Panel Four

Torts and Tastemakers: Adventures in Influencer Advertising

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Title 16: Commercial Practices

PART 255—GUIDES CONCERNING USE OF ENDORSEMENTS AND TESTIMONIALS IN ADVERTISING

Contents

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SOURCE: 74 FR 53138, Oct. 15, 2009, unless otherwise noted.

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§255.0 Purpose and definitions.

(a) The Guides in this part represent administrative interpretations of laws enforced by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. Specifically, the Guides address the application of Section 5 of the FTC Act (15 U.S.C. 45) to the use of endorsements and testimonials in advertising. The Guides provide the basis for voluntary compliance with the law by advertisers and endorsers. Practices inconsistent with these Guides may result in corrective action by the Commission under Section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute. The Guides set forth the general principles that the Commission will use in evaluating endorsements and testimonials, together with examples illustrating the application of those principles. The Guides do not purport to cover every possible use of endorsements in advertising. Whether a particular endorsement or testimonial is deceptive will depend on the specific factual circumstances of the advertisement at issue.

(b) For purposes of this part, an endorsement means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group, or institution.

(c) The Commission intends to treat endorsements and testimonials identically in the context of its enforcement of the Federal Trade Commission Act and for purposes of this part. The term endorsements is therefore generally used hereinafter to cover both terms and situations.

(d) For purposes of this part, the term product includes any product, service, company or industry.

(e) For purposes of this part, an expert is an individual, group, or institution possessing, as a result of experience, study, or training, knowledge of a particular subject, which knowledge is superior to what ordinary individuals generally acquire.

Example 1: A film critic's review of a movie is excerpted in an advertisement. When so used, the review meets the definition of an endorsement because it is viewed by readers as a statement of the critic's own opinions and not those of the film producer, distributor, or exhibitor. Any alteration in or quotation from the text of the review that does not fairly reflect its substance would be a violation of the standards set by this part because it would distort the endorser's opinion. [*See* §255.1(b).]

Example 2: A TV commercial depicts two women in a supermarket buying a laundry detergent. The women are not identified outside the context of the advertisement. One comments to the other how clean her brand makes her family's clothes, and the other then comments that she will try it because she has not been fully satisfied with her own brand. This obvious fictional dramatization of a real life situation would not be an endorsement.

Example 3: In an advertisement for a pain remedy, an announcer who is not familiar to consumers except as a spokesman for the advertising drug company praises the drug's ability to deliver fast and lasting pain relief. He purports to speak, not on the basis of his own opinions, but rather in the place of and on behalf of the drug company. The announcer's statements would not be considered an endorsement.

Example 4: A manufacturer of automobile tires hires a well-known professional automobile racing driver to deliver its advertising message in television commercials. In these commercials, the driver speaks of the smooth ride, strength, and long life of the tires. Even though the message is not expressly declared to be the personal opinion of the driver, it may nevertheless constitute an endorsement of the tires. Many consumers will recognize this individual as being primarily a racing driver and not merely a spokesperson or announcer for the advertiser. Accordingly, they may well believe the driver would not speak for an automotive product unless he actually believed in what he was saying and had personal knowledge sufficient to form that belief. Hence, they would think that the advertising message reflects the driver's personal views. This attribution of the underlying views to the driver brings the advertisement within the definition of an endorsement for purposes of this part.

Example 5: A television advertisement for a particular brand of golf balls shows a prominent and well-recognized professional golfer practicing numerous drives off the tee. This would be an endorsement by the golfer even though she makes no verbal statement in the advertisement.

Example 6: An infomercial for a home fitness system is hosted by a well-known entertainer. During the infomercial, the entertainer demonstrates the machine and states that it is the most effective and easy-to-use home exercise machine that she has ever tried. Even if she is reading from a script, this statement would be an endorsement, because consumers are likely to believe it reflects the entertainer's views.

Example 7: A television advertisement for a housewares store features a well-known female comedian and a well-known male baseball player engaging in light-hearted banter about products each one intends to purchase for the other. The comedian says that she will buy him a Brand X, portable, high-definition television so he can finally see the strike zone. He says that he will get her a Brand Y juicer so she can make juice with all the fruit and vegetables thrown at her during her performances. The comedian and baseball player are not likely to be deemed endorsers because consumers will likely realize that the individuals are not expressing their own views.

Example 8: A consumer who regularly purchases a particular brand of dog food decides one day to purchase a new, more expensive brand made by the same manufacturer. She writes in her personal blog that the change in diet has made her dog's fur noticeably softer and shinier, and that in her opinion, the new food definitely is worth the extra money. This posting would not be deemed an endorsement under the Guides.

Assume that rather than purchase the dog food with her own money, the consumer gets it for free because the store routinely tracks her purchases and its computer has generated a coupon for a free trial bag of this new brand. Again, her posting would not be deemed an endorsement under the Guides.

Assume now that the consumer joins a network marketing program under which she periodically receives various products about which she can write reviews if she wants to do so. If she receives a free bag of the new dog food through this program, her positive review would be considered an endorsement under the Guides.

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§255.1 General considerations.

(a) Endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, an endorsement may not convey any express or implied representation that would be deceptive if made directly by the advertiser. [*See* §255.2(a) and (b) regarding substantiation of representations conveyed by consumer endorsements.

(b) The endorsement message need not be phrased in the exact words of the endorser, unless the advertisement affirmatively so represents. However, the endorsement may not be presented out of context or reworded so as to distort in any way the endorser's opinion or experience with the product. An advertiser may use an endorsement of an expert or celebrity only so long as it has good reason to believe that the endorser continues to subscribe to the views presented. An advertiser may satisfy this obligation by securing the endorser's views at reasonable intervals where reasonableness will be determined by such factors as new information on the performance or effectiveness of the product, a material alteration in the product, changes in the performance of competitors' products, and the advertiser's contract commitments.

(c) When the advertisement represents that the endorser uses the endorsed product, the endorser must have been a bona fide user of it at the time the endorsement was given. Additionally, the advertiser may continue to run the advertisement only so long as it has good reason to believe that the endorser remains a bona fide user of the product. [*See* §255.1(b) regarding the “good reason to believe” requirement.](d)Advertisers are subject to liability for false or unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers [*see* §255.5]. Endorsers also may be liable for statements made in the course of their endorsements.

Example 1: A building contractor states in an advertisement that he uses the advertiser's exterior house paint because of its remarkable quick drying properties and durability. This endorsement must comply with the pertinent requirements of §255.3 (Expert Endorsements). Subsequently, the advertiser reformulates its paint to enable it to cover exterior surfaces with only one coat. Prior to continued use of the contractor's endorsement, the advertiser must contact the contractor in order to determine whether the contractor would continue to specify the paint and to subscribe to the views presented previously.

Example 2: A television advertisement portrays a woman seated at a desk on which rest five unmarked computer keyboards. An announcer says, “We asked X, an administrative assistant for over ten years, to try these five unmarked keyboards and tell us which one she liked best.”The advertisement portrays X typing on each keyboard and then picking the advertiser's brand. The announcer asks her why, and X gives her reasons. This endorsement would probably not represent that X actually uses the advertiser's keyboard at work. In addition, the endorsement also may be required to meet the standards of §255.3 (expert endorsements).

Example 3: An ad for an acne treatment features a dermatologist who claims that the product is “clinically proven” to work. Before giving the endorsement, she received a write-up of the clinical study in question, which indicates flaws in the design and conduct of the study that are so serious that they preclude any conclusions about the efficacy of the product. The dermatologist is subject to liability for the false statements she made in the advertisement. The advertiser is also liable for misrepresentations made through the endorsement. [*See* Section 255.3 regarding the product evaluation that an expert endorser must conduct.

Example 4: A well-known celebrity appears in an infomercial for an oven roasting bag that purportedly cooks every chicken perfectly in thirty minutes. During the shooting of the infomercial, the celebrity watches five attempts to cook chickens using the bag. In each attempt, the chicken is undercooked after thirty minutes and requires sixty minutes of cooking time. In the commercial, the celebrity places an uncooked chicken in the oven roasting bag and places the bag in one oven. He then takes a chicken roasting bag from a second oven, removes from the bag what appears to be a perfectly cooked chicken, tastes the chicken, and says that if you want perfect chicken every time, in just thirty minutes, this is the product you need. A significant percentage of consumers are likely to believe the celebrity's statements represent his own views even though he is reading from a script. The celebrity is subject to liability for his statement about the product. The advertiser is also liable for misrepresentations made through the endorsement.

Example 5: A skin care products advertiser participates in a blog advertising service. The service matches up advertisers with bloggers who will promote the advertiser's products on their personal blogs. The advertiser requests that a blogger try a new body lotion and write a review of the product on her blog. Although the advertiser does not make any specific claims about the lotion's ability to cure skin conditions and the blogger does not ask the advertiser whether there is substantiation for the claim, in her review the blogger writes that the lotion cures eczema and recommends the product to her blog readers who suffer from this condition. The advertiser is subject to liability for misleading or unsubstantiated representations made through the blogger's endorsement. The blogger also is subject to liability for misleading or unsubstantiated representations made in the course of her endorsement. The blogger is also liable if she fails to disclose clearly and conspicuously that she is being paid for her services. [*See* §255.5.]

In order to limit its potential liability, the advertiser should ensure that the advertising service provides guidance and training to its bloggers concerning the need to ensure that statements they make are truthful and substantiated. The advertiser should also monitor bloggers who are being paid to promote its products and take steps necessary to halt the continued publication of deceptive representations when they are discovered.

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§255.2 Consumer endorsements.

(a) An advertisement employing endorsements by one or more consumers about the performance of an advertised product or service will be interpreted as representing that the product or service is effective for the purpose depicted in the advertisement. Therefore, the advertiser must possess and rely upon adequate substantiation, including, when appropriate, competent and reliable scientific evidence, to support such claims made through endorsements in the same manner the advertiser would be required to do if it had made the representation directly, *i.e.*, without using endorsements. Consumer endorsements themselves are not competent and reliable scientific evidence.

(b) An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.[105]

[105]The Commission tested the communication of advertisements containing testimonials that clearly and prominently disclosed either “Results not typical” or the stronger “These testimonials are based on the experiences of a few people and you are not likely to have similar results.”Neither disclosure adequately reduced the communication that the experiences depicted are generally representative. Based upon this research, the Commission believes that similar disclaimers regarding the limited applicability of an endorser's experience to what consumers may generally expect to achieve are unlikely to be effective.

Nonetheless, the Commission cannot rule out the possibility that a strong disclaimer of typicality could be effective in the context of a particular advertisement. Although the Commission would have the burden of proof in a law enforcement action, the Commission notes that an advertiser possessing reliable empirical testing demonstrating that the net impression of its advertisement with such a disclaimer is non-deceptive will avoid the risk of the initiation of such an action in the first instance.

(c) Advertisements presenting endorsements by what are represented, directly or by implication, to be “actual consumers” should utilize actual consumers in both the audio and video, or clearly and conspicuously disclose that the persons in such advertisements are not actual consumers of the advertised product.

Example 1: A brochure for a baldness treatment consists entirely of testimonials from satisfied customers who say that after using the product, they had amazing hair growth and their hair is as thick and strong as it was when they were teenagers. The advertiser must have

competent and reliable scientific evidence that its product is effective in producing new hair growth.

The ad will also likely communicate that the endorsers' experiences are representative of what new users of the product can generally expect. Therefore, even if the advertiser includes a disclaimer such as, “Notice: These testimonials do not prove our product works. You should not expect to have similar results,” the ad is likely to be deceptive unless the advertiser has adequate substantiation that new users typically will experience results similar to those experienced by the testimonialists.

Example 2: An advertisement disseminated by a company that sells heat pumps presents endorsements from three individuals who state that after installing the company's heat pump in their homes, their monthly utility bills went down by $100, $125, and $150, respectively. The ad will likely be interpreted as conveying that such savings are representative of what consumers who buy the company's heat pump can generally expect. The advertiser does not have substantiation for that representation because, in fact, less than 20% of purchasers will save $100 or more. A disclosure such as, “Results not typical” or, “These testimonials are based on the experiences of a few people and you are not likely to have similar results” is insufficient to prevent this ad from being deceptive because consumers will still interpret the ad as conveying that the specified savings are representative of what consumers can generally expect. The ad is less likely to be deceptive if it clearly and conspicuously discloses the generally expected savings and the advertiser has adequate substantiation that homeowners can achieve those results. There are multiple ways that such a disclosure could be phrased, *e.g.*, “the average homeowner saves $35 per month,” “the typical family saves $50 per month during cold months and $20 per month in warm months,” or “most families save 10% on their utility bills.”

Example 3: An advertisement for a cholesterol-lowering product features an individual who claims that his serum cholesterol went down by 120 points and does not mention having made any lifestyle changes. A well-conducted clinical study shows that the product reduces the cholesterol levels of individuals with elevated cholesterol by an average of 15% and the advertisement clearly and conspicuously discloses this fact. Despite the presence of this disclosure, the advertisement would be deceptive if the advertiser does not have adequate substantiation that the product can produce the specific results claimed by the endorser (*i.e.*, a 120-point drop in serum cholesterol without any lifestyle changes).

Example 4: An advertisement for a weight-loss product features a formerly obese woman. She says in the ad, “Every day, I drank 2 WeightAway shakes, ate only raw vegetables, and exercised vigorously for six hours at the gym. By the end of six months, I had gone from 250 pounds to 140 pounds.”The advertisement accurately describes the woman's experience, and such a result is within the range that would be generally experienced by an extremely overweight individual who consumed WeightAway shakes, only ate raw vegetables, and exercised as the endorser did. Because the endorser clearly describes the limited and truly exceptional circumstances under which she achieved her results, the ad is not likely to convey that consumers who weigh substantially less or use WeightAway under less extreme circumstances will lose 110 pounds in six months. (If the advertisement simply says that the endorser lost 110 pounds in six months using WeightAway together with diet and exercise, however, this description would not adequately alert consumers to the truly remarkable circumstances leading to her weight loss.)The advertiser must have substantiation, however, for any performance claims conveyed by the endorsement (e.g., that WeightAway is an effective weight loss product).

If, in the alternative, the advertisement simply features “before” and “after” pictures of a woman who says “I lost 50 pounds in 6 months with WeightAway,” the ad is likely to convey that her experience is representative of what consumers will generally achieve. Therefore, if consumers cannot generally expect to achieve such results, the ad should clearly and conspicuously disclose what they can expect to lose in the depicted circumstances (*e.g.,* “most women who use WeightAway for six months lose at least 15 pounds”).

If the ad features the same pictures but the testimonialist simply says, “I lost 50 pounds with WeightAway,” and WeightAway users generally do not lose 50 pounds, the ad should disclose what results they do generally achieve (*e.g.,* “most women who use WeightAway lose 15 pounds”).

Example 5: An advertisement presents the results of a poll of consumers who have used the advertiser's cake mixes as well as their own recipes. The results purport to show that the majority believed that their families could not tell the difference between the advertised mix and their own cakes baked from scratch. Many of the consumers are actually pictured in the advertisement along with relevant, quoted portions of their statements endorsing the product. This use of the results of a poll or survey of consumers represents that this is the typical result that ordinary consumers can expect from the advertiser's cake mix.

Example 6: An advertisement purports to portray a “hidden camera” situation in a crowded cafeteria at breakfast time. A spokesperson for the advertiser asks a series of actual patrons of the cafeteria for their spontaneous, honest opinions of the advertiser's recently introduced breakfast cereal. Even though the words “hidden camera” are not displayed on the screen, and even though none of the actual patrons is specifically identified during the advertisement, the net impression conveyed to consumers may well be that these are actual customers, and not actors. If actors have been employed, this fact should be clearly and conspicuously disclosed.

Example 7: An advertisement for a recently released motion picture shows three individuals coming out of a theater, each of whom gives a positive statement about the movie. These individuals are actual consumers expressing their personal views about the movie. The advertiser does not need to have substantiation that their views are representative of the opinions that most consumers will have about the movie. Because the consumers' statements would be understood to be the subjective opinions of only three people, this advertisement is not likely to convey a typicality message.

If the motion picture studio had approached these individuals outside the theater and offered them free tickets if they would talk about the movie on camera afterwards, that arrangement should be clearly and conspicuously disclosed. [*See* §255.5.]

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§255.3 Expert endorsements.

(a) Whenever an advertisement represents, directly or by implication, that the endorser is an expert with respect to the endorsement message, then the endorser's qualifications must in fact give the endorser the expertise that he or she is represented as possessing with respect to the endorsement.

(b) Although the expert may, in endorsing a product, take into account factors not within his or her expertise (*e.g.*, matters of taste or price), the endorsement must be supported by an actual exercise of that expertise in evaluating product features or characteristics with respect to which he or she is expert and which are relevant to an ordinary consumer's use of or experience with the product and are available to the ordinary consumer. This evaluation must have included an examination or testing of the product at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented in the endorsement. To the extent that the advertisement implies that the endorsement was based upon a comparison, such comparison must have been included in the expert's evaluation; and as a result of such comparison, the expert must have concluded that, with respect to those features on which he or she is expert and which are relevant and available to an ordinary consumer, the endorsed product is at least equal overall to the competitors' products. Moreover, where the net impression created by the endorsement is that the advertised product is superior to other products with respect to any such feature or features, then the expert must in fact have found such superiority. [*See* §255.1(d) regarding the liability of endorsers.]

Example 1: An endorsement of a particular automobile by one described as an “engineer” implies that the endorser's professional training and experience are such that he is well acquainted with the design and performance of automobiles. If the endorser's field is, for example, chemical engineering, the endorsement would be deceptive.

Example 2: An endorser of a hearing aid is simply referred to as “Doctor” during the course of an advertisement. The ad likely implies that the endorser is a medical doctor with substantial experience in the area of hearing. If the endorser is not a medical doctor with substantial experience in audiology, the endorsement would likely be deceptive. A non-medical “doctor” (e.g., an individual with a Ph.D. in exercise physiology) or a physician without substantial experience in the area of hearing can endorse the product, but if the endorser is referred to as “doctor,” the advertisement must make clear the nature and limits of the endorser's expertise.

Example 3: A manufacturer of automobile parts advertises that its products are approved by the “American Institute of Science.”From its name, consumers would infer that the “American Institute of Science” is a bona fide independent testing organization with expertise in judging automobile parts and that, as such, it would not approve any automobile part without first testing its efficacy by means of valid scientific methods. If the American Institute of Science is not such a bona fide independent testing organization (*e.g.*, if it was established and operated by an automotive parts manufacturer), the endorsement would be deceptive. Even if the American Institute of Science is an independent bona fide expert testing organization, the endorsement may nevertheless be deceptive unless the Institute has conducted valid scientific tests of the advertised products and the test results support the endorsement message.

Example 4: A manufacturer of a non-prescription drug product represents that its product has been selected over competing products by a large metropolitan hospital. The hospital has selected the product because the manufacturer, unlike its competitors, has packaged each dose of the product separately. This package form is not generally available to the public. Under the circumstances, the endorsement would be deceptive because the basis for the hospital's choice—convenience of packaging—is neither relevant nor available to consumers, and the basis for the hospital's decision is not disclosed to consumers.

Example 5: A woman who is identified as the president of a commercial “home cleaning service” states in a television advertisement that the service uses a particular brand of cleanser, instead of leading competitors it has tried, because of this brand's performance. Because cleaning services extensively use cleansers in the course of their business, the ad likely conveys that the president has knowledge superior to that of ordinary consumers. Accordingly, the president's statement will be deemed to be an expert endorsement. The service must, of course, actually use the endorsed cleanser. In addition, because the advertisement implies that the cleaning service has experience with a reasonable number of leading competitors to the advertised cleanser, the service must, in fact, have such experience, and, on the basis of its expertise, it must have determined that the cleaning ability of the endorsed cleanser is at least equal (or superior, if such is the net impression conveyed by the advertisement) to that of leading competitors' products with which the service has had experience and which remain reasonably available to it. Because in this example the cleaning service's president makes no mention that the endorsed cleanser was “chosen,” “selected,” or otherwise evaluated in side-by-side comparisons against its competitors, it is sufficient if the service has relied solely upon its accumulated experience in evaluating cleansers without having performed side-by-side or scientific comparisons.

Example 6: A medical doctor states in an advertisement for a drug that the product will safely allow consumers to lower their cholesterol by 50 points. If the materials the doctor reviewed were merely letters from satisfied consumers or the results of a rodent study, the endorsement would likely be deceptive because those materials are not what others with the same degree of expertise would consider adequate to support this conclusion about the product's safety and efficacy.

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§255.4 Endorsements by organizations.

Endorsements by organizations, especially expert ones, are viewed as representing the judgment of a group whose collective experience exceeds that of any individual member, and whose judgments are generally free of the sort of subjective factors that vary from individual to individual. Therefore, an organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. Moreover, if an organization is represented as being expert, then, in conjunction with a proper exercise of its expertise in evaluating the product under §255.3 (expert endorsements), it must utilize an expert or experts recognized as such by the organization or standards previously adopted by the organization and suitable for judging the relevant merits of such products. [*See* §255.1(d) regarding the liability of endorsers.]

Example: A mattress seller advertises that its product is endorsed by a chiropractic association. Because the association would be regarded as expert with respect to judging mattresses, its endorsement must be supported by an evaluation by an expert or experts

recognized as such by the organization, or by compliance with standards previously adopted by the organization and aimed at measuring the performance of mattresses in general and not designed with the unique features of the advertised mattress in mind.

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§255.5 Disclosure of material connections.

When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience), such connection must be fully disclosed. For example, when an endorser who appears in a television commercial is neither represented in the advertisement as an expert nor is known to a significant portion of the viewing public, then the advertiser should clearly and conspicuously disclose either the payment or promise of compensation prior to and in exchange for the endorsement or the fact that the endorser knew or had reason to know or to believe that if the endorsement favored the advertised product some benefit, such as an appearance on television, would be extended to the endorser. Additional guidance, including guidance concerning endorsements made through other media, is provided by the examples below.

Example 1: A drug company commissions research on its product by an outside organization. The drug company determines the overall subject of the research (*e.g.*, to test the efficacy of a newly developed product) and pays a substantial share of the expenses of the research project, but the research organization determines the protocol for the study and is responsible for conducting it. A subsequent advertisement by the drug company mentions the research results as the “findings” of that research organization. Although the design and conduct of the research project are controlled by the outside research organization, the weight consumers place on the reported results could be materially affected by knowing that the advertiser had funded the project. Therefore, the advertiser's payment of expenses to the research organization should be disclosed in this advertisement.

Example 2: A film star endorses a particular food product. The endorsement regards only points of taste and individual preference. This endorsement must, of course, comply with §255.1; but regardless of whether the star's compensation for the commercial is a $1 million cash payment or a royalty for each product sold by the advertiser during the next year, no disclosure is required because such payments likely are ordinarily expected by viewers.

Example 3: During an appearance by a well-known professional tennis player on a television talk show, the host comments that the past few months have been the best of her career and during this time she has risen to her highest level ever in the rankings. She responds by attributing the improvement in her game to the fact that she is seeing the ball better than she used to, ever since having laser vision correction surgery at a clinic that she identifies by name. She continues talking about the ease of the procedure, the kindness of the clinic's doctors, her speedy recovery, and how she can now engage in a variety of activities without glasses, including driving at night. The athlete does not disclose that, even though she does not appear in commercials for the clinic, she has a contractual relationship with it, and her contract pays her for speaking publicly about her surgery when she can do so. Consumers might not realize that a celebrity discussing a medical procedure in a television interview has been paid for doing so, and knowledge of such payments would likely affect the weight or credibility consumers give to the celebrity's endorsement. Without a clear and conspicuous disclosure that the athlete has been engaged as a spokesperson for the clinic, this endorsement is likely to be deceptive. Furthermore, if consumers are likely to take away from her story that her experience was typical of those who undergo the same procedure at the clinic, the advertiser must have substantiation for that claim.

Assume that instead of speaking about the clinic in a television interview, the tennis player touts the results of her surgery—mentioning the clinic by name—on a social networking site that allows her fans to read in real time what is happening in her life. Given the nature of the medium in which her endorsement is disseminated, consumers might not realize that she is a paid endorser. Because that information might affect the weight consumers give to her endorsement, her relationship with the clinic should be disclosed.

Assume that during that same television interview, the tennis player is wearing clothes bearing the insignia of an athletic wear company with whom she also has an endorsement contract. Although this contract requires that she wear the company's clothes not only on the court but also in public appearances, when possible, she does not mention them or the company during her appearance on the show. No disclosure is required because no representation is being made about the clothes in this context.

Example 4: An ad for an anti-snoring product features a physician who says that he has seen dozens of products come on the market over the years and, in his opinion, this is the best ever. Consumers would expect the physician to be reasonably compensated for his appearance in the ad. Consumers are unlikely, however, to expect that the physician receives a percentage of gross product sales or that he owns part of the company, and either of these facts would likely materially affect the credibility that consumers attach to the endorsement. Accordingly, the advertisement should clearly and conspicuously disclose such a connection between the company and the physician.

Example 5: An actual patron of a restaurant, who is neither known to the public nor presented as an expert, is shown seated at the counter. He is asked for his “spontaneous” opinion of a new food product served in the restaurant. Assume, first, that the advertiser had posted a sign on the door of the restaurant informing all who entered that day that patrons would be interviewed by the advertiser as part of its TV promotion of its new soy protein “steak.” This notification would materially affect the weight or credibility of the patron's endorsement, and, therefore, viewers of the advertisement should be clearly and conspicuously informed of the circumstances under which the endorsement was obtained.

Assume, in the alternative, that the advertiser had not posted a sign on the door of the restaurant, but had informed all interviewed customers of the “hidden camera” only after interviews were completed and the customers had no reason to know or believe that their response was being recorded for use in an advertisement. Even if patrons were also told that they would be paid for allowing the use of their opinions in advertising, these facts need not be disclosed.

Example 6: An infomercial producer wants to include consumer endorsements for an automotive additive product featured in her commercial, but because the product has not yet been sold, there are no consumer users. The producer's staff reviews the profiles of

individuals interested in working as “extras” in commercials and identifies several who are interested in automobiles. The extras are asked to use the product for several weeks and then report back to the producer. They are told that if they are selected to endorse the product in the producer's infomercial, they will receive a small payment. Viewers would not expect that these “consumer endorsers” are actors who were asked to use the product so that they could appear in the commercial or that they were compensated. Because the advertisement fails to disclose these facts, it is deceptive.

Example 7: A college student who has earned a reputation as a video game expert maintains a personal weblog or “blog” where he posts entries about his gaming experiences. Readers of his blog frequently seek his opinions about video game hardware and software. As it has done in the past, the manufacturer of a newly released video game system sends the student a free copy of the system and asks him to write about it on his blog. He tests the new gaming system and writes a favorable review. Because his review is disseminated via a form of consumer-generated media in which his relationship to the advertiser is not inherently obvious, readers are unlikely to know that he has received the video game system free of charge in exchange for his review of the product, and given the value of the video game system, this fact likely would materially affect the credibility they attach to his endorsement. Accordingly, the blogger should clearly and conspicuously disclose that he received the gaming system free of charge. The manufacturer should advise him at the time it provides the gaming system that this connection should be disclosed, and it should have procedures in place to try to monitor his postings for compliance.

Example 8: An online message board designated for discussions of new music download technology is frequented by MP3 player enthusiasts. They exchange information about new products, utilities, and the functionality of numerous playback devices. Unbeknownst to the message board community, an employee of a leading playback device manufacturer has been posting messages on the discussion board promoting the manufacturer's product. Knowledge of this poster's employment likely would affect the weight or credibility of her endorsement. Therefore, the poster should clearly and conspicuously disclose her relationship to the manufacturer to members and readers of the message board.

Example 9: A young man signs up to be part of a “street team” program in which points are awarded each time a team member talks to his or her friends about a particular advertiser's products. Team members can then exchange their points for prizes, such as concert tickets or electronics. These incentives would materially affect the weight or credibility of the team member's endorsements. They should be clearly and conspicuously disclosed, and the advertiser should take steps to ensure that these disclosures are being provided.

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FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship

Commission aims to improve disclosures in social media endorsements

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FOR RELEASE

April 19, 2017

TAGS: Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Online Advertising and Marketing

After reviewing numerous Instagram posts by celebrities, athletes, and other influencers, Federal Trade Commission staff recently sent out more than 90 letters reminding influencers and marketers that influencers should clearly and conspicuously disclose their relationships to brands when promoting or endorsing products through social media.

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.

