

Social Media Activities Continue to Draw Consumers and Consumer Protection Enforcement Alike: Scrutiny Continues

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Since we last wrote about how marketers can craft social media policies to offer engaging promotions while meeting the scrutiny of regulators, social media has continued to be a popular venue for marketers to reach consumers. The **Federal Trade Commission (FTC)** has also kept the spotlight on compliance with the FTC [Guides Concerning Use of Endorsements and Testimonials in Advertising](#), targeting companies who fail to meet obligations to disclose “material connections” when working with influencers to promote products in social media. Some recent FTC actions are summarized below.

- In July 2016, Warner Bros. Home Entertainment, Inc., settled with the FTC over charges that the company deceived consumers by running a marketing campaign for the video game *Middle Earth: Shadow of Mordor* in 2014 without properly disclosing that online influencers, including the prominent PewDiePie, were allegedly paid from hundreds to tens of thousands of dollars to generate “buzz” for the game. These influencers posted gameplay videos on social media sites including YouTube without, according to the FTC, incorporating clear statements that the videos were sponsored. Although Warner Bros. did require *some* disclaimers about sponsorship, this information was generally only visible if consumers clicked on a button to reveal more details in a description about the video. The company allegedly also pre-approved at least one video without adequate sponsorship disclosure.
- In June 2016, the FTC settled claims with SmartClick Media LLC, doing business as “Doctor Trusted,” relating to a certification program that allegedly represented to consumers that products sold on websites were independently evaluated by doctors using their medical expertise, when in fact they were not. The company used seals on websites that appeared to operate independently from SmartClick, including health-product review sites, but which were in fact operated by SmartClick. Although SmartClick had hired freelance doctors to conduct some reviews, these reviews were allegedly cursory, and the seals were sold to—and appeared on—800 websites. The FTC’s order imposed a judgment of \$603,588 on the defendants, which was to be suspended upon their payment of \$35,000.
- In March 2016, the FTC finalized an order settling charges that Machinima, Inc. engaged in

deceptive advertising by failing to disclose that it paid “influencers” to post YouTube videos that endorsed Microsoft Xbox One games as well as the platform. The FTC first announced the proposed order in September 2015, alleging that the company paid endorsers \$15,000 and \$30,000 for posting videos on the popular video playing platform that resulted in 250,000 views and 730,000 views, respectively. The settlement did not involve a financial payment by Machinima, but the company agreed not to violate the FTC’s deception policy in the future. Microsoft and its advertising agency both received closing letters in 2015 that found them partially responsible, but the FTC concluded that these companies’ failures were “one-offs.”

The social media landscape is no longer new. Companies are expanding social media initiatives with good reason – because it’s where the eyeballs are. But all companies, large and small, must take care to assure that their social media initiatives, particularly those involving influencers, comply with the FTC’s guidelines on endorsements. A word to the wise: The FTC staff, just like consumers, is looking at social media sites like YouTube, Pinterest and others. The difference is that the FTC is on the lookout for violations of its rules and guidelines.

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