

The FTC Throws Shade at Influencer Bruhs Who Failed to Disclose Material Connections

September 11, 2017 – The TMCA

by Sandra Edelman



We blogged last week about the FTC's triple play against deceptive influencer advertising. In one prong of the initiative, the FTC announced that its staff had sent 21 follow-up warning letters to influencers, asking them to respond to the agency as to whether the influencers had material connections to the products or companies featured in specific posts. In a second part of the effort, the FTC issued a Decision and Order in In the Matter of CSGLotto, Inc., Trevor Martin and Thomas Cassell, an enforcement action involving online social media influencers

who failed to disclose their material connections to the company they were endorsing.

The facts in CSGLotto come under the heading of "what were they thinking"? Martin and Cassell, known on their popular YouTube channels as TmarTn and Syndicate, were the owners of GSGLOtto, a company that puts out Counter-Strike: Global Offensive (or CS:GO), an online shooter game in which players can earn "Skins" that can be bought, sold or traded for real money and used as virtual currency on certain online gambling sites, including CSGOLotto.com.

Now knowing that Martin and Cassell own CSGLotto, some of their posts touting CS:GO seem almost comical. In one, Martin says, "We found this new site called CSGLotto" and then goes on to say how great it is. Really? How hard is it to find a site that you own? And then Martin says, "I ended up like following them on Twitter and stuff" - again, how surprising! Cassell similarly promoted CSGLotto in videos that were seen more than 5 million times, bragging about his winnings: "Bruh ..I've won like \$8,000 worth of CS:GO Skins today on @CSGLotto. I cannot even believe it!"

Related Capabilities

- Trademark, Copyright + Advertising
- Intellectual Property Litigation

The FTC's own blog post about this matter spoke their language, saying "Well, Bruhs, while we're on the subject of things we cannot even believe, did either of you like consider clearly disclosing that you like owned the company- a material connection required under FTC law?"

The FTC also challenged how Martin and Cassell ran their own influencer program for CSGO Lotto, paying other gamers thousands of dollars in cash or Skins to post positive content about the game. The influencer contract barred the influencers from saying negative things about CSGO, but did not require them to disclose the payments in their social media posts.

Interestingly, the proposed Consent Order does not call for the payment of a monetary fine. But it does require the company and its owners to engage in a detailed and multi-step monitoring program with its influencers to make sure necessary disclosures of material connections are made. The Order also calls for ten years of compliance reporting to the FTC, along with required record keeping, an administrative obligation that will burden the company for the long term and will keep them in the agency's cross-hairs.

This enforcement action is surely a warning shot about deceptive influencer advertising campaigns, and the next victim of the FTC may not be so lucky in escaping a monetary penalty.

Stay tuned for The TMCA's post about the third part of the FTC's effort to crack down on deceptive influencer advertising: updated guidance for influencers and marketers in the FTC's Endorsement Guides, with more than 20 new questions relevant to this increasingly popular form of advertising and promotion on social media.