

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Lord & Taylor, LLC, Matter No. 152 3181

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Lord & Taylor, LLC (“Lord & Taylor”).

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 or make final the agreement’s proposed order.

This matter involves Lord & Taylor’s use of paid spokespersons to promote, in social media, its private label line, “Design Lab,” an apparel collection aimed at women ages eighteen to thirty-five. The Commission’s complaint alleges that Lord & Taylor paid fifty fashion influencers to wear and simultaneously post on Instagram photos of a particular Design Lab item – the Paisley Asymmetrical Dress. In most instances, the Instagram post did not mention any connection between the influencer and Lord & Taylor. The complaint also alleges that Lord & Taylor sponsored an article, also featuring the dress, that appeared to be an independent and objective review of the Design Lab collection in an online fashion magazine. The article did not disclose the connection between Lord & Taylor and the magazine. The complaint alleges that Lord & Taylor violated Section 5 of the FTC Act by misrepresenting that the Instagram images and captions reflected the independent statements of impartial fashion influencers, when, in fact, the postings were created as part of an advertising campaign for Lord & Taylor. The complaint further alleges that Lord & Taylor violated Section 5 by failing to disclose that the fashion influencers were paid endorsers. Finally, the complaint alleges that that Lord & Taylor misrepresented that the article that appeared on the fashion magazine website and the Design Lab posting on the magazine’s Instagram account were independent statements or opinions regarding the launch of the Design Lab collection when, in fact, the article and posting were paid commercial advertising.

The proposed order includes injunctive relief to address these alleged violations and requires Lord & Taylor to follow certain monitoring and compliance procedures related to its use of paid spokespersons or endorsers.

Part I of the proposed order prohibits Lord & Taylor, in connection with the advertising of any product or service, from misrepresenting that an endorser of such product or service is an independent user or ordinary consumer of the product or service.

Part II of the proposed order requires Lord & Taylor, in connection with the advertising of any product or service by means of an endorsement, to disclose clearly and conspicuously, and in close proximity to the representation, a material connection, if one exists, between the endorser and Lord & Taylor.

Part III of the proposed order prohibits Lord & Taylor from misrepresenting that paid commercial advertising is a statement or opinion from an independent or objective publisher or source.

Part IV of the proposed order sets out certain monitoring and compliance obligations that Lord & Taylor must meet with respect to any endorser with a material connection to Lord & Taylor, including: obtaining signed acknowledgements from such endorsers that they will disclose their connection to Lord & Taylor; monitoring the endorsers' representations and disclosures; maintaining records of its monitoring efforts; and terminating endorsers who fail to disclose their connection to Lord & Taylor; provided, however, that if Lord & Taylor reasonably determines that an endorser's failure to disclose was inadvertent, it may provide an endorser with one notice of the failure to disclose and an opportunity to cure the disclosure prior to termination.

Parts V through VIII of the proposed order require Lord & Taylor to: keep copies of advertisements and promotional materials containing the representations or endorsements, contracts with endorsers and communications regarding disclosures required by Part II of the proposed order, relevant consumer complaints and inquiries, and documents demonstrating order compliance; provide copies of the order to officers, employees, and others with responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part IX of the proposed order 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.