

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

Travelers United,

Plaintiff,

v.

Expedition 196, LLC, et al.,

Defendants.

Case Number 2022 CA 003089 B

Judge: Neal Kravitz

**PLAINTIFF’S RULE 26(a)(2) EXPERT DISCLOSURES AND
REPORTS**

Under SCR-Civil 26(a)(2)(B), Travelers United hereby designates the following people whose expert testimony it expects to offer during this case on whether Cassandra De Pecol and Expedition 196, LLC's false claims and lack of material disclosures in advertisements are harmful to consumers:

(1) Professor Mark Bartholomew

(2) Ava Smithing

Travelers United may call on Professor Mark Bartholomew and/or Ava Smithing at trial to offer evidence, may rely on him or her for purposes of summary judgement, or may otherwise utilize his or her opinions in connection with this case. Under SCR-Civil 26(a)(2)(B), Professor Mark Bartholomew's report is attached as Exhibit 1. Ava Smithing's expert report is attached as Exhibit 2. Travelers United reserves all rights to supplement both expert reports as discovery is ongoing in this matter.

Travelers United further reserves the right to designate, rely upon, and call for testimony any expert witness designated by any other parties or to provide supplemental disclosure as necessary as fact discovery continues in this matter.

Respectfully submitted,

Dated: January 16, 2024

/s/ Lauren Wolfe

LAUREN WOLFE (D.C. Bar # 1048660)
Counsel, Travelers United
2833 Alabama Ave SE #30736
Washington, D.C. 20020

Telephone: 202-713-9596
Email: lauren.wolfe@travelersunited.org

Certificate of Service

On this day of January 16, 2024, I caused to be served true and correct copies of the foregoing District of Columbia's Rule 26(a)(2) Expert Disclosures and Report on all counsel of record via eFile DC.

Respectfully submitted,

/s/ Lauren Wolfe

LAUREN WOLFE (D.C. Bar # 1048660)
Counsel, Travelers United
2833 Alabama Ave SE #30736
Washington, D.C. 20020

Telephone: 202-713-9596
Email: lauren.wolfe@travelersunited.org

EXHIBIT 1

EXPERT REPORT OF MARK BARTHOLOMEW

Travelers United, Plaintiff
v.
Cassandra de Pecol and
Expedition 196, LLC, Defendants

I. INTRODUCTION AND SCOPE OF TESTIMONY

My name is Mark Bartholomew. I am employed as a professor of law at the University at Buffalo School of Law. I have been retained by the Plaintiff to provide my expert opinion on this matter. Specifically, I have been asked to address the scope and evolution of obligations for advertising on social media, including disclosure requirements and prohibitions on false claims, as they relate to this matter.

II. QUALIFICATIONS

I have been a tenured law professor at the University at Buffalo School of Law since 2012. I earned a B.A. from Cornell University (1994) and a J.D. from Yale Law School (2000). I write and teach on the subjects of advertising regulation, online privacy, and intellectual property. I have authored twenty-five articles and two books relating to these topics. For example, my 2017 book, published by Stanford University Press, analyzes new marketing techniques, including influencer advertising, and their relationship to existing consumer protection laws. The book was the culmination of years of researching the mechanics of social media platforms, how platform users understand those mechanics, and the state and federal rules governing commercial representations on social media. In various articles, I have addressed similar issues in further depth. In addition, much of my teaching addresses how commercial representations are regulated in online spaces. In my classes “Advanced Topics in Law and Technology,” “Advertising and the

Law,” and “Trademarks and Unfair Competition,” I teach students about the rules and operation of different legal regulations for online advertising. I have frequently been quoted in the media on these issues.

A copy of my curriculum vitae is attached as Exhibit “A” to this report.

III. PRIOR EXPERT TESTIMONY

I have been engaged as an expert witness in one prior matter. I was not deposed in the matter and the case did not proceed to trial.

IV. MATERIALS REVIEWED

A list of materials I reviewed is attached as Exhibit “B” to this report.

V. STATEMENT OF COMPENSATION

I am being compensated for this report with a flat fee of \$950.00. This fee is significantly lower than my standard hourly rate for legal consulting services, but I have agreed to it given Travelers United’s status as a not-for-profit entity. The payment of this fee is not contingent on the opinions I express in connection with this engagement.

VI. SUMMARY OF CONCLUSIONS

Just as businesses are responsible for material misstatements about their products, so are influencers responsible for the commercial misrepresentations they make about themselves. Defendant’s misrepresentations as to affiliations and awards not actually received are factual, material, and within the traditional ambit of consumer protection law. Defendant’s failure to

disclose compensation for promotional statements is a material omission also within the traditional ambit of consumer protection law. That the misstatements at issue are about the Defendant herself and not another product or third party does not change the analysis. This only makes sense given the policies that animate consumer protection law—a contrary carve out for influencers would leave consumers prey to any bogus commercial message made on Instagram or TikTok.

VII. BACKGROUND AND DETAILS SUPPORTING MY CONCLUSIONS

It is my understanding that the central issues in this proceeding relate to allegedly false statements made by the Defendant on social media. While I do not opine on the truth of those statements, I describe the academic research on how consumers perceive influencer advertising and how the statements at issue in this matter fit within the larger landscape of consumer protection law for social media misstatements and omissions.

Statements as to Affiliations and Awards Not Actually Received are Factual, Material, and Within the Traditional Ambit of Consumer Protection Law

1. Endorsements and certifications by outside authorities are routinely considered material statements relied on by consumers under false advertising law. Rebecca Tushnet & Eric Goldman, Advertising and Marketing Law 191 (6th ed. 2022) (“Claims that appear to give a stamp of approval from a trusted source are generally material.”); Louis Altman & Malla Pollack, Callmann on Unfair Competition, Trademarks & Monopolies § 5:54 (4th ed. 2023) (noting that although such misrepresentations were originally not actionable at common law, now an advertiser that “falsely claims medals, awards or endorsements . . . will ordinarily be enjoined”). Businesses are not allowed to describe their products as

“EPA approved” or certified by Underwriters Laboratories when they are not. Such claims are damaging to society because they can harm individual consumers by leading them to make buying decisions under false pretenses, potentially resulting in the purchase of unsatisfactory, substandard, or even unsafe products. The law has also come to recognize the broader anti-competitive dangers of advertising featuring false affiliations and awards—if allowed to proceed unchecked, such misrepresentations can cause investment to flow to less effective products, potentially blocking the introduction of superior ones. See Lee Goldman, The World’s Best Article on Competitor Suits for False Advertising, 45 Fla. L. Rev. 487, 492 (1993) (“[F]alse advertising results in a reduction of product quality and a misallocation of resources.”).

2. Part of Defendant’s claim to be the first woman to travel around the world is the contention that her achievement has been recognized as such in the Guinness Book of World Records. Defendant also claimed Virgin Galactic accepted her as an astronaut for their spaceflight program. A travel product endorser is not allowed to describe themselves as holding a Guinness World Record that they do not really hold. Similarly, false designations of affiliation, like claiming a non-existent relationship with Virgin Galactic, are prohibited under consumer protection law.
3. False claims do not have to be about a particular physical property of a product, like “preservative-free” or “made with all natural ingredients,” to be actionable. False claims can also include claims of uniqueness. For example, a product’s claim to be made up of a “unique” formula that is not actually unique is actionable false advertising. *Home Prods. Corp. v. Federal Trade Commission*, 695 F.2d 681 (3d Cir. 1982). Defendant’s claims to be the first woman to travel to every country in the world as recognized by Guinness and

to be part of Virgin Galactic's astronaut program are claims to uniqueness which, if untrue, constitute false advertising.

4. The harms to the public from deceptive marketing can be long-lasting. As a consequence, the favored approach is to calculate the length of availability of a state unfair trade practices claim from the time the act of fraud was discovered, not from the very first date of the fraudulent misrepresentation's publication. See *Bradford v. George Washington University*, 249 F. Supp. 3d 325, 335 (D.D.C. 2017); *Valencia v. Midnite Rodeo, LLC*, 2023 WL 7031561, *5 (W.D.N.C. Sept. 13, 2023); *Rose v. United Equitable Insurance Co.*, 632 N.W.2d 429, 433-34 (N.D. 2001). A contrary interpretation would threaten to leave consumers powerless to seek redress for commercial lies online that they happened to discover through an online search weeks or months after their original date of posting.
5. There is no reason to think that the particular medium for falsely claiming an affiliation in this matter—social media—should alter the analysis. The animating policy behind false advertising law is to protect the consumer from making purchasing decisions under the wrong impression. Such mistaken decisions harm the individual consumer and the efficiency of the marketplace. These bedrock concerns are not changed when the false statements appear on Instagram instead of on television, in a magazine, or some other more traditional forum for advertising.

Failure to Disclose Compensation for Promotional Statements is a Material Omission

Within the Traditional Ambit of Consumer Protection Law

1. An omission or failure to disclose a material fact like sponsorship can be actionable when it renders an affirmative statement false or misleading. One example of such an actionable omission can be failure to disclose compensation for promotional statements. See, e.g., *Casper Sleep, Inc. v. Mitcham*, 204 F. Supp. 3d 632, 644 (S.D.N.Y. 2016) (finding defendant's failure to clearly and conspicuously disclose affiliate marketing relationships on its product review website actionable under New York's deceptive business practices statute); *Federal Trade Commission v. NPB Advertising, Inc.*, 218 F. Supp. 3d 1352, 1361-62 (M.D. Fla. 2016) (advertisements that failed to disclose compensation for product testimonials held to "omit a material fact on which a reasonable prospective purchaser would rely").
2. An advertiser does not have to disclose everything in their marketing communications, but certain omissions can violate consumer protection law by reshaping the message of an advertisement so that the advertisement becomes materially false or misleading. Consumer confusion caused by omission is problematic because it can distort purchasing behavior just as much as an affirmative misrepresentation itself. Hiding promotional fees and compensation from consumers makes paid-for content more persuasive and effectively misleads consumers into believing that promotional statements are organic testimonials not influenced by economic self-interest. Consequently, advertising law has long recognized that failures to disclose sponsorship interests can be tantamount to an expressly false claim about a product or service. *Altman & Pollack, supra*, at § 5:54 (describing legal requirement that "payments or free products" given by an advertiser to an endorser must be disclosed as a "long-standing principle").

3. Rigorous investigation of sponsorship disclosures is even more appropriate in the context of social media advertising. Research shows that once consumers are able to identify a social media post as an advertisement, they become less trustful of the post. Sophie C. Boerman, Lotte M. Willemsen & Eva P. Van Der Aa, “This Post Is Sponsored”: Effects of Sponsorship Disclosure on Persuasion Knowledge and Electronic Word of Mouth in the Context of Facebook, 38 J. Interactive Marketing 82, 90 (2017); Samantha Kay, Rory Mulcahy & Joy Parkinson, When Less is More: The Impact of Macro and Micro Social Influencers’ Disclosure, 36, J. Marketing Mgmt. 248, 262 (2020) (“the resounding sentiment of the literature is that sponsorship disclosure results in negative brand attitudes and a reduction in intention to engage in electronic word-of-mouth.”). Without sponsorship disclosure, consumers cannot distinguish between a genuine preference for a product and commercial propaganda.
4. Nondisclosure of paid endorsement has *an even stronger* influence on consumer behavior when it comes to influencing on social media as compared to other endorsement contexts. Studies diagnose significantly greater levels of trust in influencer posts as compared to other types of advertisements. See, e.g., Nathaniel J. Evans et al., Disclosing Instagram Influencer Advertising: The Effects of Disclosure Language on Advertising Recognition, Attitudes, and Behavioral Intent, 17 J. Interactive Advert. 138, 139 (2017); Alexandra J. Roberts, False Influencing, 109 Geo L.J. 81, 97-98 (2020) (“Followers are typically interested in the lives of the influencers they follow [and] believe their recommendations sincere.”). If consumers rely on influencer recommendations because of their perceived authenticity, failure to reveal that those recommendations have been bought and paid for will impact consumer decision-making. Consequently, failure to disclose the sponsorship

motivating positive posts for a particular good or service can constitute a material omission.

Material False Statements and Omissions About a Person Are Not Exempt From

Consumer Protection Law

1. Although the typical false advertising case involves a business making false statements about a physical product rather than a person, false advertising law creates no special immunity for false statements about a person. When a person is in fact the product at issue, the same rules for evaluating falsity and materiality apply. D.C. Code § 28-3904(d) explicitly affirms this by listing “representing that a person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have” as a deceptive sales practice. This basic legal principle—false statements about a person can constitute false advertising—is also recognized throughout different areas of consumer protection law.
2. Across different areas of advertising regulation, the law has evolved to encompass commercial statements about or relating to someone’s personal identity. Most famously, the Federal Trade Commission’s Endorsement Guidelines, first issued in 1975, attempt to make sure that personal endorsements do not deceive the public. Over time, the Endorsement Guidelines have been updated in light of changing modes of commercial communication and, in their current form, acknowledge the need for social media influencers to accurately present their commercial messages to the public. The Endorsement Guidelines have been used to help inform the scope of state laws regulating

online advertising. See *Casper Sleep, Inc. v. Mitcham*, 204 F. Supp. 3d 632, 644 (S.D.N.Y. 2016).

3. Along similar lines, federal trademark law allows an endorser's identity to be characterized as a kind of mark just like COCA-COLA or ROLLS-ROYCE. See, e.g., *Landham v. Lewis Galoob Toys, Inc.*, 227 F.3d 619, 626-27 (6th Cir. 2000). People can become brands themselves, resulting in the potential for false statements about a person to deceive consumers in the same manner as a confusing trademark or misleading product claim. Because the *raison d'être* for federal trademark law is to protect consumers from misleading information in the marketplace, the definition of what is a trademark has expanded over time to now encompass "almost anything at all that is capable of carrying meaning," *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 162 (1995). This expansion now clearly encompasses human personas. J. Thomas McCarthy & Roger E. Schechter, The Rights of Publicity and Privacy § 5:31 (2d ed. 2023) (it is "clearer than ever" that federal trademark and false advertising law apply to "falsely implying the endorsement of a product or service by a real person"). Accordingly, the U.S. Patent & Trademark Office grants celebrity endorsers, including influencers like Kim Kardashian and Michelle Phan, registered trademarks in their names. Registration No. 4,978,865 (trademark registration for KIM KARDASHIAN WEST for use in "promoting the brands, goods, and services of others"); Registration No. 6,351,209 (trademark registration for MICHELLE PHAN for use for cosmetics).
4. Consequently, since a person can serve as a commercial source identifier, i.e., a trademark, that also means that false statements about a person can be commercially misleading. Hence, to protect the public from making purchases under false pretenses,

confusing commercial messaging about people is analyzed for potentially misleading information in the same way as confusing commercial messaging about a business. J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 28:15 (5th ed. 2023). A contrary position would give unscrupulous advertisers license to lie about commercial spokespersons, harming consumers and the marketplace as a whole.

5. In addition, outside of trademark law, a whole body of consumer protection law has assessed liability against commercial spokespersons, just as it would against other persons and businesses involved in product promotion. Historically, findings of liability against particular spokespersons for false representations have been rare because of the tight control over advertising content once exercised by advertising agencies and the advertised brands themselves. See Tamany Vinson Bentz & Carolina Veltri, The Indirect Regulation of Influencer Advertising, 75 Food & Drug L.J. 185, 185 (2020). Typically, if a case brought against a spokesperson under consumer protection law was unsuccessful, it was because even though the agency or the brand itself knowingly promoted misleading content, there was insufficient evidence that the spokesperson had knowledge of the falsity of the statements made. But consumer protection law has never granted a blanket amnesty for spokespersons. See, e.g., *In re Diamond Mortg. Corp. of Ill.*, 118 B.R. 575, 576 (Bankr. N.D. Ill. 1989) (ruling that paid endorser had a “duty to substantiate the truthfulness of endorsements”).
6. Moreover, this is not a case of a commercial spokesperson unwittingly repeating false information that was fed to her by a business or advertising agency. Rather, there is no question as to the Defendant’s knowledge of the veracity of the commercial

representations at issue since they are about her personal conduct and life history and not some third party's good or service.

7. Rather than acknowledge the well-established legal principle that representations about a person can constitute a deceptive sales practice, defendant maintains that her false online statements are immune from suit because they are false statements about her own person. Cassandra De Pecol's Motion to Dismiss Travelers United's Complaint at 15 (contending that falsely professing to be the first woman to visit every country would not mislead consumers because "Cassie is making a claim about herself—not about the company's product."). But commercial falsehoods do not somehow become non-actionable just because they are made about a person.
8. Just as businesses do not have a right to lie about their products, influencers do not have a legal license to lie about themselves. Although the First Amendment tolerates personal lies in particular contexts like political speech, see *United States v. Alvarez*, 567 U.S. 709 (2012) (holding that federal law criminalizing false statements about receiving military medals was unconstitutional), false commercial speech is treated differently. *Kasky v. Nike, Inc.*, 45 P.3d 243, 261 (Cal. 2002) ("[C]ommercial speech that is false or misleading receives no protection under the First Amendment, and therefore a law that prohibits only such unprotected speech cannot violate constitutional free speech protections."); see also 18 U.S.C. § 704 (revising federal law in light of *Alvarez* to only penalize false statements about military medals made "with intent to obtain money, property, or other tangible benefit").
9. As commercial activity has shifted into online territories, courts have increasingly recognized that social media posts can constitute commercial advertising, and thus can be

regulated as commercial speech. Even without proof of payment from the sponsoring organization, indications that the organization provided free use of the consumer item that is the subject of the post or that the post encouraged viewers to purchase the same item allow the legal inference that the post is a commercial advertisement and, as result, can be regulated for false or misleading content. See Order Granting in Part and Denying in Part Defendant's Motion to Dismiss, *Petunia Prods., Inc. v. Rodan & Fields, LLC*, No. 8:21-CV-00630 at 5-6 (C.D. Cal. Aug. 6, 2021). This only makes sense given that sponsored influencer posts are already considered commercial advertising by the FTC and by the social media platforms themselves. *Roberts, supra*, at 103-05. When you are selling yourself and products to people online, you are obligated to comply with the rules against false advertising.

I reserve the right to update this report if additional documents or information become available to me.

I hereby certify that this report is a complete and accurate statement of all of my opinions, and the basis and reasons for them, to which I will testify under oath.

Respectfully submitted,



MARK BARTHOLOMEW

January 8, 2024

Exhibit A

MARK BARTHOLOMEW

617 Lord O'Brian Hall, Buffalo, NY 14260; (716) 645-5959; bartholo@buffalo.edu

ACADEMIC APPOINTMENTS

UNIVERSITY AT BUFFALO SCHOOL OF LAW, Buffalo, New York

Professor of Law

2012—present

Associate Professor of Law

2006—2012

Courses Taught: Intellectual Property, Copyright, Trademarks and Unfair Competition, Advanced Topics in Law and Technology, Advertising and the Law, Fashion and the Law, Intellectual Property Colloquium

Awards:

- SUNY Chancellor's Award for Excellence in Teaching (2016)
- University at Buffalo Teaching Innovation Award (2009)
- Twice received the Law School's only teaching award, the Faculty Award, by vote of the graduating class (2008 and 2012)

EDUCATION

YALE LAW SCHOOL, New Haven,
Connecticut

J.D., 2000

- *Yale Law Journal*, senior editor
- *Yale Journal of Law & Humanities*, editor
- Winner of the Nathan Burkan Prize (best paper in the field of copyright)

CORNELL UNIVERSITY, Ithaca, New York

B.A., *cum laude*, History, 1994

PUBLICATIONS

BOOKS & BOOK CHAPTERS

INTELLECTUAL PROPERTY AND THE BRAIN: HOW NEUROSCIENCE WILL RESHAPE LEGAL PROTECTION FOR CREATIONS OF THE MIND (Cambridge University Press 2022).

ADCREEP: THE CASE AGAINST MODERN MARKETING (Stanford University Press 2017).

Academic Branding and Cognitive Dissonance, in ACADEMIC BRANDS: DISTINCTION IN GLOBAL HIGHER EDUCATION (Cambridge University Press 2022).

From Debbie Does Dallas to The Hangover: The Changing Landscape of Trademark Law in Tinseltown, in HOLLYWOOD AND THE LAW (BFI/Palgrave Press 2016) (co-authored with John Tehranian).

LAW REVIEW ARTICLES

A Right to Be Left Dead, 112 CALIFORNIA LAW REVIEW ____ (forthcoming 2024).

[*Historical Kinship and Categorical Mischief: The Use and Misuse of Doctrinal Borrowing in Intellectual Property Law*](#), 109 IOWA LAW REVIEW 51 (2023) (co-authored with John Tehranian).

A New Addition to the Trademark Litigator's Tool Kit: A Neuroscientific Index of Mark Similarity, 113 TRADEMARK REPORTER 789 (2023) (with Zhang, Hsu, Kayser & van Horen).

[*Nonobvious Design*](#), 108 IOWA LAW REVIEW 601 (2023).

[*Copyright and the Creative Process*](#), 97 NOTRE DAME LAW REVIEW 357 (2021).

- Reviewed on [Jotwell](#)

[*Copyright and the Brain*](#), 98 WASHINGTON UNIVERSITY LAW REVIEW 525 (2020).

[*Neuromarks*](#), 103 MINNESOTA LAW REVIEW 521 (2018).

[*The Political Economy of Celebrity Rights*](#), 38 WHITTIER LAW REVIEW 1 (2018) (invited article).

[*Intellectual Property's Lessons for Information Privacy*](#), 92 NEBRASKA LAW REVIEW 746 (2014).

[*Trademark Morality*](#), 55 WILLIAM & MARY LAW REVIEW 85 (2013).

[*An Intersystemic View of Intellectual Property and Free Speech*](#), 81 GEORGE WASHINGTON LAW REVIEW 1 (2013) (co-authored with John Tehranian).

[*A Right is Born: Celebrity, Property, and Postmodern Lawmaking*](#), 44 CONNECTICUT LAW REVIEW 301 (2011).

- Republished in ENTERTAINMENT, PUBLISHING, AND THE ARTS HANDBOOK (West 2012) as “one of the best law review articles published within the last year in the fields of entertainment, publishing, and the arts.”

