UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of	**DOCKET NO. C-4595**
WARNER BROS. HOME ENTERTAINMENT INC., a corporation.	**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 of a complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violations of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("consent agreement"), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 had 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 agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Warner Bros. Home Entertainment Inc. is a Delaware corporation with its principal office or place of business at 4000 Warner Blvd., Burbank, California 91522.

2. The Federal Trade 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" means Warner Bros. Home Entertainment Inc., its successors and assigns, and its officers, agents, representatives, and employees.

2. "Clearly and Conspicuously" 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, such as a television advertisement, 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 telephone or 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 but not limited to all electronic devices and face-to-face communications.

   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. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. "Endorsement" means any advertising message (including but not limited to 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.

5. "Endorser" or "Influencer" means an individual or organization that provides an Endorsement.

6. "Home Entertainment Product or Service" means any video game product or service for any platform, including but not limited to video game consoles, handheld or mobile devices, and personal computers.

7. "Influencer Campaign" means any arrangement whereby, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, an Influencer creates, publishes, or otherwise disseminates an Endorsement for which the Influencer is to receive compensation from either Respondent or anyone else that Respondent engages to conduct such campaign.

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, trade name, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Home Entertainment Product or Service, in or affecting commerce, shall not in any Influencer Campaign misrepresent, in any manner, expressly or by implication, that an Influencer 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 Home Entertainment Product or Service, in or affecting commerce, by means of an Endorsement of such product or service, shall in any Influencer Campaign Clearly and Conspicuously disclose a Material Connection, if one exists, between the Influencer and Respondent.

III.

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 Home Entertainment Product or Service, in or affecting commerce, shall: (i) in any Influencer Campaign it conducts directly, take steps sufficient to ensure that its Influencer Campaigns comply with Parts I and II of this order; and (ii) require that any entity that Respondent engages to conduct an Influencer Campaign take steps sufficient to ensure that its Influencer Campaigns comply with Parts I and II of this order. Such steps shall include, at a minimum:

A. Providing each Influencer with a statement of his or her responsibility to disclose Clearly and Conspicuously, in any online video, social media posting, or other communication for which the Influencer is to receive compensation, the Influencer's Material Connection to Respondent. Respondent or the entity conducting the campaign shall obtain from each Influencer a signed and dated acknowledgment that the Influencer has received the statement and expressly agrees to comply with it;

B. Establishing, implementing, and thereafter maintaining a system to monitor and review the representations and disclosures of Influencers 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 the Influencers' online videos, social media postings, or other digital advertisements or communications made as part of the Influencer Campaign;

C. Immediately terminating and ceasing payment to any Influencer 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 Influencer and Respondent.

   Provided, however, that Respondent may provide an Influencer with notice of failure to disclose and an opportunity to cure the disclosure prior to terminating the Influencer if Respondent reasonably concludes that the failure to disclose was inadvertent. Respondent shall inform any Influencer 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;

D. Directing the entity conducting the campaign to immediately terminate and cease payment to any Influencer with a Material Connection to Respondent who the entity conducting the campaign 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 Influencer and Respondent.

Provided, *however*, that Respondent may allow the entity conducting the campaign to provide an Influencer with notice of failure to disclose and an opportunity to cure the disclosure prior to terminating the Influencer if the entity conducting the campaign reasonably concludes that the failure to disclose was inadvertent. The entity conducting the campaign shall inform any Influencer 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;

E. Establishing, implementing, and thereafter maintaining a system for Respondent to monitor any entity that Respondent engages to conduct an Influencer Campaign for adherence to this Part of the order. If Respondent reasonably concludes that the entity engaged to conduct the Influencer Campaign has failed to comply with this Part of the order, Respondent shall immediately suspend payment to the entity, unless and until any noncompliance has been cured. Respondent shall disqualify the entity from conducting future Influencer Campaigns for Respondent upon a repeat incident unless Respondent reasonably concludes that the noncompliance was inadvertent; and

F. Creating, and thereafter maintaining, reports showing the results of the monitoring required by subparts B and E of this Part of the order.

IV.

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

A. Any documents that:

1) Are reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to documents obtained, created, or generated, or which relate to, the requirements, provisions, or terms of this order, and all reports submitted to the Commission pursuant to this order;

2) Contradict, qualify, or call into question Respondent's compliance with this order; or

3) Comprise or relate to complaints or inquiries, whether received directly, indirectly, or through any third party, concerning any Endorsement made by Respondent, and any responses to those complaints or inquiries; and

B. All acknowledgments of receipt of this order obtained pursuant to Part V.

V.

IT IS FURTHER ORDERED that, for five (5) years, Respondent and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to 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.

VI.

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 a 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 affiliate 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, all notices required by this Part 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, DC 20580. The subject line must begin: In re Warner Bros. Home Entertainment Inc.

VII.

IT IS FURTHER ORDERED that Respondent and its successors and assigns, within sixty (60) 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 own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

VIII.

This order will terminate on November 17, 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;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. 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 the 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: November 17, 2016