Blogs

On October 21, 2019, the Federal Trade Commission (FTC) announced that it had settled two cases regarding alleged fake indicators of social media influence and fake product reviews.

In the first action, the FTC alleged that Devumi, LLC and its CEO had "sold fake indicators of social media influence, including fake followers, subscribers, views, and likes, to users of different social media platforms, including LinkedIn, Twitter, YouTube, Pinterest, Vine, and SoundCloud." These fake indicators were designed to make the influencers more attractive to businesses and individuals hiring the influencers or making purchase decisions related to the influencers (e.g., the more followers or engagement associated with the influencer, the higher fees a business might pay to engage them or more value consumers might give their opinion). This is the first time the FTC has enforced against the sale of fake indicators of social media influence and further signals that the FTC is working to reduce deception across many aspects of influencer activities. Significantly, the

FTC's settlement included both $2.5 million in monetary relief and injunctive relief, such as prohibiting the defendants from selling or assisting in the sale of "indicators of social medial influence." In a second action, the FTC alleged that skincare company Sunday Riley Modern Skincare LLC had repeatedly posted reviews of its products on a beauty store website using fake accounts and had set up fake personas and a virtual private network (VPN) to drive sales of the products with false and misleading claims and no disclosures that the reviews were written by employees of the skincare company itself. The FTC's consent order included injunctive relief, but no monetary damages. Two commissioners dissented from the initial authorization of the proposed settlement and emphasized in a written statement that "going forward, the FTC should seek monetary consequences for fake review fraud, even if the exact level of ill-gotten gains is difficult to measure." This dissent suggests that there might be a growing appetite at the FTC (at least among certain commissioners) to more aggressively seek monetary relief in cases involving fake reviews. **Key Takeaways:**

- The FTC continues to monitor social media influencer activities and company review programs.
- Consumers value the opinions of influencers and the FTC's first-ever complaint related to these tactics demonstrates that companies should not sell or attempt to deceptively manipulate indicators of social media influence that would mislead consumers about the relative popularity of an influencer (e.g., by falsely inflating the metrics that businesses use to evaluate the influencer).
- All reviews must be truthful and reflect the honest and sincere beliefs of actual consumers (*not* company employees or owners) - and a failure to comply could result in FTC enforcement (including potential monetary consequences).

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