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Social Media Bot Company Devumi LLC Reaches $2.5 Million Settlement with FTC for Sale of Misleading Social Media "Influence Indicators"

Background

On October 21, 2019, the Federal Trade Commission ("FTC") settled its first-ever complaint against a company for selling fake indicators of social media influence such as phony likes, follows, views, and subscribers to users on Twitter, LinkedIn, YouTube, Pinterest, Vine, and SoundCloud.[1] The company, Devumi LLC ("Devumi"), and its CEO, German Calas, Jr., settled the enforcement action with a $2.5 million fine.[2] The company was dissolved in 2018.[3] Reporting suggested that Devumi maintained an estimated stock of at least 3.5 million automated accounts, thousands of which used personal details of real social media users (who had not engaged Devumi's clients with follows, likes, etc.), and that these accounts were used to generate the false indicators of social media influence.[4]

The FTC found, for example, that Devumi filled more than 58,000 orders for fake Twitter followers from a diverse set of buyers, including actors, athletes, musicians, investment professionals, lawyers, and experts who wanted to increase their appeal as influencers or otherwise boost their credibility.[5] Devumi filled over 800 orders for fake LinkedIn followers to marketing and public relations firms, consulting firms, and financial services companies, among others.[6]

The enforcement action is notable because it signals the FTC's broad repudiation of an increasingly widespread practice on social media platforms by "influencers" and other social media users endeavoring

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[1] *See generally* Complaint, *FTC* v. *Devumi, LLC and German Calas, Jr.*, No. 9:19-cv-81419 (S.D. Fla. Oct. 18, 2019); Stipulated Order for Permanent Injunction and Monetary Judgment, *FTC* v. *Devumi, LLC and German Calas, Jr.*, No. 9:19-cv-81419 (S.D. Fla. Oct. 18, 2019); Press Release, FTC, Devumi, Owner and CEO Settle FTC Charges They Sold Fake Indicators of Social Media Influence (Oct. 21, 2019), https://www.ftc.gov/news-events/press-releases/2019/10/devumi-owner-ceo-settle-ftc-charges-they-sold-fake-indicators.

[2] The fine was imposed on Calas, and, upon payment of $250,000, the remainder will be suspended. Stipulated Order, *supra* note 1, at 3–4.

[3] *See* Nicholas Confessore, *Firm That Sold Social Media Bots Settles With New York Attorney General*, New York Times (Jan. 30, 2019), https://www.nytimes.com/2019/01/30/technology/letitia-james-social-media-bots.html.

[4] Nicholas Confessore, et al., *The Follower Factory*, New York Times (Jan. 27, 2018), https://www.nytimes.com/interactive/2018/01/27/technology/social-media-bots.html?module=inline. The *Times* investigation found that Devumi provided customers with more than 200 million fabricated Twitter followers.

[5] Complaint, *supra* note 1, at 3–4.

[6] Complaint, *supra* note 1, at 3.

to expand their popularity and brand by promoting artificial audience engagement. In pursuing this conduct, the FTC resorted to a standard tool in its toolbox: the prohibition of "unfair or deceptive acts or practices in or affecting commerce" under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). According to the FTC, indicators of social media influence are important metrics that businesses and individuals use in hiring, investing, and purchasing decisions, and enabling people to portray themselves falsely as influencers would allow them to deceive potential clients, investors, and employees.

In addition to the fine, the settlement enjoined Devumi and Calas from directly or indirectly selling, or assisting others in selling, any indicators of social media influence to users of third-party social media platforms; from making or assisting others in making any misrepresentation about the social media influence of any person or entity; or from making or assisting others in making any misrepresentations in or about any review or endorsement of any person, entity, product, or service.[7] The settlement was approved by unanimous Commission vote.

The FTC settlement follows a yearlong ramp-up of state enforcement action targeting social media fraud. In January, the New York Attorney General's Office announced a "groundbreaking settlement" with Devumi.[8] Per the terms of that settlement, Devumi agreed to pay a $50,000 fine to cover the cost of an investigation into its business practices and to cease the sale of fake accounts pursuant to New York law.[9] Florida's Attorney General also reached a similar settlement with Devumi, resulting in a $50,000 fine and a prohibition on future violations of Florida's Deceptive and Unfair Trade Practices Act.[10]

Implications

In recent years, the burgeoning market of false social media influence appeared to be a "legal gray zone."[11] The FTC's enforcement action against Devumi suggests that this gray area may be hardening into an active part of the government's enforcement agenda. This has a number of implications, including for companies that hire services that promise to boost their social media following or companies that market using influencers; these companies may come under increased pressure to take steps to ensure that their efforts do not rely on false support. Likewise, because automated users may account for a significant portion of social media engagement, potential regulatory enforcement should remain a serious consideration for

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[7]   Stipulated Order, *supra* note 1, at 2–3.

[8]   Press Release, New York State Office of the Attorney General, Attorney General James Announces Groundbreaking Settlement With Sellers Of Fake Followers And "Likes" On Social Media (Jan. 30, 2019), https://ag.ny.gov/press-release/2019/attorney-general-james-announces-groundbreaking-settlement-sellers-fake-followers.

[9]   *See id.*; Confessore, *Firm That Sold Social Media Bots Settles With New York Attorney General*, *supra* note 3.

[10]   *See* Press Release, Florida Office of the Attorney General, Company Selling Fake Twitter Followers Permanently Banned (Jan. 31, 2019), http://myfloridalegal.com/__852562220065EE67.nsf/0/0CD5F8EE14B7C6FA85258393007103EB?Open&Highlight=0,devumi.

[11]   *See* Confessore, *The Follower Factory*, *supra* note 4.

companies operating within the social media environment.[12] Indeed, just this past week, technology reporters have noted that there are "still plenty of places" to purchase fake influence indicators online.[13]

The settlement with Devumi also signals an expanded regulatory approach to reining in the proliferation of social media bots and fake followers. Whereas regulatory attention on fake followers and social media bots has been focused largely on election security concerns, this settlement demonstrates a new interest in the purely commercial uses of artificial social media audiences.

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[12] A 2017 study by researchers from the University of Southern California and Indiana University estimated that between 9 and 15 percent of Twitter's 320 million active users were bots. Onur Varol, et al., *Online Human-Bot Interactions: Detection, Estimation, and Characterization*, International AAAI Conference on Web and Social Media (Mar. 27, 2017), https://arxiv.org/pdf/1703.03107.pdf.

[13] Sarah Perez, *FTC settles with Devumi, a company that sold fake followers, for $2.5M*, TechCrunch (Oct. 22, 2019), https://techcrunch.com/2019/10/22/ftc-settles-with-devumi-a-company-that-sold-fake-followers-for-2-5m/.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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