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## Social media disclosure rules appear to be getting some FTC teeth

**S**ocial media influencers — and the brands that use them — should take note: The Federal Trade Commission is serious when it says that influencers or endorsers must clearly disclose any material connections the product or service has with the social network.

The FTC recently settled charges against two influencers — the first time the agency has taken action against individual influencers and a direct result of its most recent focus on disclosures.

The agency also issued updated guidance to clarify social media disclosure practices, from Instagram and Snapchat disclosures to the adequacy of vague disclosures like “#ambassador.”

In its recent enforcement action, the commission accused two established influencers in the online gaming community, Trevor Martin and Thomas Cassell (known as “TmarTn” and “Syndicate,” respectively), of promoting the online gambling service CSGO Lotto without informing followers that they actually owned the company.

The two also paid other influencers up to \$55,000 to promote the site on their own social media platforms without requiring them to disclose the payments.

The federal government launched its disclosure campaign after the nonprofit advocacy group Public Citizen flagged more than 150 examples of Instagram posts that violated the FTC's disclosure policies and urged the agency to investigate.

The FTC subsequently sent out more than 90 letters in April after it reviewed social media posts by celebrities, athletes and other influencers. The website, WWD, outed the celebrity recipients, including Victoria Beckham, Lindsay Lohan and Sean

Combs and the brands, such as Adidas, Cabela's and Hello Fresh.

Although Martin and Cassell weren't celebrities, they were clearly on the FTC's radar. According to the complaint filed by the agency, Martin, Cassell and their company, CSGO Lotto Inc., began operating and advertising the csgolotto.com website in 2015.

The CSGO Lotto name is based on Counter-Strike: Global Offensive, also known as “CS:GO,” an online multiplayer, first-person shooter game. The game uses “collectible virtual items” called “skins” that can be used to cover weapons in distinctive designs. Skins can be bought, sold and traded for real money. As a result, CSGO Lotto enabled consumers to gamble, using the skins as virtual currency, the complaint noted.

Martin and Cassell each posted YouTube videos of themselves gambling on their website and encouraging others to do the same. Between mid-November 2015 and June 2016, Martin and Cassell posted videos to their respective YouTube channels showing themselves gambling on CSGO Lotto and encouraging viewers to try the gambling service. Martin posted at least 13 promotional videos to his YouTube

channel and Cassell posted at least seven promotional videos, stated the complaint.

Notably, Cassell's videos promoting the CSGO Lotto website, with titles like “Insane Knife Bets! (CS:GO Betting)” and “All or Nothing! (CS:GO Betting)” were viewed more than 5.7 million times, according to the com-



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plaint. Martin and Cassell also paid other gaming influencers between \$2,500 and \$55,000 to promote the CSGO Lotto website and barred influencers from saying anything negative about the site.

But they never disclosed that Martin is the company's president and Cassell its vice president or that they paid influencers to promote their site.

Under the settlement announced Sept. 7, Martin and Cassell must clearly and conspicuously

disclose any material connections with any influencers or endorser and between an endorser and any promoted product or service going forward.

The FTC said it additionally sent warning letters to 21 other social media influencers it had contacted earlier in the year about their Instagram posts.

To clarify any confusion about the disclosure guidelines, the agency also issued an updated version of “The FTC's Endorsement Guide: What People Are Asking,” which was first published in 2015. The update adds more than 20 frequently asked questions and answers addressing social media influencer and marketing disclosure requirements.

The new guidance addresses emerging social media issues 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 disclosures like “#ambassador.”

The guidelines clarify that social media posts don't have to specifically state support for a product to be an endorsement. “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,” the guide points out.

The FTC also addresses questions about posting disclosures on Instagram and Snapchat. For example, the new guidelines point out that when people view Instagram streams on most smartphones only the first three lines of the description are displayed and the viewer has to click on the “more” button to see the rest. Therefore, “[i]f 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,’” according to the guidance.

Disclosures made on Snapchat, on the other hand, can be superimposed over the images posted. Disclosures “should be easy to notice and read in the

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time that your followers have to look at the image,” the guidelines note.

Factors to consider include how much time followers have 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.

A related issue is the disclosure obligations of influencers who live outside the United States. For example, does a London-based beauty blogger who posts sponsored videos on YouTube of products sold in the U.S. have a responsibility to tell followers about the sponsorship? According to the FTC guidance, if it's reasonably foreseeable that

the YouTube videos will be seen by U.S. consumers, U.S. law would apply and disclosures are required.

Social media influencers must also disclose travel expenses and hotel accommodations that are paid for by a company hoping the influencers will post about its product or service. “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,” the guidelines point out.

Vague disclosures in the form of hashtags also was addressed, including the adequacy of disclo-

sure such as “#ambassador,” for example. Using just “#ambassador” is “ambiguous and confusing,” according to the guidance. A better hashtag disclosure, as long as it's prominently displayed, would be “#XYZ-Ambassador” (where XYZ is a brand name) because it is clearer and more understandable.

Finally, the FTC took the opportunity to follow up with 21 other influencers it had previously contacted and warn them their social media posts may be violating the Federal Trade Commission Act.

The letters cite specific posts and explain why they may not be in compliance. The agency further asks the recipients to in-

form it about any material connections they have to the brands in the identified posts and what actions will be taken to ensure that their social media posts clearly and conspicuously disclose those relationships.

The FTC stated it was not releasing the names of the 21 influencers who received the warning letters.

The CSGO Lotto settlement demonstrates that the FTC is watching how and if social media influencers keep followers informed about their ties to sponsors.

Influencers that decide to gamble by flouting the guidelines may find themselves hearing from the agency.