY RULE

103. Defendants are “sellers” who have sold or offered to sell “business opportunities” as defined by the Business Opportunity Rule, 16 C.F.R. § 437.1(c) and (q). Under the Business Opportunity Rule, a “seller” is a person who offers for sale or sells a business opportunity. 16 C.F.R. § 437.1(q). Under the Rule, a “business opportunity” means a “commercial arrangement” in which a “seller solicits a prospective purchaser to enter into a new business;” the “prospective purchaser makes a required payment;” and the “seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will . . . [p]rovide outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser’s goods or services[.]” 16 C.F.R. § 437.1(c).

104. Among other things, the Business Opportunity Rule requires sellers to provide prospective purchasers with a disclosure document in the form and using the language set forth in the Business Opportunity Rule and its Appendix A, and any required attachments. In the disclosure document, the seller must disclose to prospective purchasers five categories of information, including: basic identifying information about the seller, any earnings claims the seller makes, the seller’s litigation history, any cancellation and refund policy the seller offers, and contact information of prior purchasers. 16 C.F.R. § 437.3(a)(1)-(5). Furthermore, this information must be disclosed at least seven (7) days before the prospective purchaser signs a contract or makes a payment. 16 C.F.R. § 437.2. The pre-sale disclosure of this information enables a prospective purchaser to contact prior purchasers and take other steps to assess the potential risks involved in the purchase of the business opportunity.

105. Defendants have made earnings claims in connection with the sale of their business opportunities, as defined by the Business Opportunity Rule, 16 C.F.R. § 437.1(f). Under the Business Opportunity Rule, an “earnings claim” means “any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits.” 16 C.F.R. § 437.1(f).

106. The Business Opportunity Rule prohibits sellers from making earnings claims unless the seller: (1) has a reasonable basis for the claim at the time it is made; (2) has in its possession written materials to substantiate the claim at the time it is made; (3) furnishes an Earnings Claim statement to prospective purchasers in conjunction with the disclosure document, containing, among other things, information regarding the time frame captured by the earnings claim, the characteristics of the purchasers, and the number and percentage of all persons who purchased the business opportunity within the time frame who achieved at least the stated level of earnings; and (4) makes written substantiation of the earnings claim available to any prospective purchaser who requests it. 16 C.F.R. § 437.4(a).

107. Defendants have also made earnings claims in connection with the sale of their business opportunities in the general media, as defined by the Business Opportunity Rule, 16 C.F.R. § 437.1(h). Under the Business Opportunity Rule, “general media” means “any instrumentality through which a person may communicate with the public, including, but not limited to, television, radio, print, Internet, billboard, Web site, commercial bulk email, and mobile communications.” 16 C.F.R. § 437.1(h).

108. The Business Opportunity Rule prohibits sellers from making earnings claims in the general media unless the seller: (1) has a reasonable basis for the claim and has in its

possession written materials to substantiate the claim at the time it is made; (2) furnishes an Earnings Claim Statement, in conjunction with the disclosure document, to prospective purchasers setting forth additional information, such as the number and percentage of purchasers who achieved the claimed earnings and the time period in which the earnings were achieved; and (3) makes written substantiation of the earnings claim available to any prospective purchaser who requests it. 16 C.F.R. § 437.4(b).

109. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Business Opportunity Rule constitutes an unfair or deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

110. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, sec. 701, 129 Stat. 599 (2015), and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), effective January 10, 2022, authorizes the award of monetary civil penalties of not more than \$46,517 for each violation of the Business Opportunity Rule assessed after January 10, 2022, including penalties whose associated violation predated January 10, 2022.

111. Defendants' violations of the Business Opportunity Rule set forth below were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, U.S.C. § 45(m)(1)(A).

COUNT THREE

Misrepresentations Regarding Income or Profits

112. In numerous instances in connection with the offering for sale, sale, or promotion of a business opportunity, Defendants have misrepresented, directly or indirectly, expressly or by implication, the amount of sales, gross or net income, or profits a prospective purchaser may earn or that prior purchasers have earned.

113. Therefore, Defendants' acts and practices, as described in Paragraph 112 above, violate the Business Opportunity Rule, 16 C.F.R. § 437.6(d).

