

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of)
)
LORD & TAYLOR, LLC)
a limited liability company.)
)
_____)

DOCKET NO. C-4576

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and, which if issued by the Commission, would charge the Respondent with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; and

The Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”) that includes: a statement that Respondent neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement; an admission by the Respondent of facts necessary to establish jurisdiction for the purposes of this action; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the Respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of 30 days, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Lord & Taylor, LLC is a New York limited liability company with its principal office or place of business at 424 Fifth Avenue, New York, NY, 10018.

2. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “Respondent” shall mean Lord & Taylor, LLC, a limited liability company, its successors and assigns, and its officers, agents, representatives, and employees.
2. “Clear(ly) and conspicuous(ly)” means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 - a. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
 - b. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 - c. An audible disclosure, including by streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 - d. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 - e. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
 - f. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices.
 - g. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

- h. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
3. “Close proximity” means that the disclosure is very near the triggering endorsement or representation. In an interactive electronic medium (such as a mobile app or other computer program), a visual disclosure that cannot be viewed at the same time and in the same viewable area as the triggering endorsement or representation, on the technology used by ordinary consumers, is not in close proximity. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering endorsement or representation. A disclosure made on a different printed page than the triggering endorsement or representation is not in close proximity.
4. “Commerce” means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. “Endorsement” means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.
6. “Endorser” means an individual or organization that provides an endorsement.
7. “Influencer Campaign” means any arrangement whereby, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, Respondent engages an endorser (also known as an Influencer) to create, publish, or otherwise disseminate an endorsement and the endorser has a material connection to Respondent, or any other person or entity acting on Respondent’s behalf.
8. “Material connection” means any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that an endorser of such product or service is an independent user or ordinary consumer of the product or service.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, by means of an endorsement of such product or service, shall clearly and conspicuously, and in close proximity to the representation, disclose a material connection, if one exists, between such endorser and Respondent.

III.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, shall not misrepresent, in any manner, expressly or by implication, that paid commercial advertising is a statement or opinion from an independent or objective publisher or source.

IV.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, by means of an endorsement by an endorser with a material connection to Respondent, shall take steps sufficient to ensure compliance with Parts I and II of this order. Such steps shall include, at a minimum:

- A. Providing each such endorser with a clear statement of his or her responsibility to disclose, clearly and conspicuously, in any print, radio, television, online, or digital advertisement or communication, including but not limited to Instagram or blog posts, the endorser's material connection to Respondent, and obtaining from each such endorser a signed and dated statement acknowledging receipt of that statement and expressly agreeing to comply with it;
- B. Establishing, implementing, and thereafter maintaining a system to monitor and review the representations and disclosures of endorsers, made as part of an Influencer Campaign, with material connections to Respondent to ensure compliance with Parts I and II of this order. The system shall include, at a minimum, monitoring and reviewing its endorsers' print, radio, television, online, or digital advertisements or communications made as part of an Influencer Campaign;
- C. Immediately terminating any endorser with a material connection to Respondent who Respondent reasonably concludes:
 1. Has misrepresented, in any manner, his or her independence and impartiality; or
 2. Has failed to disclose, clearly and conspicuously, and in close proximity to the representation, a material connection between such endorser and Respondent;

Provided, however, that Respondent may provide an endorser with one notice of a failure to disclose and an opportunity to cure the disclosure prior to terminating the endorser if Respondent reasonably concludes that the failure to disclose was inadvertent; Respondent shall inform any endorser to whom it has provided a notice of a failure to disclose a material connection that any subsequent failure to disclose will result in immediate termination; and

- D. Creating, and thereafter maintaining, reports sufficient to show the results of the monitoring required by subpart B of this Part of the order.

V.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation or endorsement covered by this order, maintain and upon reasonable notice make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation or endorsement;
- B. All contracts and written communications concerning or relating to the disclosures required by Part II of this order with any endorser engaged by Respondent, or any other person or entity acting on Respondent's behalf, to participate in any Influencer Campaign;
- C. Any documents that comprise or relate to complaints or inquiries related to the subject matter of this order, whether received directly, indirectly, or through any third party, that concern any endorsement made or disseminated by Respondent, or on behalf of Respondent, and any responses to those complaints or inquiries;
- D. Any documents reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to, all documents obtained, created, generated, or which in any way relate to the requirements, provisions, terms of this order, and all reports submitted to the Commission pursuant to this order;
- E. Any documents that contradict, qualify, or call into question Respondent's compliance with this order; and
- F. All acknowledgments of receipt of this order obtained pursuant to Part VI.

VI.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, and directors, and to all current and future managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each person a signed and dated statement acknowledging receipt of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or related entity that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, these reports shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The subject line must begin: *In re Lord & Taylor*.

VIII.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, within ninety (90) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission in writing, these reports shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The subject line must begin: *In re Lord & Taylor*.

IX.

This order will terminate on May 20, 2036, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years; and
- B. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: May 20, 2016