

Complaint

IN THE MATTER OF

MACHINIMA, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4569; File No. 142 3090
Complaint, March 16, 2016 – Decision, March 16, 2016

This consent order addresses Machinima, Inc.’s failure to make appropriate disclosures about content relating to video games and gaming culture via a multi-channel network on YouTube.com. The complaint alleges that Respondent’s influencers did not disclose that Respondent offered compensation to the influencers in exchange for creating and uploading the videos as part of the advertising campaign. The complaint further alleges that Respondent’s influencers’ videos did not reflect the independent opinions of impartial video game enthusiasts. The consent order requires Respondent to clearly and prominently disclose in any Influencer Campaign a material connection, if one exists, between the Endorser and the advertiser whose product is being endorsed.

Participants

For the *Commission*: Julie Mayer, Richard McKewen, and Connor Shively.

For the *Respondent*: Linda Goldstein, Manatt, Phelps & Phillips, LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Machinima, Inc., a corporation (“Respondent”), has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at 8441 Santa Monica Blvd, West Hollywood, CA 90069.

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

3. Respondent is a video entertainment company that produces and distributes content relating to video games and gaming culture via a multi-channel network (“MCN”) on YouTube.com. Respondent’s network features original content such as scripted and non-scripted series, official content from video game publishers and developers, and game-play videos produced by individual gamers.

4. Respondent’s MCN is one of the top entertainment networks on YouTube, generating more than 3 billion views each month and reaching over 407 million subscribers.

5. Respondent generates revenue by selling advertising on its network. The advertising offered by Respondent includes video ads that appear prior to or in the middle of selected content, display ads, and other advertising formats available on YouTube.

6. In late 2013, Microsoft Corporation released its Xbox One gaming platform and published three companion video games — *Forza 5*, *Dead Rising 3*, and *Ryse: Son of Rome* (“Launch Titles”). In the months leading up to the release, Microsoft, through its advertising agency Starcom MediaVest Group, Inc. (“Starcom”), embarked on a global advertising campaign to promote the Xbox One and the new Launch Titles.

7. In mid-2013, Respondent submitted a proposal to Starcom and Microsoft to market the Xbox One and the Launch Titles on Respondent’s YouTube network. In addition to proposing traditional display, pre-roll, and other advertising, Respondent proposed leveraging a group of “influencers” that Respondent could “incentivize . . . to create content” on YouTube. These influencers would make and upload their own game-play videos and “generate millions of organic views around the Xbox One platform and launch titles” and “build early buzz” surrounding the new platform and games.

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8. Respondent eventually entered into a written agreement with Starcom to provide advertising on behalf of Microsoft as outlined in Respondent's proposal. Under the terms of the agreement, Respondent committed to engage its influencers to create videos promoting the Xbox One and the Launch Titles. Respondent promised that the influencer videos would "not portray [Microsoft], the Xbox One, or the Launch Titles in a negative manner," and Microsoft could request that Respondent take down any video that violated this promise. Respondent guaranteed that the influencer videos would be viewed a minimum of 19,000,000 times.

PHASE ONE OF RESPONDENT'S INFLUENCER PROGRAM

9. In Phase One of Respondent's influencer program, Respondent recruited five of its influencers to produce and upload two video reviews each. The statement of work given to each influencer provided explicit instructions as to the content of each video.

10. Respondent directed each influencer to include in their first video review:

- *Montage of past Xbox 360 footage, talking over a game you're playing on the Xbox 360, etc.*
- *Two to three talking points detailing what features you're looking forward to in the Xbox One*
- *Announce that you will be playing Ryse on the Xbox early*
- *Video will be at least 2 minutes long in length*
- *Video showcases Microsoft products in positive light*

Respondent directed each influencer to include in their second video review:

- *Capture Ryse gameplay in Machinima office*
- *Two to three talking points detailing what you like about the game*
- *Video will be at least 2 minutes long in length*
- *Video showcases Microsoft in positive light*

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Respondent provided separately the talking points to be covered in each video.

