Analysis of Proposed Consent Order to Aid Public Comment
***In the Matter of Legacy Learning Systems, Inc.*, File No. 102-3055**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from Legacy Learning Systems, Inc. and Lester Gabriel Smith, an officer and director of the corporation ("respondents").

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 and take appropriate action or make final the agreement's proposed order.

The practices challenged in this case relate to the advertising of respondents' instructional courses via an online affiliate marketing program. According to the Commission's complaint, many of respondents' affiliates promoted respondents' instructional courses through positive endorsements in articles, blog posts, or other online editorial copy that contained hyperlinks to respondents' website in close proximity to the endorsements. For each sale of an instructional course to a consumer directed to respondents' website by an affiliate, respondents paid the affiliate a commission of 20 to 45 percent of the purchase price. The affiliates often posted endorsements about respondents' instructional courses using statements that gave readers the impression the endorsements had been submitted by ordinary consumers or independent reviewers. Respondents failed to implement a reasonable monitoring program to ensure that these postings clearly and prominently disclosed the compensated nature of the affiliates' relationship to respondents.

The Commission's complaint alleges that respondents violated Section 5 of the FTC Act by disseminating or causing to be disseminated reviews of their instructional courses that misrepresented that they were those of independent, ordinary consumers. The complaint further alleges that respondents violated Section 5 by failing to disclose, or disclose adequately, that the affiliates receive financial compensation from the sale of respondents' products.

Part I of the proposed order prohibits respondents, in connection with the advertising of any product or service, from misrepresenting the status of any user or endorser of a product or service, including, but not limited to, misrepresenting that the user or endorser is an independent user or ordinary consumer of the product or service.

Part II prohibits respondents from making any representation about any user or endorser of a product or service unless they disclose, clearly and prominently, a material connection, when one exists, between the user or endorser of the product or service and any other party involved in promoting that product or service. The proposed order defines "material connection" as any relationship that materially affects the weight or credibility of any endorsement and would not be reasonably expected by consumers.

Part III requires respondents to take immediate steps to ensure compliance with Parts I and II of the order, including maintaining a system to review and monitor their affiliate representations and disclosures. The proposed order requires respondents to determine, on a semi-annual basis, their top fifty (50) revenue-generating affiliates, and then monitor, on a monthly basis, the web sites of those affiliates and the web sites of a random sample of fifty (50) of their remaining affiliates. Part III also requires respondents to terminate any affiliate who engages in conduct inconsistent with Parts I and II of the order and to maintain reports regarding compliance with Part III of the order.

Part IV requires respondents to serve copies of the order to prospective affiliates prior to their entry into respondents' affiliate program, and to current affiliates within ten days of the date of service of the order.

Part V requires respondents to pay to the Commission a sum of $250,000. This payment may be used in the Commission's sole discretion to provide appropriate relief, which may include, but is not limited to, the recision of contracts, payment of damages, and/or public notification respecting the unfair or deceptive acts or practices alleged in the complaint. If the Commission determines that such relief is wholly or partially impracticable, any or all such funds shall be paid to the United States Treasury.

Parts VI through X of the proposed order require respondents to: keep copies of relevant consumer complaints and inquiries, documents demonstrating order compliance, and any documents relating to any representation covered by this order; provide copies of the order to certain of their personnel; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; notify the Commission of changes in corporate business or employment as to respondent Lester Gabriel Smith individually; and file compliance reports with the Commission. Part XI 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 agreement and proposed order or to modify in any way their terms.