

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.
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

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 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

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 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