COUNT FOUR

Disclosure Document Violations

114. In numerous instances in connection with the offer for sale, sale, or promotion of business opportunities, Defendants have failed to furnish prospective purchasers with a disclosure document and any required attachments, within the time period prescribed by the Business Opportunity Rule.

115. Therefore, Defendants' acts and practices, as described in Paragraph 114 above, violate the Business Opportunity Rule, 16 C.F.R. §§ 437.2 and 437.3(a).

COUNT FIVE

Earnings Disclosure Violations

116. In numerous instances, Defendants have made earnings claims to prospective purchasers in connection with the offering for sale, sale, or promotion of a business opportunity while, among other things: (1) lacking a reasonable basis for the earnings claim at the time it was made; (2) lacking written substantiation for the earnings claim at the time it was made; or

(3) failing to provide an Earnings Claim statement to the prospective purchaser, as required by the Business Opportunity Rule.

117. Therefore, Defendants acts and practices, as described in Paragraph 116 above, violate the Business Opportunity Rule, 16 C.F.R. § 437.4(a). §§ 45(a).

COUNT SIX

General Media Earnings Claims Violations

118. Defendants have made earnings claims in the general media in connection with the offering for sale, sale, or promotion of a business opportunity while failing to state in immediate conjunction with those claims the beginning and ending dates when the represented earnings were achieved, and the number and percentage of all persons who purchased Defendants' business opportunity prior to that ending date who achieved at least the stated level of earnings.

119. Therefore, Defendants' acts and practices, as described in Paragraph 118 above, violate the Business Opportunity Rule, 16 C.F.R. § 437.4(b).

COUNT SEVEN

Misrepresentations of the Cost, Performance, or Central Characteristics Violations

120. In numerous instances in connection with the offer for sale, sale, or promotion of a business opportunity, Defendants have misrepresented the cost, performance, efficacy, nature, or central characteristics of the business opportunity or the goods or services offered to a prospective purchaser.

121. Therefore, Defendants' acts and practices, as described in Paragraph 120 above, violate the Business Opportunity Rule, 16 C.F.R. § 437.6(h).

VIOLATIONS OF THE CONSUMER REVIEW FAIRNESS ACT

122. “CRFA” defines “covered communication” as “a written, oral, or pictorial review, performance assessment of, or other similar analysis of, including by electronic means, the goods, services, or conduct of a person by an individual who is party to a form contract with respect to which such person is also a party.” 15 U.S.C. § 45b(a)(2).

123. The CRFA defines “form contract” to mean “a contract with standardized terms (i) used by a person in the course of selling or leasing the person’s goods or services; and (ii) imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.” 15 U.S.C. § 45b(a)(3).

124. The CRFA renders void any provision of a form contract if such provision prohibits or restricts the ability of an individual who is a party to the form contract to engage in a covered communication. 15 U.S.C. § 45b(b)(1).

125. The CRFA prohibits any person from offering a form contract containing a provision described as void in sub-section (b) of the CRFA. 15 U.S.C. § 45b(c).

126. Pursuant to the CRFA, a violation of sub-section (c) of the CRFA shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under Section 18(a)(1)(B) of the FTC Act, 15 U.S.C. § 57a(a)(1)(b), and the FTC shall enforce the CRFA in the same manner, by the same means, and with the same jurisdiction, powers, and duties as the FTC Act. 15 U.S.C. § 45b(d).

127. Defendants have offered “form contract[s],” as that term is defined in the CRFA. 15 U.S.C. § 45b(a)(3).

128. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, sec. 701, 129 Stat. 599 (2015), and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), effective January 10, 2022, authorizes the award of monetary civil penalties of not more than \$46,517 for each violation of the Consumer Review Fairness Act assessed after January 10, 2022, including penalties whose associated violation predated January 10, 2022.

129. Defendants' violations of the Consumer Review Fairness Act set forth below were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, U.S.C. § 45(m)(1)(A).

COUNT EIGHT

Violations of the CRFA

130. In numerous instances, including as described in Paragraphs 75 to 82, Defendants have offered, in the course of selling their business opportunities, "form contracts," containing provisions that prohibit or restrict the ability of an individual who is a party to the form contract to engage in a covered communication.

