

You Must Disclose If It's a Paid Video Endorsement: FTC

(September 2, 2015) If you are posting videos on YouTube touting a product and being paid to do so, you better disclose it or you will be subject to Federal Trade Commission (FTC) action for deceptive advertising.

That's the lesson that an online entertainment network learned. Machinima, Inc., entered into contracts with its "influencers," whom it paid to promote Microsoft's Xbox One system and several games. The contracts included a provision that they remain confidential. As a result, anyone viewing the favorable videos had no idea that Machinima paid the persons posting the videos.

In mid-2013, Machinima proposed to Microsoft and its advertising agency Starcom MediaVest Group, Inc. that it could assist in the new Xbox rollout by "creating content" on YouTube. Machinima guaranteed that its "influencer videos would be viewed a minimum of 19,000,000 times," according to an FTC complaint.

Machinima first recruited five of its influencers to produce and upload two reviews each. The influencers received explicit instructions as to what to include in the videos. The five influencers were paid based upon the number of views, with payments ranging from \$15,000 to \$30,000. Next, Machinima recruited members of its entire network of influencers to produce and upload favorable videos. The influencers were paid \$1 for every 1,000 views up to a maximum of \$25,000.

The influencers "produced and uploaded to YouTube over 300 videos that, between November 22 and December 31, 2013, generated more than 30 million views," the complaint said. Machinima through its influencers "represented, directly or indirectly, expressly or by implication, that video reviews of Microsoft's Xbox One and the Launch Titles reflected the independent opinions of impartial video game enthusiasts," the FTC charged. "In truth and in fact, the video reviews for Xbox and the Launch Titles did not reflect the independent opinions of impartial video game enthusiasts." By failing to disclose the financial arrangements, Machinima engaged in a deceptive practice.

Pursuant to a Consent Order, Machinima is required to prominently disclose in future campaigns any material connection between the endorser and the advertiser. The Consent Order also prohibits Machinima from compensating any influencer who has not disclosed it is being paid or otherwise compensated for the endorsement.

"When people see a product touted online, they have a right to know whether they're looking at an authentic opinion or paid marketing pitch. That's true whether the endorsement appears in a video or any other media," the FTC said in announcing the Consent Order.

In the Matter of Machinima, Inc., FTC File No. 1423090, issued September 2, 2015.

Balough Law Offices, LLC, is a Chicago-based law firm which focuses on cyberspace, business, and intellectual property law. Our homepage is balough.com.