The FTC's Endorsement Guides provide that if there is a "material connection" between an endorser and an advertiser – in other words, a connection that might affect the weight or credibility that consumers give the endorsement – that connection should be clearly and conspicuously disclosed, unless it is already clear from the context of the communication. A material connection could be a business or family relationship, monetary payment, or the gift of a free product. Importantly, the Endorsement Guides apply to both marketers and endorsers.

In addition to providing background information on when and how marketers and influencers should disclose a material connection in an advertisement, the letters each addressed one point specific to Instagram posts -- consumers viewing Instagram posts on mobile devices typically see only the first three lines of a longer post unless they click "more," which many may not do. The staff's letters informed recipients that when making endorsements on Instagram, they should disclose any material connection above the "more" button.

The letters also noted that when multiple tags, hashtags, or links are used, readers may just skip over them, especially when they appear at the end of a long post – meaning that a disclosure placed in such a string is not likely to be conspicuous.

Some of the letters addressed particular disclosures that are not sufficiently clear, pointing out that many consumers will not understand a disclosure like "#sp," "Thanks [Brand]," or "#partner" in an Instagram post to mean that the post is sponsored.

The staff's letters were sent in response to a sample of Instagram posts making endorsements or referencing brands. In sending the letters, the staff did not predetermine in every instance whether the brand mention was in fact sponsored, as opposed to an organic mention.

In addition to the Endorsement Guides, the FTC has previously addressed the need for endorsers to adequately disclose connections to brands through law enforcement actions and the staff's business education efforts. The staff also issued FTC's Endorsement Guides: What People are Asking, an informal business guidance document that answers frequently asked questions. The staff's letters to endorsers and brands enclosed copies of both guidance documents. The FTC is not publicly releasing the letters or the names of the recipients at this time.

The Federal Trade Commission works to promote competition, and protect and educate consumers. You can learn more about consumer topics and file a consumer complaint online or by calling 1-877-FTC-HELP (382-4357). Like the FTC on Facebook, follow us on Twitter, read our blogs and subscribe to press releases for the latest FTC news and resources.

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Influencers, are your #materialconnection #disclosures #clearandconspicuous?

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Lesley Fair
Apr 19, 2017

TAGS: Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Advertising and Marketing Basics | Endorsements | Online Advertising and Marketing

If Instagram is the home of Throwback Thursday and Flashback Friday, #IGers should think of today as Word to the Wise Wednesday.

We've been spending some time on Instagram lately. Why? Because advertisers, endorsers, and consumers are spending time there, too. What we saw raised concerns about whether some influencers are aware of truth-in-advertising standards about endorsements and disclosures. So the FTC staff sent 90+ letters to celebrities, athletes, and other influencers – as well as to the marketers of brands the influencers endorsed. Our goal is to influence influencers to comply with those established principles in their Instagram posts.

According to the FTC's Endorsement Guides, if there is a material connection between an endorser and an advertiser, that connection should be clearly and conspicuously disclosed unless it's already clear from the context of the communication. What do we mean by "material connection"? It's a connection that might affect the weight or credibility that consumers give the endorsement – like a business or family relationship, a payment, or the gift of a free product.

The legal responsibility for disclosing the relationship between an influencer and a brand is a two-way street. Influencers should clearly let people know about that connection and marketers have an obligation to make sure they do – usually by educating their influencers and monitoring what the influencers are doing on their behalf.

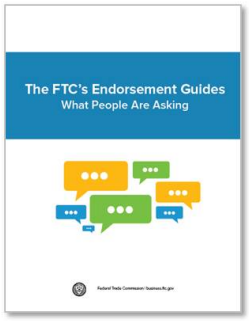
You'll want to read sample letters we sent to influencers and marketers for the specifics, but here is some #nofilter advice on making effective disclosures on Instagram:

> **Keep your disclosures unambiguous.** Vague terms like "Thank you," "#partner," and "#sp" aren't likely to explain to people the nature of the relationship between an influencer and the brand. There's no one-size-fits-all way to make that disclosure, but an unfamiliar abbreviation or cryptic word subject to multiple interpretations probably won't do the trick. Approach the issue by asking yourself "In the context of this post, how can I make the connection clear?"
>
> **Make your disclosures hard to miss.** In addition to *what* you say, consider *where* you say it and *how* it will look to consumers on the devices they're using. People should be able to spot the disclosure easily. But if they check their Instagram stream on a mobile device, they typically see only the first three lines of a longer post unless they

click “more.” And let’s face it: Many people don’t click “more.” Therefore, disclose any material connection above the “more” button.

Avoid #HardtoRead #BuriedDisclosures #inStringofHashtags #SkippedByReaders. When posts end with a jumble of hashtags, how likely is it that people really read them? That’s why a “disclosure” placed in a string of other hashtags isn’t likely to be effective.

In addition to the examples in the Endorsement Guides, the brochure FTC Endorsement Guides: What People are Asking offers additional tips for influencers and marketers.



United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

Mary K. Engle
Associate Director

{*Date*}

{*Address*}

Dear {*Influencer*}:

The Federal Trade Commission is the nation's consumer protection agency. As part of our consumer protection mission, we work to educate marketers about their responsibilities under truth-in-advertising laws and standards, including the FTC's Endorsement Guides.[1]

I am writing regarding your attached Instagram post endorsing {*product or service}*.[2] You posted a picture of {*description of picture*}. You wrote, "{*quotation from Instagram post*}."

The FTC's Endorsement Guides state that if there is a "material connection" between an endorser and the marketer of a product – in other words, a connection that might affect the weight or credibility that consumers give the endorsement – that connection should be clearly and conspicuously disclosed, unless the connection is already clear from the context of the communication containing the endorsement. Material connections could consist of a business or family relationship, monetary payment, or the provision of free products to the endorser.

The Endorsement Guides apply to marketers and endorsers. [If there is a material connection between you and {*Marketer*}, that connection should be clearly and conspicuously disclosed in your endorsements.] *or* [It appears that you have a business relationship with {*Marketer*}. Your material connection to that company should be clearly and conspicuously disclosed in your endorsements.] To make a disclosure both "clear" and "conspicuous," you should use unambiguous language and make the disclosure stand out. Consumers should be able to notice the disclosure easily, and not have to look for it. For example, consumers viewing posts in their Instagram streams on mobile devices typically see only the first three lines of a longer post unless they click "more," and many consumers may not click "more." Therefore, you should disclose any material connection above the "more" button. In addition, where there are multiple tags, hashtags, or links, readers may just skip over them, especially where they appear at the end of a long post.

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[1] The Endorsement Guides are published in 16 C.F.R. Part 255.

[2] The post is available at {*URL*}.

If you are endorsing the products or services of any marketers with whom you have a material connection, you may want to review the enclosed FTC staff publication, *The FTC Endorsement Guides: What People are Asking*. I'm also enclosing a copy of the *Endorsement Guides* themselves. (Both documents are available online at business.ftc.gov.)

If you have any questions, please contact Mamie Kresses at (202) 326-2070 or mkresses@ftc.gov. Thank you.

Very truly yours,

Mary K. Engle
Associate Director
Division of Advertising Practices

United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

Mary K. Engle
Associate Director

{*Date*}

{*Address*}

Dear {*Executive*}:

The Federal Trade Commission is the nation's consumer protection agency. As part of our consumer protection mission, we work to educate businesses about their responsibilities under truth-in-advertising laws and standards, including the FTC's Endorsement Guides.[1]

I am writing to call your attention to the attached Instagram post by {*Influencer*}.[2] {He/she} posts a picture {*description of picture*} and writes, "{*quotation from Instagram post*}."

The FTC's Endorsement Guides state that if there is a "material connection" between an endorser and the marketer of a product – in other words, a connection that might affect the weight or credibility that consumers give the endorsement – that connection should be clearly and conspicuously disclosed, unless the connection is already clear from the context of the communication containing the endorsement. Material connections could consist of a business or family relationship, monetary payment, or the provision of free products to the endorser.

The Endorsement Guides apply to marketers and endorsers. FTC staff guidance makes clear that marketers should advise endorsers of their disclosure responsibilities and should monitor their endorsements to ensure that appropriate disclosures are made.

[If your company has a business relationship with {*Influencer*}, that relationship should be clearly and conspicuously disclosed in her endorsements.] *or* [It appears that {*Influencer*} has a business relationship with your company. {*Influencer's*} material connection to your company should be clearly and conspicuously disclosed in {his/her} endorsements.] To be both "clear" and "conspicuous," the disclosure should use unambiguous language and stand out. Consumers should be able to notice the disclosure easily, and not have to look for it. For example, consumers viewing posts in their Instagram streams on mobile devices typically see only the first three lines of a longer post unless they click "more," and many consumers may not click "more." Therefore, an endorser should disclose any material connection above the "more" button. In

[1] The Endorsement Guides are published in 16 C.F.R. Part 255.

[2] The post is available at {*URL*}.

addition, where there are multiple tags, hashtags, or links, readers may just skip over them, especially where they appear at the end of a long post.

If your company has a written social media policy that addresses the disclosure of material connections by endorsers, you may want to evaluate how it applies to {*Influencer's*} post and to similar posts by other endorsers. If your company does not have such a policy, you may want to consider implementing one that provides appropriate guidance to your endorsers.

You may also want to review your company's social media marketing to ensure that posts contain necessary disclosures and they are clear and conspicuous. To assist you, I have enclosed the Endorsement Guides and a recent staff publication, The FTC Endorsement Guides: What People are Asking. (They're available online at business.ftc.gov.)

If you have any questions, please contact Michael Ostheimer at (202) 326-2699 or mostheimer@ftc.gov. Thank you.

Very truly yours,

Mary K. Engle
Associate Director
Division of Advertising Practices

United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

Mary K. Engle
Associate Director

September 6, 2017

{*Name and Address*}

Dear {*Name*}:

As you may recall, I wrote to you in March regarding one of your Instagram posts endorsing {*product or products*}. As I said in my earlier letter, if you are endorsing a brand and have a "material connection" with the marketer (that is, a connection or relationship that might affect the weight or credibility that your followers give the endorsement), then your connection should be clearly and conspicuously disclosed, unless the connection is already clear from the context of the endorsement. Material connections could consist of a business or family relationship, or your receipt of payment, free products or services, or other incentives to promote the brand.

{*Number*} of your other Instagram posts, attached to this letter, [has/have] recently come to our attention. {Description of post or posts.} [In the picture, you tagged {*description*.}] [The FTC staff believes that tagging a brand is an endorsement of the brand. Accordingly, if you have a material connection with the marketer of a tagged brand, then your posts should disclose that connection.] [None/neither of these posts discloses/This post does not disclose] whether you have material connections with the [brands and businesses] endorsed in the post[s].

[In another post, you {description} and you wrote, "Thank you …." As my earlier letter explained, a simple "thank you" is probably inadequate to inform consumers of a material connection because it does not sufficiently explain the nature of your relationship; consumers could understand "thank you" simply to mean that you are a satisfied customer.]

[In a … post, you {*description of post*}. Although you acknowledge {*connection to the brand*} that does not appear until line[s] {*number(s)*} of your post. As my earlier letter explained, consumers viewing posts in their Instagram streams on mobile devices typically see only the first three lines of a longer post unless they click "more," and many consumers may not click "more." Therefore, you should disclose any material connection above the "more" button.]

Please provide a written response to this letter by September 30, 2017 advising the FTC staff of whether you have a material connection with each of the brands or businesses that you endorsed in these posts: {*brands and businesses*}. If you have a material connection with [any of them], please describe what actions you are or will be taking to ensure that your social media posts endorsing brands and businesses with which you have a material connection clearly and conspicuously disclose your relationships.

Please direct your correspondence to Michael Ostheimer or Mamie Kresses of my office. If you have any questions, contact Mr. Ostheimer at (202) 326-2699 or mostheimer@ftc.gov or Ms. Kresses at (202) 326-2070 or mkresses@ftc.gov. Thank you.

Very truly yours,

Mary K. Engle
Associate Director
Division of Advertising Practices

Three FTC actions of interest to influencers

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Lesley Fair
Sep 7, 2017

TAGS: Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Endorsements | Online Advertising and Marketing

If you have any influence over influencers, alert them to three developments, including the FTC's first law enforcement action against individual online influencers for their role in misleading practices. According to the FTC, Trevor Martin and Thomas Cassell – known on their YouTube channels as TmarTn and Syndicate – deceptively endorsed the online gambling site CSGO Lotto without disclosing that they owned the company.

Law enforcement

Counter-Strike: Global Offensive (also known as CS: GO) is an online, multiplayer, first-person shooter game. "Skins" are game collectibles that can be bought, sold, or traded for real money. Skins have another use: They can be used as virtual currency on certain gambling sites, including CSGOLotto.com. On that site, players could challenge others to a one-on-one coin flip, wagering their pooled skins. In 2015, respondent Martin posted a video touting CSGO Lotto:

> We found this new site called CSGO Lotto, so I'll link it down in the description if you guys want to check it out. But we were betting on it today and I won a pot of like $69 or something like that so it was a pretty small pot but it was like the coolest feeling ever. And I ended up like following them on Twitter and stuff and they hit me up. And they're like talking to me about potentially doing like a skins sponsorship like they'll give me skins to be able to bet on the site and stuff. And I've been like considering doing it.

Martin followed up with more videos on his YouTube channel showing him gambling on the CSGO Lotto site. In addition, he tweeted things like "Made $13k in about 5 minutes on CSGO betting. Absolutely insane" and posted on Instagram "Unreal!! Won two back to back CSGOLotto games today on stream – $13,000 in total winnings."

Cassell promoted CSGO Lotto in a similar way, posting videos that were viewed more than five million times. In addition, he tweeted a screen shot of himself winning a betting pool worth over $2,100 with the caption "Not a bad way to start the day!" According to another tweet, "I lied . . . I didn't turn $200 into $4,000 on @CSGOLotto. . . I turned it into $6,000!!!!" Then there's this one: "Bruh.. i've won like $8,000 worth of CS:GO Skins today on @CSGOLotto. I cannot even believe it!"

Well, Bruhs, while we're on the subject of things we cannot even believe, did either of you like consider clearly disclosing that you like owned the company – a material connection requiring disclosure under FTC law?

The complaint also challenges how the respondents ran their own influencer program for CSGO Lotto. They paid other gamers between $2,500 and $55,000 in cash or skins "to post in their social media circles about their experiences in using" the gambling site. However, the contract made clear that those influencers couldn't make "statements, claims, or representations . . . that would impair the name, reputation and goodwill" of CSGO Lotto. And post they did on YouTube, Twitch, Twitter, and Facebook – in many instances, touting winnings worth thousands of dollars.

According to the FTC, Cassell, Martin, and CSGOLotto, Inc. falsely claimed that their videos and social media posts – and the videos and posts of the influencers they hired – reflected the independent opinions of impartial users. The complaint also charges that the respondents failed to disclose the material connection they had to the company – and the connection their paid influencers had. The proposed settlement requires Cassell, Martin, and the company to make those disclosures clearly and conspicuously in the future. The FTC is accepting public comments about the settlement until October 10, 2017.

An interesting aside: This isn't the first time Cassell's name has appeared in an FTC complaint. In a 2015 settlement with Machinima, the FTC alleged that Cassell pocketed $30,000 for two video reviews of Xbox One that he uploaded to his YouTube channel. Although the FTC didn't sue him, the complaint in that case alleged, "Nowhere in the videos or in the videos' descriptions did Cassell disclose that Respondent paid him to create and upload them."

Warning letters

The next development of interest to influencers relates to more than 90 educational letters the FTC sent to influencers and brands in April 2017, reminding them that, if influencers are endorsing a brand and have a "material connection" to the marketer, that relationship must be clearly disclosed, unless the connection is already clear from the context of the endorsement.

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. But the letters are different this time. The latest round asks the recipients to let us know if they have material connections to the brands in the identified social media posts. If they do, we've asked them to spell out the steps they will be taking to make sure they clearly disclose their material connections to brands and businesses.

Updated guidance for influencers and marketers

We've also just released an updated version of The FTC's Endorsement Guides: What People are Asking, a staff publication that answers questions about the use of endorsements, including in social media. The principles remain the same, but we've answered more than 20 new questions relevant to influencers and marketers on topics like tags in pictures, disclosures in Snapchat and Instagram, the use of hashtags, and disclosure tools built into some platforms. You'll want to read the updated brochure for details, but here are four "heads up" points for influencers:

1. **Clearly disclose when you have a financial or family relationship with a brand.** *"But everybody knows!"* No, they don't. It's unwise for influencers to assume that people know all about their business relationships.

2. **Don't assume that using a platform's disclosure tool is sufficient.** Some platforms are starting to offer disclosure tools, but that's no guarantee they're an effective way for an influencer to disclose a material connection to a brand. Like so many things on social media, it's all about context. One key consideration is placement – whether the disclosure attracts viewers' attention, taking into account where people are likely to look on a particular platform. For example, when paging through a stream of eye-catching photos, a viewer may not spot a disclosure placed above the picture or off to the side. The ultimate responsibility for making clear disclosures is yours. That's why you want to make sure your disclosures are hard to miss.

3. **Avoid ambiguous disclosures like #thanks, #collab, #sp, #spon, or #ambassador.** Clarity counts. When disclosing a material connection to a brand, use language that's clear and unmistakable. It's unlikely that abbreviations, shorthand, or arcane lingo will communicate the disclosure effectively to consumers. Think of it like football. Unless the quarterback throws the ball *and* the receiver catches it, it's an incomplete pass.

4. **Don't rely on a disclosure placed after a CLICK MORE link or in another easy-to-miss location.** Consider your own viewing habits on social media. Do you click every CLICK MORE link? We don't either. When disclosing a brand relationship, the better approach is to hit 'em right between the eyes. Furthermore, on image-only platforms, superimpose your disclosure over the picture in a clear font that contrasts sharply with the background.

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

The FTC's Endorsement Guides: What People Are Asking

TAGS: Advertising and Marketing | Endorsements | Online Advertising and Marketing

Answers to questions people are asking about the FTC's Endorsement Guides, including information about disclosing material connections between advertisers and endorsers.

Suppose you meet someone who tells you about a great new product. She tells you it performs wonderfully and offers fantastic new features that nobody else has. Would that recommendation factor into your decision to buy the product? Probably.

Now suppose the person works for the company that sells the product – or has been paid by the company to tout the product. Would you want to know that when you're evaluating the endorser's glowing recommendation? You bet. That common-sense premise is at the heart of the Federal Trade Commission's (FTC) Endorsement Guides.

The Guides, at their core, reflect the basic truth-in-advertising principle that endorsements must be honest and not misleading. An endorsement must reflect the honest opinion of the endorser and can't be used to make a claim that the product's marketer couldn't legally make.

In addition, the Guides say, if there's a connection between an endorser and the marketer that consumers would not expect and it would affect how consumers evaluate the endorsement, that connection should be disclosed. For example, if an ad features an endorser who's a relative or employee of the marketer, 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 is obvious: Knowing about the connection is important information for anyone evaluating the endorsement.

Say you're planning a vacation. You do some research and find a glowing review on someone's blog that a particular resort is the most luxurious place he has ever stayed. If you knew the hotel had paid the blogger hundreds of dollars to say great things about it or that the blogger had stayed there for several days for free, it could affect how much weight you'd give the blogger's endorsement. The blogger should, therefore, let his readers know about that relationship.

Another principle in the Guides applies to ads that feature endorsements from people who achieved exceptional, or even above average, results. An example is an endorser who says she lost 20 pounds in two months using the advertised product. If the advertiser doesn't have proof that the endorser's experience represents what people will generally achieve using the product as described in the ad (for example, by just taking a pill daily for two months), then an ad featuring that endorser must make clear to the audience what the generally expected results are.

Here are answers to some of our most frequently asked questions from advertisers, ad agencies, bloggers, and others.

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About the Endorsement Guides

Do the Endorsement Guides apply to social media?

Yes. Truth in advertising is important in all media, whether they have been around for decades (like television and magazines) or are relatively new (like blogs and social media).

Isn't it common knowledge that bloggers are paid to tout products or that if you click a link on a blogger's site to buy a product, the blogger will get a commission?

No. Some bloggers who mention products in their posts have no connection to the marketers of those products – they don't receive anything for their reviews or get a commission. They simply recommend those products to their readers because they believe in them.

Moreover, the financial arrangements between some bloggers and advertisers may be apparent to industry insiders, but not to everyone else who reads a particular blog. Under the law, an act or practice is deceptive if it misleads "a significant minority" of consumers. Even if some readers are aware of these deals, many readers aren't. That's why disclosure is important.

Are you monitoring bloggers?

Generally not, but if concerns about possible violations of the FTC Act come to our attention, we evaluate them case by case. If law enforcement becomes necessary, our focus usually will be on advertisers or their ad agencies and public relations firms. Action against an individual endorser, however, might be appropriate in certain circumstances, such as if the endorser has continued to fail to make required disclosures despite warnings.

Does the FTC hold bloggers to a higher standard than reviewers for traditional media outlets?

No. The FTC Act applies across the board. The issue is – and always has been – whether the audience understands the reviewer's relationship to the company whose products are being recommended. If the audience understands the relationship, a disclosure isn't needed.

If you're employed by a newspaper or TV station to give reviews – whether online or offline – your audience probably understands that your job is to provide your personal opinion on behalf of the newspaper or television station. In that situation, it's clear that you did not buy the product yourself – whether it's a book or a car or a movie ticket. On a personal blog, a social networking page, or in similar media, the reader might not realize that the reviewer has a relationship with the company whose products are being recommended. Disclosure of that relationship helps readers decide how much weight to give the review.

What is the legal basis for the Guides?

The FTC conducts investigations and brings cases involving endorsements made on behalf of an advertiser under Section 5 of the FTC Act, which generally prohibits deceptive advertising.

The Guides are intended to give insight into what the FTC thinks about various marketing activities involving endorsements and how Section 5 might apply to those activities. The Guides themselves don't have the force of law. However, practices inconsistent with the Guides may result in law enforcement actions alleging violations of the FTC Act. Law enforcement actions can result in orders requiring the defendants in the case to give up money they received from their violations and to abide by various requirements in the future. Despite inaccurate news reports, there are no "fines" for violations of the FTC Act.

When Does the FTC Act Apply to Endorsements?

I'm a blogger. I heard that every time I mention a product on my blog, I have to say whether I got it for free or paid for it myself. Is that true?

No. If you mention a product you paid for yourself, there isn't an issue. Nor is it an issue if you get the product for free because a store is giving out free samples to its customers.

The FTC is only concerned about endorsements that are made on behalf of a sponsoring advertiser. For example, an endorsement would be covered by the FTC Act if an advertiser – or someone working for an advertiser – pays you or gives you something of value to mention a product. If you receive free products or other perks with the expectation that you'll promote or discuss the advertiser's products in your blog, you're covered. Bloggers who are part of network marketing programs, where they sign up to receive free product samples in exchange for writing about them, also are covered.

What if all I get from a company is a $1-off coupon, an entry in a sweepstakes or a contest, or a product that is only worth a few dollars? Does that still have to be disclosed?

The question you need to ask is whether knowing about that gift or incentive would affect the weight or credibility your readers give to your recommendation. If it could, then it should be disclosed. For example, being entered into a sweepstakes or a contest for a chance to win a thousand dollars in exchange for an endorsement could very well affect how people view that endorsement. Determining whether a small gift would affect the weight or credibility of an endorsement could be difficult. It's always safer to disclose that information.

Also, even if getting one free item that's not very valuable doesn't affect your credibility, continually getting free stuff from an advertiser or multiple advertisers could suggest you expect future benefits from positive reviews. If a blogger or other endorser has a relationship with a marketer or a network that sends freebies in the hope of positive reviews, it's best to let readers know about the free stuff.

Even an incentive with no financial value might affect the credibility of an endorsement and would need to be disclosed. The Guides give the example of a restaurant patron being offered the opportunity to appear in television advertising before giving his opinion about a product. Because the chance to appear in a TV ad could sway what someone says, that incentive should be disclosed.

My company makes a donation to charity anytime someone reviews our product. Do we need to make a disclosure?

Some people might be inclined to leave a positive review in an effort to earn more money for charity. The overarching principle remains: If readers of the reviews would evaluate them differently knowing that they were motivated in part by charitable donations, there should be a disclosure. Therefore, it might be better to err on the side of caution and disclose that donations are made to charity in exchange for reviews.

What if I upload a video to YouTube that shows me reviewing several products? Should I disclose that I got them from an advertiser?

Yes. The guidance for videos is the same as for websites or blogs.

What if I return the product after I review it? Should I still make a disclosure?

That might depend on the product and how long you are allowed to use it. For example, if you get free use of a car for a month, we recommend a disclosure even though you have to return it. But even for less valuable products, it's best to be open and transparent with your readers.

I have a website that reviews local restaurants. It's clear when a restaurant pays for an ad on my website, but do I have to disclose which restaurants give me free meals?

If you get free meals, you should let your readers know so they can factor that in when they read your reviews.

I'm opening a new restaurant. To get feedback on the food and service, I'm inviting my family and friends to eat for free. If they talk about their experience on social media, is that something that should be disclosed?

You've raised two issues here. First, it may be relevant to readers that people endorsing your restaurant on social media are related to you. Therefore, they should disclose that personal relationship. Second, if you are giving free meals to anyone and seeking their endorsement, then their reviews in social media would be viewed as advertising subject to FTC jurisdiction. But even if you don't specifically ask for their endorsement, there may be an expectation that attendees will spread the word about the restaurant. Therefore, if someone who eats for free at your invitation posts about your restaurant, readers of the post would probably want to know that the meal was on the house.

I have a YouTube channel that focuses on hunting, camping, and the outdoors. Sometimes I'll do a product review. Knife manufacturers know how much I love knives, so they send me knives as free gifts, hoping that I will review them. I'm under no obligation to talk about any knife and getting the knives as gifts really doesn't affect my judgment. Do I need to disclose when I'm talking about a knife I got for free?

Even if you don't think it affects your evaluation of the product, what matters is whether knowing that you got the knife for free might affect how *your audience* views what you say about the knife. It doesn't matter that you aren't required to review every knife you receive. Your viewers may assess your review differently if they knew you got the knife for free, so we advise disclosing that fact.

Several months ago a manufacturer sent me a free product and asked me to write about it in my blog. I tried the product, liked it, and wrote a favorable review. When I posted the review, I disclosed that I got the product for free from the manufacturer. I still use the product. Do I have to disclose that I got the product for free every time I mention it in my blog?

It might depend on what you say about it, but each new endorsement made without a disclosure could be deceptive because readers might not see the original blog post where you said you got the product free from the manufacturer.

A trade association hired me to be its "ambassador" and promote its upcoming conference in social media, primarily on Facebook, Twitter, and in my blog. The association is only hiring me for five hours a week. I disclose my relationship with the association in my blogs and in the tweets and posts I make about the event during the hours I'm working. But sometimes I get questions about the conference in my off time. If I respond via Twitter when I'm not officially working, do I need to make a disclosure? Can that be solved by placing a badge for the conference in my Twitter profile?

You have a financial connection to the company that hired you and that relationship exists whether or not you are being paid for a particular tweet. If you are endorsing the conference in your tweets, your audience has a right to know about your relationship. That said, some of your tweets responding to questions about the event might not be endorsements, because they aren't communicating your opinions about the conference (for example, if someone just asks you for a link to the conference agenda).

Also, if you respond to someone's questions about the event via email or text, that person probably already knows your affiliation or they wouldn't be asking you. You probably wouldn't need a disclosure in that context. But when you respond via social media, all your followers see your posts and some of them might not have seen your earlier disclosures.

With respect to posting the conference's badge on your Twitter profile page, a disclosure on a profile page isn't sufficient because many people in your audience probably won't see it. Also, depending upon what it says, the badge may not adequately inform consumers of your connection to the trade association. If it's simply a logo or hashtag for the event, it won't tell consumers of your relationship to the association.

I'm a blogger and a company wants me to attend the launch of its new product. They will fly me to the launch and put me up in a hotel for a couple of nights. They aren't paying me or giving me anything else. If I write a blog sharing my thoughts about the product, should I disclose anything?

Yes. Knowing that you received free travel and accommodations could affect how much weight your readers give to your thoughts about the product, so you should disclose that you have a financial relationship with the company.

I share in my social media posts about products I use. Do I actually have to say something positive about a product for my posts to be endorsements covered by the FTC Act?

Simply posting a picture of a product in social media, such as on Pinterest, or a video of you using it could convey that you like and approve of the product. If it does, it's an endorsement.

You don't necessarily have to use words to convey a positive message. If your audience thinks that what you say or otherwise communicate about a product reflects your opinions or beliefs about the product, and you have a relationship with the company marketing the product, it's an endorsement subject to the FTC Act.

