

The FTC Settles Case Over Online Reviews of Mobile Games

August 31, 2010

In October 2009, the U.S. Federal Trade Commission (FTC) issued final revisions to its Guides Concerning the Use of Endorsements and Testimonials in Advertising (the Guides), addressing endorsements by consumers, experts, organizations, bloggers, and celebrities. The Guides reinforced the principle that “material connections” such as free goods or other compensation must be disclosed even in the online and social media context. The FTC placed the responsibility for disclosure on bloggers and other “word of mouth” marketers, as well as on the companies that attempt to influence the decision making of bloggers and marketers by creating material connections.¹

The most recent enforcement action of the FTC under the Guides involves reviews by a public relations firm’s employees of mobile game applications, for which the public relations firm allegedly received compensation from game developers.

The FTC complaint involved the firm Reverb Communications, Inc. (Reverb) and its owner. The FTC charged that Reverb, a company that provides public relations, marketing, and sales services for mobile game developers, posted reviews of mobile game applications, giving the impression that the reviews were from ordinary consumers. Instead, Reverb had been hired and compensated to promote these applications by arrangements with the game developers, allegedly including at times a percentage of sales.

The FTC’s charging complaint alleged that Reverb needed to disclose that the reviews were not from independent consumers, but were the result of an arrangement with game developers for the reviews. Reverb disagreed with the FTC, arguing that Reverb employees had purchased the games themselves and played them, so that the reviews were not in effect fake reviews, but rather personal posts from employees who had actually played the games. The FTC noted in connection with the settlement announcement that it was not focused on whether the reviews were accurate or fake. Rather, the FTC’s concern centered on the failure to disclose the connection between the game developers and the reviews Reverb procured.

¹ For more information on these revisions, see Morgan Lewis’s October 13, 2009 LawFlash, “FTC Releases Guidelines Detailing Advertiser and Blogger Responsibilities in Social Media,” available at http://www.morganlewis.com/pubs/IP_SocialMediaGuidelines_LF_13oct09.pdf

In the settlement, Reverb agreed to remove any reviews that were written by anyone associated with Reverb. The FTC in connection with the announcement of the settlement issued a statement by Mary Engle, director of the FTC’s Division of Advertising Practices, stating, “Advertisers should not pass themselves off as ordinary consumers touting a product, and endorsers should make it clear when they have financial connections to sellers.”

While neither the game developers nor specific reviewers were charged in the FTC’s complaint against Reverb, the settlement provides a cautionary note to all—companies, public relations and advertising firms, as well as bloggers, marketers, and reviewers—to disclose clearly and conspicuously any monetary or nonmonetary compensation received in connection with statements made about products or services that otherwise appear to be independent. Simply stated, if reviews are not freely obtained from independent consumers for no compensation, the public has a right to know this fact.

Because the Guides charge advertisers with the responsibility of advising bloggers, marketers, and reviewers of their responsibilities and of monitoring their compliance to avoid a violation of the FTC Act, every company engaged in “word of mouth” marketing should have appropriate internal policies addressing these responsibilities. The FTC has long looked favorably on the existence of, and compliance with, such policies as a means by which to mitigate liability under the FTC Act.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

Washington, D.C.

Karen A. Butcher	202.739.5526	kbutcher@morganlewis.com
J. Kevin Fee	202.739.5353	jkfee@morganlewis.com
Michael F. Clayton	202.739.5215	mclayton@morganlewis.com
Ron N. Dreben	202.739.5213	rdreben@morganlewis.com
Anita B. Polott	202.739.5397	apolott@morganlewis.com
James R. Sims	202.739.5216	jsims@morganlewis.com

San Francisco

Rochelle D. Alpert	415.442.1326	ralpert@morganlewis.com
Carla Oakley	415.442.1301	coakley@morganlewis.com

About Morgan Lewis’s Intellectual Property Practice

Morgan Lewis’s Intellectual Property Practice consists of more than 150 intellectual property professionals. We represent and advise clients concerning all aspects of intellectual property: patents, trademarks, and copyrights; intellectual property litigation; intellectual property licensing; intellectual property enforcement programs; trade secret protection; related matters involving franchises, the Internet, advertising, and unfair competition; outsourcing and managed services; and the full range of intellectual property issues that arise in business transactions.

About Morgan, Lewis & Bockius LLP

With 23 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory

scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2010 Morgan, Lewis & Bockius LLP. All Rights Reserved.