131. Defendants have thereby violated the CRFA, 15 U.S.C. § 45b(c).

VIOLATIONS OF PRIOR COMMISSION DETERMINATIONS CONCERNING UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN COMMERCE

132. Pursuant to Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B), if the Commission has determined in a proceeding under section 5(b) of the FTC Act, 15 U.S.C. § 45(b), that an act or practice is unfair or deceptive and issued a final cease and desist order, with respect to the act or practice, then a person, partnership, or corporation that engages in such act

or practice with actual knowledge that such act or practice is unfair or deceptive and is unlawful under Section 5(a)(1) of the FTC Act shall be liable for civil penalties.

133. In prior litigated decisions the Commission has determined that the acts or practices described in Paragraphs 26 to 87 above, are unfair or deceptive and violate Section 5(a)(1) of the FTC Act and issued final cease and desist orders with respect to those acts or practices.

134. Pursuant to Section 5(m)(1)(B) of the FTC Act, for the purpose of computing civil penalties, each and every instance that Defendant has made a misrepresentation identified in the Notices to a consumer, since receiving the letters and Notices, constitutes an act or practice that the Commission has determined in a prior proceeding to be unfair or deceptive and unlawful under Section 5(a)(1) of the FTC Act.

135. Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, sec. 701, 129 Stat. 599 (2015), and Section 1.98(e) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(e), effective January 10, 2022, authorizes the award of monetary civil penalties of not more than \$46,517 for each violation of prior Commission determinations concerning unfair and deceptive acts or practices in commerce.

COUNT NINE

Violations of Prior Commission Determinations Known to Defendants

136. As set forth in Paragraphs 88 to 92, at least since receiving the letters and Notices, Defendants had actual knowledge that, in connection with the advertising or promotion of money-making opportunities, making false, misleading, or deceptive earnings claims is an unfair or deceptive act or practice, unlawful under Section 5(a)(1) of the FTC Act, and subject to civil penalties.

137. In numerous instances, as set forth in Paragraphs 26 to 87, Defendants represented, directly or indirectly, expressly or by implication, that purchasers of Defendants' services are likely to make substantial profits.

138. In truth and in fact, in numerous instances in which Defendants made the representations set out in Paragraphs 26 to 87, purchasers of Defendants' services were not likely to make substantial profits.

139. In numerous instances, as set forth in Paragraphs 34, 38, 39 and 67, Defendants used testimonials to make performance claims, or to represent explicitly or implicitly that the experience described by endorsers of one of Defendants' products or services represented the typical or ordinary experience of users of the products or services.

140. In truth and in fact, in numerous instances in which Defendants used testimonials as set forth in Paragraph 34, 38, 39 and 67, the testimonials made unsubstantiated or otherwise deceptive performance claims, or misrepresented explicitly or implicitly that the experience described by endorsers of one of Defendants' products or services represented the typical and ordinary experience of users of the products or services.

141. Defendants engaged in the acts and practices described in Paragraphs 26 to 87 with the actual knowledge, as set forth in Paragraphs 88 to 92, that in prior litigated decisions the Commission has determined that the acts or practices are unfair or deceptive and violate Section 5(a)(1) of the FTC Act and issued final cease and desist orders, other than consent orders, with respect to those acts or practices. Defendants are therefore liable for civil penalties under Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B).

CONSUMER INJURY

Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act, the Business Opportunity Rule, and the Consumer Review Fairness Act. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests that the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act, the Business Opportunity Rule, and the Consumer Review Fairness Act by Defendants in accordance with Section 13(b) of the FTC Act, 15 U.S.C. § 53(b);
- B. Grant preliminary injunctive and ancillary relief;
- C. Award monetary and other relief in accordance with Section 19 of the FTC Act, 15 U.S.C. § 57b.
- D. Award Plaintiff civil penalties from Defendants for every violation of the Business Opportunity Rule, 16 C.F.R. Part 437, as amended, the Consumer Review Fairness Act, 15 U.S.C. § 45b, Section 5(m)(1)(A) of the FTC Act, U.S.C. § 45(m)(1)(A), and the Notice of

Penalty Offenses Concerning Money-Making Opportunities and Notice of Penalty Offenses
Around Endorsements and Testimonials, pursuant to 15 U.S.C. §§ 45(m)(1)(A)-(B) and 16
C.F.R. § 1.98(e).

