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## Beware social media masters, FTC taking long look at phony blogs

In the age of digital communities — or “social topic tribes” as they have been called — bloggers, vloggers and Instagramers create and disseminate a huge amount of content on myriad topics from fashion, food and travel to entertainment, music and video games.

These influencers have built trust, credibility and a loyal following through authentic content on a variety of digital platforms. In an ever more crowded digital world, brands that want access to their target consumer audience increasingly prize — and pay for — “peer” reviews and recommendations from influencers.

And for this reason — that these campaigns are so effective at reaching and influencing consumers — the Federal Trade Commission is highlighting what it sees as the risk that these campaigns can veer into deceptive advertising territory.

The FTC’s latest enforcement action related to Warner Bros. Entertainment Co.’s YouTube marketing campaign for “Middle Earth: Shadow of Mordor” is the latest in a string of actions the commission has taken against companies over advertising that looks like unbiased endorsements but in reality was part of a sponsored advertising campaign.

The FTC accused Warner Bros. of misleading consumers in its marketing campaign for the Tolkien-inspired video game, alleging that the company failed to adequately disclose that it paid influencers thousands of dollars to post positive game play videos on YouTube and other social media.

Warner Bros. released the fantasy role-playing game for PlayStation 3 and Xbox 360 in late 2014. According to the FTC complaint, Warner Bros. and an

advertising agency developed a YouTube influencer campaign to maximize consumer awareness of the game when it became available for sale and to persuade consumers to purchase it.

Warner Bros. required the paid influencers to create videos that featured the game being played but did not disclose “bugs or glitches” they may have encountered; to encourage viewers to click on a link to go to the game’s website to learn more about the game; to promote a “positive sentiment” about the game; and to create one Facebook post or one Tweet to support the video.

What Warner Bros. didn’t do, according to the FTC, was instruct the influencers to include sponsorship disclosures clearly and conspicuously in the video itself where consumers were likely to see or hear them. Instead, Warner Bros. allegedly told influencers to place the disclosures in the description box appearing below the video.

This was a problem, according to the FTC, because the description box contained other information so most of the sponsorship disclosures appeared “below the fold” and were visible only if consumers clicked on the “Show More” button in the description box. Further, when the influencers posted the videos on Facebook or Twitter, the posting didn’t include the “Show More” at all.

The July 2016 settlement with Warner Bros. bars the company from misrepresenting that sponsored content is the “objective, independent opinions of video game enthusiasts or influencers.”

The agency also spelled out steps Warner Bros. should take to “clearly and conspicuously” post the required disclosures.



*Nerissa Coyle McGinn is a Chicago-based partner at Loeb & Loeb LLP. Her practice focuses on matters involving the convergence of advertising and promotions, emerging media, technology, and privacy law, as well as intellectual property law, focusing on trademark clearance and counseling. She can be reached at [nmcginn@loeb.com](mailto:nmcginn@loeb.com).*

These steps include formatting disclosures in the same format through which the influencer communication is presented, whether visual, audible or both.

Visual disclosures must stand out from text or other visual elements in size, contrast, location, the length of time it appears and other characteristics, so that they are easily noticed, read and understood.

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Likewise, audible disclosures, including by telephone or streaming video, must be delivered in a volume, speed and cadence sufficient for ordinary consumers to easily hear and understand. In any communication using an interactive electronic medium, such as the internet or software, the disclo-

sure must be “unavoidable.”

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

The FTC has reached similar settlements in recent months. With Lord & Taylor earlier this year, charging that the national department store chain failed to disclose that “fashion influencers” posting online endorsements of the clothes were provided with free clothing and cash payments.

Also, gaming entertainment network Machinima Inc. was cited for failing to disclose that it paid influencers to post YouTube videos endorsing Microsoft’s Xbox One system.

Let’s not forget home security company ADT, which failed to disclose that it paid a “mommy blogger” who endorsed its products and services on news programs and talk shows.

And, finally, with “people search” engine Spokeo, which directed employees to post favorable comments about the company and gave the false impression the comments were posted by Spokeo users.

According to the FTC, the Warner Bros. enforcement stands out, in part, because of the sheer number of gaming consumers who viewed — and potentially could be deceived by — the sponsored endorsements.

Warner Bros. influencers included Felix Kjellberg, a 26-year-old Swedish comedian better known as PewDiePie to his enormous following on YouTube. As the FTC pointed out in a statement, PewDiePie’s sponsored video on the Warner Bros. game alone was viewed more than 3.7 million times.

As PewDiePie, Kjellberg and his YouTube gaming channel have achieved rock-star levels of followers, at least in the gaming world. According to Social Blade, which compiles user data from YouTube, Twitch, Twitter and Instagram, Kjellberg's channel ranks No. 1 on the list of top 500 YouTube gaming channels with more than 47.5 million subscribers and more than 13 billion video views.

Of course, PewDiePie is relatively small potatoes compared to more mainstream celebrity influencers who have been accused of not complying with FTC guidelines.

The consumer watchdog group Truth in Advertising (TINA.org) recently called out the Kardashian and Jenner sisters after reviewing their widely followed Instagram accounts, in which they promote a variety of cosmetic and luxury brands, including Balmain, Calvin Klein and Revlon.

The celebrity family's social media reach is considerable: Kim Kardashian West has more than 81 million followers of her own on Instagram and TINA.org estimates the five sisters have more than 300 million Instagram followers combined.

TINA.org notified the family of its findings and asked that posts containing deceptive marketing be remedied immediately. While a few posts were corrected to add appropriate disclosure language, TINA.org asserts that 75 of the 108 flagged posts remained unchanged and another seven posts were insufficiently edited by adding the hashtag "#spon."

The group then contacted the FTC and urged the agency to conduct its own investigation of the family's social media posts endorsing company products. As TINA.org pointed out in its Aug. 25 letter that while the

Kardashians and Jenners appear willing to correct their deceptive posts, "it is apparent that the issue is with the companies, who continue to flagrantly ignore the law."

Indeed, while influencers do have a responsibility to disclose sponsored content, the FTC has made it clear that it is focused for the most part on companies (and their agencies) that fail to meet the FTC's guidelines for disclosing their relationships with paid social media influencers and fail to ensure that those influencers themselves follow the agency's disclosure guidelines.