11. According to the statement of work, the videos produced by the five influencers were Respondent's property, "work-made-for-hire with Machinima as sole owner of all rights, title, and interest, including any and all copyright therein, worldwide, in perpetuity." Pursuant to a separate promotion agreement with Respondent applicable to all of Respondent's campaigns, the influencers "agree[d] to keep confidential at all times in perpetuity all matters relating to" their agreement with Respondent.

12. The five influencers were required to create and upload the videos to YouTube before the Xbox One and Launch Titles were available to the general public. To facilitate the creation of the videos, Microsoft provided Respondent with pre-release versions of *Ryse* and the Xbox One console, and Respondent made them available to its influencers.

13. In November 2013, each of the influencers uploaded to their individual YouTube channels the two videos ordered by Respondent. Respondent, Starcom, and Microsoft reviewed and approved each of the videos. Respondent compensated each influencer in accordance with the influencer's statement of work with Respondent.

14. Neither the statements of work nor the master promotion agreement with the influencers required the influencers to disclose in their videos that they had been compensated. Respondent did not otherwise oblige the influencers to disclose in their videos that they had been compensated.

15. Respondent paid influencer Adam Dahlberg \$15,000 for the two video reviews that he uploaded to his YouTube channel "SkyVSGaming." In his videos, Dahlberg speaks favorably of Microsoft, Xbox One, and *Ryse*. Dahlberg's videos appear to be independently produced and give the impression that they reflect his personal views. Nowhere in the videos or in the videos' descriptions did Dahlberg disclose that Respondent paid him to create and upload them. Dahlberg's first video received more

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than 360,000 views, and his second video more than 250,000 views.

16. Respondent paid influencer Tom Cassell \$30,000 for the two video reviews that he uploaded to his YouTube channel “TheSyndicateProject.” In his videos, Cassell speaks favorably of Microsoft, Xbox One, and *Ryse*. Cassell’s videos appear to be independently produced and give the impression that they reflect his personal views. Nowhere in the videos or in the videos’ descriptions did Cassell disclose that Respondent paid him to create and upload them. Cassell’s first video received more than 730,000 views, and his second video more than 300,000 views.

PHASE TWO OF RESPONDENT’S INFLUENCER PROGRAM

17. In Phase Two of the influencer program, Respondent recruited members of its entire network of influencers to produce and upload videos. Respondent promised to pay each influencer \$1.00 for every 1,000 views of an influencer’s video, up to an aggregate cap of \$25,000 for the entire campaign. Phase Two was open to any influencer willing to sign a Video Campaign Agreement (“VCA”).

18. The VCA imposed several conditions that had to be met before an influencer could be paid for producing and uploading a video. Among other things,

- The influencer’s video had to be at least 60 seconds long and include at least 30 seconds of gameplay or other footage from any combination of the Xbox One and the Launch Titles within the first two minutes of the video.
- The video could not contain anything negative or disparaging regarding Machinima, Xbox One, or any Launch Title.
- The video had to provide a link to either the Xbox One YouTube Channel or another qualifying video on the influencer’s YouTube channel.

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- The video had to be uploaded to the influencer's YouTube channel and tagged with the "XB1M13" tag.

19. The VCA included a confidentiality provision requiring the influencer to "keep confidential at all times all matters relating to [the] Agreement," which included the conditions listed in the previous paragraph and the influencer's compensation.

20. The VCA did not require Respondent's influencers to disclose that Respondent had offered compensation in exchange for creating and uploading the video.

21. Respondent's influencers produced and uploaded to YouTube over 300 videos that, between November 22 and December 31, 2013, generated more than 30 million views. In many of the videos, influencers spoke favorably of Microsoft, Xbox One, and the Launch Titles, and the influencers gave the impression that their videos were independently produced and that their comments reflected the influencer's personal views. In numerous instances, nowhere in the videos or in the videos' descriptions did the influencers disclose that Respondent had offered compensation in exchange for creating and uploading the video.

