
FTC Finalizes Rule Banning Fake Reviews and Testimonials & Touts New Rule at Open Commission Meeting

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The Federal Trade Commission (the FTC or the Commission) [voted](#) on August 14 to approve its Trade Regulation Rule on the Use of Consumer Reviews and Testimonials (Final Rule). The Final Rule, which will be effective on October 21, 2024, will ban marketers from using fake reviews, consumer testimonials and celebrity testimonials, and will prohibit companies from paying for either positive or negative reviews. It will authorize the FTC to seek consumer restitution and, for knowing violators, civil penalties of up to \$51,744 per violation.

The Final Rule builds on the Biden-Harris Administration's efforts to aggressively police practices that "degrade" the "quality of life" of Americans.¹ Just days before the FTC's vote, for example, the White House released a Fact Sheet highlighting efforts designed to "crack down on everyday headaches and hassles that waste Americans' time and money."²

During the FTC's September 19 Open Commission Meeting, FTC Chair Lina Khan described the new rule as one that "will make a marketplace that is better for consumers and honest businesses alike." FTC staff attorney and primary author of the new rule Michael Ostheimer further remarked that the goal of the rule is to "focus on truly egregious and inarguably deceptive or unfair practices involving consumer reviews and testimonials, while not burdening honest business."

¹ See Fact Sheet, White House, FACT SHEET: Biden-Harris Administration Launches New Effort to Crack Down on Everyday Headaches and Hassles That Waste Americans' Time and Money (Aug. 12, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/08/12/fact-sheet-biden-harris-administration-launches-new-effort-to-crack-down-on-everyday-headaches-and-hassles-that-waste-americans-time-and-money/>.

² See *id.* ("The FTC has proposed a rule that, if finalized as proposed, would stop marketers from using illicit review and endorsement practices such as using fake reviews, suppressing honest negative reviews, and paying for positive reviews, which deceive consumers looking for real feedback on a product or service and undercut honest businesses.").

To be sure, the FTC has long placed companies that employ fake reviews in its crosshairs. In 2023, for example, the FTC updated its existing guidance (Guides Concerning Use of Endorsements and Testimonials in Advertising (the Endorsement Guides)) to reflect current marketing trends, including social media and consumer reviews, and to articulate principles for compliance with Section 5 of the FTC Act.³ The FTC also has a long history of enforcement actions and taking other efforts to deter deceptive reviews and testimonials.⁴ In 2019, for example, the FTC filed a complaint against a skincare company for allegedly posting fake reviews and failing to disclose that reviewers were employees.⁵ In 2020, the FTC brought an action against a tea marketer for allegedly deceptive health claims and endorsements by well-known social media influencers who did not adequately disclose they were being paid for their posts.⁶ The FTC also sent [warning letters](#) to the 10 influencers named in the complaint, which included Cardi B—though notably, while the Endorsement Guides warn that failure to disclose a “material connection” is deceptive, such practices by themselves are not prohibited by the Final Rule, which is narrower in scope.⁷ Following this, in 2021, the FTC issued a Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials.⁸ In 2022, the FTC challenged an online fashion store’s alleged misrepresentation that the reviews on its website reflected the views of all customers who submitted reviews, when in fact, reviews with ratings lower than four stars were being suppressed.⁹ And even more recently, in November 2023, the FTC sent warning letters to

³ The Endorsement Guides cannot be directly enforced by the FTC but provide examples of disclosures and other steps that marketers can take to comply with Section 5 when using endorsements or testimonials and describe practices the FTC has found to be deceptive. *See* Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255.0(a) (2023).

⁴ *See, e.g.,* Complaint, *In the Matter of Sunday Riley Modern Skincare LLC*, Docket No. C-4729 (Oct. 21, 2019), https://www.ftc.gov/system/files/documents/cases/192_3008_sunday_riley_complaint_0.pdf [hereinafter *Sunday Riley Compl.*]; *In the matter of Fashion Nova, LLC*, Docket No. C-4759 (Mar. 21, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/1923138C4759FashionNovaComplaint.pdf [hereinafter “*Fashion Nova Compl.*”].

