

Complaint

IN THE MATTER OF

**REVERB COMMUNICATIONS, INC. AND
TRACIE SNITKER**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4310; File No. 092 3199**Complaint, November 22, 2010 — Decision, November 22, 2010*

The consent order addresses allegations that Reverb Communications and its sole owner, Tracie Snitker, (collectively “Respondents”) engaged in deceptive advertising by having employees pose as ordinary consumers and post video game reviews on iTunes, while failing to disclose that Respondents were hired to provide the reviews or that they often received a percentage of the sales. The consent order requires Respondents to remove all reviews that misrepresent the authors as independent users or ordinary consumers, and that fail to disclose a connection between Respondents and the seller of a product or service. The consent order also prohibits Respondents from misrepresenting that the user or endorser is an independent, ordinary consumer, and from making any claims about a product or service unless they disclose any relevant connections that they have with the seller of the product or service.

Participants

For the *Commission*: Victor DeFrancis and Stacey Ferguson.

For the *Respondents*: Trevor J. Zink, Omni Law Group, LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Reverb Communications Inc., a corporation, and Tracie Snitker, an officer and director of the corporation (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Reverb Communications, Inc. (“Reverb”) is a California corporation with its principal office or place of business at 18711 Tiffeni Drive, Twain Harte, CA 95383.

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2. Respondent Tracie Snitker is the 100% owner and the only officer and director of Reverb. At all times relevant to this complaint, Tracie Snitker, individually or in concert with others, formulated, directed, controlled, or participated in the acts or practices of the corporation, including the acts or practices alleged in this complaint.

3. The acts and practices of respondents, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. Reverb provides sales, marketing, and public relations services to clients, including clients that develop gaming applications offered for sale to consumers via the iTunes store, an electronic retail platform operated by Apple Inc. Reverb’s fee often includes a percentage of the sales of its clients’ gaming applications.

5. The iTunes store allows users to publicly review gaming applications available for purchase via the iTunes store. Such reviews are accomplished by means of a rating (of between one and five stars) and also written commentary. Readers of these reviews have the opportunity to confirm on the site whether or not they found them useful.

6. From approximately November 2008 through May 2009, Reverb employees, including individual Respondent Tracie Snitker, and company managers, posted public reviews about Reverb’s clients’ gaming applications in the iTunes store. These reviews were posted using account names that would give the readers of these reviews the impression they had been submitted by disinterested consumers.

7. In these reviews, Reverb employees endorsed the products by consistently giving Reverb’s clients’ gaming applications four and five star ratings. Reverb employees also submitted positive written comments, including but not limited to the following examples:

“Amazing new game”

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“ONE of the BEST”

“[Developer of gaming application being reviewed] hits another home run with [gaming application being reviewed]”

“Really Cool Game”

“GREAT, family-friendly board game app”

“One of the best apps just got better” and

“[Developer of gaming application being reviewed] does it again!”

8. Through the means described in Paragraphs 5-7, respondents have represented, expressly or by implication, that reviews of certain gaming applications were independent reviews reflecting the views of ordinary consumers.

9. In truth and in fact, the reviews for those gaming applications were not independent reviews reflecting the views of ordinary consumers. The reviews were created by employees of Reverb, a company hired to promote the gaming applications and often paid a percentage of the applications’ sales. Therefore, the representation set forth in Paragraph 8 was, and is, false and misleading.

10. Through the means described in Paragraphs 5-7, respondents have represented, expressly or by implication, that reviews for certain gaming applications reflected endorsements from persons who had used those gaming applications. Respondents failed to disclose that those reviews were written by employees of Reverb, a company hired to promote the gaming applications and often paid a percentage of the applications’ sales. These facts would have been material to consumers in their purchasing decision regarding the gaming applications. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

11. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or

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affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twenty-second day of November, 2010, has issued this Complaint against respondents.

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act, 15 U.S.C § 45 *et seq.*; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said consent agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in the complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 has reason to believe that the respondents have 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 consent agreement on the public record for a

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period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Reverb Communications, Inc. (“Reverb”) is a California corporation with its principal office or place of business at 18711 Tiffeni Drive, Twain Harte, CA 95383.
2. Respondent Tracie Snitker is the 100% owner and the only officer and director of Reverb. At all times relevant to this complaint, Tracie Snitker, individually or in concert with others, formulated, directed, controlled, or participated in the acts or practices of the corporation, including the acts or practices alleged in this complaint.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “respondents” shall mean Reverb Communications, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees; and Tracie Snitker, individually, and as an officer and director of Reverb.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. “Material connection” shall mean any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.

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4. “Endorsement” shall mean as defined in the Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255.0.
5. “Clearly and prominently” shall mean:
 - a. In textual communications (e.g., printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;
 - b. In communications disseminated orally or through audible means (e.g., radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - c. In communications disseminated through video means (e.g., television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication;
 - d. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them; and
 - e. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to, inconsistent

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with, or in mitigation of the disclosures used in any communication of them.

6. The term “including” in this order shall mean “without limitation.”
7. The terms “and” and “or” in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the status of any user or endorser of a product or service, including, but not limited to, misrepresenting that the user or endorser is an independent user or ordinary consumer of the product or service.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about any user or endorser of such product or service unless they disclose, clearly and prominently, a material connection, when one exists, between such user or endorser and the respondents or any other individual or entity manufacturing, advertising, labeling, promoting, offering for sale, selling, or distributing such product or service.

