Professional Athlete Cryptocurrency Endorsements and Transparency Concerns

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I. Introduction

Cryptocurrency was initially created in the 1990s as eCash, but it was discontinued around 2008 due to compliance issues—including legal and regulatory challenges—before the global financial crisis.[1] In 2009, cryptocurrency was reintroduced under the name Bitcoin, once again necessitating increased financial literacy due to skyrocketing nationwide interest within the digital currency world.[2] Cryptocurrency is seen as another form of digital cash and assets sent through a blockchain, a data log of all transactions, that can be used in certain establishments.[3] For instance, Tesla, under Elon Musk's leadership, accepted Bitcoin for a limited time.[4] The public's response to cryptocurrency has varied greatly over the years. It has been accepted at times, but harshly criticized at others due to the amount of electrical energy needed to create coins and perform transactions.[5] Cryptocurrency requires a lot of computerized operations with high energy demands; the amount of energy that it uses has been compared to the energy usage of entire countries.[6] Many people continue to invest in cryptocurrency, especially since the COVID-19 pandemic, during which digital transactions outnumbered physical transactions and led to economic growth, which in turn caused individuals to invest in their futures.[7] With rapid growth for cryptocurrency agencies, it became a goal to have people continuously investing. One way to attract more attention to a product is through advertising featuring professional athletes.

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[1] David Lee Kuo Chuen et al., *Cryptocurrency*: *A New Investment Opportunity?*, 20 J. Alt. Inv. 16 (2018).
[2] Bahman Zohuri et al., *What Is the Cryptocurrency? Is It a Threat to Our National Security, Domestically and Globally?* 3 Int'l J. Theoretical & Computational Physics 1 (2022).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] Tatiana Antipova, *Is It Worth Investing in Cryptocurrency?*, 342 MATEC Web Conf. 1 (2021).

However, this practice has led fans of such athletes to invest in cryptocurrency despite lacking sufficient knowledge in this new industry, which has, in many instances, led to feelings of deceit.[8] Some notable companies have even experienced financial distress and backlash, such as the Futures Exchange (FTX). Given cryptocurrency's associated risks, increased regulations are necessary in this fast-paced industry to protect both investors and endorsers.

II. Sam Bankman-Fried and Futures Exchange

FTX was established in 2019 by Sam Bankman-Fried and others as a digital currency exchange platform designed for those from beginners to professionals.[9] Bankman-Fried, who also worked for Alameda Research, was transferring billions in customer money to Alameda Research from FTX, and then filed for bankruptcy in 2022.[10] Multiple charges against him, including money laundering and security fraud, resulted in him receiving a twenty-five year prison sentence.[11]

Due to sports fans' risky nature and willingness to invest with loyalty in their favorite sports team, FTX heavily promoted their platform through professional athletes.[12] High-profile professional athletes such as Tom Brady, Stephen Curry, and Shaquille O'Neal participated in endorsements with FTX.[13] While this seemed like a great deal between Bankman-Fried, professional athletes, and investors, it quickly crumbled with the rest of the company. Fans of these professional athletes and teams drastically changed their once positive opinion of them, and began to resent them because they felt lied to by these endorsers.[14] With the fall of FTX came

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[8] Anna D'Eramo, *Where You Lead, I Will Follow: Professional Athletes' Ability to Influence Loyal Fans' Cryptocurrency Investments and the Broader Need for Cryptocurrency Regulation*, 31 Jeffrey S. Moorad Sports L.J. 143 (2024).
[9] Lawrence Trautman & Larry D. Foster II, *The FTX Crypto Debacle: Largest Fraud Since Madoff?* 54 U. Mem. L.R. 289 (2023).
[10] *Id.*
[11] *Id.*
[12] D'Eramo, *supra* note 8.
[13] *Id.*
[14] *Id.*

many lawsuits, including *Garrison v. Bankman-Fried*, which mentioned multiple professional athletes, such as Tom Brady, Stephen Curry, and Shaquille O'Neal.[15] These athletes were accused of violating the Florida Securities Act, which requires securities and accounts that include yield-bearing amounts (YBAs) to be registered, and the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), which forbids evident deception and identifies various causes of it.[16] FTX was accused of putting YBAs into different securities that were left unregistered, meaning that money was being saved into different accounts that made the company look like it had more money than it did.[17] This lawsuit and other cases raised concerns regarding regulation of the industry and how to legally and truthfully use professional athletes as endorsers of cryptocurrency.