22. At the conclusion of the campaign, Respondent compensated the influencers for their videos in accordance with the VCA, up to the \$25,000 aggregate cap.

VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT

23. Through the means described in Paragraphs 9 through 22, Respondent has represented, directly or indirectly, expressly or by implication, that video reviews of Microsoft's Xbox One and the Launch Titles reflected the independent opinions of impartial video game enthusiasts.

24. In truth and in fact, the video reviews for Xbox One and the Launch Titles did not reflect the independent opinions of impartial video game enthusiasts. Respondent's influencers created the video reviews as part of the global advertising

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campaign to promote sales of Xbox One and the Launch Titles. Therefore, the representation set forth in Paragraph 23 was, and is, false and misleading.

25. Through the means described in Paragraphs 9 through 22, Respondent has represented, directly or indirectly, expressly or by implication, that favorable video reviews for Xbox One and the Launch Titles were posted online by individuals who had played Xbox One or the Launch Titles. In numerous instances, Respondent has failed to disclose, or disclose adequately, that the individuals who posted the reviews were compensated in connection with their endorsements. This fact would be material to consumers in their purchasing decisions regarding Xbox One and the Launch Titles. The failure to disclose this fact, in light of the representations made, was, and is, a deceptive practice.

26. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this sixteenth day of March, 2016, has issued this Complaint against Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent 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

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Commission, would charge the Respondent with violation of the Federal Trade Commission Act, 15 U.S.C § 45 et seq.; and

The Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), which includes a statement by the Respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the consent agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 Respondent has 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 period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Machinima, Inc. (“Machinima”), is a Delaware corporation with its principal office or place of business at 8441 Santa Monica Blvd, West Hollywood, CA 90069.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

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- A. Unless otherwise specified, “Respondent” shall mean Machinima, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- C. “Clearly and prominently” shall mean as follows:
 - 1. 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;
 - 2. 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;
 - 3. 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.
 - 4. 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
 - 5. In all instances, the required disclosures are presented in an understandable language and

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syntax, in the same language as the predominant language that is used in the communication, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.

- D. “Endorsement” means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.
- E. “Endorser” means an individual or organization that provides an Endorsement.
- F. “Influencer Campaign” means any arrangement whereby, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, Respondent engages an Endorser (also known as an Influencer) to create, publish, or otherwise disseminate an online Endorsement for which the Influencer is to receive compensation from Respondent, the advertiser for whom Respondent conducts the campaign, or anyone else acting on their behalf.
- G. “Material connection” means any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.
- H. The term “including” in this order means “without limitation.”

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I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not in any Influencer Campaign misrepresent, in any manner, expressly or by implication, that an Endorser of such product is an independent user or ordinary consumer of the product or service.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, by means of an Endorsement of such product or service, shall in any Influencer Campaign clearly and prominently disclose a material connection, if one exists, between the Endorser and the advertiser whose product is being endorsed.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall take reasonable steps to ensure that its Influencer Campaigns comply with Parts I and II of this order. Such steps shall include, at a minimum:

- A. Establishing, implementing, and thereafter maintaining a system to monitor and review its Influencers' representations and disclosures to ensure compliance with Parts I and II of this order. As part of this system:
 - 1. Respondent shall provide each Influencer with a statement of his or her responsibility to disclose clearly and prominently, in any online video, social

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media posting, or other communication for which the Influencer is to receive compensation, the Influencer's material connection to the advertiser for whom Respondent is conducting the Influencer Campaign. The statement shall also inform the Influencer that Respondent will monitor for compliance. The statement may be included as part of any Influencer agreement, but the statement shall be on a separate page by itself, and written in a manner reasonably calculated to be easily understood by the Influencer. Respondent shall obtain from each Influencer a signed and dated acknowledgment that the Influencer has received the statement and expressly agrees to comply with it. Any electronic signature that Respondent obtains pursuant to this Part shall comply with the signature requirements of the Electronic Signatures in Global and National Commerce, 15 U.S.C. §§ 7001 *et seq.*