Of course, if you don't have any relationship with the advertiser, then your posts simply are not subject to the FTC Act, no matter what you show or say about the product. The FTC Act covers only endorsements made on behalf of a sponsoring advertiser.

If I post a picture of myself to Instagram and tag the brand of dress I'm wearing, but don't say anything about the brand in my description of the picture, is that an endorsement? And, even if it is an endorsement, wouldn't my followers understand that I only tag the brands of my sponsors?

Tagging a brand you are wearing is an endorsement of the brand and, just like any other endorsement, could require a disclosure if you have a relationship with that brand. Some influencers only tag the brands of their sponsors, some tag brands with which they don't have relationships, and some do a bit of both. Followers might not know why you are tagging a dress and some might think you're doing it just because you like the dress and want them to know.

Say a car company pays a blogger to write that he wants to buy a certain new sports car and he includes a link to the company's site. But the blogger doesn't say he's going to actually buy the car – or even that he's driven it. Is that still an endorsement subject to the FTC's Endorsement Guides?

Yes, an endorsement can be aspirational. It's an endorsement if the blogger is explicitly or implicitly expressing his or her views about the sports car (*e.g.*, "I want this car"). If the blogger was paid, it should be disclosed.

I'm a book author and I belong to a group where we agree to post reviews in social media for each other. I'll review someone else's book on a book review site or a bookstore site if he or she reviews my book. No money changes hands. Do I need to make a disclosure?

It sounds like you have a connection that might materially affect the weight or credibility of your endorsements (that is, your reviews), since bad reviews of each others' books could jeopardize the arrangement. There doesn't have to be a monetary payment. The connection could be friendship, family relationships, or strangers who make a deal.

My Facebook page identifies my employer. Should I include an additional disclosure when I post on Facebook about how useful one of our products is?

It's a good idea. People reading your posts in their news feed – or on your profile page – might not know where you work or what products your employer makes. Many businesses are so diversified that readers might not realize that the products you're talking about are sold by your company.

A famous athlete has thousands of followers on Twitter and is well-known as a spokesperson for a particular product. Does he have to disclose that he's being paid every time he tweets about the product?

It depends on whether his followers understand that he's being paid to endorse that product. If they know he's a paid endorser, no disclosure is needed. But if a significant portion of his followers don't know that, the relationship should be disclosed. Determining whether followers are aware of a relationship could be tricky in many cases, so we recommend disclosure.

A famous celebrity has millions of followers on Twitter. Many people know that she regularly charges advertisers to mention their products in her tweets. Does she have to disclose when she's being paid to tweet about products?

It depends on whether her followers understand that her tweets about products are paid endorsements. If a significant portion of her followers don't know that, disclosures are needed. Again, determining that could be tricky, so we recommend disclosure.

I'm a video blogger who lives in London. I create sponsored beauty videos on YouTube. The products that I promote are also sold in the U.S. Am I under any obligation to tell my viewers that I have been paid to endorse products, considering that I'm not living in the U.S.?

To the extent it is reasonably foreseeable that your YouTube videos will be seen by and affect U.S. consumers, U.S. law would apply and a disclosure would be required. Also, the U.K. and many other countries have similar laws and policies, so you'll want to check those, too.

Product Placements

What does the FTC have to say about product placements on television shows?

Federal Communications Commission law (FCC, not FTC) requires TV stations to include disclosures of product placement in TV shows.

The FTC has expressed the opinion that under the FTC Act, product placement (that is, merely showing products or brands in third-party entertainment content – as distinguished from sponsored content or disguised commercials) doesn't require a disclosure that the advertiser paid for the placement.

What if the host of a television talk show expresses her opinions about a product – let's say a videogame – and she was paid for the promotion? The segment is entertainment, it's humorous, and it's not like the host is an expert. Is that different from a product placement and does the payment have to be disclosed?

If the host endorses the product – even if she is just playing the game and saying something like "wow, this is awesome" – it's more than a product placement. 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. It doesn't matter that the host isn't an expert or the segment is humorous as long as the endorsement has credibility that would be affected by knowing about the payment. However, if what the host says is obviously an advertisement – think of an old-time television show where the host goes to a different set, holds up a cup of coffee, says "Wake up with ABC Coffee. It's how I start my day!" and takes a sip – a disclosure probably isn't necessary.

Endorsements by Individuals on Social Networking Sites

Many social networking sites allow you to share your interests with friends and followers by clicking a button or sharing a link to show that you're a fan of a particular business, product, website or service. Is that an "endorsement" that needs a disclosure?

Many people enjoy sharing their fondness for a particular product or service with their social networks.

If you write about how much you like something you bought on your own and you're not being rewarded, you don't have to worry. However, if you're doing it as part of a sponsored campaign or you're being compensated – for example, getting a discount on a future purchase or being entered into a sweepstakes for a significant prize – then a disclosure is appropriate.

I am an avid social media user who often gets rewards for participating in online campaigns on behalf of brands. Is it OK for me to click a "like" button, pin a picture, or share a link to show that I'm a fan of a particular business, product, website or service as part of a paid campaign?

Using these features to endorse a company's products or services as part of a sponsored brand campaign probably requires a disclosure.

We realize that some platforms – like Facebook's "like" buttons – don't allow you to make a disclosure. Advertisers shouldn't encourage endorsements using features that don't allow for clear and conspicuous disclosures. Whether the Commission may take action would depend on the overall impression, including whether consumers take "likes" to be material in their decision to patronize a business or buy a product.

However, an advertiser buying fake "likes" is very different from an advertiser offering incentives for "likes" from actual consumers. If "likes" are from non-existent people or people who have no experience using the product or service, they are clearly deceptive, and both the purchaser and the seller of the fake "likes" could face enforcement action.

I posted a review of a service on a website. Now the marketer has taken my review and changed it in a way that I think is misleading. Am I liable for that? What can I do?

No, you aren't liable for the changes the marketer made to your review. You could, and probably should, complain to the marketer and ask them to stop using your altered review. You also could file complaints with the FTC, your local consumer protection organization, and the Better Business Bureau.

How Should I Disclose That I Was Given Something for My Endorsement?

Is there special wording I have to use to make the disclosure?

No. The point is to give readers the essential information. A simple disclosure like "Company X gave me this product to try . . . ." will usually be effective.

Do I have to hire a lawyer to help me write a disclosure?

No. What matters is effective communication. A disclosure like "Company X gave me [name of product], and I think it's great" gives your readers the information they need. Or, at the start of a short video, you might say, "The products I'm going to use in this video were given to me by their manufacturers." That gives the necessary heads-up to your viewers.

Do I need to list the details of everything I get from a company for reviewing a product?

No. What matters is whether the information would have an effect on the weight readers would give your review. So whether you got $100 or $1,000 you could simply say you were "paid." (That wouldn't be good enough, however, if you're an employee or co-owner.) And if it is something so small that it would not affect the weight readers would give your review, you may not need to disclose anything.

When should I say more than that I got a product for free?

It depends on whether you got something else from the company. Saying that you got a product for free suggests that you didn't get anything else.

For example, if an app developer gave you their 99-cent app for free for you to review it, that information might not have much effect on the weight that readers give to your review. But if the app developer also gave you $100, knowledge of that payment would have a much greater effect on the credibility of your review. So a disclosure that simply said you got the app for free wouldn't be good enough, but as discussed above, you don't have to disclose exactly how much you were paid.

Similarly, if a company gave you a $50 gift card to give away to one of your readers and a second $50 gift card to keep for yourself, it wouldn't be good enough only to say that the company gave you a gift card to give away.

I'm doing a review of a videogame that hasn't been released yet. The manufacturer is paying me to try the game and review it. I was planning on disclosing that the manufacturer gave me a "sneak peek" of the game. Isn't that enough to put people on notice of my relationship to the manufacturer?

No, it's not. Getting early access doesn't mean that you got paid. Getting a "sneak peek" of the game doesn't even mean that you get to keep the game. If you get early access, you can say that, but if you get to keep the game or are paid, you should say so.

Would a single disclosure on my home page that "many of the products I discuss on this site are provided to me free by their manufacturers" be enough?

A single disclosure on your home page doesn't really do it because people visiting your site might read individual reviews or watch individual videos without seeing the disclosure on your home page.

If I upload a video to YouTube and that video requires a disclosure, can I just put the disclosure in the description that I upload together with the video?

No, because consumers can easily miss disclosures in the video description. Many people might watch the video without even seeing the description page, and those who do might not read the disclosure. The disclosure has the most chance of being clear and prominent if it's included in the video itself. That's not to say that you couldn't have disclosures in both the video and the description.

What about a disclosure in the description of an Instagram post?

When people view Instagram streams on most smartphones, descriptions more than four lines long are truncated, with only the first three lines displayed. To see the rest, you have to click “more.” If an Instagram post makes an endorsement through the picture or the first three lines of the description, any required disclosure should be presented without having to click “more.”

Would a button that says DISCLOSURE, LEGAL, or something like that which links to a full disclosure be sufficient?

No. A hyperlink like that isn’t likely to be sufficient. It does not convey the importance, nature, and relevance of the information to which it leads and it is likely that many consumers will not click on it and therefore will miss necessary disclosures. The disclosures we are talking about are brief and there is no space-related reason to use a hyperlink to provide access to them.

The social media platform I use has a built-in feature that allows me to disclose paid endorsements. Is it sufficient for me to rely on that tool?

Not necessarily. Just because a platform offers a feature like that is no guarantee it’s an effective way for influencers to disclose their material connection to a brand. It still depends on an evaluation of whether the tool clearly and conspicuously discloses the relevant connection. One factor the FTC will look to is placement. The disclosure should catch users’ attention and be placed where they aren’t likely to miss it. A key consideration is how users view the screen when using a particular platform. For example, on a photo platform, users paging through their streams will likely look at the eye-catching images. Therefore, a disclosure placed above a photo may not attract their attention. Similarly, a disclosure in the lower corner of a video could be too easy for users to overlook. Second, the disclosure should use a simple-to-read font with a contrasting background that makes it stand out. Third, the disclosure should be a worded in a way that’s understandable to the ordinary reader. Ambiguous phrases are likely to be confusing. For example, simply flagging that a post contains paid content might not be sufficient if the post mentions multiple brands and not all of the mentions were paid. The big-picture point is that the ultimate responsibility for clearly disclosing a material connection rests with the influencer and the brand – not the platform.

How can I make a disclosure on Snapchat or in Instagram Stories?

You can superimpose a disclosure on Snapchat or Instagram Stories just as you can superimpose any other words over the images on those platforms. The disclosure should be easy to notice and read in the time that your followers have to look at the image. In determining whether your disclosure passes muster, factors you should consider include how much time you give your followers to look at the image, how much competing text there is to read, how large the disclosure is, and how well it contrasts against the image. (You might want to have a solid background behind the disclosure.) Keep in mind that if your post includes video and you include an audio disclosure, many users of those platforms watch videos without sound. So they won’t hear an audio-only disclosure. Obviously, other general disclosure guidance would also apply.

What about a platform like Twitter? How can I make a disclosure when my message is limited to 140 characters?

The FTC isn’t mandating the specific wording of disclosures. However, the same general principle – that people get the information they need to evaluate sponsored statements – applies across the board, regardless of the advertising medium. The words “Sponsored” and “Promotion” use only 9 characters. “Paid ad” only uses 7 characters. Starting a tweet with “Ad:” or “#ad” – which takes only 3 characters – would likely be effective.

You just talked about putting “#ad” at the beginning of a social media post. What about “#ad” at or near the end of a post?

We’re not necessarily saying that “#ad” has to be at the beginning of a post. The FTC does not dictate where you have to place the “#ad.” What the FTC will look at is whether it is easily noticed and understood. So, although we aren’t saying it has to be at the beginning, it’s less likely to be effective in the middle or at the end. Indeed, if #ad is mixed in with links or other hashtags at the end, some readers may just skip over all of that stuff.

What if we combine our company name, "Cool Stylle" with "ad" as in "#coolstyllead"?

There is a good chance that consumers won't notice and understand the significance of the word "ad" at the end of a hashtag, especially one made up of several words combined like "#coolstyllead." Disclosures need to be easily noticed and understood.

Is it good enough if an endorser says "thank you" to the sponsoring company?

No. A "thank you" to a company or a brand doesn't necessarily communicate that the endorser got something for free or that they were given something in exchange for an endorsement. The person posting in social media could just be thanking a company or brand for providing a great product or service. But "Thanks XYZ for the free product" or "Thanks XYZ for the gift of ABC product" would be good enough – if that's all you got from XYZ. If that's too long, there's "Sponsored" or "Ad."

What about saying, "XYZ Company asked me to try their product"?

Depending on the context of the endorsement, it might be clear that the endorser got the product for free and kept it after trying it. If that isn't clear, then that disclosure wouldn't be good enough. Also, that disclosure might not be sufficient if, in addition to receiving a free product, the endorser was paid.

I provide marketing consulting and advice to my clients. I'm also a blogger and I sometimes promote my client's products. Are "#client" "#advisor" and "#consultant" all acceptable disclosures?

Probably not. Such one-word hashtags are ambiguous and likely confusing. In blogs, there isn't an issue with a limited number of characters available. So it would be much clearer if you say something like, "I'm a paid consultant to the marketers of XYZ" or "I work with XYZ brand"(where XYZ is a brand name).

Of course, it's possible that that some shorter message might be effective. For example, something like "XYZ_Consultant" or "XYZ_Advisor" might work. But even if a disclosure like that is clearer, no disclosure is effective if consumers don't see it and read it.

Would "#ambassador" or "#[BRAND]_Ambassador" work in a tweet?

The use of "#ambassador" is ambiguous and confusing. Many consumers are unlikely to know what it means. By contrast, "#XYZ_Ambassador" will likely be more understandable (where XYZ is a brand name). However, even if the language is understandable, a disclosure also must be prominent so it will be noticed and read.

I'm a blogger, and XYZ Resort Company is flying me to one of its destinations and putting me up for a few nights. If I write an article sharing my thoughts about the resort destination, how should I disclose the free travel?

Your disclosure could be just, "XYZ Resort paid for my trip" or "Thanks to XYZ Resort for the free trip." It would also be accurate to describe your blog as "sponsored by XYZ Resort."

The Guides say that disclosures have to be clear and conspicuous. What does that mean?

To make a disclosure "clear and conspicuous," advertisers should use plain and unambiguous language and make the disclosure stand out. Consumers should be able to notice the disclosure easily. They should not have to look for it. In general, disclosures should be:

close to the claims to which they relate;

in a font that is easy to read;

in a shade that stands out against the background;

for video ads, on the screen long enough to be noticed, read, and understood;

for audio disclosures, read at a cadence that is easy for consumers to follow and in words consumers will understand.

A disclosure that is made in both audio and video is more likely to be noticed by consumers. Disclosures should not be hidden or buried in footnotes, in blocks of text people are not likely to read, or in hyperlinks. If disclosures are hard to find, tough to understand, fleeting, or buried in unrelated details, or if other elements in the ad or message obscure or distract from the disclosures, they don't meet the "clear and conspicuous" standard. With respect to online disclosures, FTC staff has issued a guidance document, ".com Disclosures: How to Make Effective Disclosures in Digital Advertising," which is available on ftc.gov.

Where in my blog should I disclose that my review is sponsored by a marketer? I've seen some say it at the top and others at the bottom. Does it matter?

Yes, it matters. A disclosure should be placed where it easily catches consumers' attention and is difficult to miss. Consumers may miss a disclosure at the bottom of a blog or the bottom of a page. A disclosure at the very top of the page, outside of the blog, might also be overlooked by consumers. A disclosure is more likely to be seen if it's very close to, or part of, the endorsement to which it relates.

I've been paid to endorse a product in social media. My posts, videos, and tweets will be in Spanish. In what language should I disclose that I've been paid for the promotion?

The connection between an endorser and a marketer should be disclosed in whatever language or languages the endorsement is made, so your disclosures should be in Spanish.

I guess I need to make a disclosure that I've gotten paid for a video review that I'm uploading to YouTube. When in the review should I make the disclosure? Is it ok if it's at the end?

It's more likely that a disclosure at the end of the video will be missed, especially if someone doesn't watch the whole thing. Having it at the beginning of the review would be better. Having multiple disclosures during the video would be even better. Of course, no one should promote a link to your review that bypasses the beginning of the video and skips over the disclosure. If YouTube has been enabled to run ads during your video, a disclosure that is obscured by ads is not clear and conspicuous.

I'm getting paid to do a videogame playthrough and give commentary while I'm playing. The playthrough – which will last several hours – will be live streamed. Would a disclosure at the beginning of the stream be ok?

Since viewers can tune in any time, they could easily miss a disclosure at the beginning of the stream or at any other single point in the stream. If there are multiple, periodic disclosures throughout the stream people are likely to see them no matter when they tune in. To be cautious, you could have a continuous, clear and conspicuous disclosure throughout the entire stream.

Other Things for Endorsers to Know

Besides disclosing my relationship with the company whose product I'm endorsing, what are the essential things I need to know about endorsements?

The most important principle is that an endorsement has to represent the accurate experience and opinion of the endorser:

> You can't talk about your experience with a product if you haven't tried it.
>
> If you were paid to try a product and you thought it was terrible, you can't say it's terrific.

You can't make claims about a product that would require proof the advertiser doesn't have. The Guides give the example of a blogger commissioned by an advertiser to review a new body lotion. Although the advertiser does not make any claims about the lotion's ability to cure skin conditions and the blogger does not ask the advertiser whether there is

substantiation for the claim, she writes that the lotion cures eczema. The blogger is subject to liability for making claims without having a reasonable basis for those claims.

Social Media Contests

My company runs contests and sweepstakes in social media. To enter, participants have to send a Tweet or make a pin with the hashtag, #XYZ_Rocks. ("XYZ" is the name of my product.) Isn't that enough to notify readers that the posts were incentivized?

No, it is likely that many readers would not understand such a hashtag to mean that those posts were made as part of a contest or that the people doing the posting had received something of value (in this case, a chance to win the contest prize). Making the word "contest" or "sweepstakes" part of the hashtag should be enough. However, the word "sweeps" probably isn't, because it is likely that many people would not understand what that means.

Online Review Programs

My company runs a retail website that includes customer reviews of the products we sell. We believe honest reviews help our customers and we give out free products to a select group of our customers for them to review. We tell them to be honest, whether it's positive or negative. What we care about is how helpful the reviews are. Do we still need to disclose which reviews were of free products?

Yes. Knowing that reviewers got the product they reviewed for free would probably affect the weight your customers give to the reviews, even if you didn't intend for that to happen. And even assuming the reviewers in your program are unbiased, your customers have the right to know which reviewers were given products for free. It's also possible that the reviewers may wonder whether your company would stop sending them products if they wrote several negative reviews – despite your assurances that you only want their honest opinions – and that could affect their reviews. Also, reviewers given free products might give the products higher ratings on a scale like the number of stars than reviewers who bought the products. If that's the case, consumers may be misled if they just look at inflated average ratings rather than reading individual reviews with disclosures. Therefore, if you give free products to reviewers you should disclose next to any average or other summary rating that it includes reviewers who were given free products.

My company, XYZ, operates one of the most popular multi-channel networks on YouTube. We just entered into a contract with a videogame marketer to pay some of our network members to produce and upload video reviews of the marketer's games. We're going to have these reviewers announce at the beginning of each video (before the action starts) that it's "sponsored by XYZ" and also have a prominent simultaneous disclosure on the screen saying the same thing. Is that good enough?

Many consumers could think that XYZ is a neutral third party and won't realize from your disclosures that the review was really sponsored (and paid for) by the videogame marketer, which has a strong interest in positive reviews. If the disclosure said, "Sponsored by [name of the game company]," that would be good enough.

Soliciting Endorsements

My company wants to contact customers and interview them about their experiences with our service. If we like what they say about our service, can we ask them to allow us to quote them in our ads? Can we pay them for letting us use their endorsements?

Yes, you can ask your customers about their experiences with your product and feature their comments in your ads. If they have no reason to expect compensation or any other benefit before they give their comments, there's no need to disclose your payments to them.

However, if you've given these customers a reason to expect a benefit from providing their thoughts about your product, you should disclose that fact in your ads. For example, if customers are told in advance that their comments might be used in advertising, they might expect to receive a payment for a positive review, and that could influence what they say, even if you tell them that you want their honest opinion. In fact, even if you tell your customers that you aren't going to pay them but that they might be featured in your advertising, that opportunity might be seen as having a value, so the fact that they knew this when they gave the review should be disclosed (e.g., "Customers were told in advance they might be featured in an ad.").

I'm starting a new Internet business. I don't have any money for advertising, so I need publicity. Can I tell people that if they say good things about my business on Yelp or Etsy, I'll give them a discount on items they buy through my website?

It's not a good idea. Endorsements must reflect the honest opinions or experiences of the endorser, and your plan could cause people to make up positive reviews even if they've never done business with you. However, it's okay to invite people to post reviews of your business after they've actually used your products or services. If you're offering them something of value in return for these reviews, tell them in advance that they should disclose what they received from you. You should also inform potential reviewers that the discount will be conditioned upon their making the disclosure. That way, other consumers can decide how much stock to put in those reviews.

A company is giving me a free product to review on one particular website or social media platform. They say that if I voluntarily review it on another site or on a different social media platform, I don't need to make any disclosures. Is that true?

No. If you received a free or discounted product to provide a review somewhere, your connection to the company should be disclosed everywhere you endorse the product.

Does it matter how I got the free product to review?

No, it doesn't. Whether they give you a code, ship it directly to you, or give you money to buy it yourself, it's all the same for the purpose of having to disclose that you got the product for free. The key question is always the same: If consumers knew the company gave it to you for free (or at a substantial discount), might that information affect how much weight they give your review?

My company wants to get positive reviews. We are thinking about distributing product discounts through various services that encourage reviews. Some services require individuals who want discount codes to provide information allowing sellers to read their other reviews before deciding which reviewers to provide with discount codes. Other services send out offers of a limited number of discount codes and then follow up by email to see whether the recipients have reviewed their products. Still others send offers of discount codes to those who previously posted reviews in exchange for discounted products. All of these services say that reviews are not required. Does it matter which service I choose? I would prefer that recipients of my discount codes not have to disclose that they received discounts.

Whichever service you choose, the recipients of your discount codes need to disclose that they received a discount from you to encourage their reviews. Even though the services might say that a review is not "required," it's at least implied that a review is expected.

What Are an Advertiser's Responsibilities for What Others Say in Social Media?

Our company uses a network of bloggers and other social media influencers to promote our products. We understand we're responsible for monitoring our network. What kind of monitoring program do we need? Will we be liable if someone in our network says something false about our product or fails to make a disclosure?

Advertisers need to have reasonable programs in place to train and monitor members of their network. The scope of the program depends on the risk that deceptive practices by network participants could cause consumer harm – either physical injury or financial loss. For example, a network devoted to the sale of health products may require more supervision than a network promoting, say, a new fashion line. Here are some elements every program should include:

1. Given an advertiser's responsibility for substantiating objective product claims, explain to members of your network what they can (and can't) say about the products – for example, a list of the health claims they can make for your products, along with instructions not to go beyond those claims;
2. Instruct members of the network on their responsibilities for disclosing their connections to you;
3. Periodically search for what your people are saying; and
4. Follow up if you find questionable practices.

It's unrealistic to expect you to be aware of every single statement made by a member of your network. But it's up to you to make a reasonable effort to know what participants in your network are saying. That said, it's unlikely that the activity of a rogue blogger would be the basis of a law enforcement action if your company has a reasonable training, monitoring, and compliance program in place.

Our company's social media program is run by our public relations firm. We tell them to make sure that what they and anyone they pay on our behalf do complies with the FTC's Guides. Is that good enough?

Your company is ultimately responsible for what others do on your behalf. You should make sure your public relations firm has an appropriate program in place to train and monitor members of its social media network. Ask for regular reports confirming that the program is operating properly and monitor the network periodically. Delegating part of your promotional program to an outside entity doesn't relieve you of responsibility under the FTC Act.

What About Intermediaries?

I have a small network marketing business. Advertisers pay me to distribute their products to members of my network who then try the product for free. How do the principles in the Guides affect me?

You should tell the participants in your network that if they endorse products they have received through your program, they should make it clear they got them for free. Advise your clients – the advertisers – that if they provide free samples directly to your members, they should remind them of the importance of disclosing the relationship when they talk about those products. Put a program in place to check periodically whether your members are making those disclosures, and to deal with anyone who isn't complying.

My company recruits "influencers" for marketers who want them to endorse their products. We pay and direct the influencers. What are our responsibilities?

Like an advertiser, your company needs to have reasonable programs in place to train and monitor the influencers you pay and direct.

What About Affiliate or Network Marketing?

I'm an affiliate marketer with links to an online retailer on my website. When people read what I've written about a particular product and then click on those links and buy something from the retailer, I earn a commission from the retailer. What do I have to disclose? Where should the disclosure be?

If you disclose your relationship to the retailer clearly and conspicuously on your site, readers can decide how much weight to give your endorsement.

In some instances – like when the affiliate link is embedded in your product review – a single disclosure may be adequate. When the review has a clear and conspicuous disclosure of your relationship and the reader can see both the review containing that disclosure and the link at the same time, readers have the information they need. You could say something like, "I get commissions for purchases made through links in this post." But if the product review containing the disclosure and the link are separated, readers may not make the connection.

As for where to place a disclosure, the guiding principle is that it has to be clear and conspicuous. The closer it is to your recommendation, the better. Putting disclosures in obscure places – for example, buried on an ABOUT US or GENERAL INFO page, behind a poorly labeled hyperlink or in a "terms of service" agreement – isn't good enough. Neither is placing it below your review or below the link to the online retailer so readers would have to keep scrolling after they finish reading. Consumers should be able to notice the disclosure easily. They shouldn't have to hunt for it.

Is "affiliate link" by itself an adequate disclosure? What about a "buy now" button?

Consumers might not understand that "affiliate link" means that the person placing the link is getting paid for purchases through the link. Similarly, a "buy now" button would not be adequate.

What if I'm including links to product marketers or to retailers as a convenience to my readers, but I'm not getting paid for them?

Then there isn't anything to disclose.

Does this guidance about affiliate links apply to links in my product reviews on someone else's website, to my user comments, and to my tweets?

Yes, the same guidance applies anytime you endorse a product and get paid through affiliate links.

It's clear that what's on my website is a paid advertisement, not my own endorsement or review of the product. Do I still have to disclose that I get a commission if people click through my website to buy the product?

If it's clear that what's on your site is a paid advertisement, you don't have to make additional disclosures. Just remember that what's clear to you may not be clear to everyone visiting your site, and the FTC evaluates ads from the perspective of reasonable consumers.

Expert Endorsers Making Claims Outside of Traditional Advertisements

One of our company's paid spokespersons is an expert who appears on news and talk shows promoting our product, sometimes along with other products she recommends based on her expertise. Your Guides give an example of a celebrity spokesperson appearing on a talk show and recommend that the celebrity disclose her connection to the company she is promoting. Does that principle also apply to expert endorsers?

Yes, it does. Your spokesperson should disclose her connection when promoting your products outside of traditional advertising media (in other words, on programming that consumers won't recognize as paid advertising). The same guidance also would apply to comments by the expert in her blog or on her website.

Employee Endorsements

I work for a terrific company. Can I mention our products to people in my social networks? How about on a review site? My friends won't be misled since it's clear in my online profiles where I work.

If your company allows employees to use social media to talk about its products, you should make sure that your relationship is disclosed to people who read your online postings about your company or its products. Put yourself in the reader's shoes. Isn't the employment relationship something you would want to know before relying on someone else's endorsement? Listing your employer on your profile page isn't enough. After all, people who just read what you post on a review site won't get that information.

People reading your posting on a review site probably won't know who you are. You definitely should disclose your employment relationship when making an endorsement.

On her own initiative and without us asking, one of our employees used her personal social network simply to "like" or "share" one of our company's posts. Does she need to disclose that she works for our company?

Whether there should be any disclosure depends upon whether the "like" or "share" could be viewed as an advertisement for your company. If the post is an ad, then employees endorsing the post should disclose their relationship to the company. With a share, that's fairly easy to do, "Check out my company's great new product …." Regarding "likes," see what we said above about "likes."

Our company's policy says that employees shouldn't post positive reviews online about our products without clearly disclosing their relationship to the company. All of our employees agree to abide by this policy when they are hired. But we have several thousand people working here and we can't monitor what they all do on their own computers and other devices when they aren't at work. Are we liable if an employee posts a review of one of our products, either on our company website or on a social media site and doesn't disclose that relationship?

