

In the Matter of

**WARNER BROS. HOME
ENTERTAINMENT INC.,
a corporation.**

FILE NO. 152 3034

**AGREEMENT CONTAINING
CONSENT ORDER**

The Federal Trade Commission has conducted an investigation of certain acts and practices of Warner Bros. Home Entertainment Inc., a corporation (“Proposed Respondent”). Proposed Respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Warner Bros. Home Entertainment Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed Respondent Warner Bros.

will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to Proposed Respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

6. Proposed Respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. Unless otherwise specified, "Respondent" means Warner Bros. Home Entertainment Inc., its successors and assigns, and its officers, agents, representatives, and employees.
2. "Clearly and Conspicuously" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 - a. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
 - b. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

- c. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
- d. In any communication using an interactive electronic medium, such as the internet or software, the disclosure must be unavoidable.
- e. The disclosure must use diction and syntax understandable to ordinary consumers

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 Home Entertainment Product or Service, in or affecting commerce, shall not in any Influencer Campaign misrepresent, in any manner, expressly or by implication, that an Influencer 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 Home Entertainment Product or Service, in or affecting commerce, by means of an Endorsement of such product or service, shall in any Influencer Campaign Clearly and Conspicuously disclose a Material Connection, if one exists, between the endorser and the product or service.

1. Has misrepresented, in any manner, his or her independence and impartiality; or
2. Has failed to disclose, Clearly and Conspicuously, and in close proximity to the representation, a Material Connection between such Influencer and Respondent.

Provided, however, that Respondent may provide an Influencer with notice of failure to disclose and an opportunity to cure the disclosure prior to terminating the Influencer if Respondent reasonably concludes that the failure to disclose was inadvertent. Respondent shall inform any Influencer to whom it has provided a notice of a failure to disclose a Material Connection that any subsequent failure to disclose will result in immediate termination;

D. Directing the entity conducting the campaign to immediately terminate and cease payment to any Influencer with a Material Connection to Respondent who the entity conducting the campaign reasonably concludes:

1. Has misrepresented, in any manner, his or her independence and impartiality; or
2. Has failed to disclose, Clearly and Conspicuously, and in close proximity to the representation, a Material Connection between such Influencer and Respondent.

Provided, however, that Respondent may allow the entity conducting the campaign to provide an Influencer with notice of failure to disclose and an

courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re Warner Bros. Home Entertainment Inc.

VII.

IT IS FURTHER ORDERED that Respondent and its successors and assigns, within sixty (60) days after the date of service of this order, shall 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, they shall submit additional true and accurate written reports.

VIII.

This order will terminate twenty (20) years from the date of its issuance, 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.

WARNER BROS. HOME
ENTERTAINMENT INC.

Date: _____

By: _____
JACQUELINE JOURDAIN HAYES
Senior Vice President and General Counsel,
Legal and Business Affairs
WARNER BROS. HOME
ENTERTAINMENT INC.

Date: _____

STUART P. INGIS
LEONARD L. GORDON
VENABLE LLC
Attorneys for Respondent

Date: _____

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EVAN ROSE
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APPROVED:

THOMAS N. DAHDOUH
Regional Director
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JESSICA L. RICH
Director
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