2. Prior to compensating any Influencer for an online video Endorsement, Respondent shall conduct an initial review of that Endorsement. If the video Endorsement fails to clearly and prominently disclose any material connection between the Influencer and the advertiser for whom Respondent is conducting the Influencer Campaign, then Respondent shall notify the Influencer of the failure to disclose, refrain from compensating the Influencer for the Campaign, and disqualify the Influencer from participating in future Influencer Campaigns until the video Endorsement contains the required disclosure. *Provided, however,* Respondent may compensate an Influencer in advance for an online video Endorsement if the video Endorsement is not uploaded to the Internet, publicly disseminated, or otherwise made publicly accessible until after Respondent has reviewed it and verified that it clearly and prominently discloses any material connection between the

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Influencer and the advertiser for whom Respondent is conducting the Influencer Campaign.

3. After an Influencer's video Endorsement has been uploaded to the Internet, publicly disseminated, or otherwise made publicly accessible, Respondent shall continue to monitor the online video Endorsement by conducting another review of it within ninety days of the date of the Influencer's final compensation, but not before two weeks after that date. The timing of this second review must not be disclosed in advance to the Influencer, and the manner of the review must be reasonably calculated not to disclose the source of the monitoring activity at the time it is being conducted. If the online video Endorsement is no longer publicly accessible nor reasonably accessible to Respondent at the time Respondent attempts the review required by this subparagraph 3, Respondent need not conduct the review of the online video.
4. If, after conducting the review described in the preceding subparagraph, or if at any other time subsequent to compensating an Influencer, Respondent reasonably concludes that the Influencer
 - a. has misrepresented, in any manner, the status of the Influencer, including but not limited to, the misrepresentation that such Influencer is an independent user or ordinary consumer; or
 - b. has failed to disclose, clearly and prominently, a material connection, when one exists, between such Influencer and the advertiser for whom Respondent is conducting the Influencer Campaign;

then Respondent shall immediately suspend the Influencer from, and withhold payments to the

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Influencer for, any Influencer Campaigns, until the Influencer cures such misrepresentation or discloses, clearly and prominently, such material connection. Respondent shall immediately terminate and disqualify the Influencer from future Influencer Campaigns upon a repeat incident;

- B. Creating, and thereafter maintaining, reports sufficient to show the results of the monitoring required by subpart A of this Part of the order.

IV.

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

- A. 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;
- B. Contradict, qualify, or call into questions Respondent's compliance with this order;
- C. Comprise or relate to complaints or inquiries, whether received directly, indirectly, or through any third party, concerning any endorsement made by Respondent, and any responses to those complaints or inquiries; and
- D. All acknowledgments of receipt of this order obtained pursuant Part V.

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V.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and 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 such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that Respondent 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 a 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 Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. 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 Machinima, Inc., FTC File Number 1423090. *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.

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VII.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall, within ninety (90) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, Respondent shall submit additional true and accurate written reports.

VIII.

This order will terminate on March 16, 2036, 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 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.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent 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 to Aid Public Comment

**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 Machinima, Inc. (“Respondent”). The proposed consent 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.

Respondent is a video entertainment company that produces and distributes content relating to video games and gaming culture via a multi-channel network (“MCN”) on YouTube.com. In 2013, Respondent was hired by Microsoft Corp. (“Microsoft”), through its advertising agency Starcom MediaVest Group (“Starcom”), to market the Xbox One gaming console and three companion video games (“Launch Titles”) on Respondent’s YouTube network. As part of Respondent’s advertising campaign for Microsoft, Respondent engaged and compensated its “influencers” (or “endorsers”) to create videos promoting the Xbox One and the Launch Titles. As part of its agreement with Starcom, Respondent promised that the influencer videos would “not portray [Microsoft], the Xbox One, or the Launch Titles in a negative manner,” and Microsoft could request that Respondent take down any video that violated this promise.

