



Alert

Consumer Protection Group

To: Our Clients and Friends

March 23, 2011

FTC Settlement Strikes Chord with Affiliate Advertising Programs

On March 15, 2011, the Federal Trade Commission (“FTC”) announced a \$250,000 settlement with a Nashville-based company that sells instructional DVDs. The complaint alleges that Legacy Learning Systems (“Legacy”) failed to monitor members of its affiliates program who endorsed Legacy’s “Learn and Master Guitar” DVD program on their websites and blogs but did not disclose their financial connection with Legacy. In addition to the fine, Legacy must also take steps to ensure that its affiliate advertising program complies with FTC regulations.

Affiliate advertising programs, like the one used by Legacy, work by generating endorsements of products through reviews in blog postings, website articles, and other online materials. These endorsements are positioned near links to the products’ website with the hope that consumers will read the endorsement and then click on the link to purchase the product. The endorser is paid with a commission for each of these “click through” purchases, with free items from the seller, or with a monthly payment plan. Affiliate advertising programs run into trouble when the financial connection between the endorser and the seller are not adequately disclosed to consumers.

The complaint alleges that members of Legacy’s affiliate program failed to disclose their connection to Legacy by failing to make any type of disclosure or by providing disclosures “only through inconspicuous hyperlinks located at the bottom of the home pages” of the affiliate. To remedy these violations, the settlement provides what the FTC views as best practices when engaging in affiliate advertising:

- Disclosing the connection between affiliates and the seller in a clear and prominent way,
- Monitoring affiliates’ content to ensure that it complies with FTC regulations, and
- Terminating affiliates that violate FTC regulations.

Affiliate advertising programs, and other forms of endorsement based advertising, can be a good way to stretch advertising budgets. But care must be taken to comply with FTC regulations, or all of the savings can disappear quickly after a call from the FTC.

If you would like further information on how to comply with the guidelines on the use of endorsements and testimonials in advertising, or on the FTC’s recent enforcement action, feel free to contact [Josh James](#) or [David Zetoony](#) in Washington D.C., at 202-508-6000; [Rebecca Nelson](#) in St. Louis, at 314-259-2000; or [Andrew Klungness](#) in Santa Monica, at 310-576-2100.

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