It wouldn't be reasonable to expect you to monitor every social media posting by all of your employees. However, you should establish a formal program to remind employees periodically of your policy, especially if the company encourages employees to share their opinions about your products. Also, if you learn that an employee has posted a review on the company's website or a social media site without adequately disclosing his or her relationship to the company, you should remind them of your company policy and ask them to remove that review or adequately disclose that they're an employee.

What about employees of an ad agency or public relations firm? Can my agency ask our employees to spread the buzz about our clients' products?

First, an ad agency (or any company for that matter) shouldn't ask employees to say anything that isn't true. No one should endorse a product they haven't used or say things they don't believe about a product, and an employer certainly shouldn't encourage employees to engage in such conduct.

Moreover, employees of an ad agency or public relations firm have a connection to the advertiser, which should be disclosed in all social media posts. Agencies asking their employees to spread the word must instruct those employees about their responsibilities to disclose their relationship to the product they are endorsing, e.g., "My employer is paid to promote [name of product]," or simply "Advertisement," or when space is an issue, "Ad" or "#ad."

My company XYX wants to tell our employees what to disclose in social media. Is "#employee" good enough?

Consumers may be confused by "#employee." Consumers would be more likely to understand "#XYZ_Employee." Then again, if consumers don't associate your company's name with the product or brand being endorsed, that disclosure might not work. It would be much clearer to use the words "my company" or "employer's" in the body of the message. It's a lot easier to understand and harder to miss.

Using Testimonials That Don't Reflect the Typical Consumer Experience

We want to run ads featuring endorsements from consumers who achieved the best results with our company's product. Can we do that?

Testimonials claiming specific results usually will be interpreted to mean that the endorser's experience reflects what others can also expect. Statements like "Results not typical" or "Individual results may vary" won't change that interpretation. That leaves advertisers with two choices:

1. Have adequate proof to back up the claim that the results shown in the ad are typical, or

2. Clearly and conspicuously disclose the generally expected performance in the circumstances shown in the ad.

How would this principle about testimonialists who achieved exceptional results apply in a real ad?

The Guides include several examples with practical advice on this topic. One example is about an ad in which a woman says, "I lost 50 pounds in 6 months with WeightAway." If consumers can't generally expect to get those results, the ad should say how much weight consumers can expect to lose in similar circumstances – for example, "Most women who use WeightAway for six months lose at least 15 pounds."

Our company website includes testimonials from some of our more successful customers who used our product during the past few years and mentions the results they got. We can't figure out now what the "generally expected results" were back then. What should we do? Do we have to remove those testimonials?

There are two issues here. First, according to the Guides, if your website says or implies that the endorser currently uses the product in question, you can use that endorsement only as long as you have good reason to believe the endorser does still use the product. If you're using endorsements that are a few years old, it's your obligation to make sure the claims still are accurate. If your product has changed, it's best to get new endorsements.

Second, if your product is the same as it was when the endorsements were given and the claims are still accurate, you probably can use the old endorsements if the disclosures are consistent with what the generally expected results are now.

Where can I find out more?

The Guides offer more than 35 examples involving various endorsement scenarios. Questions? Send them to endorsements@ftc.gov. We may address them in future FAQs.

The FTC works to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or get free information on consumer issues, visit ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. Watch a video, How to File a Complaint, at consumer.ftc.gov/media to learn more. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.

September 2017

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

CSGO Lotto Owners Settle FTC's First-Ever Complaint Against Individual Social Media Influencers

Owners must disclose material connections in future posts; FTC staff also sends 21 warning letters to prominent social media influencers

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FOR RELEASE

September 7, 2017

TAGS: Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Endorsements | Online Advertising and Marketing

Trevor "TmarTn" Martin and Thomas "Syndicate" Cassell, two social media influencers who are widely followed in the online gaming community, have settled Federal Trade Commission charges that they deceptively endorsed the online gambling service CSGO Lotto, while failing to disclose they jointly owned the company.

They also allegedly paid other well-known influencers thousands of dollars to promote the site on YouTube, Twitch, Twitter, and Facebook, without requiring them to disclose the payments in their social media posts.

The Commission order settling the charges requires Martin and Cassell to clearly and conspicuously disclose any material connections with an endorser or between an endorser and any promoted product or service.

"Consumers need to know when social media influencers are being paid or have any other material connection to the brands endorsed in their posts," said FTC Acting Chairman Maureen Ohlhausen. "This action, the FTC's first against individual influencers, should send a message that such connections must be clearly disclosed so consumers can make informed purchasing decisions."

Also today, the FTC announced that staff has both sent warning letters to 21 social media influencers it contacted earlier this year regarding their Instagram posts, and updated staff guidance for social media influencers and endorsers.

According to the FTC, beginning in late 2015, Martin, Cassell, and their company, CSGOLotto, Inc., operated and advertised the csglotto.com website. The CSGO Lotto name was based on Counter-Strike: Global Offensive, also known as "CS: GO," an online multi-player, first-person shooter game. The game uses collectible virtual items called "skins" that can be used to cover weapons in distinctive patterns. Skins can be bought, sold, and traded for real money. CSGO Lotto

enabled consumers to gamble, using skins as virtual currency.

Martin is the company's president and Cassell is its vice president. As alleged in the complaint, each posted YouTube videos of themselves gambling on their website and encouraging others to use the service. Martin's videos had titles such as, "HOW TO WIN $13,000 IN 5 MINUTES (CS-GO Betting)" and "$24,000 COIN FLIP (HUGE CSGO BETTING!) + Giveaway."

Cassell posted videos with titles such as "INSANE KNIFE BETS! (CS:GO Betting)," and "ALL OR NOTHING! (CS:GO Betting)." In all, Cassell's videos promoting the CSGO Lotto website were viewed more than 5.7 million times. Martin and Cassell allegedly also promoted the site on Twitter without adequately disclosing their connection to CSGO Lotto.

According to the FTC's complaint, Martin, Cassell, and their company also had an "influencer program" and paid other gaming influencers between $2,500 and $55,000 to promote the CSGO Lotto website to their social media circles, while prohibiting them from saying anything negative about the site.

The Commission's complaint alleges that Martin, Cassell, and their company misrepresented that videos of themselves and other influencers gambling on the CSGO Lotto website and their social media posts about the website reflected the independent opinions of impartial users of the service. The complaint charges that, in truth, Martin and Cassell are owners and officers of the company operating the CSGO Lotto website and the other influencers were paid to promote the website and were prohibited from impugning its reputation.

Finally, the complaint alleges that a number of Martin's, Cassell's, and the gaming influencers' CSGO Lotto videos and social media posts deceptively failed to adequately disclose that Martin and Cassell are owners and officers of the company operating the gambling service, or that the influencers received compensation to promote it.

The proposed order settling the FTC's charges prohibits Martin, Cassell, and CSGOLotto, Inc. from misrepresenting that any endorser is an independent user or ordinary consumer of a product or service. The order also requires clear and conspicuous disclosures of any unexpected material connections with endorsers.

New Instagram Influencer Warning Letters

Following up on the more than 90 educational letters FTC staff sent to social media influencers and brands in April of this year, the staff has sent warning letters to 21 of the influencers previously contacted. The earlier educational letters informed the influencers that if they are endorsing a brand and have a "material connection" to the marketer, this must be clearly and conspicuously disclosed, unless the connection is already clear from the context of the endorsement.

The warning letters cite specific social media posts of concern to staff and provide details on why they may not be in compliance with the FTC Act as explained in the Commission's Endorsement Guides. For example, some of the letters point out that tagging a brand in an Instagram picture is an endorsement of the brand and requires an appropriate disclosure.

The letters ask that the recipients advise FTC staff as to whether they have material connections to the brands in the identified posts, and if so, what actions they will be taking to ensure that all of their social media posts endorsing brands and businesses with which they have material connections clearly and conspicuously disclose their relationships. The FTC is not disclosing the names of the 21 influencers who received the warning letters.

Updated Guidance to Influencers and Marketers

The Commission today also issued an updated version of The FTC's Endorsement Guides: What People are Asking, a staff guidance document that answers frequently asked questions. Previously revised in 2015, the newly updated version includes more than 20 additional questions and answers addressing specific questions social media influencers and marketers may have about whether and how to disclose material connections in their posts.

The new information covers a range of topics, including tags in pictures, Instagram disclosures, Snapchat disclosures, obligations of foreign influencers, disclosure of free travel, whether a disclosure must be at the beginning of a post, and the adequacy of various disclosures like "#ambassador."

The Commission vote to issue the administrative complaint and to accept the consent agreement was 2-0. The FTC will publish a description of the consent agreement package in the Federal Register shortly.

The agreement will be subject to public comment for 30 days, beginning today and continuing through October 10, 2017, after which the Commission will decide whether to make the proposed consent order final. Interested parties can submit comments electronically by following the instructions in the "Invitation to Comment" part of the "Supplementary Information" section.

NOTE: The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of up to $40,654.

The Federal Trade Commission works to promote competition, and protect and educate consumers. You can learn more about consumer topics and file a consumer complaint online or by calling 1-877-FTC-HELP (382-4357). Like the FTC on Facebook, follow us on Twitter, read our blogs and subscribe to press releases for the latest FTC news and resources.

PRESS RELEASE REFERENCE:
FTC Approves Final Consent Order against Owners of CSGO Lotto Website
FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship
FTC to Hold Twitter Chat on Social Media Influencer Disclosures

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162-3184

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen K. Ohlhausen, Acting Chairman**
Terrell McSweeny

In the Matter of **CSGOLOTTO, INC., a corporation,** **TREVOR MARTIN, a/k/a TmarTn, individually and as an officer of CSGOLOTTO, INC., and** **THOMAS CASSELL, a/k/a TheSyndicateProject, Tom Syndicate, and Syndicate, individually and as an officer of CSGOLOTTO, INC.**	**Docket No. C-4632**

COMPLAINT

The Federal Trade Commission, having reason to believe that CSGOLotto, Inc., a corporation, and Trevor Martin and Thomas Cassell, individually and as officers of CSGOLotto, Inc. (collectively, "Respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent, CSGOLotto, Inc., is a Florida corporation with its principal office or place of business at 6511 Vineland Road, Orlando, FL 32819. It was incorporated in December 2015.

2. Respondent, Trevor Martin, also known as TmarTn, is the President and a 42.5% owner of CSGOLotto, Inc. Individually or in concert with others, he controlled or had the authority to control, or participated in the acts and practices of CSGOLotto, Inc., including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of CSGOLotto, Inc.

3. Respondent, Thomas Cassell, also known as TheSyndicateProject, Tom Syndicate, and Syndicate, is the Vice President and a 42.5% owner CSGOLotto, Inc. Individually or in concert with others, he controlled or had the authority to control, or participated in the acts and practices of CSGOLotto, Inc., including the acts and practices alleged in this complaint. When the acts and practices alleged in this complaint occurred, he resided in Los Angeles, California.

4. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

5. Respondents Martin and Cassell are both online influencers who operate YouTube channels focused primarily on online gaming. Respondent Martin's YouTube channels include "TmarTn2." Respondent Cassell's YouTube channels include "TheSyndicateProject." Each of these channels has millions of subscribers.

6. Counter-Strike: Global Offensive, also known as CS: GO, is an online, multiplayer, first-person shooter game, marketed by Valve Corp. Among other things, it uses collectible items called "skins," which cover weapons in distinctive patterns. Skins can be bought, sold, and traded for real-world money.

7. Beginning in October or November 2015, Respondents operated and advertised a website, www.csgolotto.com, that offered consumers the opportunity to gamble using skins as virtual currency ("CSGO Lotto"). Respondents earned revenue from their CSGO Lotto skin-betting service by charging an eight percent service fee on skin-betting pools.

8. Respondent CSGOLotto, Inc. provided Respondents Martin and Cassell with free skins with which to gamble on CSGO Lotto.

9. In a video posted in early-November 2015, Martin said,

> I've been starting to bet a little bit more. … [W]e found this new site called CSGO Lotto, so I'll link it down in the description if you guys want to check it out. But we were betting on it today and I won a pot of like $69 or something like that so it was a pretty small pot but it was like the coolest feeling ever. And I ended up like following them on Twitter and stuff and they hit me up. And they're like talking to me about potentially doing like a skins sponsorship like they'll give me skins to be able to bet on the site and stuff. And I've been like considering doing it.

10. Between mid-November 2015 and June 2016, Respondents Martin and Cassell posted videos to their respective YouTube channels showing themselves gambling on CSGO Lotto. These videos promoted CSGO Lotto and encouraged viewers to use the gambling service.

11. Between mid-November 2015 and June 2016, Respondent Martin posted at least 13 promotional videos to his "TmarTn2" YouTube channel showing himself gambling on CSGO Lotto, including ones with titles such as, "HOW TO WIN $13,000 IN 5 MINUTES (CS-GO Betting)," "$24,000 COIN FLIP (HUGE CSGO BETTING!) + Giveaway," "HUGE WINS (And Losses) - CounterStrike Betting Challenge #2 (CSGO Skins)," and "CS-GO Betting - Part 3 - HUGE $1000+ COIN FLIP BET! (Duel Arena Skin Gambling)." (*See, e.g.*, Exhibits A – D).

12. Nowhere in his videos promoting CSGO Lotto or in the videos' descriptions did Respondent Martin disclose that he was an officer and owner of the company operating CSGO Lotto or that he was gambling with free skins provided by that company. In the promotional videos showing

him gambling on CSGO Lotto, Martin did not mention any connection between himself and CGSO Lotto and when he posted the videos he made no disclosures in the videos' descriptions.

13. Respondent Martin disseminated tweets that promoted CSGO Lotto and linked to his promotional videos. One such tweet read, "Made $13k in about 5 minutes on CSGO betting. Absolutely insane. Reactions here 😂: [*YouTube link*]." (March 6, 2016 tweet by @TmarTn). (Exhibit E). An Instagram post by Martin showed screen shots of TmarTn winning two betting pools on CSGO Lotto with the caption, "Unreal!! Won two back to back CSGOLotto games today on stream – $13,000 in total winnings 😂😱 🙌 " (March 3, 2016 Instagram post by tmartn). (Exhibit F). Nowhere in his social media posts promoting CSGO Lotto did Martin disclose any connection between himself and CGSO Lotto.

14. Between January and June 2016, Cassell posted at least seven promotional videos showing himself gambling on CSGO Lotto, including ones with titles such as, "INSANE KNIFE BETS! (CS:GO Betting)," "CRAZY 6 KNIFE WIN!!! (CS:GO Betting)," and "ALL OR NOTHING! (CS:GO Betting)." (*See, e.g.*, Exhibits G – I). Cassell's videos promoting CSGO Lotto garnered more than 5.7 million views.

15. Nowhere in his videos promoting CSGO Lotto or in the videos' descriptions did Respondent Cassell disclose that he was an officer and owner of the company operating CSGO Lotto. In at least five of his videos promoting CSGO Lotto, Cassell did not mention any connection between himself and CSGO Lotto. Each of these videos' description boxes included the statement "This video is sponsored by CSGO Lotto!" The disclosure appeared in the description boxes "below the fold" where it would not be visible without consumers having to click on a link and perhaps scroll down.

16. Respondent Cassell disseminated tweets that promoted CSGO Lotto and did not disclose any connection between himself and CGSO Lotto. These tweets contained statements such as:

a. "CRAZY 6 KNIFE WIN!!! (CS:GO BETTING): [*YouTube link*] … OUR LUCK HAS CHANGED!!! 2016 IS THE YEAR OF THE KNIFZ! Site Used ► CSGO LOTTO: https://csgolotto.com Big thanks to Flux Pavilion for letting me use his music …" (January 2, 2016 tweet by @ProSyndicate) (Exhibit J);

b. "Bruh.. i've won like $8,000 worth of CS:GO Skins today on @CSGOLotto I cannot even believe it!" (March 30, 2016 tweet by @ProSyndicate) (Exhibit K);

c. "Not a bad way to start the day!" [*screen shot of Syndicate winning a betting pool worth over $2,100 on CSGO Lotto*] (March 31, 2016 tweet by @ProSyndicate) (Exhibit L)

d. "<3 @CSGOLotto" [*screen shot of Syndicate winning a betting pool worth over $1,100 on CSGO Lotto*] (April 20, 2016 tweet by @ProSyndicate) (Exhibit M); and

e. "I lied… I didn't turn $200 into $4,000 on @CSGOLotto…I turned it into $6,000!!!! csgolotto.com/duel-arena" [*screen shot of Syndicate winning a betting pool worth over $4,400 on CSGO Lotto*] (April 20, 2016 tweet by @ProSyndicate) (Exhibit N).

17. As described in Paragraphs 9 through 16, consumers who saw promotions of CSGO Lotto by Respondents Martin or Cassell were unlikely to learn of the connection between Martin or Cassell and CSGO Lotto. Even those who did learn of a sponsorship relationship with CSGO Lotto would not have learned that Martin and Cassell were officers and owners of the company operating CSGO Lotto and thus had a vested interest in the success of the service or that they were gambling with skins that were provided by that company.

18. Respondents used an "Influencer Program" to encourage certain online influencers "to post in their social media circles about their experiences in using" CSGO Lotto. Respondents contractually prohibited the influencers from making "statements, claims or representations … that would impair the name, reputation and goodwill of" CSGO Lotto.

19. Payments to influencers were in United States dollars, skins credits, or a combination of both and ranged from $2,500 to $55,000.

20. Participants in Respondents' influencer program included, among others: Albi Bytyqi, who operates the "SideArms4Reason" YouTube channel; Brennon O'Neil, who operates the "GoldGloveTV" YouTube channel; Joseph Rylott, who operates the "jahovaswitniss" YouTube channel; Lucas Watson, who operates the "KYRSP33DY" YouTube channel; Alan Widmann, who operates the "Hotted89" YouTube channel; Nathan "NBK" Schmitt, who operates a Twitch channel; and Edwin Castro, who operates a Twitch channel.

21. The influencers Respondents hired promoted CSGO Lotto on YouTube, Twitch, Twitter, and Facebook.

22. Numerous resulting YouTube videos of influencers gambling on CSGO Lotto did not include any sponsorship disclosure in the videos themselves and if they included sponsorship disclosures in the description boxes below the videos, they only did so "below the fold."

23. Numerous resulting social media posts by influencers promoting CSGO Lotto did not include any sponsorship disclosures. These include:

a. "LET'S GOOOO @CSGOLotto" [*screen shot of Hotted winning a betting pool worth over $4,100 on CSGO Lotto*] (April 13, 2016 tweet by @hotted89) (Exhibit O);

b. "25,000.00 @CSGOLotto COINFLIP!!! BIGGEST COINFLIP OF MY LIFE!! RT's appreciated ;) [*YouTube link*]" [*CSGO Lotto screen shot with "$24000 COINFLIP ON CSGOLOTTO" superimposed*] (April 27, 2016 tweet by @hotted89) (Exhibit P);

c. "<3 @CSGOLotto" [*screen shot of jahova winning a betting pool worth over $500 on CSGO Lotto*] (April 22, 2016 tweet by @JahovasWitniss) (Exhibit Q);

d. "YES OMG @CSGOLotto" [*screen shot of SideArms winning a betting pool worth over $2,700 on CSGO Lotto*] (May 7, 2016 tweet by @Albi_SideArms) (Exhibit R);

e. "EZ $$$$$$$ bets $1,021…….WINS! @CSGOLotto http://twitch.tv.castro_1021 @twitch" [*screen shot of Castro1021 winning a betting pool worth over $2,000 on CSGO Lotto*] (May 9, 2016 tweet by @Castro1021) (Exhibit S);

f. "3 in a row :O @CSGOLotto <3" [*screen shot of jahova winning three consecutive CSGO Lotto betting pools*] (May 25, 2016 tweet by @JahovasWitniss) (Exhibit T);

g. "The 3% has happened! @CSGOLotto" [*screen shot of nickbunyun betting $158.91 and winning a betting pool worth over $4,800 on CSGO Lotto*] (May 29, 2016 tweet by @nickbunyun) (Exhibit U); and

h. "Stream is live at http://www.twitch.tv/nbk ! Ready to play FPL and fight you on @CSGOLotto 😎 " (May 31, 2016 tweet by @G2NBK) (Exhibit V).

24. In late-June 2016, it became publicly known that Respondents Martin and Cassell ran the company operating CSGO Lotto. Shortly after that public revelation and the resulting public reaction, in July 2016 CSGO Lotto ceased operations.

Count I
False Claim of Independent Reviews

25. Through the means described in Paragraphs 9 through 23, Respondents have represented, directly or indirectly, expressly or by implication, that videos of Trevor Martin, Thomas Cassell, and other influencers gambling on CSGO Lotto and their social media posts about CSGO Lotto reflected the independent opinions or experiences of impartial users of the service.

26. In truth and in fact, the videos of Trevor Martin, Thomas Cassell, and other influencers gambling on CSGO Lotto and the social media posts about CSGO Lotto did not reflect the independent opinions or experiences of impartial users of the service. Trevor Martin is the President and an owner of the company operating CSGO Lotto. Thomas Cassell is the Vice President and an owner of the company operating CSGO Lotto. The other influencers were paid to promote CSGO Lotto and were prohibited from impairing its reputation. Therefore, the representation set forth in Paragraph 25 was, and is, false and misleading.

Count II
Deceptive Failure to Disclose Endorsers Were Owners and Officers

27. Through the means described in Paragraphs 9 through 17, Respondents have represented, directly or indirectly, expressly or by implication, that videos of Trevor Martin and Thomas Cassell gambling on CSGO Lotto and their social media posts about CSGO Lotto reflected the opinions or experiences of individuals who had used the service. In numerous instances, Respondents failed to disclose or failed to disclose adequately that Trevor Martin and Thomas Cassell are owners and officers of the company operating CSGO Lotto. These facts would be material to consumers in their decisions regarding using CSGO Lotto. Respondents' failure to disclose or disclose adequately these facts, in light of the representation made, was, and is, a deceptive act or practice.

Count III
Deceptive Failure to Disclose Endorsers Were Paid

28. Through the means described in Paragraphs 18 through 23, Respondents have represented, directly or indirectly, expressly or by implication, that videos of influencers gambling on CSGO Lotto and the influencers' social media posts about CSGO Lotto reflect the opinions or experiences of individuals who had used the service. In numerous instances, Respondents have failed to disclose or failed to disclose adequately that the influencers received compensation, including monetary payment, to promote CSGO Lotto. These facts would be material to consumers in their decisions regarding using CSGO Lotto. Respondents' failure to disclose or disclose adequately these facts, in light of the representation made, was, and is, a deceptive act or practice.

Violations of Section 5

29. The acts and practices of Respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twenty-eighth day of November, 2017, has issued this Complaint against Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL:

162-3184

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen K. Ohlhausen, Acting Chairman**
Terrell McSweeny

In the Matter of **CSGOLOTTO, INC.,** **a corporation,** **TREVOR MARTIN, a/k/a TmarTn,** **individually and as an** **officer of CSGOLOTTO, INC., and** **THOMAS CASSELL, a/k/a** **TheSyndicateProject, Tom Syndicate, and** **Syndicate, individually and as an officer of** **CSGOLOTTO, INC.**	**DECISION AND ORDER** **DOCKET NO. C-4632**

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission's Bureau of Consumer Protection ("BCP") prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violation of the Federal Trade Commission Act.

Respondents and BCP thereafter executed an Agreement Containing Consent Order ("Consent Agreement"). The Consent Agreement includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission's Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further

conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondents are:

    a. Respondent CSGOLotto, Inc., a Florida corporation with its principal office or place of business at 6511 Vineland Road, Orlando, FL 32819.

    b. Respondent Trevor Martin, also known as TmarTn, the President and a 42.5% owner of CSGOLotto, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of CSGOLotto, Inc. His principal office or place of business is the same as that of CSGOLotto, Inc.

    c. Respondent Thomas Cassell, also known as TheSyndicateProject, Tom Syndicate, and Syndicate, is the Vice President and a 42.5% owner of CSGOLotto, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of CSGOLotto, Inc.

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

A. "Clearly and conspicuously" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

    1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure ("triggering representation") is made through only one means.

    2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7 The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.

B. "Close proximity" means that the disclosure is very near the triggering representation. For example, a disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation.

C. "Respondents" means the Corporate Respondent and the Individual Respondents, individually, collectively, or in any combination.

1. "Corporate Respondent" means CSGOLotto, Inc., a corporation, and its successors and assigns.

2. "Individual Respondents" means Trevor Martin, also known as TmarTn, and Thomas Cassell, also known as TheSyndicateProject, Tom Syndicate, and Syndicate.

D. "Unexpected material connection" means any relationship that might materially affect the weight or credibility of a testimonial or endorsement and that would not reasonably be expected by consumers.

Provisions

I. Misrepresentation of Independence

IT IS ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any product or service must not make any misrepresentation, expressly or by implication, that an endorser of such product or service is an independent user or ordinary consumer of the product or service.

II. Required Disclosure of Material Connections

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any product or service must not make any representation, expressly or by implication, about any consumer or other endorser of such product or service without disclosing, clearly and conspicuously, and in close proximity to that representation, any unexpected material connection between such endorser and (1) any Respondent; (2) any other individual or entity affiliated with the product or service; or (3) the product or service.

III. Monitoring of Endorsers

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any product or service by means of an endorsement by an endorser with a material connection to (1) any Respondent, (2) any other individual or entity affiliated with the product or service, or (3) the product or service, must take steps sufficient to ensure compliance with Provisions I and II of this Order. Such steps shall include, at a minimum:

A. Providing each such endorser with a clear statement of his or her responsibilities to disclose clearly and conspicuously, and in close proximity to the endorsement, in any online video, social media posting, or other communication endorsing the product or service, the endorser's unexpected material connection to any Respondent, any other individual or entity affiliated with the product or service, or the product or service, and obtaining from each such endorser a signed and dated statement acknowledging receipt of that statement and expressly agreeing to comply with it;

B. Establishing, implementing, and thereafter maintaining a system to monitor and review the representations and disclosures of endorsers with material connections to any Respondent, any other individual or entity affiliated with the product or service, or the product or service, to ensure compliance with Provisions I and II of this Order. The system shall include, at a minimum, monitoring and reviewing the endorsers' online videos and social media postings;

C. Immediately terminating and ceasing payment to any endorser with a material connection to any Respondent, any other individual or entity affiliated with the product or service, or the product or service, who Respondents reasonably conclude:

    1. Has misrepresented, in any manner, his or her independence or impartiality; or

    2. Has failed to disclose, clearly and conspicuously, and in close proximity to the endorsement, an unexpected material connection between such endorser and any

Respondent, any other individual or entity affiliated with the product or service, or the product or service.

Provided, however, that Respondents may provide an endorser with notice of failure to adequately disclose and an opportunity to cure the disclosure prior to terminating the endorser if Respondents reasonably conclude that the failure to adequately disclose was inadvertent. Respondents shall inform any endorser to whom they have provided a notice of a failure to adequately disclose an unexpected material connection that any subsequent failure to adequately disclose will result in immediate termination; and

D. Creating reports showing the results of the monitoring required by sub-provision B of this Provision of the Order.

IV. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after the issuance date of this Order, each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly, and Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

V. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:

1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Respondent (which Individual Respondents must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which such Respondent performs services whether as an employee or otherwise and any entity in which such Respondent has any ownership interest; and (c) describe in detail such Respondent's involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which such Respondent performs services whether as an employee or otherwise and (ii) any entity in which such Respondent has any ownership interest and over which Respondents have direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.

C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re CSGOLotto, Inc.

VI. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 10 years after the issuance date of the Order, and retain each such record for 5 years, unless otherwise specified below. Specifically, Corporate Respondent and each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. accounting records showing the revenues from all goods or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;

B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. copies or records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. all records necessary to demonstrate full compliance with each Provision of this Order, including all submissions to the Commission and the reports required pursuant to the Provision titled Monitoring of Endorsers;

E. a copy of each unique advertisement or other marketing material making a representation subject to this Order; and

F. for 5 years from the date created or received, all records, whether prepared by or on behalf of Respondents, that tend to show any lack of compliance by Respondents with this Order.

VII. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.

C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Respondents, pursuant to Section 604(2) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(2).