⁵ *See* *Sunday Riley Compl.* Note that the conduct alleged would be prohibited under the Final Rule.

⁶ *See* Press Release, FTC, Tea Marketer Mised Consumers, Didn’t Adequately Disclose Payments to Well-Known Influencers, FTC Alleges (Mar. 6, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/03/tea-marketer-mised-consumers-didnt-adequately-disclose-payments-well-known-influencers-ftc-alleges>.

⁷ *See id.* For examples of practices that would be prohibited by the Final Rule, see *Sunday Riley Compl.*; *Fashion Nova Compl.*

⁸ *See Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials*, FED. TRADE COMM’N (2021), https://www.ftc.gov/system/files/attachments/penalty-offenses-concerning-endorsements/notice-penalty_offenses-endorsements.pdf. Note that a Notice of Penalty Offenses lists certain types of conduct that the FTC has determined to be unfair or deceptive via one or more litigated administrative cases. By sending such notices, the FTC puts the companies on notice of its holdings so that it can seek civil penalties if the company engages in practices the Commission previously has held were deceptive. *See* Notices of Penalty Offenses, FED. TRADE COMM’N: ENFORCEMENT, <https://www.ftc.gov/enforcement/penalty-offenses>.

⁹ *See* *Fashion Nova Compl.* Note that the conduct alleged would be prohibited under the Final Rule.

social media influencers; in particular, the letters identified that the influencers failed to adequately disclose that they were paid by the industry to promote such content.¹⁰

Businesses that make use of consumer reviews and testimonials should consider reviewing both the recently published notices and the prohibitions in the Final Rule (discussed below) to evaluate whether their current practices and disclosures are sufficient for compliance. Furthermore, businesses and marketers should review the Endorsement Guides, which cover a broader range of practices than does the Final Rule, which focuses on a very specific subset of deceptive practices that the FTC has found to be prevalent (e.g., review suppression, fake reviews).

Key Highlights of Final Rule

Issuance of the Final Rule also follows an advance notice of proposed rulemaking (which we wrote about [here](#)) and a notice of proposed rulemaking. As the FTC noted in the background to the Final Rule, “the Commission received 100 responsive and non-duplicative comments” and while “some commenters raised concerns and recommended specific modifications or additions to the Commission’s proposal, the majority of commenters generally supported the Commission’s proposal.” The Final Rule, which will go into effect on October 21, 2024, allows the FTC to seek significant civil penalties (up to \$51,744 per violation of a trade rule) in addition to other forms of consumer redress.¹¹

Notably, the Final Rule prohibits:

- **Fake or False Reviews and Testimonials**
 - Businesses are prohibited from writing, creating or selling consumer reviews, consumer testimonials and celebrity testimonials that materially misrepresent (i) the existence of the person giving the review (e.g., AI-generated reviews or testimonials); and (ii) the experience of the person giving the review.
 - Businesses also cannot buy, procure or disseminate such reviews or testimonials where they knew or should have known that the reviews or testimonials were fake or false. There are also explicit prohibitions against the procurement of reviews from a business’s officers, managers, employees or agents, or any of their immediate

¹⁰ See Press Release, FTC, FTC Warns Two Trade Associations and a Dozen Influencers About Social Media Posts Promoting Consumption of Aspartame or Sugar (Nov. 15, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-warns-two-trade-associations-dozen-influencers-about-social-media-posts-promoting-consumption>.

¹¹ Section 5(m) of the FTC Act allows the Commission to pursue civil penalties where: (1) there has been a violation of any FTC rule involving unfair and deceptive acts or practices (but excluding “interpretive rule[s] or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice”). See 15 U.S.C. § 45(m)(1)(A). Violations of Section 5(m)(1)(A) are calculated on a per-violation basis, and, as of 2024, defendants can be liable for up to \$51,744 per violation. See Press Release, Fed. Trade Comm’n, FTC Publishes Inflation-Adjusted Civil Penalty Amounts for 2024 (Jan. 11, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-publishes-inflation-adjusted-civil-penalty-amounts-2024>.

