November 19, 2018

Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, D.C. 20580

Dear Chairman Simons,

On behalf of more than 500,000 members and supporters of Public Citizen, we ask that the Federal Trade Commission (FTC) open an investigation on whether Donald J. Trump and family members engaged in deceptive and misleading advertising on behalf of American Communications Network (ACN), a multi-level marketing business.

1. Donald J. Trump Failed to Disclose Remuneration for Endorsing American Communications Network

According to the Washington Post, “Trump earned $450,000 each for three speeches he gave for ACN, according to his government disclosure form, but in marketing videos he told potential investors that . . . his endorsement was ‘not for any money.’”¹

Section 5 of the Federal Trade Commission Act prohibits “unfair or deceptive acts or practices in or affecting commerce,” which include deceptive advertising.²

ACN executives appeared on “The Apprentice” twice. On neither occasion upon introducing ACN executives did Mr. Trump inform the viewer that he was being paid to promote ACN. In one episode, Mr. Trump introduces the ACN executives as “friends of mine.”³ It is clear that on both occasions where ACN was featured on “The Apprentice” that that episodes were geared toward promoting ACN.⁴ What is unclear to the audience, however, is that ACN paid Mr. Trump

³ bundleforlesssdotcom, ACN on The Apprentice, YOUTUBE (July 31, 2011) https://www.youtube.com/watch?v=mxTqWtNSV2w.
⁴ Id. (Interviewing one executive who said on camera that their video phone technology “is the next major revolution in communications”).
millions of dollars to promote the company. Assuming *arguendo* that the producers included small disclaimers at the end of the episodes acknowledging that Mr. Trump was being paid by ACN and/or that ACN appeared on the program as paid product placement—which we cannot verify—it still would not absolve Mr. Trump from a Section 5 violation. Under the FTC’s enforcement guidelines, “If the payment for the endorsement isn’t expected by the audience and it would affect the weight the audience gives the endorsement, it should be disclosed.”

No reasonable viewer, especially after being told that the ACN executives were “friends of mine,” would expect that the reason for ACN’s presence on “The Apprentice” was because they paid Mr. Trump. And such a disclosure should have been disclosed immediately after introducing the individuals who paid Mr. Trump to endorse their product.

Moreover, at least one ACN press release promoting their appearance on “The Apprentice” fails to disclose Mr. Trump as a paid endorser of their product. This suggests that the status quo was to skate around the fact that the primary reason for ACN’s presence on the show was to reap the benefits of paying Mr. Trump to endorse their product.

In addition to the television appearances, according to court documents, Mr. Trump endorsed ACN numerous times during the course of their business relationship and repeatedly failed to disclose to potential participants in ACN’s multi-level marketing business that he was paid for these efforts. Rather, he claimed that his endorsements were not for money, but because he was impressed by the company and its leadership. The court documents also state that Mr. Trump endorsed ACN during at least 14 appearances with prospective ACN participants between 2006 and 2015. The most recent was in Charlotte, North Carolina, on February 13, 2015—almost four months to the day before he announced his candidacy for president of the United States.

During Mr. Trump’s presentations, “he failed to disclose that he was, in fact, being paid millions of dollars for his ACN endorsement,” according to the court documents. Onstage at a 2013 ACN event, Mr. Trump was asked, “Why do you keep coming back? What is it about ACN? Certainly not for any money.” Trump answered: “No.” In an article for a magazine, Trump was quoted as saying that his speaking appearances before ACN events was not “for the money.”

In addition to the Washington Post, the Wall Street Journal reviewed Mr. Trump’s business relationship with ACN. Mr. Trump did not “disclose to viewers that he had been paid by ACN for appearances over the years. According to documents released by Mr. Trump’s presidential campaign, he received $450,000 apiece for three of the most recent speeches for ACN, in 2014 and early this year.”

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8 Id., at *51.
9 Id., at *53.
ACN was based on how much he was impressed by ACN and its management company, the *Journal* noted that Mr. Trump later contradicted that earlier statement when he declared that he did not base his endorsements on knowledge of the company or its products. He said:

“I do not know the company. I know nothing about the company other than the people who run the company... I’m not familiar with what they do or how they go about doing that, and I make that clear in my speeches.”\(^{11}\)

However, also according to the court documents, Mr. Trump is quoted as saying that “ACN has a winning business model”\(^{12}\) and “praised ANC’s ‘great product.’”\(^{13}\)

In one speech captured on video, Mr. Trump speaks about his close relationship to the executives who run the company.\(^{14}\) While one could argue that Mr. Trump was not endorsing ACN’s product, but acknowledging his warm relationship to ACN’s executives, the law is clear: “Disclosures [of endorsements] need to be easily noticed and understood.”\(^{15}\) Mr. Trump was being paid to promote ACN. Thus, his failure to disclose to the public this pivotal fact means that he violated Section 5’s prohibition against deceptive advertising.