VIII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on November 28, 2037, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

A. Any Provision in this Order that terminates in less than 20 years;

B. This Order's application to any Respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: November 28, 2017

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **CSGOLOTTO, INC.,** **a corporation,** **TREVOR MARTIN, a/k/a TmarTn,** **individually and as an** **officer of CSGOLOTTO, INC., and** **THOMAS CASSELL, a/k/a** **TheSyndicateProject, Tom Syndicate, and** **Syndicate, individually and as an officer of** **CSGOLOTTO, INC.**	**FILE NO. 162-3184** **AGREEMENT CONTAINING** **CONSENT ORDER**

The Federal Trade Commission ("Commission") has conducted an investigation of certain acts and practices of CSGOLotto, Inc., a corporation, and Trevor Martin and Thomas Cassell, individually and as officers of CSGOLotto, Inc. ("Proposed Respondents"). The Commission's Bureau of Consumer Protection ("BCP") has prepared a draft of an administrative Complaint ("draft Complaint"). BCP and Proposed Respondents, individually or through a duly authorized officer, enter into this Agreement Containing Consent Order ("Consent Agreement") to resolve the allegations in the attached draft Complaint through a proposed Decision and Order to present to the Commission, which is also attached and made a part of this Consent Agreement.

IT IS HEREBY AGREED by and between Proposed Respondents and BCP, that:

1. The Proposed Respondents are:

   a. Proposed Respondent CSGOLotto, Inc., a Florida corporation with its principal office or place of business at 6511 Vineland Road, Orlando, FL 32819.

   b. Proposed Respondent, Trevor Martin, also known as TmarTn, is the President and a 42.5% owner of CSGOLotto, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of CSGOLotto, Inc. His principal office or place of business is the same as that of CSGOLotto, Inc.

   c. Proposed Respondent, Thomas Cassell, also known as TheSyndicateProject, Tom Syndicate, and Syndicate, is the Vice President and a 42.5% owner of CSGOLotto, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of CSGOLotto, Inc.

2. Proposed Respondents neither admit nor deny any of the allegations in the Complaint, except as specifically stated in the Decision and Order. Only for purposes of this action, Proposed Respondents admit the facts necessary to establish jurisdiction.

3. Proposed Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order issued pursuant to this Consent Agreement.

4. This Consent Agreement will not become part of the public record of the proceeding unless and until it is accepted by the Commission. If the Commission accepts this Consent Agreement, it, together with the draft Complaint, will be placed on the public record for 30 days and information about them publicly released. Acceptance does not constitute final approval, but it serves as the basis for further actions leading to final disposition of the matter. Thereafter, the Commission may either withdraw its acceptance of this Consent Agreement and so notify each Proposed Respondent, in which event the Commission will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision in disposition of the proceeding, which may include an Order. *See* Section 2.34 of the Commission's Rules, 16 C.F.R. § 2.34.

5. If this agreement is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to Commission Rule 2.34, the Commission may, without further notice to Proposed Respondents: (1) issue its Complaint corresponding in form and substance with the attached draft Complaint and its Decision and Order; and (2) make information about them public. Proposed Respondents agree that service of the Order may be effected by its publication on the Commission's website (ftc.gov), at which time the Order will become final. *See* Rule 2.32(d). Proposed Respondents waive any rights they may have to any other manner of service. See Rule 4.4.

6. When final, the Decision and Order will have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other Commission orders.

7. The Complaint may be used in construing the terms of the Decision and Order. No agreement, understanding, representation, or interpretation not contained in the Decision and Order or in this Consent Agreement may be used to vary or contradict the terms of the Decision and Order.

8. Each Proposed Respondent agrees to comply with the terms of the proposed Decision and Order from the date that Proposed Respondent signs this Consent Agreement. Proposed

Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

CSGOLOTTO, INC.

By:_____
Trevor Martin
President

Date:_____

TREVOR MARTIN

By:_____
Trevor Martin, individually and as an officer of CSGOLotto, Inc.

Date:_____

_____
Coleman Watson, Watson LLP
Attorney for Proposed Respondents
CSGOLotto, Inc. and Trevor Martin

Date:_____

THOMAS CASSELL

By:_____
Thomas Cassell, individually and as an officer of CSGOLotto, Inc.

Date:_____

_____
Alicia J. Batts, Squire Patton Boggs
Attorney for Proposed Respondent
Thomas Cassell

Date:_____

FEDERAL TRADE COMMISSION

By:_____
Michael Ostheimer
Attorney, Bureau of Consumer Protection

APPROVED:

_____
Mary K. Engle
Associate Director
Division of Advertising Practices

_____
Thomas B. Pahl
Acting Director
Bureau of Consumer Protection

Date:_____

162-3184

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen K. Ohlhausen, Acting Chairman**
Terrell McSweeny

In the Matter of **CSGOLOTTO, INC.,** **a corporation,** **TREVOR MARTIN, a/k/a TmarTn,** **individually and as an** **officer of CSGOLOTTO, INC., and** **THOMAS CASSELL, a/k/a** **TheSyndicateProject, Tom Syndicate, and** **Syndicate, individually and as an officer of** **CSGOLOTTO, INC.**	**DECISION AND ORDER** **DOCKET NO. C-**

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission's Bureau of Consumer Protection ("BCP") prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violation of the Federal Trade Commission Act.

Respondents and BCP thereafter executed an Agreement Containing Consent Order ("Consent Agreement"). The Consent Agreement includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission's Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further

conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondents are:

    a. Respondent CSGOLotto, Inc., a Florida corporation with its principal office or place of business at 6511 Vineland Road, Orlando, FL 32819.

    b. Respondent Trevor Martin, also known as TmarTn, the President and a 42.5% owner of CSGOLotto, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of CSGOLotto, Inc. His principal office or place of business is the same as that of CSGOLotto, Inc.

    c. Respondent Thomas Cassell, also known as TheSyndicateProject, Tom Syndicate, and Syndicate, is the Vice President and a 42.5% owner of CSGOLotto, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of CSGOLotto, Inc.

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

A. "Clearly and conspicuously" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

    1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure ("triggering representation") is made through only one means.

    2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7 The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.

B. "Close proximity" means that the disclosure is very near the triggering representation. For example, a disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation.

C. "Respondents" means the Corporate Respondent and the Individual Respondents, individually, collectively, or in any combination.

1. "Corporate Respondent" means CSGOLotto, Inc., a corporation, and its successors and assigns.

2. "Individual Respondents" means Trevor Martin, also known as TmarTn, and Thomas Cassell, also known as TheSyndicateProject, Tom Syndicate, and Syndicate.

D. "Unexpected material connection" means any relationship that might materially affect the weight or credibility of a testimonial or endorsement and that would not reasonably be expected by consumers.

Provisions

I. Misrepresentation of Independence

IT IS ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any product or service must not make any misrepresentation, expressly or by implication, that an endorser of such product or service is an independent user or ordinary consumer of the product or service.

II. Required Disclosure of Material Connections

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any product or service must not make any representation, expressly or by implication, about any consumer or other endorser of such product or service without disclosing, clearly and conspicuously, and in close proximity to that representation, any unexpected material connection between such endorser and (1) any Respondent; (2) any other individual or entity affiliated with the product or service; or (3) the product or service.

III. Monitoring of Endorsers

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any product or service by means of an endorsement by an endorser with a material connection to (1) any Respondent, (2) any other individual or entity affiliated with the product or service, or (3) the product or service, must take steps sufficient to ensure compliance with Provisions I and II of this Order. Such steps shall include, at a minimum:

A. Providing each such endorser with a clear statement of his or her responsibilities to disclose clearly and conspicuously, and in close proximity to the endorsement, in any online video, social media posting, or other communication endorsing the product or service, the endorser's unexpected material connection to any Respondent, any other individual or entity affiliated with the product or service, or the product or service, and obtaining from each such endorser a signed and dated statement acknowledging receipt of that statement and expressly agreeing to comply with it;

B. Establishing, implementing, and thereafter maintaining a system to monitor and review the representations and disclosures of endorsers with material connections to any Respondent, any other individual or entity affiliated with the product or service, or the product or service, to ensure compliance with Provisions I and II of this Order. The system shall include, at a minimum, monitoring and reviewing the endorsers' online videos and social media postings;

C. Immediately terminating and ceasing payment to any endorser with a material connection to any Respondent, any other individual or entity affiliated with the product or service, or the product or service, who Respondents reasonably conclude:

    1. Has misrepresented, in any manner, his or her independence or impartiality; or

    2. Has failed to disclose, clearly and conspicuously, and in close proximity to the endorsement, an unexpected material connection between such endorser and any

Respondent, any other individual or entity affiliated with the product or service, or the product or service.

Provided, however, that Respondents may provide an endorser with notice of failure to adequately disclose and an opportunity to cure the disclosure prior to terminating the endorser if Respondents reasonably conclude that the failure to adequately disclose was inadvertent. Respondents shall inform any endorser to whom they have provided a notice of a failure to adequately disclose an unexpected material connection that any subsequent failure to adequately disclose will result in immediate termination; and

D. Creating reports showing the results of the monitoring required by sub-provision B of this Provision of the Order.

IV. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after the issuance date of this Order, each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly, and Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

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IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

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1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Respondent (which Individual Respondents must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which such Respondent performs services whether as an employee or otherwise and any entity in which such Respondent has any ownership interest; and (c) describe in detail such Respondent's involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which such Respondent performs services whether as an employee or otherwise and (ii) any entity in which such Respondent has any ownership interest and over which Respondents have direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.

C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re CSGOLotto, Inc.

VI. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 10 years after the issuance date of the Order, and retain each such record for 5 years, unless otherwise specified below. Specifically, Corporate Respondent and each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. accounting records showing the revenues from all goods or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;

B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. copies or records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. all records necessary to demonstrate full compliance with each Provision of this Order, including all submissions to the Commission and the reports required pursuant to the Provision titled Monitoring of Endorsers;

E. a copy of each unique advertisement or other marketing material making a representation subject to this Order; and

F. for 5 years from the date created or received, all records, whether prepared by or on behalf of Respondents, that tend to show any lack of compliance by Respondents with this Order.

VII. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.

C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Respondents, pursuant to Section 604(2) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(2).

VIII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Provision in this Order that terminates in less than 20 years;

B. This Order's application to any Respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of CSGOLotto, Inc., File No. 1623184

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from CSGOLotto, Inc., Trevor Martin ("Martin"), and Thomas Cassell ("Cassell") (collectively "respondents").

The proposed consent order ("order") has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the final the agreement's order.

This matter involves respondents' advertising for their website, www.csgolotto.com ("CSGO Lotto"), which offered consumers the opportunity to gamble using what is in effect a virtual currency. The complaint alleges that respondents violated Section 5(a) of the FTC Act by misrepresenting that videos of Martin, Cassell, and other influencers gambling on CSGO Lotto and their social media posts about CSGO Lotto reflected the independent opinions or experiences of impartial users of the service. According to the complaint, Martin is the President, Cassell is the Vice President, and both are owners of the company operating CSGO Lotto, and the other influencers were paid to promote CSGO Lotto and were prohibited from impairing its reputation. The complaint further alleges that respondents deceptively failed to disclose that Martin and Cassell were owners and officers of the company operating CSGO Lotto and that other influencers received compensation, including monetary payment, to promote CSGO Lotto.

The order includes injunctive relief to address these alleged violations and fences in similar and related violations.

Provision I prohibits respondents, in connection with the sale of any product or service, from misrepresenting that any endorser of such product or service is an independent user or ordinary consumer of the product or service.

Provision II prohibits respondents from making any representation about any consumer or other endorser of a product or service without disclosing, clearly and conspicuously, and in close proximity to that representation, any unexpected material connection between the consumer or endorser and (1) any respondent, (2) any other individual or entity affiliated with the product or service, or (3) the product or service ("relevant material connections"). The order defines "clearly and conspicuously" as the term applies to the required disclosures.

Provision III sets out certain monitoring and compliance obligations to ensure that when respondents advertise or promote any product or service through endorsers with relevant material connections, the endorsers comply with Provisions I and II of the order. These obligations include: obtaining signed acknowledgements from such endorsers that they will disclose their relevant material connections; monitoring the endorsers' representations and disclosures; maintaining records of monitoring efforts; and, under certain circumstances, terminating and ceasing payment to endorsers who misrepresent their independence or fail to properly disclose a relevant material connection.

Provision IV mandates that respondents acknowledge receipt of the order, distribute the order to principals, officers, and certain employees and agents, and obtain signed acknowledgments from them. **Provision V** requires that respondents submit compliance reports to the FTC one year after the order's issuance and submit notifications when certain events occur. **Provision VI** requires that for ten years respondents must create and retain certain records. **Provision VII** provides for the FTC's continued compliance monitoring of respondent's activity during the order's effective dates. **Provision VIII** provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Warner Bros. Settles FTC Charges It Failed to Adequately Disclose It Paid Online Influencers to Post Gameplay Videos

Influencers Were Paid Thousands of Dollars to Promote 'Shadow of Mordor'

Share This Page

FOR RELEASE

July 11, 2016

TAGS: Bureau of Consumer Protection | Western Region | Consumer Protection | Advertising and Marketing | Endorsements | Online Advertising and Marketing

Warner Bros. Home Entertainment, Inc. has settled Federal Trade Commission charges that it deceived consumers during a marketing campaign for the video game *Middle Earth: Shadow of Mordor*, by failing to adequately disclose that it paid online "influencers," including the wildly popular "PewDiePie," thousands of dollars to post positive gameplay videos on YouTube and social media. Over the course of the campaign, the sponsored videos were viewed more than 5.5 million times.

Under a proposed FTC order announced today, Warner Bros. is barred from failing to make such disclosures in the future and cannot misrepresent that sponsored content, including gameplay videos, are the objective, independent opinions of video game enthusiasts or influencers.

"Consumers have the right to know if reviewers are providing their own opinions or paid sales pitches," said Jessica Rich, Director of the FTC's Bureau of Consumer Protection. "Companies like Warner Brothers need to be straight with consumers in their online ad campaigns."

The FTC's complaint stems from a late-2014 Warner Bros. online marketing campaign designed to generate buzz within the gaming community for the new release of *Middle Earth: Shadow of Mordor*, a fantasy role-playing game loosely based on *The Hobbit* and the *Lord of the Rings* trilogy. It was released in September 2014 for the PlayStation 3 and in November 2014 for the Xbox 360.

According to the complaint, during the campaign, Warner Bros., through its advertising agency Plaid Social Labs, LLC, hired online influencers to develop sponsored gameplay videos and post them on YouTube. Warner Bros. also told the influencers to promote the videos on Twitter and Facebook, generating millions of views. PewDiePie's sponsored video alone was viewed more than 3.7 million times.

Warner Bros. paid each influencer from hundreds to tens of thousands of dollars, gave them a free advance-release version of the game, and told them how to promote it, according to the complaint. The FTC contends that Warner Bros. required the influencers to promote the game in a positive way and not to disclose any bugs or glitches they found.

While the videos were sponsored content – essentially ads for *Shadow of Mordor* – the FTC alleges that Warner Bros. failed to require the paid influencers to adequately disclose this fact. The FTC also alleges that Warner Bros. did not instruct the influencers to include sponsorship disclosures clearly and conspicuously in the video itself where consumers were likely to see or hear them.

Instead, according to the complaint, Warner Bros. instructed influencers to place the disclosures in the description box appearing below the video. Because Warner Bros. also required other information to be placed in that box, the vast majority of sponsorship disclosures appeared "below the fold," visible only if consumers clicked on the "Show More" button in the description box. In addition, when influencers posted YouTube videos on Facebook or Twitter, the posting did not include the "Show More" button, making it even less likely that consumers would see the sponsorship disclosures.

The complaint also alleges that in some cases, the influencers disclosed only that they had received early access to *Shadow of Mordor*, but failed to disclose that Warner Bros. also had paid them to promote the game.

The FTC also alleges that the Warner Bros.' contracts with influencers subjected their videos to pre-approval, and that on at least one occasion Warner Bros. reviewed and approved an influencer video that lacked adequate sponsorship disclosure.

The Commission's complaint charges that Warner Bros., through its marketing campaign, misled consumers by suggesting that the gameplay videos of *Shadow of Mordor* reflected the independent or objective views of the influencers. The complaint also alleges that Warner Bros. failed to adequately disclose that the gamers were compensated for their positive reviews.

The proposed order settling the FTC's charges prohibits Warner Bros. from misrepresenting that any gameplay videos disseminated as part of a marketing campaign are independent opinions or the experiences of impartial video game enthusiasts. Further, it requires the company to clearly and conspicuously disclose any material connection between Warner Bros. and any influencer or endorser promoting its products.

Finally, the order specifies the minimum steps that Warner Bros., or any entity it hires to conduct an influencer campaign, must take to ensure that future campaigns comply with the terms of the order. These steps include educating influencers regarding sponsorship disclosures, monitoring sponsored influencer videos for compliance, and, under certain circumstances, terminating or withholding payment from influencers or ad agencies for non-compliance.

The Commission vote to issue the administrative complaint and to accept the proposed consent agreement was 3-0. The FTC will publish a description of the consent agreement package in the Federal Register shortly.

The agreement will be subject to public comment for 30 days, beginning today and continuing through August 10, 2016, after which the Commission will decide whether to make the proposed consent order final. Interested parties can submit comments electronically by following the instructions in the "Invitation to Comment" part of the "Supplementary Information" section of the Federal Register notice.

NOTE: The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty.

The Federal Trade Commission works to promote competition, and protect and educate consumers. You can learn more about consumer topics and file a consumer complaint online or by calling 1-877-FTC-HELP (382-4357). Like the FTC on Facebook, follow us on Twitter, read our blogs and subscribe to press releases for the latest FTC news and resources.

PRESS RELEASE REFERENCE:

Contact Information

MEDIA CONTACT:

Mitchell J. Katz
Office of Public Affairs
202-326-2161

STAFF CONTACT:

Linda K. Badger
FTC Western Region, San Francisco
415-848-5151

UNITED STATES OF AMERICA
BFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of **WARNER BROS. HOME ENTERTAINMENT INC.,** **a corporation.**	**Docket No.**

COMPLAINT

The Federal Trade Commission, having reason to believe that Warner Bros. Home Entertainment Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Warner Bros. Home Entertainment Inc. ("WBHE") is a Delaware corporation with its principal office or place of business at 4000 Warner Blvd., Burbank, California 91522. Warner Bros. Interactive Entertainment ("WBIE") is a division of WBHE.

2. The acts and practices of respondent, as alleged herein, have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

3. Respondent produces and distributes home entertainment content to consumers. Respondent, through its division, WBIE, has manufactured, advertised, labeled, offered for sale, sold, and distributed interactive entertainment for consumers, including but not limited to the video game title, *Middle Earth: Shadow of Mordor* ("*Shadow of Mordor*"). WBIE is a major worldwide publisher and distributer of video game titles.

4. In 2014, respondent hired an advertising agency, Plaid Social Labs, LLC ("Plaid Social"), to coordinate a "YouTube Influencer Campaign" for its soon-to-be-released video game, *Shadow of Mordor*. Through the YouTube Influencer Campaign, respondent intended to maximize consumer awareness of the game when it became available for sale and to persuade consumers to purchase it.

5. Respondent, through Plaid Social, hired individuals who had earned reputations as video game enthusiasts on YouTube ("YouTube influencers") to post positive videos promoting *Shadow of Mordor* on YouTube. These YouTube influencers were given free access to a pre-release version of *Shadow of Mordor* and cash payments often ranging from hundreds of dollars

to tens of thousands of dollars, provided that the videos they created about *Shadow of Mordor* met certain requirements defined by respondent. These requirements were communicated to the YouTube influencers through Plaid Social.

6. In respondent's contract with Plaid Social, any work performed on behalf of respondent is respondent's property, or "work made for hire," and respondent is the "the sole owner of all rights in and to the [w]ork of every kind and character whatsoever in perpetuity and throughout the universe." Similarly, the influencers agreed that respondent "will be deemed the author and exclusive owner" of any work arranged for by Plaid Social on behalf of the respondent.

7. Respondent, through Plaid Social, required that each influencer's video meet the following requirements:

- Video will feature gameplay of the [*Shadow of Mordor* video game]
- Video will have a strong verbal call-to-action to click the link in the description box for the viewer to go to the [game's] website to learn more about the [game], to learn how they can register, and to learn how to play the game.

. . . .

- Video will promote positive sentiment about the [game].
- Video will not show bugs or glitches that may exist.

. . . .

- Video will not communicate negative sentiment about WBIE, its affiliates or the [game].
- One Facebook post or one Tweet by Influencer in support of Video.

Consequently, these videos are sponsored advertisements, and do not necessarily reflect the independent experiences of the individual YouTube Influencers.

8. Respondent also required that the YouTube influencers be instructed to place specified information in the written text or "description box" that typically appears underneath the portion of the web page where a consumer can view a YouTube video. For example:

- Description box will contain information about the [game] above the fold.

. . . .

- Description box will include FTC disclaimer disclosing that the post is sponsored.

9. As described in Paragraph 8, respondent, through Plaid Social, instructed the YouTube influencers to provide a written disclosure that their videos had been sponsored ("FTC disclaimer"), and to place this disclosure in the description box appearing below the YouTube videos. Respondent did not require that the YouTube influencers be instructed to place a sponsorship disclosure clearly and conspicuously in the video itself. Nor did respondent require that the YouTube influencers be instructed to place the sponsorship disclosure "above the fold" in the description box, or visible without consumers having to scroll down or click on a link, as it

had for other information about *Shadow of Mordor*. (*See, e.g.*, Exhibit A-1) Accordingly, the vast majority of YouTube influencers did not include any sponsorship disclosure in their videos and only placed their sponsorship disclosures "below the fold" in the description box below the video. Therefore, consumers have to click on a "Show More" button in the description box and potentially scroll down before they can see the sponsorship disclosure. (*See, e.g.*, Exhibits A-1, A-2; Exhibits B-1, B-2) As a result, consumers who watched these YouTube videos were unlikely to learn that the videos were paid promotions.

10. Respondent, through Plaid Social, required the YouTube influencers to promote their videos on Twitter or Facebook. When the influencers posted these videos for consumers to view on Twitter or Facebook, however, consumers were even less likely to see the required sponsorship disclosures because such posts did not include the Show More button. (*See, e.g.*, Exhibit C).

11. On at least two occasions, the YouTube influencers disclosed only that they had been given early access to the game, and did not adequately disclose that they had also been paid to post the video. (*See, e.g.*, Exhibit D-1, D-2) For example, one influencer's disclosure states: "This has been one of my favorite sponsored games, so thanks that I could play it for free!!" (*See* Exhibit D-1) This statement implies that the only compensation this YouTube influencer received was free access to the *Shadow of Mordor* video game. In fact, this YouTube influencer also received monetary compensation of thousands of dollars in return for his positive gameplay video and social media postings about *Shadow of Mordor*.

12. By contract, influencers' videos were subject to pre-approval by respondent and/or Plaid Social to ensure that they conformed with respondent's requirements. On at least one occasion, respondent reviewed and approved an influencer video with an inadequate sponsorship disclosure before it was made public. On this occasion, respondent did not require the influencer or Plaid Social to move the sponsorship disclosure.

13. Prior to and immediately after the public release of *Shadow of Mordor* on September 30, 2014, the YouTube influencers commissioned for the *Shadow of Mordor* YouTube Influencer Campaign posted approximately thirty gameplay videos on YouTube. These videos were viewed over 5.5 million times by consumers, and were publicly available for over a year.

Count I
False Claim of Independent Reviews

14. Through the means described in Paragraphs 4 through 13, respondent has represented, directly or indirectly, expressly or by implication, that gameplay videos of *Shadow of Mordor* produced and disseminated in connection with the YouTube Influencer Campaign reflect the independent opinions or experiences of impartial video game enthusiasts.

15. In truth and in fact, these gameplay videos of *Shadow of Mordor* do not reflect the independent opinions or experiences of impartial video game enthusiasts. The YouTube influencers were paid by respondent to create the videos as part of respondent's advertising

campaign to promote sales of the game. Therefore, the representation set forth in Paragraph 14 was, and is, false and misleading.

Count II
Deceptive Failure to Disclose Material Connection Between Endorsers and Seller

16. Through the means described in Paragraphs 4 through 13, respondent has represented, directly or indirectly, expressly or by implication, that favorable gameplay videos for *Shadow of Mordor* reflect the opinions or experiences of individuals who had played *Shadow of Mordor*. In numerous instances, respondent has failed to disclose or disclose adequately that these individuals received compensation, including both a free game and monetary payment, to produce and disseminate the videos. This fact would be material to consumers in their decision to purchase *Shadow of Mordor*. The failure to disclose or disclose adequately this fact, in light of the representations made, was, and is, a deceptive practice.

Violations of Section 5

17. The acts and practices of respondent as alleged in this Complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this ___ day of ____, 2016, has issued this Complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL:

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	**DOCKET NO.**
WARNER BROS. HOME ENTERTAINMENT INC., a corporation.	**DECISION AND ORDER**

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of a complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violations of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("consent agreement"), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, (and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34) now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Warner Bros. Home Entertainment Inc. is a Delaware corporation with its principal office or place of business at 4000 Warner Blvd., Burbank, California 91522.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "Respondent" means Warner Bros. Home Entertainment Inc., its successors and assigns, and its officers, agents, representatives, and employees.

2. "Clearly and Conspicuously" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

   a. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

   b. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

   c. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

   d. In any communication using an interactive electronic medium, such as the internet or software, the disclosure must be unavoidable.

   e. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

   f. The disclosure must comply with these requirements in each medium through which it is received, including but not limited to all electronic devices and face-to-face communications.

   g. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

   h. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.

3. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. "Endorsement" means any advertising message (including but not limited to verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.

5. "Endorser" or "Influencer" means an individual or organization that provides an Endorsement.

6. "Home Entertainment Product or Service" means any video game product or service for any platform, including but not limited to video game consoles, handheld or mobile devices, and personal computers.

7. "Influencer Campaign" means any arrangement whereby, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, an Influencer creates, publishes, or otherwise disseminates an Endorsement for which the Influencer is to receive compensation from either Respondent or anyone else that Respondent engages to conduct such campaign.

8. "Material Connection" means any relationship that materially affects the weight or credibility of any Endorsement and that would not be reasonably expected by consumers.

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Home Entertainment Product or Service, in or affecting commerce, shall not in any Influencer Campaign misrepresent, in any manner, expressly or by implication, that an Influencer is an independent user or ordinary consumer of the product or service.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Home Entertainment Product or Service, in or affecting commerce, by means of an Endorsement of such product or service, shall in any Influencer Campaign Clearly and Conspicuously disclose a Material Connection, if one exists, between the Influencer and Respondent.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Home Entertainment Product or Service, in or affecting commerce, shall: (i) in any Influencer Campaign it conducts directly, take steps

sufficient to ensure that its Influencer Campaigns comply with Parts I and II of this order; and (ii) require that any entity that Respondent engages to conduct an Influencer Campaign take steps sufficient to ensure that its Influencer Campaigns comply with Parts I and II of this order. Such steps shall include, at a minimum:

A. Providing each Influencer with a statement of his or her responsibility to disclose Clearly and Conspicuously, in any online video, social media posting, or other communication for which the Influencer is to receive compensation, the Influencer's Material Connection to Respondent. Respondent or the entity conducting the campaign shall obtain from each Influencer a signed and dated acknowledgment that the Influencer has received the statement and expressly agrees to comply with it;

B. Establishing, implementing, and thereafter maintaining a system to monitor and review the representations and disclosures of Influencers with Material Connections to Respondent to ensure compliance with Parts I and II of this order. The system shall include, at a minimum, monitoring and reviewing the Influencers' online videos, social media postings, or other digital advertisements or communications made as part of the Influencer Campaign;

C. Immediately terminating and ceasing payment to any Influencer with a Material Connection to Respondent who Respondent reasonably concludes:

1) Has misrepresented, in any manner, his or her independence and impartiality; or

2) Has failed to disclose, Clearly and Conspicuously, and in close proximity to the representation, a Material Connection between such Influencer and Respondent.

Provided, however, that Respondent may provide an Influencer with notice of failure to disclose and an opportunity to cure the disclosure prior to terminating the Influencer if Respondent reasonably concludes that the failure to disclose was inadvertent. Respondent shall inform any Influencer to whom it has provided a notice of a failure to disclose a Material Connection that any subsequent failure to disclose will result in immediate termination;

D. Directing the entity conducting the campaign to immediately terminate and cease payment to any Influencer with a Material Connection to Respondent who the entity conducting the campaign reasonably concludes:

1) Has misrepresented, in any manner, his or her independence and impartiality; or

2) Has failed to disclose, Clearly and Conspicuously, and in close proximity to the representation, a Material Connection between such Influencer and Respondent.

