

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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

**In the Matter of**

**WARNER BROS. HOME  
ENTERTAINMENT INC.,  
a corporation.**

**Docket No.**

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Warner Bros. Home Entertainment Inc., a corporation (“respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Warner Bros. Home Entertainment Inc. (“WBHE”) is a Delaware corporation with its principal office or place of business at 4000 Warner Blvd., Burbank, California 91522. Warner Bros. Interactive Entertainment (“WBIE”) is a division of WBHE.
2. The acts and practices of respondent, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
3. Respondent produces and distributes home entertainment content to consumers. Respondent, through its division, WBIE, has manufactured, advertised, labeled, offered for sale, sold, and distributed interactive entertainment for consumers, including but not limited to the video game title, *Middle Earth: Shadow of Mordor* (“*Shadow of Mordor*”). WBIE is a major worldwide publisher and distributor of video game titles.
4. In 2014, respondent hired an advertising agency, Plaid Social Labs, LLC (“Plaid Social”), to coordinate a “YouTube Influencer Campaign” for its soon-to-be-released video game, *Shadow of Mordor*. Through the YouTube Influencer Campaign, respondent intended to maximize consumer awareness of the game when it became available for sale and to persuade consumers to purchase it.
5. Respondent, through Plaid Social, hired individuals who had earned reputations as video game enthusiasts on YouTube (“YouTube influencers”) to post positive videos promoting *Shadow of Mordor* on YouTube. 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, provided that the videos they created about *Shadow of Mordor* met certain requirements defined by respondent. These requirements were communicated to the YouTube influencers through Plaid Social.

6. In respondent's contract with Plaid Social, any work performed on behalf of respondent is respondent's property, or "work made for hire," and respondent is the "the sole owner of all rights in and to the [w]ork of every kind and character whatsoever in perpetuity and throughout the universe." Similarly, the influencers agreed that respondent "will be deemed the author and exclusive owner" of any work arranged for by Plaid Social on behalf of the respondent.

7. Respondent, through Plaid Social, required that each influencer's video meet the following requirements:

- Video will feature gameplay of the [*Shadow of Mordor* video game]
- Video will have a strong verbal call-to-action to click the link in the description box for the viewer to go to the [game's] website to learn more about the [game], to learn how they can register, and to learn how to play the game.
- . . . .
- Video will promote positive sentiment about the [game].
- Video will not show bugs or glitches that may exist.
- . . . .
- Video will not communicate negative sentiment about WBIE, its affiliates or the [game].
- One Facebook post or one Tweet by Influencer in support of Video.

Consequently, these videos are sponsored advertisements, and do not necessarily reflect the independent experiences of the individual YouTube Influencers.

8. Respondent also required that the YouTube influencers be instructed to place specified information in the written text or "description box" that typically appears underneath the portion of the web page where a consumer can view a YouTube video. For example:

- Description box will contain information about the [game] above the fold.
- . . . .
- Description box will include FTC disclaimer disclosing that the post is sponsored.

9. As described in Paragraph 8, respondent, through Plaid Social, instructed the YouTube influencers to provide a written disclosure that their videos had been sponsored ("FTC disclaimer"), and to place this disclosure in the description box appearing below the YouTube videos. Respondent did not require that the YouTube influencers be instructed to place a sponsorship disclosure clearly and conspicuously in the video itself. Nor did respondent 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 information about *Shadow of Mordor*. (See, e.g., Exhibit A-1) Accordingly, the vast majority of YouTube influencers did not include any sponsorship disclosure in their videos and only placed their sponsorship disclosures “below the fold” in the description box below the video. Therefore, consumers have to click on a “Show More” button in the description box and potentially scroll down before they can see the sponsorship disclosure. (See, e.g., Exhibits A-1, A-2; Exhibits B-1, B-2) As a result, consumers who watched these YouTube videos were unlikely to learn that the videos were paid promotions.

10. Respondent, through Plaid Social, required the YouTube influencers to promote their videos on Twitter or Facebook. When the influencers posted these videos for consumers to view on Twitter or Facebook, however, consumers were even less likely to see the required sponsorship disclosures because such posts did not include the Show More button. (See, e.g., Exhibit C).

11. On at least two occasions, the YouTube 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. (See, e.g., Exhibit D-1, D-2) For example, one influencer’s disclosure states: “This has been one of my favorite sponsored games, so thanks that I could play it for free!!” (See Exhibit D-1) This statement implies that the only compensation this YouTube influencer received was free access to the *Shadow of Mordor* video game. In fact, this YouTube influencer also received monetary compensation of thousands of dollars in return for his positive gameplay video and social media postings about *Shadow of Mordor*.

12. By contract, influencers’ videos were subject to pre-approval by respondent and/or Plaid Social to ensure that they conformed with respondent’s requirements. On at least one occasion, respondent reviewed and approved an influencer video with an inadequate sponsorship disclosure before it was made public. On this occasion, respondent did not require the influencer or Plaid Social to move the sponsorship disclosure.

13. Prior to and immediately after the public release of *Shadow of Mordor* on September 30, 2014, the YouTube influencers commissioned for the *Shadow of Mordor* YouTube Influencer Campaign posted approximately thirty gameplay videos on YouTube. These videos were viewed over 5.5 million times by consumers, and were publicly available for over a year.

### **Count I False Claim of Independent Reviews**

14. Through the means described in Paragraphs 4 through 13, respondent has represented, directly or indirectly, expressly or by implication, that gameplay videos of *Shadow of Mordor* produced and disseminated in connection with the YouTube Influencer Campaign reflect the independent opinions or experiences of impartial video game enthusiasts.

15. In truth and in fact, these gameplay videos of *Shadow of Mordor* do not reflect the independent opinions or experiences of impartial video game enthusiasts. The YouTube influencers were paid by respondent to create the videos as part of respondent’s advertising

campaign to promote sales of the game. Therefore, the representation set forth in Paragraph 14 was, and is, false and misleading.

### **Count II**

#### **Deceptive Failure to Disclose Material Connection Between Endorsers and Seller**

16. Through the means described in Paragraphs 4 through 13, respondent has represented, directly or indirectly, expressly or by implication, that favorable gameplay videos for *Shadow of Mordor* reflect the opinions or experiences of individuals who had played *Shadow of Mordor*. In numerous instances, respondent has failed to disclose or disclose adequately that these individuals received compensation, including both a free game and monetary payment, to produce and disseminate the videos. This fact would be material to consumers in their decision to purchase *Shadow of Mordor*. The failure to disclose or disclose adequately this fact, in light of the representations made, was, and is, a deceptive practice.

#### **Violations of Section 5**

17. The acts and practices of respondent as alleged in this Complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this \_\_\_ day of \_\_\_\_, 2016, has issued this Complaint against respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL: