FTC Brings Actions Against the Sale of 'Fake Indicators of Social Media Influence' and 'Fake Reviews'

The Bottom Line

- *The FTC's actions challenging the sale of fake social media indicators and online reviews are intended to deter others from polluting the online marketplace with deceptive and inaccurate information.*
- *It is important to reiterate that the FTC brought its actions against two chief executive officers in their individual capacities, which may indicate a growing intention on the part of the FTC to hold those in charge responsible for complying with and ensuring their employees comply with the law.*

The Federal Trade Commission (FTC) recently announced a settlement with Devumi, LLC, and its chief executive officer, German Calas, Jr., over allegations that they sold "fake indicators of social media influence," including fake followers, subscribers, views and likes.

The FTC also announced a separate settlement with Sunday Riley Modern Skincare, LLC, and its CEO, Sunday Riley, over charges that company employees posted fake reviews of the company's products on the Sephora website at the CEO's direction.

Devumi Case

According to the complaint, Devumi and Calas sold fake followers, subscribers and views through their websites Devumi.com, TwitterBoost.co, Buyview.co and Buyplans.co to actors, athletes, musicians, writers and other users of social media platforms, such as LinkedIn, Twitter, YouTube, Pinterest, Vine and SoundCloud.

The FTC further alleged that the company sold false Twitter followers to motivational speakers, investment professionals and even law firm partners to deceive potential clients about their social media influence. The FTC also contended that Devumi and Calas sold fake LinkedIn followers to marketing, advertising and public relations firms, among others, and fake YouTube subscribers to musicians who wanted to increase the popularity of their music.

According to the FTC, selling and distributing fake indicators of social media influence to users of various social media platforms allowed Devumi and Calas to provide their customers with the ability to commit deceptive acts or practices — which is itself a deceptive act or practice in violation of the FTC Act.

Although this was the first FTC complaint challenging the sale of fake indicators of social media influence, this was not Devumi's first such fight. Earlier this year, Devumi settled similar charges brought by the Attorneys General of New York and Florida. For more information, see our previous alert.

Devumi Settlement

The settlement with Devumi (now reportedly out of business) and Calas prohibits them from:

- Selling or assisting others in selling social media influence to users of third-party social media platforms; and
- Making misrepresentations or assisting others in making misrepresentations about the social media influence of any person or entity or in any review or endorsement of any person, entity, product or service.

The FTC also fined Calas $2.5 million, although if Calas pays $250,000, the balance of the judgment will be suspended due to his reported financial condition.

Sunday Riley Case

In the second FTC action, the FTC targeted Texas-based Sunday Riley Modern Skincare, which sells cosmetic products at Sephora's brick-and-mortar stores and on sephora.com. The FTC alleged that, between November 2015 and August 2017, Sunday Riley Modern Skincare managers, including Ms. Riley herself, wrote reviews of their products and posted them on the Sephora website using fake accounts that they created to hide their identity and that they asked other employees to do the same.

The FTC asserted, among other things, that Ms. Riley personally solicited those reviews in an email to her staff directing them to "create three accounts on Sephora.com, registered as . . . different identities." The FTC added that the email included instructions for setting up new personas and using a virtual private network (VPN) to hide their identities. Further, the email directed employees to focus on certain products, to "[a]lways leave 5 stars" when reviewing Sunday Riley Modern Skincare products, and to "dislike" negative reviews. The FTC stated that Ms. Riley wrote: "If you see a negative review — DISLIKE it," and that she added, "After enough dislikes, it is removed. This directly translates into sales!!"

The FTC charged Sunday Riley Modern Skincare and Ms. Riley with two violations of the FTC Act:

1. Making false or misleading claims that the fake reviews reflected the opinions of ordinary users of the products; and
2. Deceptively failing to disclose that the reviews were written by Ms. Riley or her employees.

Sunday Riley **Settlement**

The settlement the FTC reached with Sunday Riley Modern Skincare and Ms. Riley:

- Prohibits them from misrepresenting the status of any endorser or person reviewing their product, including misrepresentations that the endorser or reviewer is an independent or ordinary user of the product;
- Prohibits them from making any representation about any consumer or other product endorser without "clearly and conspicuously" disclosing any unexpected material connection between the endorser and Sunday Riley Modern Skincare, Ms. Riley or any entity affiliated with the product; and
- Requires that they train their employees and agents about their responsibilities to clearly and conspicuously disclose their connections to their products in any endorsements.

As might be expected, the settlement also contains onerous reporting, recordkeeping and monitoring provisions. The settlement, however, imposes no monetary penalties or other financial consequences on Sunday Riley Modern Skincare or Ms. Riley, although two FTC commissioners — Rohit Chopra and Rebecca Kelly Slaughter — argued that the FTC should have done so and that, going forward, the FTC should seek monetary consequences for fake review fraud to deter "other would-be wrongdoers."

The FTC's Stance

Andrew Smith, Director of the FTC's Bureau of Consumer Protection, emphasized that "[p]osting fake reviews on shopping websites or buying and selling fake followers is illegal. It undermines the marketplace, and the FTC will not tolerate it."

When the FTC and other regulators take action against fraudulent social media activities, brands, marketers, agencies, and social media users all benefit. As such, we are likely to see an uptick in similar enforcement actions in the future.

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