Provided, however, that Respondent may allow the entity conducting the campaign to provide an Influencer with notice of failure to disclose and an opportunity to cure the disclosure prior to terminating the Influencer if the entity conducting the campaign reasonably concludes that the failure to disclose was inadvertent. The entity conducting the campaign shall inform any Influencer to whom it has provided a notice of a failure to disclose a Material Connection that any subsequent failure to disclose will result in immediate termination;

E. Establishing, implementing, and thereafter maintaining a system for Respondent to monitor any entity that Respondent engages to conduct an Influencer Campaign for adherence to this Part of the order. If Respondent reasonably concludes that the entity engaged to conduct the Influencer Campaign has failed to comply with this Part of the order, Respondent shall immediately suspend payment to the entity, unless and until any noncompliance has been cured. Respondent shall disqualify the entity from conducting future Influencer Campaigns for Respondent upon a repeat incident unless Respondent reasonably concludes that the noncompliance was inadvertent; and

F. Creating, and thereafter maintaining, reports showing the results of the monitoring required by subparts B and E of this Part of the order.

IV.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall, for five (5) years after the last date of dissemination of any Endorsement or other representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Any documents that:

1) Are reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to documents obtained, created, or generated, or which relate to, the requirements, provisions, or terms of this order, and all reports submitted to the Commission pursuant to this order;

2) Contradict, qualify, or call into question Respondent's compliance with this order; or

3) Comprise or relate to complaints or inquiries, whether received directly, indirectly, or through any third party, concerning any Endorsement made by Respondent, and any responses to those complaints or inquiries; and

B. All acknowledgments of receipt of this order obtained pursuant to Part V.

V.

IT IS FURTHER ORDERED that, for five (5) years, Respondent and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re Warner Bros. Home Entertainment Inc.

VII.

IT IS FURTHER ORDERED that Respondent and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal

By the Commission.

Donald S. Clark
Secretary

ISSUED:

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Lord & Taylor Settles FTC Charges It Deceived Consumers Through Paid Article in an Online Fashion Magazine and Paid Instagram Posts by 50 "Fashion Influencers"

Promotions Were Part of the Company's March 2015 Design Lab Collection Launch

Share This Page

FOR RELEASE

March 15, 2016

TAGS: Retail | Merchandise & Clothing | Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Online Advertising and Marketing

National retailer Lord & Taylor has agreed to settle Federal Trade Commission charges that it deceived consumers by paying for native advertisements, including a seemingly objective article in the online publication *Nylon* and a *Nylon* Instagram post, without disclosing that the posts actually were paid promotions for the company's 2015 Design Lab clothing collection.

The Commission's complaint also charges that as part of the Design Lab rollout, Lord & Taylor paid 50 online fashion "influencers" to post Instagram pictures of themselves wearing the same paisley dress from the new collection, but failed to disclose they had given each influencer the dress, as well as thousands of dollars, in exchange for their endorsement.

In settling the charges, Lord & Taylor is prohibited from misrepresenting that paid ads are from an independent source, and is required to ensure that its influencers clearly disclose when they have been compensated in exchange for their endorsements.

"Lord & Taylor needs to be straight with consumers in its online marketing campaigns," said Jessica Rich, Director of the FTC's Bureau of Consumer Protection. "Consumers have the right to know when they're looking at paid advertising."

Design Lab Paisley Asymmetrical Dress that was the subject of the Nylon social media campaign

According to the FTC, over a weekend in late March 2015, Lord & Taylor launched a comprehensive social media campaign to promote its new Design Lab collection, a private-label clothing line targeted to women between 18 and 35 years old. The marketing plan included branded blog posts, photos, video uploads, native advertising editorials in online fashion magazines, and online endorsements by a team of specially selected "fashion influencers."

The complaint alleges that Lord & Taylor placed a Lord & Taylor-edited paid article in *Nylon*, a pop culture and fashion publication. Nylon also posted a photo of the retailer's Design Lab Paisley Asymmetrical Dress on Nylon's Instagram site, along with a caption that Lord & Taylor had reviewed and approved. The Instagram post and article gave no indication to consumers that they were paid advertising placed by Lord & Taylor.

Over the same weekend in March 2015, Lord & Taylor gave 50 select fashion influencers a free Paisley Asymmetrical Dress and paid them between $1,000 and $4,000 each to post a photo of themselves wearing it on Instagram or another social media site. While the influencers could style the dress any way they chose, Lord & Taylor contractually obligated them to use the "@lordandtaylor" Instagram user designation and the hashtag "#DesignLab" in the caption of the photo they posted. The company also pre-approved each proposed post.

In addition, the FTC's complaint charges that Lord & Taylor did not require the influencers to disclose that the company had compensated them to post the photo, and none of the posts included such a disclosure. In total, the influencers' posts reached 11.4 million individual Instagram users over just two days, led to 328,000 brand engagements with Lord & Taylor's own Instagram handle, and the dress quickly sold out.

The proposed consent order settling the FTC's complaint prohibits Lord & Taylor from misrepresenting that paid commercial advertising is from an independent or objective source. It also prohibits the company from misrepresenting that any endorser is an independent or ordinary consumer, and requires the company to disclose any unexpected material connection between itself and any influencer or endorser. Finally, it establishes a monitoring and review program for the company's endorsement campaigns.

The FTC recently issued an enforcement policy statement that businesses can use to ensure they make required disclosures in native advertisements.

The Commission vote to issue the administrative complaint and to accept the proposed consent agreement was 4-0. The FTC will publish a description of the consent agreement package in the Federal Register shortly.

The agreement will be subject to public comment for 30 days, beginning today and continuing through April 14, 2016, after which the Commission will decide whether to make the proposed consent order final. Interested parties can submit comments electronically by following the instructions in the "Invitation To Comment" part of the "Supplementary Information" section.

NOTE: The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of up to $16,000.

The Federal Trade Commission works to promote competition, and protect and educate consumers. You can learn more about consumer topics and file a consumer complaint online or by calling 1-877-FTC-HELP (382-4357). Like the FTC on Facebook, follow us on Twitter, read our blogs and subscribe to press releases for the latest FTC news and resources.

PRESS RELEASE REFERENCE:
FTC Approves Final Lord & Taylor Order Prohibiting Deceptive Advertising Techniques

Contact Information

MEDIA CONTACT:
Mitchell J. Katz
Office of Public Affairs
202-326-2161

STAFF CONTACT:
Robin Rosen Spector
Bureau of Consumer Protection
202-326-3740

152 3181

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	)	
	)	
LORD & TAYLOR, LLC,	)	**DOCKET NO.**
a limited liability company.	)	
	)	
	)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Lord & Taylor, LLC, a limited liability company ("Respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Lord & Taylor is a New York limited liability company with its principal office or place of business at 424 5th Avenue, New York, NY, 10018.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed women's, men's, and children's apparel, accessories, cosmetics, and other retail merchandise to consumers.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

Lord & Taylor's Design Lab Instagram Campaign

4. In the Fall of 2014, Respondent Lord & Taylor developed plans to promote its new Design Lab collection, a private label clothing line aimed at women ages 18-35. Respondent's Design Lab marketing plan included a comprehensive social media campaign ("product bomb") launched at the end of March 2015. The campaign was comprised of Lord & Taylor-branded blog posts, photos, video uploads, native advertising editorials in online fashion magazines, and use of a team of fashion influencers recruited for their fashion style and extensive base of followers on social media platforms, all focused on a single article of clothing, the Design Lab Paisley Asymmetrical Dress.

5. Lord & Taylor gifted the Paisley Asymmetrical Dress to 50 select fashion influencers who were paid, in amounts ranging from $1,000 to $4,000, to post on the social media platform Instagram one photo of themselves wearing the Design Lab dress during a specified timeframe during the weekend of March 27-28, 2015. While the influencers were given the freedom to style the dress in any way they saw fit, Lord & Taylor contractually obligated them to exclusively mention the company using the "@lordandtaylor" Instagram user designation and the campaign hashtag "#DesignLab" in the photo caption. The influencers also were required to tag their photos of the dress using the "@lordandtaylor" Instagram designation.

6. Although Lord & Taylor's Design Lab influencer contracts detailed the manner in which Respondent was to be mentioned in each Instagram posting, the contracts did not require the influencers to disclose in their postings that Respondent had compensated them, nor did Respondent otherwise obligate the influencers to disclose that they had been compensated.

7. In advance of the March 27-28, 2015 Design Lab debut, Respondent's representatives pre-approved each of the influencers' Instagram posts to ensure that the required campaign hashtag and the @lordandtaylor Instagram user designation were included in the photo captions. Respondent also made certain other stylistic edits to the influencers' proposed text. None of the Instagram posts presented to Respondent for pre-approval included a disclosure that the influencer had received the dress for free, that she had been compensated for the post, or that the post was a part of a Lord & Taylor advertising campaign. Respondent Lord & Taylor did not edit any of the 50 posts to add such disclosures. *See* Exhibit A (representative Design Lab Instagram posts from the weekend of March 27-28, 2015).

8. The Design Lab Instagram campaign reached 11.4 million individual Instagram users, resulted in 328,000 brand engagements with Lord & Taylor's own Instagram user handle (such as likes, comments, or re-postings), and the dress subsequently sold out.

9. Respondent's Design Lab debut also included strategic placement of Lord & Taylor-edited Instagram posts and an article in online fashion magazines. One such magazine was Nylon, a pop culture and fashion publication owned by Nylon Media, LLC, the company that represented the majority of the fashion influencers involved in Respondent's Design Lab Instagram campaign. Nylon posted a photo of the Paisley Asymmetrical Dress, along with a Lord & Taylor-edited caption, on its Instagram account during the product bomb weekend. *See* Exhibit B (Nylon.com Design Lab Instagram Post). Although paid for, reviewed, and pre-approved by Lord & Taylor, Nylon's Instagram post failed to disclose that Lord & Taylor had paid for the posting.

10. Nylon Magazine also ran an article about the Design Lab collection in its online magazine on March 31, 2015. Under the terms of its contract with Nylon Magazine, Lord & Taylor reviewed and pre-approved the paid-for Nylon Design Lab article, yet the article did not disclose or otherwise make clear this commercial arrangement. *See* Exhibit C (Nylon.com Design Lab magazine article).

COUNT I
Misrepresentations About the Design Lab Instagram Postings

11. Through the means described in Paragraphs 4 through 7, Respondent represented, directly or indirectly, expressly or by implication, that the 50 Instagram images and captions reflected the independent statements of impartial fashion influencers.

12. In fact, the 50 Instagram images and captions did not reflect the independent statements of impartial fashion influencers. Respondent's influencers specifically created the postings as part of an advertising campaign to promote sales of Respondent's Design Lab collection. Therefore, the representation set forth in Paragraph 11 is false or misleading.

COUNT II
Failure to Disclose Influencers' Material Connection to Lord & Taylor

13. Through the means described in Paragraphs 4 through 7, Respondent represented, directly or indirectly, expressly or by implication, that the 50 Instagram images and captions posted on March 27 and 28, 2015 about the Paisley Asymmetrical Dress reflected the opinions of individuals with expertise in new trends in fashion. In numerous instances, Respondent failed to disclose or disclose adequately that these individuals were paid endorsers for Respondent. These facts would be material to consumers in their decision to purchase the Paisley Asymmetrical Dress. The failure to disclose these facts, in light of the representation made, was and is, a deceptive practice.

COUNT III
Misrepresentations About the Nylon Instagram Post and the March 31, 2015 Nylon Magazine Article

14. Through the means described in Paragraphs 9 and 10, Respondent represented, directly or indirectly, expressly or by implication, that the article that appeared on the March 31, 2015 Nylon Magazine website and the Design Lab posting on Nylon's Instagram account, were independent statements and opinions regarding the launch of Respondent's Design Lab collection.

15. In fact, neither the Nylon Magazine article nor the Nylon Instagram post were independent statements or opinions regarding Respondent's Design Lab collection; they were paid commercial advertising. Therefore, the representation set forth in Paragraph 14 is false or misleading.

16. The acts and practices of Respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this _____ day of _____, 2016, has issued this Complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL:

152 3181

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	)	
	)	
LORD & TAYLOR, LLC	)	**DOCKET NO.**
a limited liability company.	)	
	)	
	)	

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission") has conducted an investigation of certain acts and practices of Lord & Taylor, LLC, a limited liability company ("Proposed Respondent"). Proposed Respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Lord & Taylor, LLC, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed Respondent Lord & Taylor is a New York limited liability company with its principal office or place of business at 424 Fifth Avenue, New York, NY, 10018.

2. Proposed Respondent waives:

   a. Any further procedural steps;

   b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

   c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

3. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days, and information about it will be publicly released. The Commission thereafter may either

withdraw its acceptance of this agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

4. Proposed Respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, Proposed Respondent admits the facts necessary to establish jurisdiction.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time frame provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to Proposed Respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

6. Proposed Respondent has read the draft complaint and consent order. Proposed Respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "Respondent" shall mean Lord & Taylor, LLC, a limited liability company, its successors and assigns, and its officers, agents, representatives, and employees.

2. "Clear(ly) and conspicuous(ly)" means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

   a. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, the disclosure must be presented simultaneously in both the visual and audible portions of the

communication even if the representation requiring the disclosure is made in only one means.

b. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

c. An audible disclosure, including by streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

d. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

e. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

f. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices.

g. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

h. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.

3. "Close proximity" means that the disclosure is very near the triggering endorsement or representation. In an interactive electronic medium (such as a mobile app or other computer program), a visual disclosure that cannot be viewed at the same time and in the same viewable area as the triggering endorsement or representation, on the technology used by ordinary consumers, is not in close proximity. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering endorsement or representation. A disclosure made on a different printed page than the triggering endorsement or representation is not in close proximity.

4. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

5. "Endorsement" means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.

6. “Endorser” means an individual or organization that provides an endorsement.

7. “Influencer Campaign” means any arrangement whereby, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, Respondent engages an endorser (also known as an Influencer) to create, publish, or otherwise disseminate an endorsement and the endorser has a material connection to Respondent, or any other person or entity acting on Respondent’s behalf.

8. “Material connection” means any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that an endorser of such product or service is an independent user or ordinary consumer of the product or service.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, by means of an endorsement of such product or service, shall clearly and conspicuously, and in close proximity to the representation, disclose a material connection, if one exists, between such endorser and Respondent.

III.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, shall not misrepresent, in any manner, expressly or by implication, that paid commercial advertising is a statement or opinion from an independent or objective publisher or source.

IV.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, by means of an endorsement by an endorser with a material connection to Respondent, shall take steps sufficient to ensure compliance with Parts I and II of this order. Such steps shall include, at a minimum:

A. Providing each such endorser with a clear statement of his or her responsibility to disclose, clearly and conspicuously, in any print, radio, television, online, or digital

advertisement or communication, including but not limited to Instagram or blog posts, the endorser's material connection to Respondent, and obtaining from each such endorser a signed and dated statement acknowledging receipt of that statement and expressly agreeing to comply with it;

B. Establishing, implementing, and thereafter maintaining a system to monitor and review the representations and disclosures of endorsers, made as part of an Influencer Campaign, with material connections to Respondent to ensure compliance with Parts I and II of this order. The system shall include, at a minimum, monitoring and reviewing its endorsers' print, radio, television, online, or digital advertisements or communications made as part of an Influencer Campaign;

C. Immediately terminating any endorser with a material connection to Respondent who Respondent reasonably concludes:

1. Has misrepresented, in any manner, his or her independence and impartiality; or

2. Has failed to disclose, clearly and conspicuously, and in close proximity to the representation, a material connection between such endorser and Respondent;

Provided, however, that Respondent may provide an endorser with one notice of a failure to disclose and an opportunity to cure the disclosure prior to terminating the endorser if Respondent reasonably concludes that the failure to disclose was inadvertent; Respondent shall inform any endorser to whom it has provided a notice of a failure to disclose a material connection that any subsequent failure to disclose will result in immediate termination; and

D. Creating, and thereafter maintaining, reports sufficient to show the results of the monitoring required by subpart B of this Part of the order.

V.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation or endorsement covered by this order, maintain and upon reasonable notice make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation or endorsement;

B. All contracts and written communications concerning or relating to the disclosures required by Part II of this order with any endorser engaged by Respondent, or any other person or entity acting on Respondent's behalf, to participate in any Influencer Campaign;

C. Any documents that comprise or relate to complaints or inquiries related to the subject matter of this order, whether received directly, indirectly, or through any third party, that concern any endorsement made or disseminated by Respondent, or on behalf of Respondent, and any responses to those complaints or inquiries;

D. Any documents reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to, all documents obtained, created, generated, or which in any way relate to the requirements, provisions, terms of this order, and all reports submitted to the Commission pursuant to this order;

E. Any documents that contradict, qualify, or call into question Respondent's compliance with this order; and

F. All acknowledgments of receipt of this order obtained pursuant to Part VI.

VI.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, and directors, and to all current and future managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each person a signed and dated statement acknowledging receipt of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or related entity that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, these reports shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The subject line must begin: *In re Lord & Taylor*.

VIII.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, within ninety (90) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission in writing, these reports shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The subject line must begin: *In re Lord & Taylor*.

IX.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years; and

B. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Lord & Taylor, LLC

Date: _____

_____
Elizabeth Rodbell
President
Hudson's Bay Company DSG

Date: _____

_____
David G. Mallen

Nathan J. Muyskens
Loeb & Loeb LLP
Counsel for Lord & Taylor

Date: _____ _____

Robin Rosen Spector
Counsel for the Federal Trade Commission

APPROVED:

_____

MARY K. ENGLE
Associate Director
Division of Advertising Practices

_____

JESSICA L. RICH
Director
Bureau of Consumer Protection

FTC Approves Final Orders Related to False Advertising by Sony Computer Entertainment America and Its Ad Agency Deutsch LA for PS Vita Game Console

Share This Page

FOR YOUR INFORMATION

March 31, 2015

TAGS: deceptive/misleading conduct | Consumer Goods (Non Food & Beverage) | Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing

Following a public comment period, the Federal Trade Commission has approved two final orders settling charges that Sony Computer Entertainment America LLC (Sony) and its advertising agency at the time falsely advertised certain capabilities of the company's PlayStation Vita (PS Vita) handheld gaming console introduced for sale in 2012.

According to the FTC's complaints, announced jointly in November 2014, Sony deceived consumers with false advertising claims about several "game changing" technological features of the PS Vita in late 2011 and early 2012. The Commission alleged that Deutsch LA, Sony's advertising agency for the PS Vita launch, knew or should have known that the advertisements it produced contained misleading claims about the console's capabilities.

The FTC also alleged that Deutsch LA misled consumers by urging its employees to create awareness and excitement about the PS Vita on Twitter, without instructing them to disclose their connection to the advertising agency or its then-client Sony.

In the FTC's order with Sony, it is barred from making misleading advertising claims about the features or attributes of its handheld gaming consoles in the future. Under the order, Sony will provide consumers who bought a PS Vita gaming console before June 1, 2012, either a $25 cash or credit refund, or a $50 merchandise voucher for select video games, and/or services.

The FTC's order with Deutsch LA bars it from making similar misrepresentations as Sony, and bars misrepresentations that an endorser of any game console product or video game product is an independent user or ordinary consumer of the product. It also requires the agency to disclose a material connection, where one exists, between any endorser of a game console product or video game product and Deutsch LA or other entity involved in the manufacture or marketing of the product.

The Commission vote to approve the final consent orders and send letters to members of the public who submitted comments was 5-0. (FTC File No. 122-3252; the staff contacts are Linda Badger and Matthew Gold , FTC's Western Region, San Francisco, 415-848-5100)

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 2,000 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's website provides free information on a variety of consumer topics. Like the FTC on Facebook, follow us on Twitter, and subscribe to press releases for the latest FTC news and resources.

PRESS RELEASE REFERENCE:
Sony Computer Entertainment America To Provide Consumer Refunds To Settle FTC Charges Over Misleading Ads For PlayStation Vita Gaming Console

Contact Information

MEDIA CONTACT:
Mitchell J. Katz
Office of Public Affairs
202-326-2161

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeny

In the Matter of SONY COMPUTER ENTERTAINMENT AMERICA LLC, a limited liability company.	FILE NO. 122-3252 AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Sony Computer Entertainment America LLC, a limited liability company ("proposed respondent" or "SCEA"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Sony Computer Entertainment America LLC, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sony Computer Entertainment America LLC is a Delaware limited liability company with its principal office or place of business at 2207 Bridgepoint Pkwy, San Mateo, California 94404. SCEA is a wholly-owned subsidiary of Sony Corporation of America, Inc., headquartered in New York, New York.

2. Proposed respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, proposed respondent admits the facts necessary to establish jurisdiction.

3. Proposed respondent waives:

   a. Any further procedural steps;

   b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

   c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "respondent" shall mean Sony Computer Entertainment America LLC, a limited liability company, its successors and assigns, and its officers, agents, representatives, and employees.

2. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

3. "Clearly and prominently" shall mean as follows:

   a. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;

b. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;

c. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (a) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication. Provided, however, that, for communications disseminated through programming over which respondent does not have editorial control (*e.g.*, an endorser's appearance on a news program or talk show), the required disclosures may be made in a form consistent with subparagraph (b) of this definition;

d. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (a) of this definition, in addition to any audio or video presentation of them; and

e. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.

4. "Eligible Purchaser" means any consumer who purchased the PlayStation Vita before June 1, 2012 and did not return it for a full refund.

5. "Handheld Game Console Product" means any handheld portable electronic device designed for and primarily used for playing video games that has its own screen, speakers and controls in one unit, including the PlayStation Vita ("PS Vita") and the PlayStation Portable ("PSP").

6. "Home Game Console Product" means any electronic device designed for and primarily used for playing video games on a separate television screen, including the PlayStation 3 ("PS3") and the PlayStation 4 ("PS4").

7. The term "including" in this order means "without limitation."

I.

IT IS ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any material gaming feature or capability of such product when used as a standalone device to play video games.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product or Home Game Console Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the material capability of the Handheld Game Console Product or Home Game Console Product to interact with, or connect to, any other Handheld Game Console Product during gaming, unless at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product or Home Game Console Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the material capability of any Handheld Game Console Product to interact with, or connect with, any Home Game Console Product during gaming, unless it discloses, clearly and prominently, and in close proximity to the representation, that consumers must purchase two versions of the same video game, one for the Handheld Game Console Product and one for the Home Game Console Product, if such is the case.

IV.

IT IS FURTHER ORDERED that respondent shall offer Eligible Purchasers a check or credit for twenty-five dollars ($25) or the alternative of a voucher (or entitlement) for merchandise, video games, and/or services with a retail value of fifty dollars ($50) or more. Respondent shall provide such redress to Eligible Purchasers as follows:

A. Within five (5) days after the date of service of this order, respondent shall provide a notice, via email, to each Eligible Purchaser whom it can reasonably identify. Respondent shall send the notice to the current or last known email address for each such Eligible Purchaser. The electronic notice shall be in the form set out in Appendix A. The subject line of the email required by this subpart shall read "Important: Sony Computer Entertainment America offering money back or merchandise to certain purchasers of PlayStation Vita." No additional information, other than that described in subpart IV.D. of this order, shall be included in or added to the notice (Appendix A) required by this subpart.

B. Within five (5) days after the date of service of this order, respondent shall post a notice on its website informing Eligible Purchasers who were not provided with the notice described in subpart IV.A. above, how they can obtain redress. A

prominent link to this notice shall be posted on the first page of the PlayStation Vita section of its website, and shall read "Important: Sony Computer Entertainment America offering money back or merchandise to certain purchasers of PlayStation Vita." This notice shall include access, by way of a link or other means, to a form set out in Appendix B to this order, asking these consumers to provide sufficient credible evidence that they qualify as Eligible Purchasers. No additional information, other than that described in subpart IV.D. of this order, shall be included in or added to Appendix B. Any consumer whom respondent does not notify under subpart IV.A. of this order, and who contacts respondent or the Commission in any manner regarding this Part, shall be directed to this notice. Respondent may decline a request for redress made under subparts IV.A. or IV.B. if it has a reasonable good faith belief based on the evidence that the request is not from an Eligible Purchaser or is fraudulent.

C. Respondent shall honor requests for redress from Eligible Purchasers who submit the appropriate forms, pursuant to subparts IV.A. or IV.B., within ninety (90) days after the date of service of this order ("Redress Period"). The period for fulfillment of redress requests is set forth in subpart IV.E. of this order.

D. In the notices required by subparts IV.A. and IV.B., respondent shall provide, clearly and prominently, all information necessary for Eligible Purchasers to evaluate this offer before making a decision between the cash payment and the alternative of a voucher (or entitlement) for merchandise, video games, and/or services, and all information necessary to redeem the offer.

E. Respondent shall send all twenty-five dollar ($25) checks promptly through the U.S. Postal Service or shall, at the discretion of the Eligible Purchaser, promptly provide a twenty-five dollar ($25) credit to the Eligible Purchaser's PSN account. Respondent shall promptly provide secure vouchers (or entitlements) for merchandise, video games, and/or services, redeemable through PSN accounts, to all Eligible Purchasers who choose this alternative. For the purposes of this order, "promptly" shall mean within sixty (60) days after the end of the Redress Period.

F. For a period of one hundred eighty (180) days after the date of service of this order, respondent shall provide, and adequately staff during ordinary business hours, a toll-free telephone number to answer questions about this program.

G. Within two hundred ten (210) days after the date of service of this order, respondent shall provide the Commission with a report, in writing, setting forth in detail the manner and form of its own compliance with this Part.

V.

IT IS FURTHER ORDERED that respondent SCEA and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, upon reasonable notice and request, make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent SCEA and its successors and assigns shall deliver a copy of this order to all current and, for the next five (5) years, all future Vice Presidents of Marketing and Directors of Marketing ("Personnel") having primary responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent and its successors and assigns shall deliver this order to current Personnel within thirty (30) days after the date of service of this order, and to future Personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that respondent SCEA and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line: In the Matter of Sony Computer Entertainment America LLC, FTC File Number 122-3252. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

VIII.

IT IS FURTHER ORDERED that respondent SCEA and its successors and assigns shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

IX.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

SONY COMPUTER ENTERTAINMENT AMERICA LLC

Date: _____ By: _____
SHAWN LAYDEN
President and Chief Executive Officer

Date: _____ _____
RONALD URBACH, ESQ.
Davis & Gilbert, LLP
Attorney for Respondent

Date: _____

_____
LINDA K. BADGER
MATTHEW D. GOLD
Counsel for the Federal Trade Commission

APPROVED:

_____
THOMAS N. DAHDOUH
Regional Director
Western Region

_____
JESSICA L. RICH
Director
Bureau of Consumer Protection

APPENDIX A

CASH BACK OR MERCHANDISE OFFER FROM
SONY COMPUTER ENTERTAINMENT AMERICA LLC

Dear [NAME]

Our records show that you purchased a PlayStation Vita handheld game console prior to June 1, 2012. The Federal Trade Commission has alleged that some SCEA advertisements for the PlayStation Vita during this period were deceptive. Although SCEA neither admits nor denies liability in connection with this matter, SCEA has agreed to settle the dispute with the Federal Trade Commission by offering either cash back (or credit on your PSN account) or merchandise to customers who purchased a PlayStation Vita before June 1, 2012, and who have not returned the product for a full refund.

Accordingly, we are pleased to offer you the opportunity to receive a check for $25 (or a $25 credit on your PSN account). Alternatively, you are eligible to receive a merchandise voucher [or entitlement] that you can use to select from a list of merchandise, video games and/or services. The selection of merchandise, video games and/or services that are available through this offer has a retail value of $50 or more.

You are eligible to receive either a check for $25 (or a $25 credit on your PSN account) or a merchandise voucher [or entitlement], but not both. For details of each offer and to make your choice of the $25 check (or credit) or the merchandise voucher [or entitlement], please click here [link].

You MUST complete and submit the information requested in the above link by [Insert date equal to 90 days from service of this order] to be eligible to receive the $25 check (or $25 credit on your PSN account) or merchandise voucher [or entitlement] worth $50 or more. Please be assured that your acceptance of this offer does not obligate you to purchase anything.

For more information on our settlement with the Federal Trade Commission, please visit www.ftc.gov and search for “Sony Computer Entertainment America.”

If you have any questions, please call Sony Computer Entertainment America claims administration at 1-800-xxx-xxxx.

[CLICK-THROUGH PAGE]

Use this form to choose between a check for $25 (or a $25 credit on your PSN account) or a merchandise voucher [or entitlement] worth $50 or more.

I certify that the information I am providing below is true and accurate, and agree to the provisions as set out below.

