



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
NORTHWEST REGION

Charles A. Harwood
Regional Director

August 26, 2015

Yaron Dori, Esq.
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004
Counsel for Microsoft Corporation

Amy R. Mudge, Esq.
Venable LLP
575 Seventh Street, NW
Washington, DC 20005
Counsel for Starcom MediaVest Group

Re: FTC File No. 142-3090 (Microsoft/Starcom)

Dear Counsel:

As you know, the staff of the Federal Trade Commission's Northwest Region has conducted an investigation into whether Microsoft Corporation and its advertising agency, Starcom MediaVest Group ("Starcom"), violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in connection with the promotion of Xbox One video game consoles and certain Microsoft video game titles.

Our inquiry focused on an advertising campaign conducted by Machinima, Inc., in late 2013 at the request of Starcom, acting on behalf of Microsoft. As part of that advertising campaign, Machinima, a multi-channel network on YouTube, paid several of its network partners (video bloggers known as "influencers") significant amounts of money to produce and upload Xbox One game play videos. The videos, which were posted to YouTube in the days immediately prior to and after the launch of the Xbox One, were intended to generate buzz around and drive sales of the newly released Xbox One and the Microsoft video game titles.

At Machinima's direction, the influencers spoke favorably of the Xbox One and the game titles in their videos. The videos were uploaded by the influencers to their individual YouTube channels, where they appeared to be independently produced by, and to reflect the personal views of, the influencers. Machinima did not require the influencers to disclose in their videos that they were being compensated for producing and uploading the videos, and when the videos were uploaded, many (if not most) of the influencers failed to make any kind of disclosure.

Section 5 of the FTC Act requires the disclosure of a material connection between an advertiser and an endorser when such a relationship is not apparent from the context of the communication that contains the endorsement. In this case, the payment of significant sums to video bloggers to post specific content promoting the Xbox One and Microsoft's game titles is a material connection that would not be reasonably expected by YouTube viewers. As the advertiser, Microsoft bears responsibility for the influencers' failure to disclose such material connections. Starcom, as Microsoft's agent and the advertising agency that managed the relationship with Machinima, also bears responsibility for the influencers' failure to disclose.

However, upon careful review of this matter, including nonpublic information submitted to the FTC, we have determined not to recommend enforcement action against Microsoft or Starcom at this time. We considered several factors in reaching this decision.

The failures to disclose here appear to be isolated incidents that occurred in spite of, and not in the absence of, policies and procedures designed to prevent such lapses. Microsoft had a robust compliance program in place when the Xbox One campaign was launched, including specific legal and marketing guidelines concerning the FTC's Endorsement Guides, 16 C.F.R. Part 255, and relevant training made available to employees, vendors, and Starcom personnel. Since the Xbox One campaign, Microsoft and Starcom have adopted additional safeguards regarding sponsored endorsements, and they have committed to, among other steps, specifically requiring their employees to monitor influencer campaigns conducted by subcontractors in the future. In addition, Microsoft and Starcom took swift action to require that Machinima insert disclosures into the campaign videos once they learned that Machinima had paid the influencers and that no disclosures had been made.

Our decision not to pursue enforcement action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take further action as the public interest may warrant.

Very truly yours,

Charles Harwood /RM

Charles A. Harwood
Regional Director