[*Causing Infringement*](#), 64 VANDERBILT LAW REVIEW 675 (2011) (co-authored with Patrick McArdle).

[*Advertising and Social Identity*](#), 58 BUFFALO LAW REVIEW 931 (2010) (invited article, Conference on Advertising and the Law, SUNY Buffalo Law School).

[*Foreward: Advertising and the Law*](#), 58 BUFFALO LAW REVIEW 717 (2010) (invited article, Conference on Advertising and the Law, SUNY Buffalo Law School).

[*Cops, Robbers, and Search Engines: The Questionable Role of Criminal Law in Contributory Infringement Doctrine*](#), 2009 BRIGHAM YOUNG UNIVERSITY LAW REVIEW 783.

- Cited in Akamai Technologies, Inc., v. Limelight Networks, Inc., 692 F.3d 1301 (Fed. Cir. 2012).

[*Copyright, Trademark, and Secondary Liability After Grokster*](#), 32 COLUMBIA JOURNAL OF LAW & ARTS 445 (2009) (invited article, Symposium on Secondary Liability, Columbia Law School).

- Cited in BMG Rights Mgmt. v. Cox Communications, Inc., 199 F. Supp.3d 958 (E.D. Va. 2016).

[*Contributory Infringers and Good Samaritans*](#), 3 AKRON INTELLECTUAL PROPERTY JOURNAL 1 (2009) (invited article, Second Annual IP Forum, The University of Akron School of Law).

[*Advertising and the Transformation of Trademark Law*](#), 38 NEW MEXICO LAW REVIEW 1 (2008).

- One of three finalists for the International Trademark Association’s Ladas Memorial Award.

[*Advertising in the Garden of Eden*](#), 55 BUFFALO LAW REVIEW 737 (2007) (invited article).

[*The Secret Life of Legal Doctrine: The Divergent Evolution of Secondary Liability in Trademark and Copyright Law*](#), 21 BERKELEY TECHNOLOGY LAW JOURNAL 1363 (2006) (co-authored with John Tehranian).

[*Making a Mark in the Internet Economy: A Trademark Analysis of Search Engine Advertising*](#), 58 OKLAHOMA LAW REVIEW 179 (2005).

[*Legal Separation: The Relationship Between Law Schools and the Central University in the Late Nineteenth Century*](#), 53 JOURNAL OF LEGAL EDUCATION 368 (2003).

[*Protecting the Performers: Setting a New Standard for Character Copyrightability*](#), 41 SANTA CLARA LAW REVIEW 341 (2001).

[*Judicial Deference and Sexual Discrimination in the University*](#), 8 BUFFALO WOMEN'S LAW JOURNAL 155 (2000).

OTHER ACADEMIC JOURNALS

[*From Scanner to Court: A Neuroscientifically Informed "Reasonable Person" Test of Trademark Infringement*](#), 9 SCIENCE ADVANCES, Feb. 8, 2023 (co-authored with Zhang, Good, Kulikov, van Horen, Kayser, and Hsu).

- Reviewed on [Jotwell](#)

[*Disciplinary Power*](#), 22 ADVERTISING & SOCIETY QUARTERLY 1 (2021).

[*The Law of Advertising Outrage*](#), 19 ADVERTISING & SOCIETY QUARTERLY 1 (2018).

OP-EDS AND ONLINE PUBLICATIONS

We Regulate Everything From Food to Toys, Why Are We So Afraid to Do the Same for Social Media?, THE MESSENGER, Aug. 1, 2023 (with Martin Skladany)

Why Hollywood Should Leave Dead Actors Alone, VARIETY, Nov. 30, 2022 (with Martin Skladany)

We Don't Need More VIP Rights for Celebrities, BUFFALO NEWS (June 16, 2018)

Facebook's Professor Problem, INSIDE HIGHER ED (Mar. 28, 2018).

The Transformation of the Super Bowl Ad Experience, THE CONVERSATION (Feb. 2, 2018).

Hiding in Plain View: The Past and Present of Manipulative Advertising, LOS ANGELES REVIEW OF BOOKS (Sept. 24, 2017).

How We Can Fix Facebook Before the 2020 Election, FORTUNE (Sept. 8, 2017).

There's a Cost to Metro Naming Rights, WASHINGTON POST (July 17, 2017).

Author Meets Critics—Adcreep, ADVERTISING & SOCIETY QUARTERLY (June 27, 2017).

Is There Any Way to Stop Ad Creep?, THE CONVERSATION (Apr. 27, 2017).

Naming Rights on Public Spaces Come With a Cost, BUFFALO NEWS (Dec. 29, 2016).

Federal Circuit Blocks Trademark for Being Disparaging to Muslims, PATENTLY –O (May 13, 2014), available at <http://patentlyo.com/patent/2014/05/circuit-trademark-disparaging.html>.

Striking a Balance Between Privacy and Online Commerce, 2013 UTAH L. REV. ONLAW 168

WORKS IN PROGRESS

Outrage Machines (article)

Publicity Rights and the First Amendment After Warhol (article)

GRANTS

Federal Cyberservice Award, National Science Foundation, 2008-2017, 2018-2022, 2023-2028 (co-principal investigator on four successful grant applications totaling \$8.3 million in funding for development of cross-disciplinary cybersecurity curriculum offered in conjunction with schools of management and computer science).

Alvin Achenbaum Travel Grant for “Outrage Machines,” Hartman Center, Duke University, Summer 2019 (competitive research support grant of \$500 used to conduct archival research at Duke University)

Research Grant for “The Law of Advertising Outrage,” The Baldy Center for Law & Social Policy, University of Buffalo School of Law, Fall 2018 (competitive research support grant of \$1,000 for university faculty used to conduct archival research at Duke University).

Conference Grant for “The Quote’s the Thing: Negotiating Copyright in Literary Criticism,” The Baldy Center for Law & Social Policy, University of Buffalo School of Law, June 2010 (competitive conference support grant for university faculty of \$3,820 used to host an April 2011 conference with the Department of English concerning copyright and academic criticism).

Conference Grant for “Advertising and the Law,” The Baldy Center for Law & Social Policy, University of Buffalo School of Law, March 2010 (competitive conference support grant of \$5,500 for university faculty used to host a symposium on advertising law in November 2010).

PROFESSIONAL EXPERIENCE

2017-present **Intellectual Property and Consumer Protection Law Consulting**

Consulting on various legal matters relating to intellectual property law, including advisement on legal strategies regarding trademark, utility patent, design patent, trade secret, and copyright protection for private individuals, businesses, and law firms.

2004-2006 **Sonoma County Counsel's Office** Deputy County Counsel

Managed litigation for various county government organizations, including mental health department, public guardian, human resources, retirement board, and tax assessor.

2001-2004 **Howard, Rice, Nemerovski, Canady, Falk & Rabkin** Litigation Associate

Litigated intellectual property, securities, consumer fraud, bankruptcy, and divorce matters at 140 person law firm.

2000-2001 **United States Court of Appeals for the Ninth Circuit** Law Clerk

Clerked for the Honorable Cynthia Holcomb Hall, Senior Judge, in Pasadena, CA.