Check Next to Each of the Below If It Is True and Accurate:

I certify that I purchased a PlayStation Vita before June 1, 2012. _____
I certify that I have not returned my PlayStation Vita for a full refund. _____
I certify that I have neither already redeemed this offer, nor made any other consumer redress request for the PlayStation Vita from Sony Computer Entertainment America. _____

Required information:

My PSN ID is _____ (Your PSN ID is the email address where you received this notice.)

Optional Information:

The following information is not required, and will not affect your eligibility to receive either a check (or credit) or a merchandise voucher [or entitlement]. To help facilitate the administration of your request, please provide one of the following (both if you have them):
The SIRIS number _____ or SERIAL number _____ of the PlayStation Vita that you purchased before June 1, 2012. (The SIRIS number and the SERIAL number are found on the bottom edge of your PlayStation Vita product. The SIRIS number is left of the connector port and the SERIAL number is right of the connector port. These numbers are also found on the side panel of the PlayStation Vita package.)

Selection of Consumer Redress Offer:

Please select ONE of the following three Consumer Redress Offers. Additional information describing each offer is available by clicking here [pop-up window or link].

1. _____ I select a $25 check. Please send the check to me at the following mailing address:

   [Fields for entering mailing address]

OR

2. _____ Instead of the $25 check, I select a $25 credit to be applied to my PSN account. Additional information describing this offer is available by clicking here [pop-up window or link].

OR

3. _____ I select the Merchandise Voucher [or Entitlement] good for $50 or more in value of merchandise, video games and/or services. Additional information describing this offer is available by clicking here [pop-up window or link].

I understand that by submitting this request and accepting a refund of cash (or credit) or a merchandise voucher [or entitlement] issued through this program, I agree to waive any present or future claims I may have against Sony Computer Entertainment America LLC in connection with the advertising, labeling, promotion, offering for sale or sale of the PlayStation Vita for which I received consumer redress.

To Submit Your Request and Agree to the Above

CLICK HERE

APPENDIX B

CASH BACK OR MERCHANDISE OFFER FROM
SONY COMPUTER ENTERTAINMENT AMERICA LLC

Dear Customer:

If you purchased a PlayStation Vita handheld game console before June 1, 2012, you may be eligible to receive cash back (or credit on your PSN account) or merchandise worth $50 or more. The Federal Trade Commission has alleged that some SCEA advertisements for the PlayStation Vita during this period were deceptive. Although SCEA neither admits nor denies liability in connection with this matter, SCEA has agreed to settle the dispute with the Federal Trade Commission by offering either cash back (or credit on your PSN account) or merchandise to customers who purchased a PlayStation Vita before June 1, 2012, and who have not returned the product for a full refund.

Accordingly, if you qualify as an Eligible Purchaser and properly submit the required form and provide certain information and materials, you will be entitled to receive a check for $25 (or a $25 credit on your PSN account). Alternatively, you will be eligible to receive a merchandise voucher [or entitlement] that you can use to select from a list of merchandise, video games and/or services. The selection of merchandise, video games and/or services that are available through this offer has a retail value of $50 or more.

Please note that PlayStation Vita owners who purchased their Vitas before June 1, 2012, and who registered their Vitas, should be receiving emails to their PSN accounts with full details about this offer. If you have received such an email, please follow the instructions in the email to claim your $25 cash (or credit) or merchandise voucher [or entitlement].

Please also note that you may be eligible to receive either the merchandise voucher [or entitlement] or a check for $25 (or a $25 credit on your PSN account), but not both. For details on each offer and to make your choice of the $25 check (or credit) or the merchandise voucher [or entitlement], please complete and submit the form below.

You MUST complete, sign and return the below form, and provide the requested materials and information, by [Insert date equal to 90 days from service of this order] to be eligible to receive your $25 check (or $25 credit on your PSN account) or merchandise voucher [or entitlement] with a retail value of $50 or more. Please be assured that your acceptance of this offer does not obligate you to purchase anything.

For more information on our settlement with the Federal Trade Commission, please visit www.ftc.gov and search for “Sony Computer Entertainment America.”

If you have any questions, please call Sony Computer Entertainment America claims administration at 1-800-xxx-xxxx.

COMPLETE, PRINT OUT, AND RETURN
THIS FORM WITH ALL REQUIRED MATERIALS

As part of the process to qualify the recipient of this form as an Eligible Purchaser of a PlayStation Vita purchased before June 1, 2012, I have read the below, certify that the information and accompanying materials are true and accurate, agree to the provisions, and confirm my selection of consumer redress.

Check next to each of the below if it is true and accurate:

I certify that I purchased a PlayStation Vita before June 1, 2012. _____
I certify that I have not returned my PlayStation Vita for a full refund. _____
I certify that I have neither already redeemed this offer, nor made any other consumer redress request for the PlayStation Vita from Sony Computer Entertainment America _____

Required information:

Name: _____
Home Address: _____
_____
_____

To help facilitate the administration of your form, and ensure that Eligible Purchasers meet the qualifications, please provide EITHER the SIRIS number _____ OR the SERIAL number _____ of the PlayStation Vita that you purchased before June 1, 2012. (The SIRIS number and the SERIAL number are found on the bottom edge of your PlayStation Vita product. The SIRIS number is left of the connector port and the SERIAL number is right of the connector port. These numbers are also on the side panel of the PlayStation Vita package, which you may submit in lieu of writing them on this form.)

Required materials:

Please supply ONE of the following:

(i) a store receipt showing purchase of the PlayStation Vita before June 1, 2012;

OR

(ii) a side panel of the PlayStation Vita package that shows the UPC code, SERIAL or SIRIS numbers;

OR

(iii) other information and materials that reasonably prove that you are an Eligible Purchaser of the PlayStation Vita before June 1, 2012.

Optional Information:

My PSN ID is _____ (Your PSN ID is the email address that you used and provided when you opened a PSN account.)

Selection of Consumer Redress Offer:

Please select ONE of the following three Consumer Redress Offers by circling or checking ONLY ONE offer. Additional information describing each offer is available by clicking here [pop-up window or link].

1. _____ I select a $25 check. Please send the check to me at the mailing address noted on this form.

   OR

2. _____ Instead of the $25 check, I select a $25 credit to be applied to my PSN account. Additional information describing this offer is available by clicking here [pop-up window or link].

   OR

3. _____ I select the Merchandise Voucher [or Entitlement] good for $50 or more in value of merchandise, video games and/or services. Additional information describing this offer is available by clicking here [pop-up window or link].

I understand that by submitting the request and accepting a refund of cash (or credit) or merchandise voucher [or entitlement] issued through this program, I agree to waive any present or future claims I may have against Sony Computer Entertainment America LLC in connection with the advertising, labeling, promotion, offering for sale or sale of the PlayStation Vita for which I received consumer redress.

To Submit Your Request and Agree to the Above
COMPLETE, PRINT OUT, AND MAIL THIS FORM TO ADDRESS BELOW. MAKE SURE YOU INCLUDE ALL REQUIRED MATERIALS:

Claims Administration
Sony Computer Entertainment America LLC
[address]

_____
(Print Name)

_____
(Signature)

_____
(Date)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeny

In the Matter of DEUTSCH LA, INC., a corporation.	FILE NO. 122-3252 AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Deutsch LA, Inc., a corporation ("proposed respondent" or "Deutsch LA"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Deutsch LA, Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Deutsch LA, Inc., is a California corporation with its principal office or place of business at 5454 Beethoven Street, Los Angeles, CA 90066.

2. Proposed respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, proposed respondent admits the facts necessary to establish jurisdiction.

3. Proposed respondent waives:

   a. Any further procedural steps;

   b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

   c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it

will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "respondent" shall mean Deutsch LA, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.

2. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

3. "Clearly and prominently" shall mean as follows:

   a. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;

   b. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;

   c. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (a) of this definition and shall appear on the screen for a duration sufficient for an

ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication. Provided, however, that, for communications disseminated through programming over which respondent does not have editorial control (*e.g.*, an endorser's appearance on a news program or talk show), the required disclosures may be made in a form consistent with subparagraph (b) of this definition;

d. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (a) of this definition, in addition to any audio or video presentation of them; and

e. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.

4. "Handheld Game Console Product" means any handheld portable electronic device designed for and primarily used for playing video games that has its own screen, speakers and controls in one unit, including the PlayStation Vita ("PS Vita") and the PlayStation Portable ("PSP").

5. "Home Game Console Product" means any electronic device designed for and primarily used for playing video games on a separate television screen, including the PlayStation 3 ("PS3") and the PlayStation 4 ("PS4").

6. "Endorsement" means as defined in the Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. §255.0.

7. "Endorser" means an individual or organization that provides an Endorsement.

8. "Material connection" means any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.

9. "Video Game Product" means any electronic game that is designed for and primarily used for playing on a Handheld Game Console Product or a Home Game Console Product.

10. The term "including" in this order means "without limitation."

I.

IT IS ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any material

gaming feature or capability of such product when used as a standalone device to play video games.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that such feature or capability was misrepresented.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product or Home Game Console Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the material capability of the Handheld Game Console Product or Home Game Console Product to interact with, or connect to, any other Handheld Game Console Product during gaming, unless at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that such capability was not substantiated by competent and reliable evidence.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product or Home Game Console Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the material capability of any Handheld Game Console Product to interact with, or connect with, any Home Game Console Product during gaming, unless it discloses, clearly and prominently, and in close proximity to the representation, that consumers must purchase two versions of the same video game, one for the Handheld Game Console Product and one for the Home Game Console Product, if such is the case.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that consumers must purchase two versions of the same video game to use such capability.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product, Home Game Console Product, or Video Game Product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that an endorser of such product is an independent user or ordinary consumer of the product.

V.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product, Home Game Console Product, or Video Game Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about any endorser of such product unless it discloses, clearly and prominently, a material connection, when one exists, between such endorser and the respondent or any other individual or entity manufacturing, advertising, labeling, promoting, offering for sale, selling, or distributing such product.

VI.

IT IS FURTHER ORDERED that respondent shall, within seven (7) days of the date of service of this order, take all reasonable steps to remove any product review or endorsement, which is under the control of respondent Deutsch LA, Inc., currently viewable by the public that does not comply with Parts IV and V of this order.

VII.

IT IS FURTHER ORDERED that respondent Deutsch LA, Inc., and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, upon reasonable notice and request, make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

IT IS FURTHER ORDERED that respondent Deutsch LA, Inc., and its successors and assigns shall deliver a copy of this order to all current and, for the next five (5) years, all future account directors and creative directors having direct and supervisory or managerial responsibilities with respect to the subject matter of this order ("Personnel"), and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent and its successors and assigns shall deliver this order to current Personnel within thirty (30) days after the date of service of this order, and to future Personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

IT IS FURTHER ORDERED that respondent Deutsch LA, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line: In the Matter of Deutsch LA, Inc., FTC File Number 122-3252. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

X.

IT IS FURTHER ORDERED that respondent Deutsch LA, Inc., and its successors and assigns shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

XI.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is

filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

DEUTSCH LA, INC.

Date: _____ By: _____
MICHAEL SHELDON
Chief Executive Officer

Date: _____ _____
RONALD URBACH, ESQ.
Davis & Gilbert, LLP
Attorney for respondent

Date: _____ _____
LINDA K. BADGER
MATTHEW D. GOLD
Counsel for the Federal Trade Commission

APPROVED:

_____
THOMAS N. DAHDOUH
Regional Director
Western Region

_____
JESSICA L. RICH
Director
Bureau of Consumer Protection

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Attorneys for Plaintiff DANIEL JUNG, individually and as the representative of a class of similarly-situated persons

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DANIEL JUNG, individually and as the representative of a class of similarly-situated persons;

Plaintiffs,

vs.

BILLY MCFARLAND, an individual; JEFFREY ATKINS p/k/a JA RULE, an individual; FYRE MEDIA, INC., a Delaware corporation; and DOES 1 through 50, inclusive;

Defendants.

Case No.: 2:17-cv-03245

CLASS ACTION COMPLAINT

1.FRAUD
2.FRAUD—NEGLIGENT MISREPRESENTATION
3.BREACH OF CONTRACT
4.BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

DEMAND FOR JURY TRIAL

Plaintiff Daniel Jung, individually and as the representative of a class of similarly-situated persons, alleges as follows:

INTRODUCTION

1. Defendants promoted their "Fyre Festival" as a posh, island-based music festival featuring "first-class culinary experiences and a luxury atmosphere." Instead, festival-goers were lured into what various media outlets have since labeled a "complete disaster," "mass chaos," and a "post-apocalyptic nightmare."

2. The festival's lack of adequate food, water, shelter, and medical care created a dangerous and panicked situation among attendees—suddenly finding themselves stranded on a remote island without basic provisions—that was closer to "The Hunger Games" or "Lord of the Flies" than Coachella. Festival-goers survived on bare rations, little more than bread and a slice of cheese, and tried to escape the elements in the only shelter provided by Defendants: small clusters of "FEMA tents," exposed on a sand bar, that were soaked and battered by wind and rain.

3. Attendees' efforts to escape the unfolding disaster were hamstrung by their reliance upon Defendants for transportation, as well as by the fact that Defendants promoted the festival as a "cashless" event—Defendants instructed attendees to upload funds to a wristband for use at the festival rather than bringing any cash. As such, Attendees were unable to purchase basic transportation on local taxis or busses, which accept only cash. As a result of Defendants' roadblocks to escape, at least one attendee suffered a medical emergency and lost consciousness after being locked inside a nearby building with other concert-goers waiting to be airlifted from the island.

4. Outrage spread quickly on social media and throughout traditional news outlets, with the New York Times, the Los Angeles Times, the Washington Post, Vanity Fair, and others describing the dangerous events unfolding. Social media users even generated the hashtag "#fyrefraud" to share their harrowing experiences while in Defendants' care.

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5. Shockingly, Defendants had been aware for months that their festival was dangerously under-equipped and posed a serious danger to anyone in attendance. Individuals employed by Defendants have since acknowledged that no infrastructure for food service or accommodations was in place as recently as last month—the island was totally barren—and that the few contractors who had been retained by Defendants were refusing to work because they had not been paid. Various news outlets began describing these logistical problems and labeling the festival as a "scam" weeks ago.

6. At the same time, however, Defendants were knowingly lying about the festival's accommodations and safety, and continued to promote the event and sell ticket packages. The festival was even promoted as being on a "private island" once owned by drug kingpin Pablo Escobar—the island isn't private, as there is a "Sandals" resort down the road, and Pablo Escobar never owned the island.

7. More troublingly, Mr. McFarland and Mr. Atkins began personally reaching out to performers and celebrities in advance of the festival and warned them not to attend—acknowledging the fact that the festival was outrageously underequipped and potentially dangerous for anyone in attendance.

8. Nevertheless, Defendants refused to warn attendees about the dangerous conditions awaiting them on the island. Defendants only "cancelled" the event on the morning of the first day—after thousands of attendees had already arrived and were stranded, without food, water, or shelter.

9. This outrageous failure to prepare, coupled with Defendants' deliberate falsehoods in promoting the island "experience," demonstrates that the Fyre Festival was nothing more than a get-rich-quick scam from the very beginning. Defendants intended to fleece attendees for hundreds of millions of dollars by inducing them to fly to a remote island without food, shelter or water—and without regard to what might happen to them after that.

10. While Plaintiff is aware that Defendants have made overtures regarding refunds, Class Members' damages in being lured to a deserted island and left to fend

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for themselves—a situation tantamount to false imprisonment—exceed the face value of their ticket packages by many orders of magnitude.

11. Plaintiff brings this class action on behalf of all ticket buyers and festival attendees defrauded and wronged by Defendants, and seeks damages in excess of $100,000,000.00 on behalf of himself and the Class.

JURISDICTION AND VENUE

12. This Court has original jurisdiction over this action under the *Class Action Fairness Act*, 28, U.S.C. § 1332(d), because this is a class action in which: (1) there are more than a one hundred and fifty (150) members in the proposed class; (2) various members of the proposed class are citizens of states different from where Defendants are citizens; and (3) the amount in controversy, exclusive of interest and costs, exceeds $5,000,000.00 in the aggregate.

13. In addition, this Court has supplemental jurisdiction over Plaintiff's state claims under 28, U.S.C. § 1367 because those claims derive from a common nucleus of operative facts.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff and Class Members' claims occurred in the Central District of California as Defendant: (a) is authorized to conduct business in this District and has intentionally availed itself to the laws within this District; (b) currently does substantial business in this District; and (c) is subject to personal jurisdiction in this District.

PARTIES

15. At all times relevant to this action, Plaintiff Daniel Jung was a resident of Los Angeles County, California, and a citizen of the State of California.

16. Upon information and belief, Defendant Billy McFarland was a resident and citizen of the State of New York at all times relevant to this action.

17. Upon information and belief, Defendant Jeffrey Atkins p/k/a Ja Rule was a resident and citizen of the State of New York at all times relevant to this action.

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18. At all times relevant to this action, Defendant Fyre Media, Inc. was a business entity incorporated under the laws of the State of Delaware.

19. Plaintiff is informed and believes that Defendants sold ticket packages, ranging in price from $1,200.00 to over $100,000.00, to thousands of Class Members who ultimately attended the Fyre Festival. Upon information and belief, these Class Members are residents and citizens of numerous States and Countries.

20. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants designated herein as DOES is legally responsible in some manner for the events and happenings referred to herein and caused injury and damage proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when the same have been fully ascertained.

21. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, each of the Defendants was the agent, servant, employee, co-venturer, and co-conspirator of each of the remaining Defendants, and was at all times herein mentioned acting within the course, scope, purpose, consent, knowledge, ratification, and authorization of and for such agency, employment, joint venture and conspiracy.

22. Plaintiff is further informed and believes, and thereon alleges, that at all relevant times, each Defendant was completely dominated and controlled by its Co-Defendants, and each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this Complaint,

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but were employees and/or agents of Defendants, such individuals at all relevant times acted on behalf of Defendants named in this Complaint within the scope of their respective employments.

GENERAL ALLEGATIONS

23. Defendants began promoting the Fyre Festival in December 2016. Set to begin April 28, 2017, Defendants touted their festival as "the cultural experience of the decade," featuring A-list entertainers like Blink-182, Migos, Rae Sremmurd, and Major Lazer, "first-class culinary experiences and a luxury atmosphere," and more than $1,000,000.00 in jewelry, cash, and other products up for grabs in a treasure hunt available to attendees—all taking place on a "private island" in the Bahamas once owned by drug kingpin Pablo Escobar.

24. Defendants invested enormous amounts of time and money in promoting and advertising their festival domestically and internationally. They employed hundreds of online "influencers"—including Kendall Jenner, Bella Hadid, and Emily Ratajkowski—to use social media to generate ticket sales, and created extravagant websites and mock-ups of the luxurious villas in which attendees would be staying.

25. Ticket packages for the event, which were advertised as including luxury accommodations and first-class food, ranged in price from $1,200.00 to well over $100,000.00 per person. Upon information and belief, Defendants sold many thousands of ticket packages to their festival.

26. Plaintiff Daniel Jung, pictured below left, purchased a ticket package and airfare to Fyre Festival, totaling approximately $2,000.00 in costs.

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27. As widely reported on social media and through news outlets, the festival was a disaster immediately upon the attendees' arrival. Concert-goers' luggage was unceremoniously dumped from shipping containers and left for them to rifle through in order to find their personal belongings:

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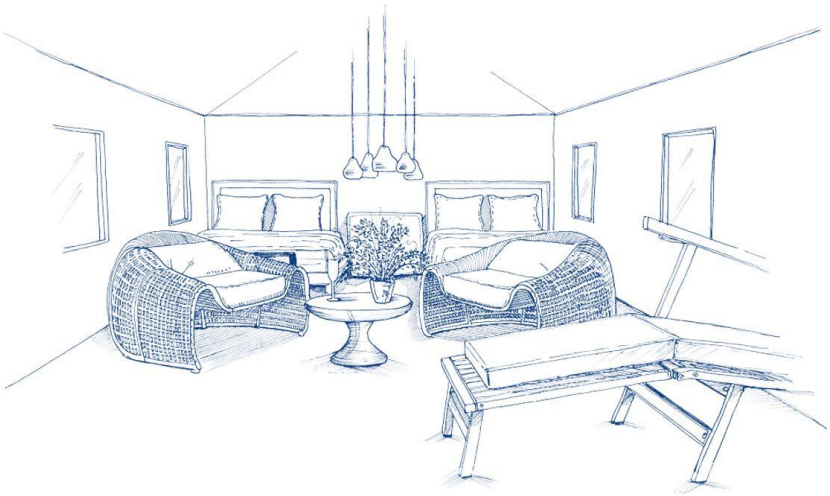
28. Once there, the accommodations were clustered "FEMA tents" (pictured below right), wholly exposed to the elements, rather than the luxurious villas described in Defendants' promotional materials (pictured below left):



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29. In addition to the substandard accommodations, wild animals were seen in and around the festival grounds:

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30. With only unsecured tents as accommodations, rather than the promised villas, attendees had no secure area to store valuables and other personal items:

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31. Similarly, the "world-class cuisine" was nowhere to be found, replaced by meager rations that were in dangerously short supply:

32. Even more troublingly, festival staff were nowhere to be found to address attendees' concerns, and the medical staff was similarly absent:

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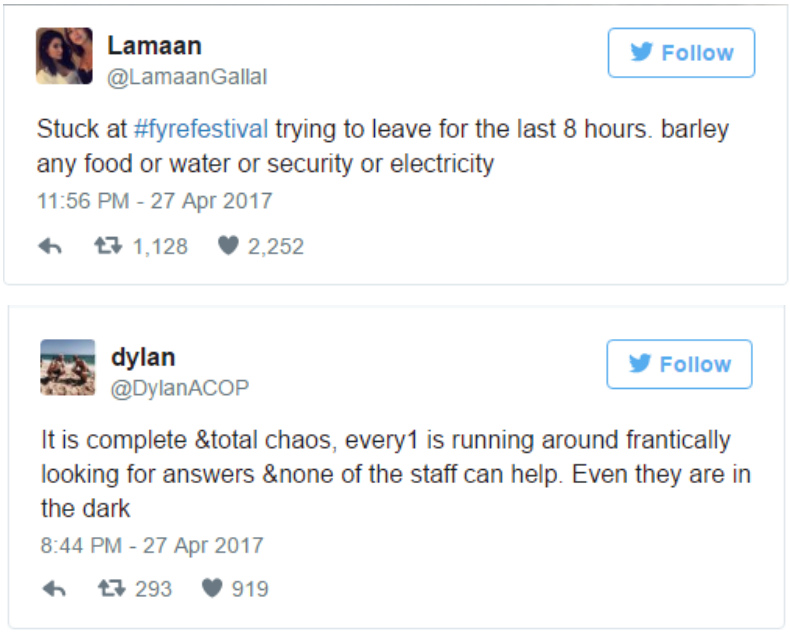
33. Faced with the complete lack of even the most basic amenities, as well as no assistance from Defendants, festival attendees began to panic:



34. Predictably, Attendees began attempting to leave the island en masse, but found themselves trapped—even locked inside an airport awaiting delayed flights:

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35. Unfortunately, festival-goers were unable to escape the unfolding disaster because of their reliance upon Defendants for transportation, and because Defendants promoted the festival as a "cashless" event—Defendants instructed attendees to upload funds to a wristband for use at the festival rather than bringing any cash. As such, Attendees were unable to purchase basic transportation on local taxis or busses, which accept only cash. As a result of Defendants' roadblocks to escape, at least one attendee suffered a medical emergency and lost consciousness after being locked inside a nearby building with other concert-goers waiting to be airlifted from the island:

36. Shockingly, Defendants had been aware for months that their festival was dangerously under-equipped and posed a serious danger to anyone in attendance. Individuals employed by Defendants have since acknowledged that no infrastructure for food service or accommodations was in place as recently as last month—the island was totally barren—and that the few contractors who had been retained by Defendants were refusing to work because they had not been paid. Various news outlets began describing these logistical problems and labeling the festival as a "scam" weeks ago.

37. More troublingly, Mr. McFarland and Mr. Atkins began personally reaching out to performers and celebrities in advance of the festival and warned them not to attend—acknowledging the fact that the festival was outrageously underequipped and potentially dangerous for anyone in attendance.

38. Nevertheless, Defendants refused to warn attendees about the dangerous conditions awaiting them on the island. Defendants only "cancelled" the event on the

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morning of the first day—after thousands of attendees had already arrived and were stranded, without food, water, or shelter.

CLASS ACTION ALLEGATIONS

39. This action is brought, and may properly be maintained, as a class action under Fed. R. Civ. P. Rule 23 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable. This action satisfies the predominance, typicality, numerosity, superiority, and adequacy requirements of these provisions.

(a) **Numerosity**: The plaintiff class is so numerous that the individual joinder of all members is impractical under the circumstances of this case. While the exact number of Class Members is unknown to Plaintiff at this time, Plaintiff is informed and believes, and based thereon alleges, that over one-thousand (1,000) persons purchased tickets for, and/or attended, Defendants' Fyre Festival.

(b) **Commonality**: Common questions of law and fact exist as to all members of the plaintiff class and predominate over any questions that affect only individual members of the class. The common questions of law and fact include, but are not limited to:

(i) Whether Defendants made false representations about Fyre Festival;

(ii) If so, whether Defendants knew they were false or were reckless as to their veracity at the time they were made;

(iii) Whether Defendants negligently misrepresented various facts regarding Fyre Festival; and

(iv) Whether Defendants breached any implied or explicit contractual obligations to ticket buyers and to attendees of Fyre Festival;

(c) **Typicality**: Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and the members of the class sustained damages arising out of Defendants' wrongful and fraudulent conduct as alleged herein.

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(d) **Adequacy**: Plaintiff will fairly and adequately protect the interests of the members of the class. Plaintiff has no interest that is adverse to the interests of the other Class Members.

(e) **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of the class is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense that numerous individual actions would engender. The expenses and burdens of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial, and substantially more than the costs and burdens of a class action. Class litigation would also prevent the potential for inconsistent or contradictory judgments.

(f) **Public Policy Considerations**: When a company or individual engages in fraudulent and predatory conduct with large swaths of consumers, it is often difficult or impossible for the vast majority of those consumers to bring individual actions against the offending party. Many consumers are either unaware that redress is available, or unable to obtain counsel to obtain that redress for financial or other reasons. Class actions provide the class members who are not named in the complaint with a vehicle to achieve vindication of their rights. The members of the class are so numerous that the joinder of all members would be impractical and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the court. There is a well-defined community of interest in the questions of law or fact affecting the Plaintiff Class in that the legal questions of fraud, breach of

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contract, and other causes of action, are common to the Class Members. The factual questions relating to Defendants' wrongful conduct and their ill-gotten gains are also common to the Class Members.

FIRST CAUSE OF ACTION

FRAUD – INTENTIONAL MISREPRESENTATION

(By Plaintiff Individually and On Behalf of All Class Members Against All Defendants)

40. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

41. As stated above, all Defendants made numerous false representations regarding the Fyre Festival.

42. Defendants represented, among other things, that (1) this event would take place on a private island; (2) the island was previously owned by infamous drug lord Pablo Escobar; (3) all food would be provided, including five-star cuisine; (4) the living quarters would be fully furnished; (5) guests would take private jets from Miami to the festival; and (6) the event would be attended by celebrities and top-level musical talent.

43. As the weekend continued, all of the representations made by Defendants proved to be completely false.

44. Defendants have, through various social media outlets, promoted this event vigorously. As the organizers and sponsors of this event, Defendants knew that the representations were false; or at the minimum, Defendants made the representation with reckless disregard for the truth.

45. These representations by Defendants were clearly made to promote the event and increase the number of attendees to the event.

46. Based on the representations by Defendants, Plaintiff purchased his ticket and attempted to attend the event.

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47. Plaintiff expended thousands of dollars on his ticket and travel accommodations to the event. Plaintiff made further expenses on emergency travel after the event collapsed. Additionally, Plaintiff experienced significant emotional pain and suffering from being stranded in a foreign country.

48. Plaintiff specifically made the above expenses based on his reliance on Defendants' representations. Furthermore, Plaintiff's emotional pain stems from his experiences at the failed event.

SECOND CAUSE OF ACTION

FRAUD - NEGLIGENT MISREPRESENTATION

(By Plaintiff Individually and On Behalf of All Class Members Against All Defendants)

49. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

50. As stated above, all Defendants made numerous false representations regarding the Fyre Festival.

51. Defendants represented, among other things, that (1) this event would take place on a private island; (2) the island was previously owned by infamous drug lord Pablo Escobar; (3) all food would be provided, including five-star cuisine; (4) the living quarters would be fully furnished; (5) guests would take private jets from Miami to the festival; and (6) the event would be attended by celebrities and top-level musical talent.

