

PR Firm Held Liable for Product Reviews it Posted on iTunes

The Federal Trade Commission (“FTC”) enforced its new guidelines on endorsements and testimonials directly against a PR agency, and its sole owner, for posting positive reviews of its client’s products on iTunes. This is the first time that the FTC has enforced these guidelines.

Reverb Communications, Inc. is a public relations, marketing and sales services agency that represents video game developers. The agency is solely owned by Tracie Snitker. Between November 2008 and May 2009, Reverb and Snitker posted positive reviews about their clients’ games at the iTunes Store using account names that gave readers the impression the reviews were written by disinterested consumers. The posts did not disclose that the authors were connected to the producer of the video games, that they were hired to promote the games or that they often received a percentage of the sales of the games.

In December 2009, the FTC updated its Endorsement and Testimonial Guidelines. Among other changes, the FTC’s updated guidelines provided that bloggers who endorse a product or service must disclose any material connections they have with the seller of the product or service. In other words, a blogger who makes an endorsement must clearly and prominently disclose whether he/she receives cash, free products or other in-kind payments to review the product or service. If these disclosures are not made, the post is considered to be deceptive and false or misleading. In addition, the FTC specified that its guidelines apply not only to the provider of the products or services that are the subject of the endorsement, but also to the advertising or PR agency that was responsible for the endorsement, and the employees of both the agency and the provider.

On September 2, 2010, the FTC announced that it entered into a Consent Order with Reverb and its owner, Snitker. The Order provided that Reverb and Snitker were required to remove any previously posted endorsements that misrepresented the authors as independent users or ordinary consumers, and that failed to disclose a connection between Reverb and Snitker and the seller of a product or service. The Order also prohibited Reverb and Snitker from misrepresenting that the user or endorser is an independent, ordinary consumer, and from making endorsement or user claims about a product or service unless they clearly and prominently disclose any material connections that they have with the seller of the product or service. Violations of a Consent Order may result in a penalty of up to \$16,000 per instance.

The FTC’s message here is clear: any advertisement or communications messages, including blogs or other online posts, that endorse a product or service must clearly and prominently disclose whether the endorser was hired by or received any payment, free products or other consideration from the provider of the product or service. If these disclosures are not made, the provider of the product or service and/ or the PR or advertising agency responsible for the endorsements, and their owners or principals, may be held liable for deceptive and false or misleading advertising.

If you would like to discuss this further, or if you have any questions regarding online or other endorsement issues, please contact:

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