E. Award any additional relief as the Court determines to be just and proper.

Respectfully submitted,

Dated: November 16, 2022

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FEDERAL TRADE COMMISSION

ATTACHMENT A

FEDERAL TRADE COMMISSION
NOTICE OF PENALTY OFFENSES
CONCERNING MONEY-MAKING OPPORTUNITIES

The Federal Trade Commission has determined that the following practices used in the advertising or promotion of money-making opportunities are deceptive or unfair and are unlawful under Section 5(a)(1) of the Federal Trade Commission Act.

1. It is an unfair or deceptive trade practice to make false, misleading or deceptive representations concerning the profits or earnings that may be anticipated by a participant in a money-making opportunity (i.e., a person who has been accepted or hired for, has purchased, or otherwise is engaging in the money-making opportunity).¹ For example:
 - a. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, that participants will be or are likely to be profitable (i.e., to earn or receive more income through the use of the money-making opportunity than the amount of any purchase price and expenses).²
 - b. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, that a substantial number of participants have made or can make the represented profits or earnings.³
 - c. It is an unfair or deceptive trade practice to represent, explicitly or implicitly, the earnings which may be secured by participants, when the representation is made

¹ *Macmillan, Inc., et al.*, 96 FTC 208, 232, 301-02, 325-29, 331 (1980); *Encyclopaedia Britannica, Inc., et al.*, 87 FTC 421, 450, 486-88, 505, 510, 531-32 (1976); *National Dynamics Corp.*, 82 FTC 488, 512-13, 543-44, 568 (1973), as modified at 85 FTC 1052, 1059-61 (1975); *Ger-Ro-Mar, Inc.*, 84 FTC 95, 113-14, 117-119, 123-125, 132-135, 138, 149-150, 160-162 (1974), affirmed in relevant part at 518 F.2d 33 (2d Cir. 1975), as modified at 86 FTC 841 (1975); *Holiday Magic*, 84 FTC 748, 948, 984, 1032-1034, 1065, 1069 (1974), as modified at 85 FTC 90 (1975); *Universal Credit Acceptance Corp.*, 82 FTC 570, 591-600, 633, 668-70 (1973); *Universal Elec. Corp.*, 78 FTC 265, 271-74, 294, 297 (1971); *Windsor Distrib. Co.*, 77 FTC 204, 212-17, 220-23 (1970); *Waltham Watch Co.*, 60 FTC 1692, 1703-05, 1710, 1724-25, 1727-28, 1730 (1962); *Abel Allan Goodman Trading As Weavers Guild*, 52 FTC 982, 984, 987-88, 991-92, 996-97 (1956), order affirmed 244 F.2d 584 (2d Cir. 1957); *Washington Mushroom Indus., Inc.*, 53 FTC 368, 370, 376, 379-80, 383-84, 386 (1956); *Von Schrader Mfg. Co.*, 33 FTC 58, 63-66 (1941).

² *Encyclopaedia Britannica*, 87 FTC 421, 450, 486-87, 505, 510, 531-32 (1976); *Ger-Ro-Mar*, 84 FTC 95, 113-14, 117-119, 123-125, 132-135, 138, 149-150, 160-162 (1974); *Universal Credit*, 82 FTC 570, 592-93, 595, 632-33, 668-70 (1973); *Universal Elec.*, 78 FTC 265, 271-74, 294-95, 297 (1971); *Waltham Watch*, 60 FTC 1692, 1703-05, 1710-11, 1716, 1724-25, 1727-28, 1730 (1962).

³ *National Dynamics*, 82 FTC 488, 511-13, 543-44, 564, 568 (1973), as modified at 85 FTC 1052, 1059-61 (1975).

without knowledge, or with only limited knowledge, of the actual profits or earnings usually and ordinarily received by participants.⁴

- d. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, that participants will or are likely to earn any specific amount or percentage.⁵
 - e. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, that the represented profits or earnings are the ordinary, typical, or average profits or earnings made by participants.⁶ This includes by means of the representation of an earnings figure or the attribution of earnings figures to specific participants, both of which impliedly represent that such figures are likely, are earned by a substantial number of participants, or are the typical, ordinary, or average results, absent clear and conspicuous disclosure of the relevant context, such as the time and effort actually expended by participants who made the amount represented, the percentage of participants making the amount represented, and the amount typically and ordinarily made by participants.⁷
 - f. It is an unfair or deceptive trade practice to misrepresent the profits or earnings that may be anticipated by a prospective participant by failing to disclose conditions or limitations affecting such income, such as expenses to be borne by the participant.⁸
2. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, that sales of a money-making opportunity will be made to only a limited number of prospective participants (including, for example, that sales will be made to only a limited number of prospective participants in a geographic region), when sales will be made to any person who is willing and able to pay.⁹

⁴ *Von Schrader Mfg. Co.*, 33 FTC 58, 63-66 (1941).