52. As the weekend continued, all of the representations made by Defendants proved to be completely false.

53. Defendants have, through various social media outlets, promoted this event vigorously. Although Defendants may have honestly believed that these representations were true, based on the lack of preparation of the event, Defendants

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had no reasonable grounds for believing the representations were true when they made it.

54. These representations by Defendants were clearly made to promote the event and increase the number of attendees to the event.

55. Based on the representations by Defendants, Plaintiff purchased his ticket and attempted to attend the event.

56. Plaintiff expended thousands of dollars on his ticket and travel accommodations to the event. Plaintiff made further expenses on emergency travel after the event collapsed. Additionally, Plaintiff experienced significant emotional pain and suffering from being stranded in a foreign country.

THIRD CAUSE OF ACTION

BREACH OF CONTRACT

(By Plaintiff Individually and On Behalf of All Class Members Against All Defendants)

57. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

58. Plaintiff entered into a contract with Defendants to provide a luxury festival experience in exchange for money. Plaintiff provided payment in consideration for Defendants' promise to provide lavish accommodations, top-tier cuisine, and A-level musical talent.

59. Instead, Defendants breached the contract by providing accommodations rivaling a refugee camp, bread and cheese sandwiches, and no musical acts.

60. Plaintiff expended thousands of dollars on his ticket and travel accommodations to the event.

61. After Defendants failed to perform, Plaintiff expended thousands of dollars on emergency travel plans to leave the event.

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FOURTH CAUSE OF ACTION

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(By Plaintiff Individually and On Behalf of All Class Members Against All Defendants)

62. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

63. Plaintiff entered into a contract with Defendants to provide a luxury festival experience in exchange for money. Plaintiff provided payment in consideration for Defendants' promise to provide lavish accommodations, top-tier cuisine, and A-level musical talent.

64. As shown above, Defendants engaged in disruptive behavior which clearly interfered with Plaintiff's right to receive the benefits of the contract.

65. Plaintiff expended thousands of dollars on his ticket and travel accommodations to the event. Plaintiff made further expenses on emergency travel after the event collapsed.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on his own behalf, and on behalf of the Class Members and Sub-Class Members, as well as the general public, prays for judgment as follows:

CLASS CERTIFICATION:

1. For an order certifying the proposed Class;
2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff be appointed as Class Counsel.

AS TO ALL CAUSES OF ACTION:

1. For all actual, consequential, and incidental losses and damages, according to proof;
2. For punitive damages, where permitted by law;
3. For attorneys' fees, where permitted by law;
4. For costs and suit herein incurred; and
5. For such other and further relief as the Court may deem just and proper.

DATED: April 29, 2017

GERAGOS & GERAGOS, APC

By: /s/ MARK J. GERAGOS
MARK J. GERAGOS
BEN J. MEISELAS
ZACK V. MULJAT
ALEX ALARCON
Attorneys for Plaintiff Daniel Jung, individually and as the representative of a class of similarly-situated persons.

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DEMAND FOR JURY TRIAL

Plaintiff Daniel Jung, individually and as the representative of a class of similarly-situated persons, hereby demands a jury trial.

DATED: April 29, 2017

GERAGOS & GERAGOS, APC

By: /s/ MARK J. GERAGOS
MARK J. GERAGOS
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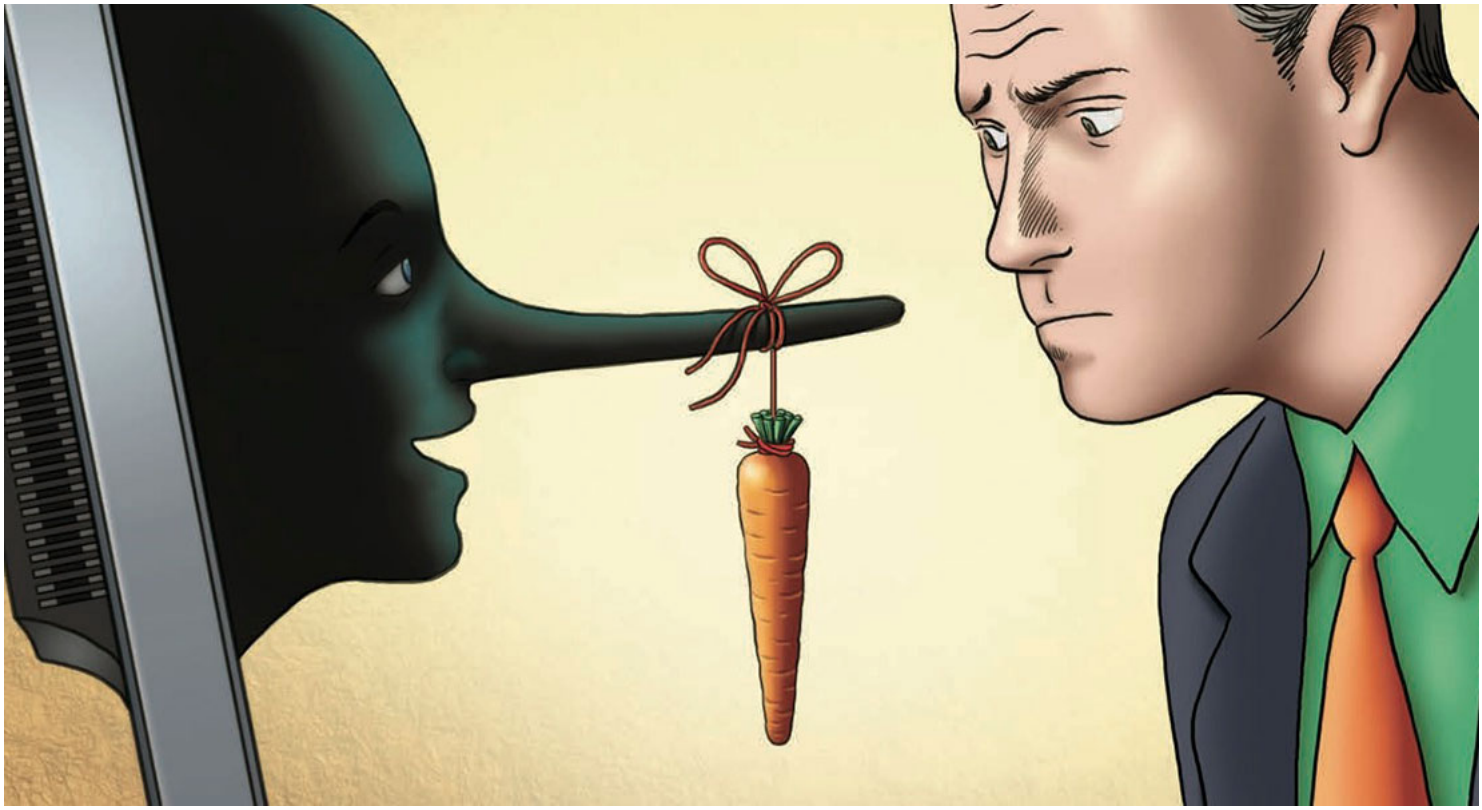
DO TELL

From *Los Angeles Lawyer*, May 2017



by ANDY MARCUS, ALAN FRIEL, and STEPHANIE LUCAS

Targeting native advertising and influencer marketing, the FTC mandates "clear and conspicuous" disclosure guidelines

Brands are tapping social media celebrities—also known as influencers—to promote their products and services, and influencers can command significant compensation. Brands also use social media and other digital media formats to publish ads that seem native to the format and look more like editorial content than ads. In both cases, consumers can be deceived because the advertising nature of the message may not be apparent, thus the consumer may not be able to judge the objectivity or credibility of the speaker. In this case, the message may be deceptive advertising and actionable under state and federal false advertising and consumer protection laws. The Federal Trade Commission (FTC) has been particularly active in issuing guidance and bringing enforcement actions in these situations. Advertisers, publishers, and influencers, and often entertainment and sports celebrities, need to take care to ensure that their activities are not deceptive. This includes ensuring that the promotional nature of the message, and the connection between the speaker and the brand, is clear to consumers and that the message is otherwise accurate and not deceptive or misleading.

In 2009, the FTC was concerned about the use of celebrities to promote brands in social media, on talk shows, and in other contexts when it was not clear that they were paid spokespersons. It addressed these concerns by updating its Guides Concerning the Use of Endorsements and Testimonials in Advertising (E&T Guides).[1] The E&T Guides, along with additional subsequent guidance and dozens of enforcement actions, provide a helpful roadmap for conducting legally compliant digital media advertising and promotional marketing in social media.

FTC Advertising Law

The E&T Guides address the application of Section 5 of the FTC Act "to the use of endorsements and testimonials in advertising."[2] In particular, Section 5 states that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful."[3] Under Section 5, the four core principles for compliance are: 1) advertising must be truthful and not misleading, 2) advertising must substantiate any express or implied claims, 3) advertising cannot be unfair or deceptive, and 4) any disclosures necessary to make an ad accurate must be clear and conspicuous.

The 2009 revised E&T Guides state that advertisers are subject to liability for false or unsubstantiated statements made through endorsements or for failure to disclose a material connection between themselves and endorsers.[4] Although the E&T Guides do not carry the force of law or regulation, they articulate what the FTC believes is required to avoid deception under Section 5. Putting aside outright false or deceptive statements, the three most important factors to consider in evaluating social media promotions and native advertising are: 1) the existence of a material connection between the speaker and a brand, 2) when there is an endorsement or other promotional message, and 3) if there is an effective disclosure of the advertising nature of the message and of the connection between the speaker and the brand.

Based on the 2009 E&T Guides, the best practices for brands to follow for ensuring proper material connection disclosures are to 1) implement social media endorsement guidelines and policies for all internal and third-party marketing and promoting on behalf of the brand, 2) obligate employees, agencies, influencers, and bloggers to effectively disclose material connections and to be accurate and not deceptive or misleading in either their association to the brand or what they say about it (separate and apart from the business and financial provisions of an engagement contract), 3) monitor the influencers' conduct in connection with campaigns, 4) enforce proper compliance—if instances of noncompliance occur—by requiring remedial action and taking disciplinary and other corrective action, and 5) set up an incentive for compliance by holding back a material portion of compensation until compliance is confirmed.

FTC 2013 Dot Com Guide

In 2013, the FTC released a guide on dot-com disclosures (.Com Guide) to describe the standards for online ads and effective disclosure for these ads.[5] In the .Com Guide, the FTC reinforced that online ads must disclose all material information needed to prevent consumers from being explicitly or implicitly deceived and that disclosures must be clear, conspicuous, and proximate to any ad content that requires qualifications or disclosures to prevent deception. The FTC stated, "If a disclosure is necessary to prevent an advertisement from being deceptive [or] unfair...and if it is not possible to make the disclosure clear and conspicuous, then either the claim should be modified or the ad should not be disseminated."[6] This can be a challenge in social media and other online media in which space is limited. In recent years the FTC has advised what types of short-form disclosures are effective (e.g., #Ad, #[BrandName]Sweepstakes, #Sponsored) and what are not (e.g., #Sp, #Collab, #Sweeps). There may be more organic ways to give an effective disclosure. For instance, when an influencer receives a free product to try, stating, "Brand gave me this product to review, and..." may be effective if that is the extent of the connection. However, if the influencer also receives payment to review and comment on the product, this type of disclosure may be ineffective in communicating the extent of the connection necessary for consumers to judge the speaker's objectivity. In other words, context is key.

After the 2009 revised E&T Guides, the FTC compiled a list of the most frequently asked questions (FAQs) to provide advertisers clarity in their compliance efforts. These FAQs reiterated the importance of adopting social media policies and recommended a "formal program to remind employees periodically of your policy, especially if the company encourages employees to share their opinions about your products."[7] These suggested social media policies should include: 1) employee and contractor compliance train- ing and corrective action, 2) an explanation to network members about what they can and cannot say about products (for example, a list of the health claims they are allowed to make), 3) instruction to network members concerning their responsibilities for disclosing corporate connection, 4) periodic searches on what network members are saying, and 5) follow up with respect to questionable practices.

Some of the FAQs involved what constitutes an effective disclosure under traditional and digital media advertising. In answering these questions, the FTC accounted for the 2009 E&T Guides as well as the 2013 .Com Guide. In addressing disclosure requirements for bloggers, the FTC Endorsement Guide FAQ requires disclosure when a significant minority of consumers would not understand the material connection between the blogger and the brand.[8] In addition to discussion of examples of clear and understandable forms of disclosure, the FAQs indicate that even clear disclosures of affiliation on speaker profile pages or site homepages can be deemed ineffective disclosures when they are not sufficiently conspicuous and proximate to each promotional message. Also, an advertiser's logo or hashtag is insufficient to explain that the speaker is getting something of value from the company the speaker is promoting.[9] Lastly, a disclosure or legal notice hyperlink leading to an explanation is an insufficient disclosure and would not comport with the FTC's requirements.[10] It is important for advertisers to note what the FTC has clearly described as being sufficient and insufficient and therefore model their disclosure policies around the FTC's guidance and enforcement history.

Incentivized Endorsements

In addressing other potential deception issues, the FTC provided clarity on another popular disclosure dilemma—using sweepstakes and contests to encourage word-of-mouth promotion. In particular, the FTC has said that providing consumers sweepstakes or contest entries for posting about a brand is an endorsement that requires a disclosure so viewers and recipients are aware that the person posting had a chance to win. In an enforcement action against a brand that ran such a promotion, the FTC took the position—which has been repeated in guidance— that indicating #Sweepstakes or #Contest could constitute a sufficient notice but stating #Brand was insufficient.[11] The FTC has been less clear on "like-gating," providing an incentive to customers to "like" the brand on social media. When a consumer sees another consumer "liking" a brand on Facebook, the action potentially suggests the consumer truly likes the brand and is endorsing it. Also, soliciting likes and shares from consumers who do not actually use and like the product is possibly deceptive because it conveys a higher popularity for the brand than is likely the case. To avoid this possible deception, brands using "like" functions should explain to consumers that the consumer should actually use and like the product to participate and should not condition receiving something of value in doing so, particularly when, as in "liking" there is no way to disclose the material connection. The FTC has stated, "Advertisers should not encourage endorsements using features that do not allow for clear and conspicuous disclosures...[but] we don't know how much stock social networks put into 'likes.'"[12]

As advertisers increasingly use influencer videos on social media platforms, such as popular "unboxing" review videos, advertisers must apply FTC compliance guidance on how to avoid deception. Disclosure of a material connection in a promotional video must be displayed clearly and prominently in the video itself. Also, the guidelines suggest that stating the material connection in the description field of the video is insufficient. Disclosures for videos should appear at the beginning of the video while longer videos should have recurring, multiple disclosures to ensure the consumer is aware of the material connection. For live streams, disclosure should occur multiple times and be periodic throughout the stream.[13] However, the FTC has stated continuous disclosure for a live stream would be the best practice.[14] Additionally, the disclosure in the promotional video should be long enough to read, or if spoken, at an understandable cadence.[15] In the context of a YouTube multichannel network, the disclosure on compensated reviews needs to identify the sponsor in a "sponsored by" notice made by the product manufacturer.16 Based on advertisers' increasingly using promotional videos for their campaigns, ensuring the video has the appropriate disclosures will be an important facet of planning the campaign and properly educating the consumers.

Native Advertising

Native advertising is generally defined as the practice of designing ads that look and feel like the natural editorial content of a website, social media platform, magazine, or video network.[17] Native advertising is also defined as a method in which the advertiser attempts to gain attention by providing content in the context of the user's experience with native ad formats matching both the form and functions of the user experience in which it is placed.[18] Another definition, which comes from the Interactive Advertising Bureau, defines native advertising as "paid ads that are so cohesive with the page content, assimilated into the design, and consistent with the platform behavior that the viewer simply feels that they belong."[19] Regardless of how it is defined, native advertising is an increasingly popular method for integrating paid advertisements into editorial content to engage consumers in information about, related to, or to promote the business that originated or paid for the content. As a demonstration of the power of native advertising, a recent study indicates that about "75 percent of advertisers have gone native and the rest intend to."[20]

Although many companies have adopted native advertising to successfully promote their own brand, and media companies enjoy the revenue stream created by this new form of advertising, disclosure compliance is required just as with social media influencer campaigns. Notably, the FTC guidelines mandate disclosure in promotional content that appears to be an advertisement in order to avoid deceiving the customer. Nevertheless, native advertising compliance with FTC disclosure can be particularly difficult because "native blurs the line between editorial content and advertising, and, when most effective, engages readers in the same way as the surrounding editorial content for a site."[21] Therefore, a thorough understanding of the FTC's guidance on native advertising is the best way for advertisers to ensure compliance.

The FTC "will find a native ad's format deceptive if it materially misleads consumers about its commercial nature, including through an express or implied misrepresentation that it comes from a party other than the sponsoring advertiser."[22] When a business uses native advertising, it is responsible for ensuring the native ads are clearly identifiable as advertising before the consumer arrives at the main advertising page.[23] Also, regardless of how many consumers arrive at the advertising content, the native ads must not mislead the consumer about its commercial nature.[24] As a business evaluates whether native ads are recognizable as advertising to consumers, the advertisers should analyze the native ad's "overall appearance; the similarity of its written, spoken, or visual style or subject matter to non-advertising content on the publisher site on which it appears; and the degree to which it is distinguishable from other content on the publisher site."[25] The more similar the native ad appears to the content on the publisher's site, the more likely disclosure will be required to prevent potential consumer deception.[26]

To make effective disclosures for native ads, the FTC recommends following the .Com Guide.[27] Similar to the other disclosure guidance, the disclosures should be 1) in clear and unambiguous language, 2) as close as possible to the native ads to which they relate, 3) in a font and color that's easy to read, 4) in a shade that stands out against the background, 5) on the screen long enough to be noticed, read, and understood with respect to video ads, and 6) read—for audio disclosures—in a cadence and vocabulary easy for consumers to follow.[28] Because advertisers have flexibility in identifying native ads as ads with different interfaces and available platforms, effective (i.e., compliant) disclosure can be accomplished creatively. Nevertheless, advertisers should ensure their native ad disclosures follow the FTC's guidelines concerning proximity and placement, prominence, and clarity of meaning in its native advertising guide and carefully analyze the FTC's examples of effective and ineffective native ad disclosures.[29]

Best Practices Case Study

One of the best ways to demonstrate what an effective system of FTC compliance, monitoring, and enforcement looks like is to view it in practice in a real-world business environment. Social media influencer agencies have popped up over the past two to three years amid the incredible growth of social media advertising dollars pouring into the market. Social media advertising budgets have doubled worldwide over the past two years, going from $16 billion in the United States in 2014 to $32 billion in 2016. Social media spending in the U.S. alone is expected to reach $17.34 billion in 2019.[30] Today, many brands and studios—and the media agencies they engage to manage their social media advertising budgets—look to these social media influencer agencies to creatively develop content and cast as well as manage and execute social media influencer campaigns. When a social media agency is engaged to execute a social media influencer campaign, it is typical for the agency to be contractually obligated to comply with all applicable federal laws, rules, and regulations. These obligations should specifically call out the FTC E&T Guides in addition to other federal and state advertising laws.

In executing a branded social media campaign, social influencer agencies are tasked with a challenge to ensure all posts published by the influencers in their network are FTC compliant. One of the most effective ways for the social influencer agency to satisfy its contractual obligations to clients is to educate the social influencers and their representatives about the E&T Guides. Social influencers communicate almost entirely in a visual language in social media. A one or two-page list of contractual obligations in an influencer's deal memo for the branded content campaign will likely be read once and not necessarily be understood.

As was learned from the FTC's closing letter to Machinima, presenting influencers with a branded content campaign deal memo containing a separate section dedicated to FTC endorsement disclosure obligations is the best practice.[31] In 2013, Machinima, Inc., a multichannel network on YouTube, conducted an advertising campaign at the request of Starcom MediaVest Group—an advertising agency representing Microsoft—in which it paid several of its network influencers to produce and upload Xbox One game play videos that were subsequently posted to YouTube to generate interest and sales activity of the newly released Xbox One and associated games. As the FTC letter indicates, the influencers were directed by Machinima to speak favorably about Xbox One and the game titles.[32] The influencers uploaded the videos to their individual YouTube channels "where they appeared to be independently produced by, and to reflect the personal views, of the influencers."[33] Despite the fact that Machinima did not require the influencers to disclose in their videos that they were being compensated to produce and upload the videos, the FTC decided not to take enforcement action against Microsoft or Starcom because the incidents appeared to be isolated since Microsoft already had in place a "robust compliance program," and both companies had "adopted additional safeguards regarding sponsored endorsements," acting quickly to have Machinima insert disclosures into the campaign videos once they learned of the breach.[34]

Providing disclosure examples in a visual, imagery-based, detailed description of what a proper endorsement disclosure looks like to followers on each social media platform is the best way to communicate important contractual and legal obligations to influencers who work in an imagery-based publishing and distribution world. If the client's branded content campaign requires influencers to post on the influencer's Instagram account, for example, the agency should include images of what a branded social post looks like on Instagram in the E&T Guides obligations section of the influencer deal memo.

Another method for social influencer agencies to ensure that branded content campaigns for their clients are FTC-compliant is to include image-based examples and step-by-step instructions in the influencer deal memo on how to use platform-specific branded content tools. YouTube has recently added a new tool to provide notice to viewers about sponsored content to help influencers achieve compliance with the necessary disclosures about their relationships with advertisers. The new feature adds visible text on a video for the first few seconds watched by a viewer with a label stating "Includes paid promotion." Similarly, Facebook implemented a branded content tool in the spring of 2016 and requires any post that includes paid content to be published using the tool. The Facebook Branded Content Tool adds hyperlinked text at the top of the post "Brand with Influencer." Clicking on the "Brand" link takes the user to the brand's official Facebook page.

One of the practical challenges facing influencers, agencies, and brands is establishing a baseline of acceptable and mutually agreed compliant disclosures for each campaign. Many social media influencer campaigns involve negotiating a campaign statement of work among three separate legal departments (the media agency representing the brand, the brand, and the agency). Personal experience has demonstrated that many influencers will not agree to use the standard FTC acceptable #Ad, #sponsored, or #Paid in their paid posts because they view them as "spammy" or "too commercial."

From a legal compliance and policy point of view, these accepted disclosures are intended to inform followers that the post is commercial or paid. Marketing departments for brands often align with influencers in their desire to make influencer marketing seem organic and not overtly commercial. In many cases, the brand, the media agency, and the influencer agency agree to provide social influencers a choice of mutually agreed disclosures that include standard direct disclosures (#Ad, #Sponsored, or #Paid) and more organic copy in the body of the text of each post, for example "I'm working with Brand...," "I've teamed up with Brand...," or "I've partnered with Brand...," Many influencers and brands prefer the organic nature of these types of disclosures over the more commercial #Ad because it lends more authenticity to the influencer's messaging as it is presented more in the influencer's voice. The FTC has not commented specifically on which, if any, of these types of more organic disclosures would be FTC compliant in disclosing the material connection between the advertiser and the influencer. The options for disclosures should be enumerated specifically in the influencer's deal memo as well as in the statement of work between the brand and the social media influencer agency.

Social influencer agencies need to ensure that the influencers they engage to execute branded content campaigns in social media do so in compliance not only with E&T Guides but also with social platform terms of service and requirements for usage of their tools. Although the branded-content tools being implemented by social platforms are helpful to influencers in disclosing their relationships with advertisers, it is not clear whether the tools create posts that are compliant with FTC endorsement disclosure requirements or with other applicable laws. Until practitioners know more about how the FTC views the posts published through the social platform branded content tools, the best practice is to include a requirement that the influencer use the tools in accordance with each social platform's terms of service and the specific text approved in the deal memo for compliant disclosures (e.g., #Ad, #Paid, #Sponsored).

Social influencer agencies and businesses executing branded content campaigns in social media using influencers should be concerned with establishing an effective system of compliance, monitoring, and enforcement that focuses on the influencer's actions. To date, the FTC has not pursued action against influencers merely for failure

to comply with the individual disclosure obligations, without further misconduct. However, social media agencies, influencers, and talent managers should be aware that there has been an increase in formal complaints from consumer protection organizations to the FTC regarding flagrant deceptive marketing practices of many high profile influencers in social media. In 2016, there were formal complaints to the FTC from Truth in Advertising and the Center for Digital Democracy.[35] Both formal complaints alleged rampant failure of highprofile social influencers and celebrities— e.g., the Kardashians—of publishing paid branded content posts without disclosing the nature of their relationship with the advertisers.[36] These consumer protection organizations also point out that the majority of the violations are taking place on platforms like Instagram where the consumers may be more vulnerable because they are often younger—according to Pew Research more than 80 percent of consumers under 30 use Instagram as opposed to 43 percent age 30 and above.[37] With the increase in formal complaints to the FTC related to violations from influencers, it is possible that the FTC may begin to investigate and take action against influencers directly.

The FTC has issued guidelines and answered FAQs concerning social media promotions and native advertising; however, concerning some of the best practices a business can follow to ensure FTC compliance, each advertiser and business should adjust its own disclosure and compliance program practices based on particular campaigns. As technology continues to evolve and the FTC promulgates further guidelines and clarifications, heightened vigilance on avoiding deception in advertisements should be the mission of every brand and agency.

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1 16 C.F.R. §255. 2 16 C.F.R. §255(a). 3 15 U.S.C. §45(a). 4 16 C.F.R. §255(a). 5 .Com Disclosures: How to Make Effective Disclosures in Digital Advertising, Federal Trade Commission (2013), available at https://www.ftc.gov [hereinafter .Com Disclosures]. 6 Id. 7 The FTC's Endorsement Guides: What People are Asking, Federal Trade Commission, available at https://www.ftc.gov (last viewed Mar. 22, 2017) [hereinafter Endorsement Guides]. 8 Id. 9 Id. 10 Id. 11 Letter from Mary K. Engle, Associate Director of Advertising Practices, F.T.C., to Christie Grymes Thompson, Kelley Drye & Warren LLP (Mar. 20, 2014), available at https://www.ftc.gov/system/files /documents/closing letter/cole-haan-inc./140320 colehaanclosingletter.pdf. 12 Endorsement Guides, supra note 7, available at https://www.ftc.gov (last viewed Mar. 22, 2017). 13 Id. 14 Id. 15 Id. 16 Id. 17 See, e.g., Native Advertising: A Guide to Businesses, Federal Trade Commission (2015), available at https: //www.ftc.gov [hereinafter Native Advertising]. 18 Native Advertising, Wikipedia, https://en.wikipedia .org (last viewed Mar. 22, 2017). 19 The Native Advertising Playbook, Interactive Advertising Bureau (2013), available at https://www.iab.com /wp-content/uploads/2015/06/IAB-Native-Advertising -Playbook2.pdf. 20 Fernando A. Bohorquez, Jr., A guide to native advertising's legal issues (Dec. 4, 2013), available at http: //www.imediaconnection.com/articles/ported-articles /red-dot-articles/2013/dec/a-guide-to-native-advertisings -legal-issues. 21 Id. 22 Native Advertising, supra note 17. 23 Id. 24 Id. 25 Id. 26 Id 27 .Com Disclosures, supra note 5 28 Id. 29 Id. 30 Evan LePage, All the Social Media Advertising Stats You Need to Know, HOOTSUITE (Nov. 29, 2016), available at https://blog.hootsuite.com/social-media -advertising-stats. 31 Letter from Charles A. Harwood, Regional Director, Federal Trade Commission, to Yaron Dori and Amy R. Mudge, Counsel (Aug. 26, 2015), available at https://www.ftc.gov. 32 Id. 33 Id. 34 Id. 35 Letter from Robert Weissman, President, Center for Digital Democracy, et al. to Jessica L. Rich, Director, Bureau of Consumer Protection, F.T.C. (Sept. 7, 2016), available at http://www.citizen.org/documents /Letter-to-FTC-Instagram-Endorsements.pdf [hereinafter Weissman letter]; Letter from Laura Smith, Legal Director, Truth in Advertising, Inc., to Kris Jenner, Manager, Kardashian-Jenner Family (Aug. 17, 2016), available at https://www.truthinadvertising .org/wp-content/uploads/2016/08/8_17_16-ltr-from -TINA-to-K_Jenner-and-M_Kump_Redacted.pdf. 36 Weissman letter, supra note 35. 37 Sydney Parker, Top Instagram Demographics That Matter to Social Media Marketers, HOOTSUITE (July 21, 2016), available at https://blog.hootsuite.com /instagram-demographics.