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FTC Issues Final Rule Banning Fake Reviews and Testimonials

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On August 14, 2024, the Federal Trade Commission (FTC) struck a blow against deceptive advertising by issuing its Final Trade Regulation Rule on the Use of Consumer Reviews and Testimonials. The Rule bans the creation, sale or purchase of fake reviews or testimonials and allows the agency to seek civil penalties against violators of the Rule.

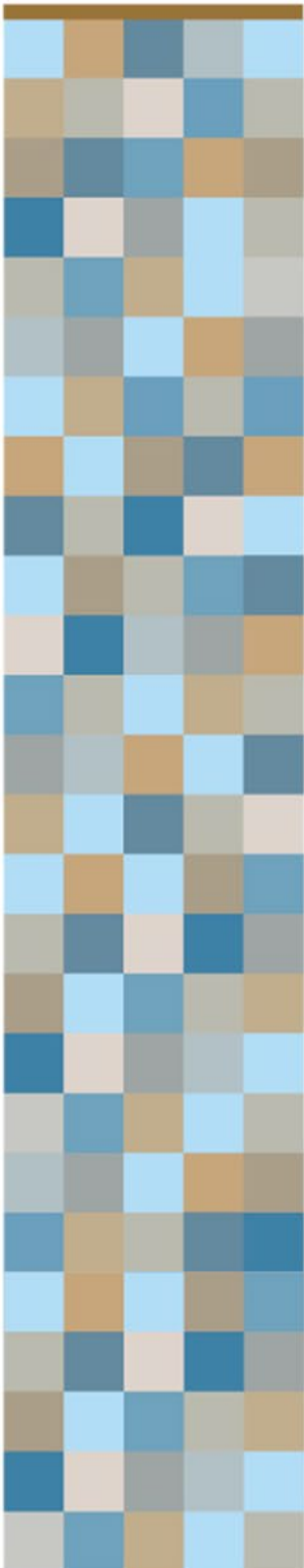
The Rule is effective October 21, 2024 so now is the time for advertisers to take a fresh look at their policies and practices when it comes to reviews and testimonials, to get ahead of the game before enforcement gets underway.

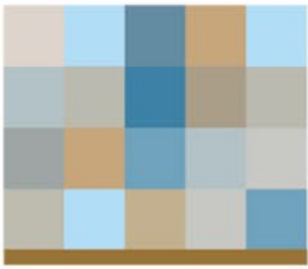
Key prohibitions of the Rule include:

Buying Positive or Negative Consumer Reviews: While an advertiser can still offer incentives for reviews (providing, of course, that any material connection is clearly disclosed), the Rule prohibits providing compensation or other incentives in exchange for, or conditioned (expressly or implicitly) on writing, a consumer review expressing a particular sentiment, whether positive or negative.

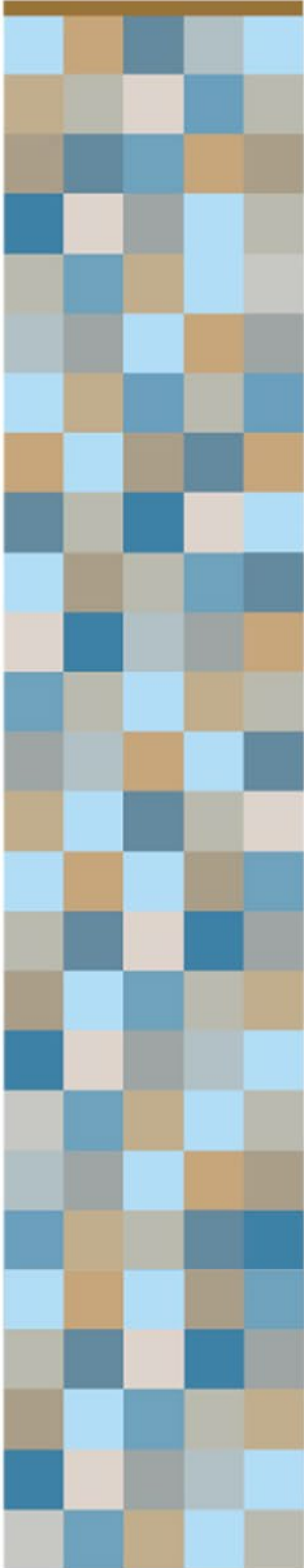
Fake or False Consumer Reviews, Consumer Testimonials, and Celebrity Testimonials: The Rule prohibits businesses from creating or selling reviews or testimonials that are from a non-existent person (e.g., AI-generated reviews) or with someone who had no experience of the business or its products or services, or that misrepresent the experience of the person making the review or testimonial. It also prohibits businesses from buying these reviews, obtaining them from company insiders, or disseminating them on third-party sites if they knew or should have known the reviews or testimonials were false.