⁵ *Encyclopaedia Britannica*, 87 FTC 421, 450, 486-87, 505, 510, 531-32 (1976); *National Dynamics*, 82 FTC 488, 511-13, 543, 564, 568 (1973), as modified at 85 FTC 1052, 1059-61 (1975); *Holiday Magic*, 84 FTC 748, 948, 984, 1032-1034, 1065, 1069 (1974); *Universal Credit*, 82 FTC 570, 592, 594-95, 632-33, 668-70 (1973); *Universal Elec.*, 78 FTC 265, 272-74, 294, 297 (1971); *Windsor*, 77 FTC 204, 214-17, 220-21, 223 (1970).

⁶ *Macmillan*, 96 FTC 208, 232, 235-36, 245-46, 254-55, 301-02, 325-29, 331 (1980); *National Dynamics*, 82 FTC 488, 511-13, 543-44, 564, 568 (1973), as modified at 85 FTC 1052, 1059 (1975); *Abel Allan Goodman*, 52 FTC 982, 984, 987-88, 991-92, 996-97 (1956), order affirmed 244 F.2d 584 (2d Cir. 1957); *Washington Mushroom*, 53 FTC 368, 370, 376, 379-380, 383-84, 386 (1956); *Von Schrader*, 33 FTC 58, 63-66 (1941).

⁷ *Macmillan*, 96 FTC 208, 232, 301-02, 326-29, 331 (1980); *National Dynamics*, 82 FTC 488, 511-13, 543-44, 563-64, 568 (1973), as modified at 85 FTC 1052, 1059-61 (1975).

⁸ *Encyclopaedia Britannica*, 87 FTC 421, 445-50, 486-87, 505, 510, 531-32 (1976).

⁹ *Universal Elec.*, 78 FTC 265, 273-74, 295-97 (1971); *Windsor*, 77 FTC 204, 213, 215-17, 220-21, 223 (1970); *Waltham Watch*, 60 FTC 1692, 1704-05, 1710-11, 1723, 1725, 1727-28, 1730 (1962); *Washington Mushroom*, 53 FTC 368, 370-71, 379-380, 386 (1956).

3. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, that prospective participants will be screened or evaluated for suitability to use or benefit from the money-making opportunity.¹⁰
4. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, that participants do not need experience in order to earn income.¹¹
5. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, that a prospective participant must act immediately to purchase or to be considered for a money-making opportunity.¹²
6. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, that purchasing a money-making opportunity is risk-free or involves little risk.¹³
7. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, the position being offered to prospective participants in a money-making opportunity, such as by failing to disclose that it is a sales position when such is the case.¹⁴
8. It is an unfair or deceptive trade practice to misrepresent, explicitly or implicitly, the amount or type of training that will be given to participants in a money-making opportunity.¹⁵

¹⁰ *Macmillan*, 96 FTC 208, 272-73, 320, 327, 331 (1980); *Universal Credit*, 82 FTC 570, 608-09, 633, 637, 668, 673 (1973); *Windsor*, 77 FTC 204, 213, 215, 217, 220-21, 223 (1970); *Waltham Watch*, 60 FTC 1692, 1704-05, 1710-11, 1725, 1727-28, 1730 (1962).

¹¹ *Universal Elec.*, 78 FTC 265, 272-74, 295, 297 (1971); *Washington Mushroom*, 53 FTC 368, 370-71, 378-80, 386 (1956).

¹² *Universal Credit*, 82 FTC 570, 610, 632-33, 637-38, 668, 673 (1973).

¹³ *Universal Credit*, 82 FTC 570, 594, 611-12, 633, 638, 668, 673 (1973).

¹⁴ *Encyclopaedia Britannica*, 87 FTC 421, 486-88, 505, 510, 531 (1976).

¹⁵ *Encyclopaedia Britannica*, 87 FTC 421, 486-88, 505, 509-10, 531-32 (1976).

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).