III.

IT IS FURTHER ORDERED that respondents shall, within seven (7) days of the date of service of this order, take all

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reasonable steps to remove any product review or endorsement, currently viewable by the public, that does not comply with Parts I and II of this order.

IV.

IT IS FURTHER ORDERED that respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable notice make available to the Federal Trade Commission for inspection and copying, any documents, whether prepared by or on behalf of respondents, that:

- A. Comprise or relate to complaints or inquiries, whether received directly, indirectly, or through any third party, concerning any endorsement made by respondents, and any responses to those complaints or inquiries;
- B. Are reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to, all documents obtained, created, generated, or which in any way relate to the requirements, provisions, terms of this order, and all reports submitted to the Commission pursuant to this order;
- C. Contradict, qualify, or call into question respondents' compliance with this order; and
- D. Are acknowledgments of receipt of this order obtained pursuant to Part V.

V.

IT IS FURTHER ORDERED that respondent Reverb Communications, Inc., its successors and assigns, and respondent Tracie Snitker shall deliver a copy of this order 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 person a signed and dated statement acknowledging receipt of this order. For current personnel,

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delivery shall be within five (5) days of the date of service of this order. For new personnel, delivery shall occur prior to their first assuming their responsibilities.

VI.

IT IS FURTHER ORDERED that respondent Reverb Communications, Inc., 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, 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 respondents learn less than thirty (30) days prior to the date such action is to take place, the respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line In the Matter of Reverb Communications, Inc. *Provided, however,* that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

VII.

IT IS FURTHER ORDERED that respondent Tracie Snitker, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of her current business or employment, or of her affiliation with any new business or employment. The notice shall include respondent Snitker's new business address and telephone number and a description of the nature of the business or employment and her duties and responsibilities. Unless otherwise directed by a representative of the Commission, all notices required by this Part

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shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line In the Matter of Reverb Communications, Inc. *Provided, however*, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

VIII.

IT IS FURTHER ORDERED that respondent Reverb Communications, Inc., its successors and assigns, and respondent Tracie Snitker, within sixty (60) days after the date of service of this order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which they have complied 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.

IX.

This order will terminate on November 22, 2030, 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 proposed 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.

Analysis to Aid Public Comment

Provided, further, that if such complaint is dismissed or a federal court rules that respondents 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.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Reverb Communications, Inc. and Tracie Snitker, 100% owner and the only officer and director of the corporation (“respondents”).

The proposed consent order (“proposed order”) has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves the public relations, marketing, and sales services that respondents provided to companies that developed video game applications. The Commission’s complaint alleges that, from November 2008 through May 2009, respondents’ employees, posing as ordinary consumers, posted positive product reviews online for their clients’ gaming applications. These postings did not disclose the compensated nature of the

Analysis to Aid Public Comment

relationship between the reviewers and the publishers of the gaming applications. The complaint alleges that the respondents violated Section 5 by misrepresenting that reviews of certain gaming applications were those of independent, ordinary consumers. The complaint further alleges that the respondents violated Section 5 by failing to disclose the material connections between the product reviewers and the sellers of the reviewed products.

Part I of the proposed order prohibits the respondents, in connection with the advertising of any product or service, from misrepresenting their status as independent users or ordinary consumers of that product or service.

Part II prohibits the respondents from making any representation about any user or endorser of a product or service unless they disclose, clearly and prominently, a material connection, when one exists, between the user or endorser of the product or service and any other party involved in promoting that product or service. The proposed order defines “material connection” as any relationship that materially affects the weight or credibility of any endorsement and would not be reasonably expected by consumers.

Part III requires the respondents to take all reasonable steps to remove, with seven days of service of the order, any previously posted endorsements that do not comply with Parts I and II of the order.

Parts IV through IX of the proposed order require respondents: to keep copies of relevant consumer complaints and inquiries, documents demonstrating order compliance, and any documents relating to any representation covered by this order; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; to notify the Commission of changes in corporate business or employment as to proposed respondent Tracie Snitker individually; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years, with certain exceptions.

Analysis to Aid Public Comment

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

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IN THE MATTER OF

MINNESOTA RURAL HEALTH COOPERATIVECONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4311; File No. 051 0199**Complaint, December 28, 2010 — Decision, December 28, 2010*

The consent order addresses allegations that the Minnesota Rural Health Cooperative (“MRHC”) eliminated competition between individual doctors and hospitals in southwest Minnesota by orchestrating illegal agreements to fix the prices at which they contract with health insurance plans and by refusing to deal with health plans that did not agree to MRHC’s desired reimbursement rates. The consent order prohibits MRHC from using coercive tactics to extract favorable contract terms from health plans and requires MRHC to offer to renegotiate all current contracts with health plans and to submit any revised contracts to the state for approval.

Participants

For the *Commission*: Robert S. Canterman and Randall David Marks.

For the *Respondent*: Mike Hatch, Blackwell Burke; Stephen L. Hill, Blackwell Sanders Peper Martin LLP; David Balto, Law Offices of David Balto; and Jeff Miles and Christie Braun, Ober Kaler.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Minnesota Rural Health Cooperative (“MRHC”) violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges in that respect as follows: