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Crypto Chaos: EthereumMax Executives, Kim Kardashian, Floyd Mayweather, Jr., and Paul Pierce Sued in Cryptocurrency Advertising Class Action

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Cryptocurrency, social media, and celebrity or influencer endorsements have all been top of mind recently, including for advertisers. A newly filed lawsuit is asking a federal court to consider the intersection of these areas, with potential implications for advertisers looking to expand into the cryptocurrency space. EthereumMax executives ("Executive Defendants") and a few well-known celebrities, including Kim Kardashian, Floyd Mayweather, Jr., and Paul Pierce ("Celebrity Defendants") were recently met with a class action complaint in California federal court filed on behalf of all purchasers of EthereumMax's EMAX tokens between May and June 2021. Plaintiff alleges that Defendants hatched a scheme to misleadingly promote and sell EMAX Tokens, cryptocurrency digital assets, through social media advertisements and other promotional activities, while failing to adequately disclose material connections between EthereumMax and the Celebrity Defendants endorsing EMAX. Huegerich v. Gentile, No. 2:22-cv-00163 (C.D. Cal. Jan. 7, 2022).

Plaintiff alleges the Executive Defendants used celebrity endorsements and promotions from the Celebrity Defendants to falsely hype EMAX Tokens on social media, in what Plaintiff characterizes as a "pump and dump" scheme. For example, Plaintiff cites a Tweet from Paul Pierce stating, "@espn I don't need you. I got @ethereum_max I made more money with this crypto in the past month than I did with y'all in a year . . . my own Boss . . . check it out for yourself." According to Plaintiff, that same day EthereumMax issued a press release announcing that it was "now the exclusive CryptoCurrency accepted for online ticket purchasing for the highly anticipated Floyd Mayweather vs. Logan Paul Pay-Per-View event." Plaintiff alleges that as a result of these ads, the trading volume of EMAX rose almost five times higher than the previous day.

According to the Complaint, Floyd Mayweather, Jr. then further promoted EMAX at the "Bitcoin 2021" conference in Miami, where he and his entourage wore EthereumMax t-shirts. The Complaint alleges Kim Kardashian also posted her own solicitation for EthereumMax on her Instagram account, stating, "ARE YOU GUYS INTO CRYPTO??? . . . SHARING WHAT MY FRIENDS TOLD ME ABOUT THE ETHEREUM MAX TOKEN! A FEW MINUTES AGO ETHEREUM MAX BURNED 400 TRILLION TOKENS – LITERALLY 50% OF THEIR ADMIN WALLET GIVING BACK TO THE ENTIRE E-MAX COMMUNITY." Her post included a disclosure in the far bottom right, stating "#AD." Plaintiff cites survey results indicating that up to 21% of American adults and nearly half of all cryptocurrency owners saw the ad, with 19% of respondents who said they saw the ad investing in EMAX as a result.

According to Plaintiff, the Celebrity Defendants received EMAX Tokens and other forms of compensation in exchange for their promotional posts. Plaintiff alleges that the Celebrity Defendants failed to adequately disclose the fact that they were being compensated for their endorsements. In particular, Plaintiff alleges that Mayweather and Pierce did not include a disclosure of any kind, while Kardashian's "#AD" disclosure "tucked in the far bottom right of the post" was not sufficiently conspicuous.

Plaintiff further alleges that the Executive Defendants capitalized on the hype they caused via the Celebrity Defendants by artificially increasing the interest in and price of the EMAX Tokens, causing investors to buy the digital assets at inflated prices. Approximately a month after these promotional activities, EMAX allegedly saw a 98% drop in its price.

With the disclosure of material connections being a hot area for the FTC and NAD (as discussed in our "On Notice" series), this class action complaint may provide one of the first insights into how these issues will be handled in the cryptocurrency space. In the cryptocurrency space, in particular, disclosure issues may continue to come to the fore; by receiving cryptocurrency in exchange for their review, the endorser may be receiving a stake in the business (as opposed to just receiving compensation), which may not be obvious from context. We will continue to monitor this case and any other similar cryptocurrency advertising class actions that may be filed.

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