UNIVERSITY SERVICE

- President's Review Board (faculty advisory body to President and Provost for all promotion and tenure cases within university) (3-year appointment, 2014-2017)
- Law School Appointments Committee (2010-2012, 2013-2016, 2020-2021) (elected by faculty vote)
- Law School Committee on Committees (2012-2018, 2019-2020, 2023-2024) (elected by faculty vote)

PROFESSIONAL AND COMMUNITY SERVICE

- Editorial Board member for *Advertising & Society Quarterly* (2018-2023)
- Peer reviewer for *Stanford Law Review*, Cambridge University Press, University of Chicago Press, Cornell University Press, *Digital Studies*, Edward Elgar Publishing, Israel Science Foundation, *Law & Social Inquiry*, *Social Theory and Practice*.

SELECT PRESENTATIONS AND APPEARANCES

“A Right to Be Left Dead,” New York, New York, 23rd Annual Intellectual Property Scholars Conference, Benjamin Cardozo School of Law (Aug. 3, 2023).

“Intellectual Property Borrowing,” San Juan, Puerto Rico, Law & Society Annual Meeting (June 2, 2023).

“Historical Kinship and Categorical Mischief,” Philadelphia, Pennsylvania, Copyright Scholars Roundtable, University of Pennsylvania School of Law (May 8, 2023).

“Nonobvious Design,” Lisbon, Portugal, Law & Society Annual Meeting (July 15, 2022).

“Nonobvious Design,” Palo Alto, California, Biolawlapalooza, Stanford Law School (May 13, 2022).

“Design Patents and the Aesthetic Middle,” International Trademark Association Scholarship Symposium, (Jan. 13, 2022).

“Fixing Fake News,” Buffalo, New York, University at Buffalo Society and Computing Club (Sept. 22, 2021).

“The Law of Advertising Outrage,” Syracuse, New York, Syracuse College of Law IP TechLaw Center (Oct. 6, 2020).

“Copyright and the Brain,” Pittsburgh, Pennsylvania, Three Rivers Tech & IP Conference, University of Pittsburgh School of Law (Jan. 31, 2020).

“Copyright and the Brain,” New York, New York, Tri-State Region IP Workshop, NYU School of Law (Jan. 10, 2020).

“Fighting Fake News,” Buffalo, New York, Case Library Conversation Series (Oct. 27, 2019).

“When Does Advertising Become Manipulation?,” Providence, Rhode Island, Brown University (Aug. 23, 2019).

“Adcreep,” Buffalo, New York, Local Author Series, Buffalo & Erie County Public Library (May 25, 2019).

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Exhibit B

MATERIALS REVIEWED

In addition to the materials referenced in my expert report, I was provided with and reviewed the following materials by counsel for Travelers United.

Pleadings

- Complaint for Violations of the Consumer Protections Procedures Act
- Cassandra De Pecol's Motion to Dismiss Travelers United's Complaint or in the Alternative to Strike
- Order Denying Defendants' Motion to Dismiss and Motion to Strike
- Plaintiff Travelers United's Witness List
- Defendants' List of Fact Witnesses

Other Documents

- May 30, 2023 cease and desist letter from Matthew Alderson, Guinness World Records to Cassandra De Pecol
- October 12, 2023 correspondence from Virgin Galactic to Lauren Wolfe, Counsel for Travelers United

EXHIBIT 2

EXPERT REPORT OF AVA SMITHING

Travelers United, Plaintiff

v.

Cassandra de Pecol and

Expedition 196, LLC, Defendants

I. Introduction

My name is Ava Smithing. I have been asked to provide my expert opinion on the impact of social media influencers on the mental health of young people. Specifically, an unchecked influencer's negative impact on youth social comparison, peer sensitivity and body image.

II. Qualifications and Scope

As a digital native with firsthand experience navigating the era of sponsored social media content, I offer a unique perspective as an expert witness in this case. I graduated with honors from the Stevens Institute of Technology in May 2023. I studied the history and philosophy of technology and public policy. I serve as the Advocacy and Operations Director at The Young People's Alliance (YPA), a youth-led non-profit dedicated to amplifying young voices in policy discourse. We are currently working towards safer social media design for young users by sharing our lived experiences and insight with lawmakers and relevant professionals. This work has been quoted in the media on many occasions. I have given talks and been involved in panel discussions on the topic of social media policy and legal proceedings.

The desperate need for new laws to protect youth online from the immense harms they have suffered¹ and the unprecedented nature of technology has necessitated that my peers and I be accepted as experts on the topics of social media and its impact on youth mental health. Our generation was the first to experience social media's impacts on our daily lives from a young age. Without lived experience, the nuance of how social media has impacted young lives can get lost in translation as legal scholars and policymakers move from empirical evidence to legal decisions and political proposals. This is why the unique youth perspective on these issues must be shared and considered when evaluating the claims made in this case.

I navigated social situations as they shifted from the real world to the virtual one. I watched as beauty standards were raised by photo editing software, filters and financial incentives. My judgment of myself got increasingly worse as the impossible expectations of what life should look like was exponentially raised by influencers who were, and still are, compensated for their posts. My experience with the negative impacts of commercial influencers on social media is deeply personal and sadly, nearly universal in my generation. Bolstered by my academic and professional background, this perspective solidifies my role to explain the harms of financially motivated influencers on my generation and its implications on the social psychological aspects of the case. My expertise does not extend to legal interpretations of consumer protection laws or detailed analysis of advertising regulations.

III. Summary of Claims

¹ U.S. Department of Health & Human Services. 2023. "Surgeon General Issues New Advisory About Effects Social Media Use Has on Youth Mental Health." Last modified May 23, 2023. <https://www.hhs.gov/about/news/2023/05/23/surgeon-general-issues-new-advisory-about-effects-social-media-use-has-youth-mental-health.html>.

Social media has become increasingly popular, especially among young people, creating a fertile ground for a secondary advertising market through influencers. The same aspects of social media that are benefiting the influencer market are harming young people. Because an influencer's monetary value is commensurate with the attention they receive, influencing can be simultaneously a lucrative, popular enterprise despite its harms to young people. As the influencer market grows, the necessity for competition between influencers grows which leads to influencers acting in deceitful ways to maintain a competitive advantage over other influencers. Competition incentivizes influencers to engage in deceptive practices as these practices can reward them monetarily due to the specific mechanisms of platform design. These deceptions cause even more harm to young people in addition to the harms built into the platforms themselves. To mitigate the effects of these harms, we must impose harsher restrictions on influencers' abilities to mislead their followers, protecting consumers and the mental health of youth persons.

IV. Explanation of Claims and Factual Evidence

Social media has become ubiquitous among young Americans. On the platforms in question, the most recent surveys from Pew Research show that of young individuals aged 15-17 more than 9 out of 10 use YouTube and nearly 7 out of 10 use TikTok, Snapchat, and/or Instagram.² Structurally, social media platforms are incentivized to increase the amount of usage by a given user in order to secure their two main sources of revenue: personal usage data and advertisements. In order to increase the amount of attention a user dedicates to the platform, social media companies have weaponized many distinct features of human psychology.

² Anderson, Monica, Michelle Faverio, and Jeffrey Gottfried. "Teens, Social Media and Technology 2023." Pew Research Center, December 11, 2023. <https://www.pewresearch.org/internet/2023/12/11/teens-social-media-and-technology-2023/>.

As outlined in a recent lawsuit filed against Instagram and Facebook's parent company, Meta, by 42 State Attorneys Generals, social media platforms that use intermittent reward schedules, such as algorithmically recommended content, and mechanisms of social comparison, such as likes and comments, are designed to increase time spent on the platforms, and can lead to addictive patterns of usage.³ The lawsuit suggests that young users are specifically susceptible to this prolonged usage because of their inability to self-regulate, leading them to spend extended amounts of time on the platforms.⁴ This, therefore, exposes the user to high volumes of content. This content is not only snippets into their peers' social lives but also posts from influencers whose goal is to market endorsed products to their follower base.

