

# ADVERTISING, MARKETING & PROMOTIONS

>> ALERT

## FTC BRINGS ACTION AGAINST PR AGENCY FOR MISLEADING ONLINE ENDORSEMENTS

The Federal Trade Commission (FTC) recently announced a settlement with Reverb Communications, Inc. (Reverb), a public relations agency in the videogame industry, and its sole owner, Tracie Snitker (Snitker). The settlement resolves claims that Reverb and Snitker engaged in deceptive advertising by having employees pose as ordinary consumers and post game reviews on iTunes. The FTC's action is the first brought against bloggers since the FTC revised its Guides Concerning the Use of Endorsements and Testimonials in Advertising (Guides).

### THE COMPLAINT

According to the FTC's complaint, between November 2008 and May 2009, Reverb and Snitker posted reviews about their clients' gaming applications at the iTunes store using account names that gave readers the impression that the reviews were written by disinterested consumers. Reverb employees allegedly endorsed their clients' gaming applications by consistently giving their client's applications four or five stars or by positively commenting on them (e.g., "Amazing new game," "ONE of the BEST" and "One of the best apps just got better"). According to the FTC, Reverb and Snitker's postings did not disclose that they were hired to promote the gaming applications or that Reverb's fee often included a percentage of its client's sales of the gaming applications - facts the FTC believed would have been relevant to consumers who were evaluating the endorsement and deciding whether to buy the gaming applications.

### THE SETTLEMENT

Under the proposed settlement order, Reverb and Snitker agreed to remove any previously posted endorsements that misrepresent the authors of such posts as independent users or ordinary consumers or fail to disclose Reverb and Snitker's connection to the marketer of the product or service. The settlement also prohibits Reverb and Snitker from misrepresenting their status as independent or ordinary consumers of a marketer's product or service and from making endorsements or user claims about a product or service unless they clearly and prominently disclose their connections to the marketer.

### WHY IS THE FTC'S ACTION AGAINST REVERB AND SNITKER IMPORTANT?

The FTC's action against Reverb and Snitker is not only important because it is the first action against bloggers since the effective date of the revised Guides but it is significant because:

### THE BOTTOM LINE

Failure to make disclosures about an agency's relationship with its client when endorsing a client's product or service online could expose the agency and (under certain circumstances) its officers and directors to liability.

- 1) The FTC brought its first action against a public relations agency - not the agency's client. By bringing the action against a public relations agency, the FTC makes clear that agency employees have the same duty to disclose their relationship with their clients as the client's own employees.
- 2) The FTC brought the action against an individual - Snitker, the agency's sole owner and only officer and director. According to

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the FTC, at all times relevant to the complaint, Snitker directed, formulated and/or participated in the misleading online endorsements. As part of the settlement, Snitker (in her individual capacity and separate from her connection to Reverb) agreed to notify the FTC of her current business or employment or of her affiliation with any new business or employment for a period of five years after the settlement date.

- 3) The FTC brought the action against Reverb and Snitker for posts they made between November 2008 and May 2009, several months before the effective date of the revised Guides (December 1, 2009).

By doing so, the FTC puts the industry on notice that it can bring an action against misleading online posts made prior to the effective date of the revised Guides.

Agencies should advise their employees to disclose their relationships with their clients whenever posting online about a client or a client's products or services. If an agency becomes aware that an employee posted online comments about a client or a client's products without disclosing the employee's relationship to the client, the agency should immediately take steps to remove those comments (even if the comments were posted prior to the effective date of the Guides).

#### FOR MORE INFORMATION

Ronald R. Urbach  
Partner/Co-chair  
212.468.4824  
rurbach@dglaw.com

Allison Fitzpatrick  
Associate  
212.468.4866  
afitzpatrick@dglaw.com

or the D&G attorney with whom  
you have regular contact.

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#### DAVIS & GILBERT LLP

T: 212.468.4800  
1740 Broadway, New York, NY 10019  
[www.dglaw.com](http://www.dglaw.com)

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