

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Warner Bros. Home Entertainment Inc., File No. 152 3034

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing consent order from Warner Bros. Home Entertainment Inc. (“Warner Bros.” or “respondent”). The proposed consent order (“proposed order”) has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves respondent’s use of social media influencers to advertise the video game, *Middle Earth: Shadow of Mordor* (“*Shadow of Mordor*”). According to the Commission’s complaint, Warner Bros., through its ad agency, Plaid Social Labs, LLC, hired individuals who had earned reputations as video game enthusiasts on YouTube (“YouTube influencers”) to post positive videos promoting *Shadow of Mordor* on YouTube. The Commission’s complaint alleges that these YouTube influencers were given free access to a pre-release version of *Shadow of Mordor* and cash payments often ranging from hundreds of dollars to tens of thousands of dollars, if the videos they created about *Shadow of Mordor* met certain requirements defined by Warner Bros. Among other things, Warner Bros. required influencer videos to promote a positive sentiment about the game, and not to disclose any bugs or glitches that the game might have. Consequently, these videos were sponsored advertisements, and did not necessarily reflect the independent experiences of the individual YouTube influencers.

The complaint also alleges that while Warner Bros. instructed the YouTube influencers to provide a disclosure that their videos had been sponsored, it specified that the disclosure be written, and placed in the description box appearing below the YouTube videos. Warner Bros. did not require the YouTube influencers to place a sponsorship disclosure clearly and conspicuously in the video itself. Nor did Warner Bros. require that the YouTube influencers be instructed to place the sponsorship disclosure “above the fold” in the description box, or visible without consumers having to scroll down or click on a link, as it had for other promotional information about *Shadow of Mordor*. (See, e.g., Exhibit A-1) As a result, most YouTube influencers did not include any sponsorship disclosures in their videos, and only placed their sponsorship disclosures “below the fold” in the description box below the video. Therefore, consumers had to click on a “Show More” button in the description box and potentially scroll down before they could see the sponsorship disclosure. As a result, consumers who watched these YouTube videos were unlikely to learn that the videos were paid promotions for Warner Bros.

The Commission’s complaint further alleges that when YouTube influencers posted their *Shadow of Mordor* videos for viewing on Facebook or Twitter, consumers were even less likely to see these sponsorship disclosures because such posts did not include the “Show More” button. In addition, the complaint states that on at least two

occasions, the influencers disclosed only that they had been given early access to the game, and did not adequately disclose that they had also been paid to post the video.

According to the complaint, in numerous instances, YouTube influencers did not disclose or adequately disclose that Warner Bros., through Plaid Social, offered compensation to the influencers in exchange for creating and uploading gameplay videos as part of a *Shadow of Mordor* advertising campaign. The Commission's complaint alleges that these videos were false and misleading because they did not reflect the independent opinions or experiences of impartial video game enthusiasts. The complaint further alleges that the videos were deceptive because they failed to disclose or disclose adequately that the influencers who posted the videos were compensated in connection with their endorsements.

The proposed order includes injunctive relief to address these alleged violations and requires Warner Bros. to follow certain monitoring and compliance procedures related to its use of influencer campaigns.

Part I of the proposed order prohibits Warner Bros., in connection with the advertising of any home entertainment product or service, from misrepresenting in any influencer campaign that an influencer or endorser of such product or service is an independent user or ordinary consumer of the product or service.

Part II of the proposed order requires Warner Bros., in connection with the advertising of any home entertainment product or service by means of an endorsement, in any influencer campaign, to disclose clearly and conspicuously a material connection, if one exists, between the influencer or endorser and Warner Bros.

Part III of the proposed order sets out certain monitoring and compliance obligations to ensure that Warner Bros., or any entity it engages to conduct an influencer campaign, comply with Parts I and II of the proposed order. These obligations include: Obtaining signed acknowledgements from such influencers that they will disclose their material connection to Warner Bros.; monitoring the influencers' representations and disclosures; maintaining records of monitoring efforts; and, under certain circumstances, terminating and ceasing payment to influencers who misrepresent their independence, or fail to properly disclose any material connection to Warner Bros. Part III specifically provides that if Warner Bros. engages an entity to conduct an influencer campaign, Warner Bros. must take steps to ensure that the entity complies with this Part, and to monitor its compliance. If the entity fails to comply with this Part, Warner Bros. must cease payment to the entity until it cures any noncompliance. Furthermore, Warner Bros. is required to disqualify the entity from conducting future influencer campaigns upon a repeat incident, unless it reasonably concludes that the entity's failure to comply was inadvertent.

Part IV of the proposed order contains recordkeeping requirements for relevant documents.

Parts V through VII of the proposed order require the company to: Provide copies of the order to certain personnel having responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part VIII of the proposed order provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.