These influencers are benefited by the same design aspects of social media platforms that are harmful to young people. These features have supported a secondary advertising market where influencers thrive. A report by Deloitte cites that social media platforms are becoming 'one stop shops' to capitalize on this commercial aspect of social media and make it as easy as possible for users to stay on platforms while they make purchases.⁵ Features that integrate shopping and content viewing onto the same platform, such as Instagram's shopping tags or YouTube's product features, streamline the advertising process for influencers to sell products. Influencers can directly tag a product in a post; users can click that tag and arrive at a page where they can purchase it simultaneously. This streamlined process is ideal for influencers who benefit from user

³ Feiner, Lauren. "Meta sued by 42 attorneys general alleging Facebook, Instagram features are addictive and target kids." CNBC Chicago 17, October 24, 2023. <https://www.cnbc.com/2023/10/24/bipartisan-group-of-ags-sue-meta-for-addictive-features.html>.

⁴ Arizona et al. v. Meta Platforms. *Complaint for Injunctive and Other Relief*. US District Court for the Northern District of California (2023): p. 82.

⁵ Nathan, Alexander, and Kasia Blicharz. "The Rise of Social Commerce: A Growth Opportunity for Brands." Deloitte, February 2023. <https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/deloitte-nl-consumer-the-rise-of-social-commerce.pdf>.

accessibility to commercial activity. Other features that undergird influencer culture are monetization features which exist for popular content creators which financially reward the production of content that attracts large audiences. Platforms also support influencers by providing analytics tools to track engagement so they can watch their progress and see which types of posts are more popular as well as what demographics they are reaching in order to equip the influencer with information about what content to tailor to those demographics.

These features make influencing a desirable job, and the demand for influencers created by consumers shopping habits are leading to the saturation of the influencing field. 64% of digital buyers discover brands and products on social media and 67% of those buyers would consider a product or a brand if their favorite influencer recommended it.⁶ On platforms saturated with influencers, to become someone's favorite influencer is no small feat. In order to achieve this, an influencer must offer high quality content and a specific lifestyle which is alluring to the consumer. This creates an incentive for influencers to establish themselves among their peers as they compete with one another for lucrative marketing deals and heightened exposure to users on the platform. The longer a user spends online, the more money the platform can make displaying advertisements in their feeds and collecting personal usage data to better understand what advertisements that specific user will engage with in the future. This cycle is commonly referred to as the 'attention economy.' While the term attention economy itself has been around for decades, coined by economist and Nobel Laureate Herbert A. Simon, it means "an economy where human attention is a commodity."⁷ In the digital age, it has more commonly been utilized as a designation of the process used by social media companies to offer their services for free in exchange for users'

⁶ Nathan and Blicharz, p. 4.

⁷ Mintzer, Ally. "Paying Attention: The Attention Economy – Berkeley Economic Review." Berkeley Economic Review, March 30, 2020. <https://econreview.berkeley.edu/paying-attention-the-attention-economy/>

attention to advertisements. This commoditization of consumer attention is what influencers are competing for with the content they create.

We exist in an economy where attention is valuable. Influencers compete with each other for attention, and due to this competition alongside the design of social media, influencers are incentivized to produce extreme claims about themselves to merit them attention, raise their status, and bolster their partnerships with brands. A study conducted on 99 global travel influencers to examine the drivers of social comparison frequency between themselves highlights the increase in competition between them as travel influencing becomes a more saturated field.⁸ To stay ahead of the competition, influencers work to establish themselves as opinion leaders which consumers see as more credible than regular advertisers. The research suggests that the more an influencer sees themselves as an opinion leader, the more likely they are to engage in social comparison with other travel influencers on social media in an attempt to identify lanes to make their content stand out.⁹ The research also supports that professional travel specifically influencers, such as De Pecol, are more likely to see themselves as opinion leaders.¹⁰

This same research (travel influencer study) highlights the advantage given to influencers when sharing false claims about themselves to heighten their status as an opinion leader and maintain a competitive advantage over her peer influencer as competition grows. The study found that travel influencers compare themselves to others in order to gain a better understanding of their own personal ability to influence their followers and find ways to be more effective. Given this

⁸ Mariani, Marcello M., Maria Ek Styven, and Rajan Nataraajan. "Social Comparison Orientation and Frequency: A Study on International Travel Bloggers." *Elsevier Journal of Business Research* 123 (February 2021): 232-240. <https://doi.org/10.1016/j.jbusres.2020.09.070>.

⁹ *Ibid.*, p. 238.

¹⁰ *Ibid.*, p. 236.

research, it could be probable that De Pecol, like other travel influencers, engages in social comparison and adjusts her strategy accordingly in order to set herself apart from the competition—by claiming allegedly heightened accomplishments.

Platforms use algorithms to promote content that garners high engagement to users. Thus one way for an influencer to become more effective is to create content for virality, as extremity in content is rewarded with viewership and engagement.¹¹ A claim that enhances one's personal image, such as being the first woman to travel to every country or the first commercially sponsored astronaut, are prime examples of a strategic manipulation of the attention economy for heightened engagement and thus virality. We know being extraordinary online, even through deception, often translates to greater attention and profitability.

Another way for an influencer to become more effective is to mislead followers on the nature of their involvement with brands. The travel influencer study shows us that users are more likely to take influencers advice if they feel the claims are authentic and not completely driven by the commercial partnership.¹² This research demonstrates how it is to the influencer's advantage to hide the sponsorship details in their recommendations to their audience in order to stimulate users to process these recommendations with a higher regard, due to its perceived 'authenticity.' To post a photo or a review of partnered brands products, without highlighting a material connection to that brand, can result in heightened follower trust of that product, despite its deceptive nature. De Pecol has allegedly engaged in this behavior on multiple counts, including recently posting videos encouraging tourism to Saudi Arabia for an expo in 2030 on TikTok, with

¹¹ Berger, Jonah, and Katherine L. Milkman. "What Makes Online Content Viral?" *Journal of Marketing Research* (2011): DOI: 10.1509/jmr.10.0353.

¹² Mariani et al., p. 233..

no mention of a material connection to the country's tourism department.¹³ This takes advantage of followers' trust encouraging them to do something potentially dangerous.

V. Analysis of Claims Impact on Youth Well-being-

From the basic principles of social comparison theory, we understand individuals naturally seek to appraise their abilities and lives against others. Platforms like Instagram amplify this tendency given they are always accessible for users to make direct comparisons to their peers. Compounding this natural urge is the previously explained commercially constructed necessity for influencers, such as De Pecol, to appear perfect and unbiased, exaggerated and authentic on social media in order to better market products. These claims are not only deceptive and unfair to consumers, but they can have a catastrophic impact on the mental health of young followers and viewers due to their heightened peer sensitivity. Thus, this can increase susceptibility to social comparison and the fear of missing out (FOMO), which both have a negative impact on body image.

The previous section discussed how social media platforms are addictive by design, a fact particularly poignant to young people. Around ages 10 to 12, regions in the brain associated with cravings for social reward begin to develop. The prefrontal cortex—the region associated with inhibiting our behaviors—will not develop until early adulthood. This means youths' desire for social attention is “all gas pedal with no brakes” in the words of the Chief Science Officer of the APA and Professor of Psychology at the University of North Carolina Mitch Prinstein.¹⁴ This

¹³ De Pecol, Cassandra. "Can't wait for 2030..." TikTok video, 1:28. Posted December 6, 2023. <https://www.tiktok.com/@cassiedepecol/video/7309598544321629482>.

¹⁴ *Protecting Our Children Online, Before the U.S. Senate Committee on Judiciary*, 118 Cong. 6-7 (2023), (written statement of Mitch Prinstein, Chief Science Officer of the APA).

makes them particularly motivated to seek social rewards and not capable of regulating themselves. Young people's desire for social attention from their peers is something called 'peer sensitivity', and it is what makes social media a more salient experience for young people.

Peer sensitivity connects to two unique experiences for young people on social media platforms: fear of missing out (FOMO) and social comparison. The fear of missing out is "a pervasive apprehension that others might be having rewarding experiences from which one is absent."¹⁵ Researchers have found that FOMO has a bidirectional relationship with social media addiction in early adolescence: higher amounts of FOMO contribute to a higher likelihood of social media addiction and vice versa.¹⁶ Triggers for FOMO on social media are numerous, and include travel.

Peer sensitivity is also integral to the process of social comparison. This occurs on social media whenever a user assesses themselves in relation to others by comparing another user's appearance, accomplishments, or lifestyle to their own. An upward social comparison takes place when a user compares themselves with someone they think is better than them. This case specifically demonstrates how influencers, and De Pecol in particular, are inextricably connected to social comparison and FOMO. In the case of social comparison, specifically for young women, social comparison happens in the context of physical appearance where a user will compare their body to the body of an influencer. It is woefully typical for young women today to fall into traps of attempting to reach a beauty standard set by women they see online. A quick sweep of the

¹⁵ Przybylski, A. K., Murayama, K., DeHaan, C. R., & Gladwell, V. "Motivational, Emotional, and Behavioral Correlates of Fear of Missing Out." *Computers in Human Behavior* 29 (2013): 1841–1848. <https://doi.org/10.1016/j.chb.2013.02.014>.

¹⁶ Ana, E. Escalante. "The Influence of Fear Of Missing Out Against Social Media Addiction In Early Teens." *Ittishal Educational Research Journal* (2021): Abstract.

Instagram or TikTok comments on De Pecol's posts demonstrate the idolic status attributed to her by her followers. To be the alleged 'first' and 'fastest' women to travel to every country, alone nonetheless, is a confidence many women admire and aspire to imitate. Due to her exalted position among her follower base, she is also encouraging her followers to aspire to be like her in other ways.

There are many cases of De Pecol posting images on her social media feeds showcasing her body, many in the context of a beach vacation, or a workout but also some in the context of her experience dieting. One post in particular shows De Pecol holding out a pair of jeans that are too large for her stating she, "bought them in October." The insinuation of this post is that she has since lost weight. The very act of posting this online is sufficient to prove De Pecol's satisfaction with her weight loss, and to a young follower who may be dissatisfied with their body image, this contributes to the belief that losing weight is an accomplishment. The viewing of this post could lead them to believe that they should lose weight as well. If they want to be more like De Pecol, who they admire for her travel accomplishments, they must undergo a similar body image transformation. Research shows this is not a fringe occurrence but rather occurs too frequently for young women. A study done by two researchers at the University of Lugano in Switzerland shows that Instagram browsing, particularly involving cases of social comparison with influencers, is significantly associated with lower body appreciation among young females ($\beta = 0.206$, $p = 0.001$).¹⁷ By presenting an exaggerated and false narrative of her travels and achievements, De

¹⁷ Edalino, F., and A.-L. Camerini. "Instagram Use and Body Dissatisfaction: The Mediating Role of Upward Social Comparison with Peers and Influencers among Young Females." *International Journal of Environmental Research and Public Health* 19 (2022): 1543. <https://doi.org/10.3390/ijerph19031543>.

Pecol has set herself up to be a person of admiration who young, female Instagram users can aspire to imitate.

The significant findings from the study suggest influencers have a considerable impact on young women's body image. This underscores the importance of regulating misleading content to protect vulnerable audiences from extreme comparisons, an onus that cannot fall on social media companies due to liability protections awarded to them by current laws. The case against De Pecol highlights a broader issue within influencer marketing, where glamorous and potentially deceptive content can have real-world psychological effects. De Pecol's alleged attempts to erase other women's travel achievements to promote herself¹⁸ further exacerbate this issue. By positioning herself as a unique example of women's empowerment through deceptive means, she is contributing to a destructive narrative that affects young women's perceptions of their own achievements and self-worth. She is creating an impossible standard to live up to which results in negative feelings of self worth in her young followers.

Aside from the evidence found in the study, I know how social comparison with influencers can detrimentally change your life. I was diagnosed with an eating disorder that I suffered from for the entirety of my teenage years. My disordered eating was incubated on social media apps while I compared myself to other women that I admired online such as influencers who had lifestyles I wanted to mimic. My inability to match the quality of my life, accomplishments, and physical aesthetic with the influencers I followed online negatively impacted my self worth leading me to develop severe disordered eating behaviors.

¹⁸ Travelers United v. Cassandra de Pecol and Expedition 196. *Complaint for the Violations of the Consumer Protection Procedures Act*. Superior Court of the District of Columbia Civil Division (2023): p. 57.

My experience is validated and repeated all too often as shown by a comprehensive review of existing literature conducted by researchers at the University College London which found young social media users are not only more susceptible to eating disorders but to escalated cases of them.¹⁹ The findings suggest that young social media users are likely to attempt to meet the beauty standards set on social media, even if those standards of beauty are enhanced and filtered. This is especially true given the comparative nature of social media, predicated on quantifiable mechanisms of social comparison such as likes and comments. De Pecol's portrayal of an idealized life coupled with her extraordinary claims of travel achievements leads to intensified feelings of inadequacy among her followers. Research suggests her followers might experience negative emotions and decreased well-being as they compare their lives to the idealized image she presents.²⁰

As already discussed, De Pecol magnifies FOMO and social comparison among young women. This makes them particularly vulnerable to products marketed to them by De Pecol. A cognitive mapping study by Professor Karima Lajnef demonstrates that an influencer's experience and credibility enhance their ability to sway adolescent consumers to buy promoted products.²¹ There are two main mechanisms by which this happens, and we've already mentioned them. The first is FOMO. Researchers found that imitation of influencers significantly affects the degree of

¹⁹ Dane, A., and K. Bhatia. "The Social Media Diet: A Scoping Review to Investigate the Association between Social Media, Body Image, and Eating Disorders Amongst Young People." *PLOS Global Public Health* 3, no. 3 (2023): e0001091. <https://doi.org/10.1371/journal.pgph.0001091>.

²⁰ Mariani, Marcello M., Maria Ek Styven, and Rajan Nataraajan. "Social Comparison Orientation and Frequency: A Study on International Travel Bloggers." *Elsevier Journal of Business Research* 123 (February 2021): 232-240. <https://doi.org/10.1016/j.jbusres.2020.09.070>.

²¹ Lajnef, Karima. "The Effect of Social Media Influencers on Teenagers' Behavior: An Empirical Study Using Cognitive Map Technique." *Current Psychology* 42 (2023): 19373. <https://doi.org/10.1007/s12144-023-04273-1>.

FOMO and subsequently customer buying behavior.²² There is a desire for adolescents to be similar to their favorite influencers and they fear missing out on endorsed products. The second mechanism is social comparison. A study of influencer culture and impulsive buying behavior found that upward social comparisons to the image presented by influencers is positively associated with consumers' impulse buying choice.²³ In short, influencers have a monetary incentive to generate the fear of missing out or a negative social comparison. This explains De Pecol's desire to lie about her accomplishments; De Pecolo had a financial reason to do so.