- relatives, where the business knew or should have known that the reviews or testimonials were fake or false (with exceptions for generalized solicitations and reviews that appear as a result of a business engaging in consumer review hosting).
- **Buying Positive or Negative Reviews.** Businesses are prohibited from providing “compensation or other incentives in exchange for, or conditioned expressly or by implication on, the writing or creation of consumer reviews expressing a particular sentiment.”
 - **Insider Reviews and Consumer Testimonials**
 - Reviews and testimonials written by officers or managers that fail to clearly and conspicuously disclose the giver’s material connection to the business are prohibited, “unless, in the case of a consumer testimonial, the relationship is otherwise clear to the audience.”
 - Businesses are also explicitly prohibited from disseminating or causing the dissemination of consumer testimonials made by officers, managers, employees or agents where there is no clear and conspicuous disclosure of “the testimonialist’s material relationship to the business, when the relationship is not otherwise clear ... and the business knew or should have known of the testimonialist’s relationship to the business” (with exceptions for generalized solicitations and reviews that appear as a result of a business engaging in consumer review hosting).
 - Officers and managers are explicitly prohibited from soliciting or demanding consumer reviews from immediate relatives or from employees or agents of the business where: (i) such solicitation results in a review that fails to disclose the material relationship between reviewer and business; and (ii) the officer or manager either encouraged a lack of disclosure, failed to provide proper instructions that the disclosure should be clear and conspicuous, or knew or should have known the review appeared without a disclosure and failed to take remedial steps.
 - **Company-Controlled Review Websites.** Businesses are prohibited from either expressly or impliedly materially misrepresenting that a website or entity it controls provides independent reviews or opinions about a category of products or services that includes its own products or services.
 - **Review Suppression.**
 - Businesses are prohibited from using an “unfounded or groundless legal threat, a physical threat, intimidation, or a public false accusation” to attempt to either (i) prevent a review from being written or (ii) cause the review to be removed.
 - Businesses are also prohibited from materially misrepresenting that the consumer reviews on the review portion of their website “represent most or all of the reviews submitted ...when reviews are being suppressed (i.e., not displayable) based upon their ratings or their negative sentiment.” The Final Rule notes, however, that reviews are not considered suppressed when the suppression “occurs based on criteria for

- withholding reviews that are applied equally to all reviews submitted” (e.g., trade secrets, defamation, harassment, obscenity, discriminatory content, etc.).
- **Misuse of Fake Social Media Indicators.** “Anyone” is prohibited from selling, buying, distributing or purchasing fake indicators of social media influence “that they knew or should have known to be fake and that can be used by individuals or businesses to materially represent influence or importance for a commercial purpose.”

Next Steps

Businesses that use consumer reviews and testimonials should pay close attention to the Final Rule. Specifically, businesses should review their current policies, procedures and practices to identify areas of noncompliance and consider making enhancements to their overall compliance framework. For example, businesses should consider creating or enhancing existing policies for endorsers, social media content, employee reviews/testimonials, compensated referrals, review curation policies, use of incentivized reviews, etc. A review of preexisting contractual relationships with third parties to ascertain the permissibility of those relationships and whether modifications are required would also be prudent.

Businesses should pay particular attention not only to policies and procedures but also to the technical controls in place, which may lead reviews to be suppressed (or otherwise elevated) and which may also help identify bot-generated reviews. Businesses may also wish to consider conducting an audit of currently published reviews to assess the risk of noncompliance and creating training materials for relevant staff and personnel.

This is also an opportunity for businesses and endorsers (e.g., social media influencers) to review the Endorsement Guides, which cover a broader range of potentially deceptive marketing practices in connection with endorsements and testimonials.

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