

# ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

## NEW YORK AND FLORIDA AGS SETTLE CHARGES WITH SELLER OF FAKE SOCIAL MEDIA ACCOUNTS AND ENGAGEMENTS

New York Attorney General Letitia James and Florida Attorney General Ashley Moody announced settlements with Devumi LLC (Devumi) over Devumi's practice of selling fake social media followers and engagements to help influencers boost their reach and appeal to advertisers.

This is the first finding by a law enforcement agency that the sale of fraudulent social media engagement is deceptive, and marks one of the first enforcement actions to be brought by newly elected New York Attorney General Letitia James and Florida Attorney General Ashley Moody.

### DEVUMI'S PRACTICES

Beginning in 2015, Devumi, along with other companies controlled by its owner German Calas, Jr., allegedly sold fake social media followers and engagement influencers. According to the attorneys general, Devumi utilized both bots (accounts operated by computers) and sock-puppet accounts (accounts operated by one person pretending to be many people) in order to generate followers and engagements for influencers. In many cases, Devumi copied social media pictures and profiles of real people without their knowledge in order to make the accounts appear to be legitimate. Influencers would then pay Devumi to have these accounts

### THE BOTTOM LINE

Brands, marketers, and their agencies typically have the most to lose due to fraudulent social media traffic, in the form of wasted marketing dollars spent appealing to non-existent users. However, these settlements made clear that such practices also harm consumers and social media users.

In the past, the Federal Trade Commission has been the most active in policing fraudulent social media activity, but these settlements mark an increased willingness by state attorneys general to jump in the mix to protect consumers and may result in other states following New York and Florida's lead in policing social media practices.

This enforcement action was announced within the first month of both Attorney General James' and Attorney General Moody's time in office, and offers a glimpse into both of their enforcement priorities.

"follow" their social media profiles, and to engage with their social media posts (including by "liking" and commenting on the posts).

By purchasing Devumi's services, influencers were made to appear more popular among users who appeared to be engaging with their content. These influencers could thereby command higher fees from brands who were willing to pay more in order for their content to appear to a larger, more

engaged audience, as influencers are typically compensated based on their "reach," or the number of users that "follow" them on the relevant social media pages.

During the time that it was in business, Devumi made approximately 250,000 sales of social media activity and endorsements, charging its customers by the follower and by the engagement, according to CNN. For example, CNN found that customers

## ADVERTISING, MARKETING &amp; PROMOTIONS

## &gt;&gt;ALERT

could purchase Twitter followers for packages of up to 500,000 for \$3,997, and likes and shares in packages costing up to \$228 per year. Devumi earned approximately \$15 million in revenue through its sale of phony followers and engagements. The practice became so widespread that in 2017, Facebook estimated that up to 60 million accounts on the platform were fake.

In January 2018, Devumi was the subject of an exposé in *The New York Times* that documented Devumi's alleged practices and exposed several prominent celebrities, politicians, influencers, and corporate executives who were found to have used Devumi to boost their social media following. Following *The New York Times* article, Twitter promptly blocked Devumi's accounts from accessing the platform and stripped the accounts from its users' follower counts.

Devumi ceased its operations in mid-2018.

## THE SETTLEMENTS

New York Attorney General Letitia James and Florida Attorney General Ashley Moody announced settlements claiming that Devumi's practices were deceptive to a number of parties, including the brands who might use follower counts to decide which influencers to sponsor, social-media users who might use follower counts to decide which influencers

to follow, and policymakers, voters, and journalists who might use follower counts to attribute credibility to politicians and policies. The attorneys general also found that Devumi's practices were deceptive to those of Devumi's customers who believed they were purchasing authentic endorsements, as well as to the social media platforms themselves, which have policies prohibiting fraudulent activity.

As part of the Florida settlement, Devumi is prohibited from:

- >> Purchasing, guiding, controlling, or managing any social media accounts generated using any person's personal information, regardless of whether such social media accounts originated within Devumi or via third-party providers;
- >> Utilizing any person's personal information without that person's express, written consent to generate products or services;
- >> Scraping any person's personal information without express, written consent, regardless of whether that information is available to the public;
- >> Advertising, selling, or offering to sell products or services from persons when the products or services are from bots;
- >> Making any misrepresentation regarding or fraudulently endorsing any individual, product or service;

- >> Providing paid endorsements without clearly and conspicuously disclosing that the recipient compensated Devumi for the endorsement;
- >> Making any representation in the course of providing paid endorsements which would lead a consumer acting reasonably to believe that the social media accounts making the endorsements are owned or operated by persons when in fact such accounts are bots; and
- >> Misrepresenting that Devumi's products or services are approved by any social media platform or are risk-free.

Devumi was not required to admit to any wrongdoing in the New York settlement, but agreed to pay \$50,000 to each state to cover their legal costs.

## FOR MORE INFORMATION

Allison Fitzpatrick  
Partner  
212.468.4866  
afitzpatrick@dglaw.com

Louis P. DiLorenzo  
Associate  
212.468.4805  
ldilorenzo@dglaw.com

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

Davis & Gilbert LLP  
212.468.4800  
1740 Broadway, New York, NY 10019  
[www.dglaw.com](http://www.dglaw.com)

© 2019 Davis & Gilbert LLP