According to the complaint, in numerous instances, Respondent’s influencers did not disclose that Respondent offered compensation to the influencers in exchange for creating and uploading the videos as part of the advertising campaign. The FTC’s complaint alleges that Respondent’s influencers’ videos were false and misleading because they did not reflect the independent opinions of impartial video game enthusiasts. The complaint also alleges that these videos were deceptive because they failed to disclose the material fact that the influencers who posted the reviews were compensated in connection with their endorsements.

Analysis to Aid Public Comment

Part I of the proposed order prohibits Respondent from misrepresenting in any Influencer Campaign, that the Endorser is an independent user or ordinary consumer of the product or service. The proposed order defines an “Influencer Campaign” as any arrangement whereby, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, Respondent engages an Endorser (also known as an Influencer) to create, publish, or otherwise disseminate an online Endorsement for which the Influencer is to receive compensation from either Respondent, the advertiser for whom Respondent conducts the campaign, or anyone else acting on their behalf.

Part II of the proposed order requires Respondent to clearly and prominently disclose in any Influencer Campaign a material connection, if one exists, between the Endorser and the advertiser whose product is being endorsed. The proposed order defines “material connection” as any relationship that material affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.

Part III of the proposed order requires Respondent to take reasonable steps to ensure that its Influencer Campaigns comply with Parts I and II. Respondent is required to provide each influencer with a plain language statement of his or her responsibility to disclose clearly and conspicuously any material connection to the advertiser on whose behalf Respondent is conducting the campaign, and Respondent must obtain a signed acknowledgment of receipt of this statement from the influencer. Respondent must also institute specific monitoring procedures for online video endorsements that are part of its Influencer Campaigns. Respondent may not compensate an influencer for a video endorsement that has been posted online or otherwise been made publicly available until Respondent verifies that the endorsement contains a clear and conspicuous disclosure about the influencer’s material connection to the advertiser. In addition, between two weeks and ninety days of compensating the influencer, Respondent must conduct another review of each video endorsement that is still publicly accessible or reasonably accessible to Respondent to ensure that any required disclosures remain.

Analysis to Aid Public Comment

Part IV of the proposed order contains recordkeeping requirements that, among other things, require Respondent to maintain records sufficient to demonstrate its compliance with Parts I through III of the order.

Parts V through VII of the proposed order require Respondents to: deliver a copy of the order to principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure, discontinuance of current business or employment, or affiliation with any new business or employment that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part VIII provides that the order will terminate after twenty (20) years, with certain exceptions.

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 complaint or proposed order or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

**RANGERS RENAL HOLDING, LP,
US RENAL CARE, INC.,
DIALYSIS PARENT, LLC,
AND
DIALYSIS HOLDCO, LLC.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4570; File No. 151 0215
Complaint, March 17, 2016 – Decision, March 17, 2016*

This consent order addresses the \$640 million acquisition by Rangers Renal Holdings LP of certain assets of Dialysis Parent, LLC. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition in Laredo, Texas, for the provision of outpatient dialysis services. Under the Order, US Renal Care, Inc. is required to divest Dialysis Newco, Inc.'s three dialysis clinics in Laredo, Texas.

Participants

For the *Commission*: Lisa D. DeMarchi Sleight, Sebastian Lorigo, Eric Rohlck, and Sarah Wohl.

For the *Respondents*: Amanda Reeves and Kory Wilmot, Latham & Watkins LLP; Gorav Jindal, Dechert LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that the Respondent Rangers Renal Holdings LP ("Rangers Holdings"), a company subject to the jurisdiction of the Commission, has entered into an agreement to acquire Dialysis Parent, LLC ("Dialysis Parent"), a company subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45; that such acquisition, if consummated, would violate Section 7 of the of the Clayton Act,