Like FTX, various other cryptocurrency agencies have also used professional athletes as endorsers. It is common for cryptocurrency agencies to promote themselves through sport entities, such as displaying agency logos on courts and fields, having an association network (NFL, NBA, etc.) advertise cryptocurrency agencies on commercial breaks and live graphics, and using professional athletes on personal contracts.[18] FTX has caused uproar amongst cryptocurrency agencies and the Federal Trade Commission, leaving those with titles in these communities frantic to create a better system.

III. The Federal Trade Commission's Response to Cryptocurrency

It is hard to maintain regulation for cryptocurrency agencies since they are rapidly changing, which in turn causes legal issues to constantly arise. Multiple federal agencies, like the Securities and Exchange Committee (SEC) and the Federal Trade Commission (FTC), try to

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[15] Garrison v. Bankman-Fried, 669 F. Supp. 3d 1231 (S.D. Fla. 2023).
[16] *Id.*
[17] *Id.*
[18] D'Eramo, *supra* note 8.

keep up with these changes and regulate how things should be handled legally.[19]

The FTC has taken precautions concerning advertisements and released guidelines that date back to 1980, which give them the right to step in when needed to protect those involved.[20] The FTC's advertising guidelines clarify that investors cannot be deceived through advertisements and endorsers.[21] While this is a good foundation for situations like the fall of FTX, the idea of deception here is subjective because the endorsers must give honest accounts of their cryptocurrency exchange, including their experience with it.[22] A 2004 case with the U.S. Court of Appeals of the Ninth Circuit, *Federal Trade Commission v. Garvey*, tried to better distinguish what "truth" is and how it should be relayed by the endorser about the cryptocurrency agency.[23] This case demonstrates how a celebrity endorsement did not correctly follow the FTC advertisement guideline at the discretion of the individual's liability, and portrayed how these guidelines can be seen as subjective.[24] Since *Garvey*, multiple cases under the FTC have examined how companies should be held liable versus the individual endorser, in this case, professional athletes.[25] Some such cases include *Brady v. Basic Research, L.L.C.* (2015) and *Federal Trade Commission v. Teami, LLC* (2020).[26] These lawsuits, along with lawsuits against FTX, hold the company responsible for deceptive actions towards investors when they feel betrayed by the endorsers.

One of the main goals in recent years has been to focus on regulations for cryptocurrency from a technological standpoint to help develop guidelines for endorsers.[27] Both social media and

[19] Madeline Simpson, *Consumers Caught in the Cryptocurrency Crisis: Why Celebrity Endorsers Should Not Escape Liability*, 64 B.C. L.R. 2045 (2023).
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] Federal Trade Comm'n v. Garvey, 383 F.3d 891 (9th Cir. 2004).
[24] *Id.*
[25] Simpson, *supra* note 19.
[26] *Id.*
[27] Trautman & Foster, *supra* note 9.

cryptocurrency agencies have faced rapid and continuous growth—this growth likely is mutually reinforcing because social media is used as a form of advertisement for cryptocurrency. While professional athlete endorsements of cryptocurrency can happen on the field, on the court, or through an athlete's merchandise, most of their attraction actually comes from their social media and the features that they participate in.[28] This is an important area that the SEC should focus on; however, it comes with challenges. Cryptocurrency agencies have acknowledged how digital assets and money are transferred very quickly between agencies and markets, causing a lack of oversight of every move happening within the cryptocurrency databases.[29] These oversights were evident when the fall of FTX that occurred with Bankman-Fried brought attention to all aspects of the company, including athlete endorsements, leaving the SEC to step up and create a better system.[30] The SEC Division of Corporate Finance has begun using disclosure guidance through previous acts including the Securities Act of 1933 and the Securities Exchange Act of 1934.[31] The SEC approach is not focused on endorsements but on the company as a whole, ensuring those involved with endorsements are not put in incriminating situations.

IV. Conclusion

The rise of cryptocurrency has posed significant social, economic, political, and legal threats. The use of professional athletes and other high-profile individuals in advertising is only one aspect of the legal issues with cryptocurrency agencies and markets, especially after the fall of FTX brought more attention to this area. While there has been some pressure thus far from both the FTC and SEC for better regulations, current laws remain insufficient. This is because of the rapid growth of cryptocurrency and technology and the learning curve for the general public

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[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*

to effectively navigate this system before sufficient laws can be imposed. Every year, cryptocurrency continues to evolve and develop, and more regulation and attention is paid to the market system. Professional athlete endorsements often lead to them being seen as the face of these digital assets, and as such, there needs to be better regulation for investor transparency so that these endorsers do not face undue criticism for their actions.