VII. Conclusion

In an attention economy, where a majority of socializing and commercial activity happens online, young people are more susceptible now than ever to unfair and deceptive advertising practices, like those Cassandra De Pecol allegedly engaged in. Action must be taken to protect them. Due to precedents set before the existence of social media, there is no incentive or legal obligation for social media companies to protect young users from dishonest claims or remove users who lie for their own personal gain. This allows influencers to exist unchecked. They can provide easily falsifiable claims about their lives and misrepresent their relationship to the brands that are supporting them which is psychologically and financially damaging to young people on social media. Therefore, the courts of the United States must establish precedent that allows the third party responsible for posting content, in this case Cassandra De Pecol, to be held liable for

²² Dinh, Thi Cam Tu and Yoonjae Lee. "I want to be as trendy as influencers' – how 'fear of missing out' leads to buying intention for products endorsed by social media influencers." *Journal of Research in Interactive Marketing* 16(3) (2022): 346-364. <https://doi.org/10.1108/JRIM-04-2021-0127>.

²³ Mundel, Juan, Anan Wan, and Jing Wang. "Processes underlying social comparison with influencers and subsequent impulsive buying: The roles of social anxiety and social media addiction." *Journal of Marketing Communication* (2023): 1-18. <https://doi.org/10.1080/13527266.2023.2183426>.

both the damages caused by unlawful trade practices and the damages caused by the deceptive practices and claims that allow them to take advantage of a young, captive audience.

By exaggerating her accomplishments for increased viewership, De Pecol not only profits from heightened sponsorship rates but also exploits the dynamics of social media that especially adversely affect young users. These young users, who are a captive audience due to addictive design features, and highly susceptible to upward social comparison due to other features such as numerical like values that are equated with worth²⁴, are more deeply engaged and influenced by the allure of exaggerated content and exceptional role models. This exploitation highlights the ethical and legal concerns of deceptive influencer marketing. If a young person is idolizing a role model who is lying about their achievements, then they are setting that young person up for failure by comparison.

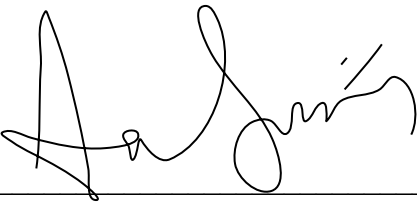
This case presents an opportunity for the judicial system to set a precedent in holding influencers accountable for deceptive practices. It's essential to protect young, impressionable social media users from the potential harms of misleading content and to ensure ethical standards in digital marketing. As a representative voice of the digital native generation, I emphasize the critical need for action in safeguarding young users in their online spaces.

I reserve the right to modify and add to this report if additional documents or information become available to me.

²⁴ Knispel, Sandra. "Getting Fewer 'Likes' on Social Media Can Make Teens Anxious and Depressed." University of Rochester Newscenter. Accessed February 1, 2024. <https://www.rochester.edu/newscenter/getting-fewer-likes-on-social-media-can-make-teens-anxious-and-depressed-453482/>.

I hereby certify that this report is a complete and accurate statement of all of my opinions, and the basis and reasons for them, to which I will testify under oath.

Submitted,

X  _____

Ava Smithing, 1/14/2024

Exhibit C

Ava Smithing

(615) 309-0532

avasmithing@gmail.com

<https://www.linkedin.com/in/ava-smithing>

EDUCATION

Stevens Institute of Technology, Hoboken, NJ

Anticipated May 2023

Bachelor of Science in Business Management and the History and Philosophy of Technology,
Public Policy Minor **GPA 3.85**

SKILLS

Software: Figma, Gephi, R studio, Microsoft Suite, Google Suite, Zoom, Slack

WORK EXPERIENCE

Young Peoples' Alliance, *Advocacy and Operations Director*, Washington, D.C.
July 2023- Present

- Organizing external stakeholders to advance legislation and research that promotes the safety of youth on social media.
- Planning and executing events with the goal of advancing YPA's mission to elevate youth voices.
- Consistent interaction with youth communities to ensure accurate representation of their needs and priorities.
- Actively engaged in ongoing research and study to maintain current knowledge of social media policy, platform design, and youth perspectives on social media trends and issues
- Drafting legislation to address targeted algorithms as the solution to heal mental health crisis and political polarization.
- Forming relationships with 110+ congressional offices and over a dozen tech relevant non-profits to offer insightful recommendations on policy to mitigate potential disproportionate harms to youth population.

The Common Good, *Public Affairs Intern*, Remote

August 2022- Dec 2022

- Liaised between project sponsors, service providers and consultants; established and developed relationships with 8 external stakeholders.
- Created and consistently updated project planning, tracking and communication documents for annual award Gala.

Green Hills Grille & Mere Bulles, *Lead Hostess/Server*, Nashville, TN
Feb 2013 - Present

- Systematized roles for staff to mitigate ineffective overlap in responsibilities.

- Developed communication, conflict resolution and problem-solving skills for a fast-paced work environment.

RESEARCH EXPERIENCE

StandardDAO, *Web 3.0 Research Assistant*, Remote
2022

May 2022 - August

- Developed a comprehensive understanding of tech policy landscape to diagnose areas for potential improvement.
- Generated actionable insights to improve user privacy on social media platforms.
- Completed and presented a research document outlining the global regulatory status of user data privacy.

Summer Research Fellow at Stevens Institute of Technology, Remote May 2021 - July 2021

- Selected for competitive research grant to investigate Amazon's recent expansion to Nashville, TN.
- Proposed action plan to mitigate disproportionate harm or gains across communities.
- Presented findings in a comprehensive PowerPoint presentation and detailed write-up.

ATHLETICS

Division III Volleyball Team, *Team Captain*, Stevens Institute of Technology
August 2019 – August 2023

- Lead 18 individual personalities to three consecutive conference titles and NCAA tournaments.
- Manage 21+ credits while dedicating 25-30 hours per week to practices and games during season.

ACTIVITIES

All Tech is Human Affiliate

Member of competitive inaugural affiliate program, acting as a representative for the leading responsible tech network organization. Consists of attending events on behalf of ATH, engaging in research projects and proliferating research.

Min-Aquabats Waterski Team, Vice President of 200+ member 501(c)(3) Non-profit.

Restructured internal organization using Google suite, served as main point of contact for existing club sponsors, designed and implemented strategy for acquiring six new fiscal sponsors over one year.

Exhibit D

MATERIALS REVIEWED

In addition to the materials referenced in my expert report, I was provided with and reviewed the following materials by counsel for Travelers United.

Pleadings

- Complaint for Violations of the Consumer Protections Procedures Act
- Cassandra De Pecol's Motion to Dismiss Travelers United's Complaint or in the Alternative to Strike
- Order Denying Defendants' Motion to Dismiss and Motion to Strike
- Plaintiff Travelers United's Witness List
- Defendants' List of Fact Witnesses

Other Documents

- May 30, 2023 cease and desist letter from Matthew Alderson, Guinness World Records to Cassandra De Pecol
- October 12, 2023 correspondence from Virgin Galactic to Lauren Wolfe, Counsel for Travelers United
- FTC influencer guidelines
- Link to Cassandra De Pecol's TikTok promoting Saudi Arabia and Riyadh Expo 2030
- Screenshot of Cassandra De Pecol's Instagram story from March 25, 2023 promoting weight loss
- Expert Report of Professor Mark Bartholomew

Payment

- Travelers United made a \$200 donation to the Young People's Alliance for the work involved in drafting this report