

FTC Reaches Settlement for Misleading Consumer Endorsements Online

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The Federal Trade Commission recently reached a \$250,000 settlement with Legacy Learning Systems, Inc. for failure to disclose material connections when using endorsements or reviews. According to the FTC, the company hired an online affiliate program to recruit affiliates to promote the guitar-lesson course by writing articles, blog posts, and other online materials, each with a link to the company's Web site. The affiliates received a commission for any sales resulting from the referrals, which resulted in more than \$5 million in sales revenue for Legacy Learning Systems. The FTC alleged that these online reviews and blog posts were deceptive and misleading in that they represented that they were the views of ordinary consumers or independent reviewers and failed to disclose that they were in fact paid for each referral sale. According to the FTC Guidelines on Endorsements and Testimonials, advertisers must disclose material connections the advertiser may have with a reviewer or blogger, and ensure that the reviewer adequately discloses such a connection, if such a connection would influence the weight a consumer would give to the review.

Under the proposed settlement, Legacy Learning Systems will be fined \$250,000; must monitor and submit monthly reports to the FTC regarding their top 50 revenue-generating affiliate marketers and another random sampling of 50 other affiliate marketers; must ensure that affiliates are disclosing that they earn a commission per sale and are not otherwise misrepresenting themselves as independent reviewers or consumers. The FTC commented that advertisers who use affiliate marketers would be wise to establish a reasonable monitoring program to verify that the affiliates are complying with the principles of truth in advertising.

TIP: If a company uses affiliates as part of word of mouth marketing to advertise its products or services, the company should have a sufficient practice in place to assure that its affiliates are disclosing the fact that they are receiving compensation, monetary or non-monetary, in connection with their opinions or reviews. Companies should also ensure that they are monitoring affiliates and causing them to take down any materials that are not in compliance or otherwise violate company policy.

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