### 2. Section 5 of The Federal Trade Commission Act Requires that an Endorser Disclose Payments for Endorsing a Product

The FTC’s endorsements guidelines make clear that failure to disclose a material connection between the endorser and the endorsed product constitutes a violation. “The Guides, at their core, reflect the basic truth-in-advertising principle that endorsements must be honest and not misleading.”\(^{16}\) The FTC’s guidelines continue: “If there’s a connection between an endorser and the marketer... that connection should be disclosed... . The ad is misleading unless the connection is made clear. The same is usually true if the endorser has been paid or given something of value to tout the product. The reason for requiring complete transparency in advertising is obvious: Knowing about the connection between an endorser and the product is important information for evaluating the independence of the endorsement.”\(^{17}\)

The FTC’s guidelines, in effect during Mr. Trump’s association with ACN, are written in plain English and aimed for the general public. This case appears not to be a technical violation of an obscure rule, but a clear-cut infraction of an obvious one. The purpose of the FTC’s guidelines is to make sure that individuals know when they are being advertised to. It’s hard to imagine a more important context for the rule to be enforced. This is not a celebrity saying, “I like Brand X cereal.” This is a celebrity businessman, celebrated precisely for his purported business success and acumen, lending an endorsement to a multi-level marketing scheme, both to a national audience but also to individuals considering participating in the scheme at significant potential risks.

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\(^{11}\) Id.
\(^{12}\) Id., supra note 7, at * 42.
\(^{13}\) Id., supra note 7, at * 43.
\(^{15}\) Id., supra note 5.
\(^{16}\) Id.
\(^{17}\) Id.; see also 16 CFR Part 255.5.
financial risk. Whether or not Mr. Trump was paid for his strong endorsement of ACN was a matter of significant and material relevance to them, and it appears they were deceived.

We are encouraged that the FTC has taken the issue of celebrity endorsements seriously. After Public Citizen filed a petition to the FTC urging the agency to investigate the rampant lack of disclosure by influencers to disclose business relationships with brands, the FTC sent letters to 90 “influencers” reminding them of their responsibility to clearly and conspicuously disclose their relationship to brands they are promoting or endorsing. After Public Citizen filed an additional petition to the FTC, demonstrating that the reminder letters had not effectively solved the problem, the FTC then sent 21 warning letters to influencers who continued to violate the FTC’s policy by posting paid endorsements without any disclosure.

A core function of the FTC is to protect consumers from unfair or deceptive business practices, including deceptive advertising. Undertaking an investigation of Mr. Trump would instill confidence in the public that the FTC takes deceptive advertising seriously. There are important facts to confirm and timelines to construct in this case, but the evidence available to us suggests a major violation of longstanding, core fair advertising principles. A failure to act by the FTC would send the wrong message about protecting consumers against this underreported problem.

For questions, please contact us at Remington A. Gregg at rgregg@citizen.org, Bartlett Naylor at bnaylor@citizen.org, and Kristen Strader at kstrader@citizen.org.

Sincerely,

Remington A. Gregg  
Counsel for Civil Justice and Consumer Rights  
Congress Watch Division

Bartlett Naylor  
Financial Policy Advocate  
Congress Watch Division

Kristen Strader  
Campaign Coordinator  
Commercial Alert

18 See https://www.ftc.gov/news-events/press-releases/2017/04/ftc-staff-reminds-influencers-brands-clearly-disclose (“The letters were informed by petitions filed by Public Citizen and affiliated organizations regarding influencer advertising on Instagram, and Instagram posts reviewed by FTC staff. They mark the first time that FTC staff has reached out directly to educate social media influencers themselves.”).

19 See https://www.ftc.gov/news-events/blogs/business-blog/2017/09/three-ftc-actions-interest-influencers (“21 of the influencers who got the April letter just received a follow-up warning letter, citing specific social media posts the FTC staff is concerned might not be in compliance with the FTC’s Endorsement Guides.”).