Insider Reviews and Testimonials: The Rule prohibits company insiders (i.e., officers or managers) from writing testimonials and reviews that don't clearly and conspicuously identify their material connection to the business they're endorsing. It also stops a company from distributing such a testimonial that it should have known was produced by an officer, manager, employee, or agent. Businesses and their





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officers and managers are generally prohibited from writing, soliciting or disseminating reviews and testimonials from immediate family members, employees, or agents, unless those reviews or testimonials clearly disclose the person's material connection to the business.

Company-Controlled Review Websites: Businesses are prohibited from misrepresenting that a website or entity it controls furnishes independent reviews or opinions about any products or services category that includes its own products or services.

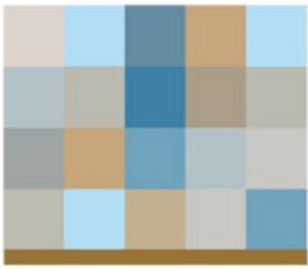
Review Suppression: The Rule prohibits businesses from attempting to suppress negative reviews through unfounded or groundless threats, intimidation or false accusations. Moreover, if the website of a business suppresses reviews based on their rating or negative sentiment, the Rule bars a business from misrepresenting that the reviews represent most or all submitted reviews.

Misuse of Fake Indicators of Social Media Influence: Everyone is prohibited from selling or buying fake indicators of social media influence, such as fake followers or views generated by a bot or hijacked account.

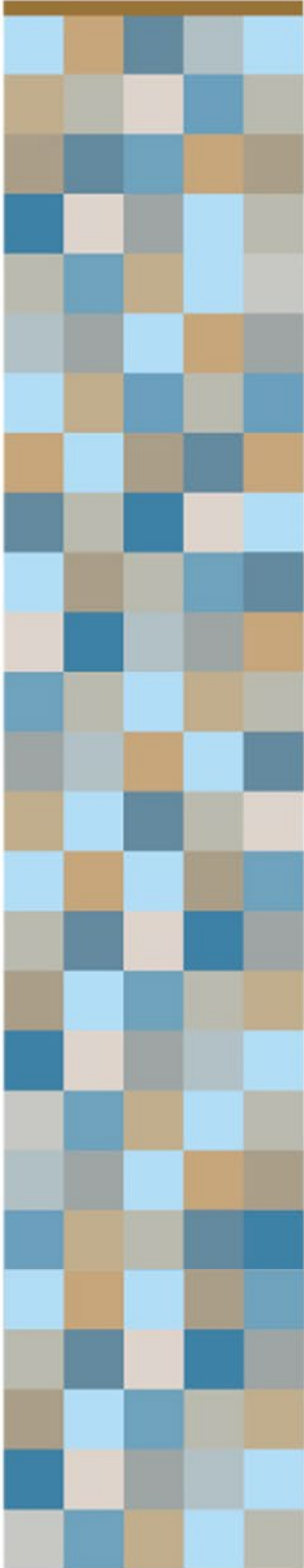
Although unfair or deceptive acts or practices such as those addressed by the Rule are already unlawful under Section 5 of the FTC Act, the Rule was promulgated with an eye towards increasing deterrence of such conduct by allowing the imposition of civil penalties against violators, in addition to allowing the FTC to seek court orders requiring violators to compensate consumers for the harm caused by their unlawful conduct. Currently, violation of the Rule risks a maximum civil penalty of almost \$52,000 per violation.

With the Rule's effective date now established and the risk of hefty penalties and other monetary damages, it is prudent business practice to take steps now to assess your company's policies and practices on reviews and testimonials to ensure compliance with the Rule, which is certain to be strictly enforced.

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