

## Disclosure Required

### Recent Federal Trade Commission Action Against Social Media Influencers



Influencer marketing is a form of marketing in which focus is placed on influential people rather than the target market as a whole. It identifies individuals that have influence over potential consumers, and focuses marketing activities around these influencers. Influencer marketing on social media is a booming business and in some sectors more prominent than traditional advertising mediums. Brands team up with individuals with large and engaged followings on social media platforms such as YouTube, Facebook, Twitter and Instagram and pay them to promote their products. Many influencers, as well as the businesses that engage them, are unaware of recent focus of certain regulatory bodies on preventing improper use of influencer mediums in the advertising of products and services for a brand.

Recently, the Federal Trade Commission settled a complaint against Trevor Martin and Thomas Cassell, known on their YouTube channels as TmarTn and Syndicate, who were accused of deceptively endorsing the online gambling site "CSGO Lotto" without disclosing to their viewers that they in fact owned and held senior positions in the same company they were promoting.

In 2015, Martin, aka TmarTn, posted a video touting CSGO Lotto:

*"We found this new site called CSGO Lotto, so I'll link it down in the description if you guys want to check it out. But we were betting on it today and I won a pot of like \$69 or something like that so it was a pretty small pot but it was like the coolest feeling ever. And I ended up like following them on Twitter and stuff and they hit me up. And they're like talking to me about potentially doing like a skins sponsorship like they'll give me skins to be able to bet on the site and stuff. And I've been like considering doing it."*

Martin followed up with more videos on his YouTube channel showing him gambling on the CSGO Lotto site. In addition, he tweeted things like *"Made \$13K in about 5 minutes on CSGO betting. Absolutely insane"* and posted on Instagram *"Unreal!! Won two back to back CSGOLotto games today on stream – \$13,000 in total winnings."*

Cassell, aka Syndicate, promoted CSGO Lotto in a comparable manner, posting videos that were viewed more than five million times. In addition, he tweeted a screen shot of himself winning a betting pool worth over \$4,000 with the caption *"Not a bad way to start the day!"* According to another tweet, *"I lied . . . I didn't turn \$200 into \$4,000 on @CSGOLotto. . . I turned it into \$6,000!!!!"*

The FTC complaint also challenged how the Martin and Cassell ran their own influencer program for CSGO Lotto. They paid other gamers between \$2,500 and \$55,000 to make undisclosed posts in their social media circles about their experiences in using the CSGO Lotto site. These other gamers posted on YouTube, Twitch, Twitter, and Facebook, often attesting to winnings worth thousands of dollars.

According to the FTC, Cassell, Martin, and CSGOLotto, Inc. falsely claimed that their videos and social media posts, as well as the videos and posts of the influencers they payed, reflected the honest independent opinions of impartial users, as required by U.S advertising law. The complaint also charged that the respondents failed to disclose the material connection they had to CSGO, and the connection their paid influencers had. The proposed settlement requires Cassell, Martin, and CSGOLotto to conspicuously make those disclosures in the future.

Prior to filing the complaint against Cassell and Martin, in April 2017 the FTC sent more than ninety letters to influencers and brands, reminding them that, if influencers are endorsing a brand and have a "material connection" to the marketer, that relationship must be clearly disclosed, unless the connection is already clear from the context of the endorsement. Twenty One of the influencers who received the first letter recently received a follow-up warning notice, citing specific social media posts the FTC staff is concerned may not be in compliance with the FTC's Endorsement Guides.

The FTC recently issued an updated version of The FTC's Endorsement Guides: What People are Asking, a staff guidance document that answers frequently asked questions regarding endorsement marketing. The updated version includes questions and answers addressing specific questions social

media influencers and marketers may have about whether and how to disclose material connections in their posts.

The new information covers a range of topics, including tags in pictures, Instagram disclosures, Snapchat disclosures, obligations of foreign influencers, disclosure of free travel, whether a disclosure must be at the beginning of a post, and the adequacy of certain disclosures.

The Endorsement Guides, at their core, reflect the basic advertising principle that endorsements must be authentic and not misleading. An endorsement must reflect the honest opinion of the endorser and can't be used to make a claim that the product's marketer couldn't legally make. Another principle in the Guides applies to ads that feature endorsements from people who achieved exceptional results. The advertiser must make clear to the audience what the generally expected results are.

The FTC's Endorsement Guidelines state that if there is any "material connection" between an endorser and the marketer of a product – in other words, a connection that might affect the weight or credibility that consumers give the endorsement, that connection must be conspicuously disclosed, unless the connection is already clear from the context of the communication containing the endorsement. Material connections could consist of a business or family relationship, the receipt of monetary payment, or the provision of free or discounted products to the endorser.

The regulation of the endorsement of products and services on social media is emerging and evolving. We are in the infancy of a new multi-billion dollar online industry, and the FTC is working to create proper policy and regulations that balance the interests of brands and influencers, while protecting the public from insincere advertising methods. Both influencers and the brands they are promoting should take caution to make full disclosure as required by the FTC and other federal and state regulatory bodies.

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