

Why You Should Care About the FTC's Rule on Fake Reviews

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FEDERAL TRADE COMMISSION

16 CFR Part 465

RIN 3084-AB76

Trade Regulation Rule on the Use of Consumer Reviews and Testimonials

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is issuing this final rule and Statement of Basis and Purpose (“SBP”) relating to certain specified unfair or deceptive acts or practices involving consumer reviews or testimonials. This final rule, among other things, prohibits selling or purchasing fake consumer reviews or testimonials, buying positive or negative consumer reviews, certain insiders creating consumer reviews or testimonials without clearly disclosing their relationships, creating a company-controlled review website that falsely purports to provide independent reviews, and selling or purchasing fake indicators of social media influence.

DATES: This rule is effective October 21, 2024.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, (202) 326-2699, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Room CC-6316, 600 Pennsylvania Avenue NW, Washington, DC 20580.

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I. Background

A. Advance Notice of Proposed Rulemaking

On November 8, 2022, the Federal Trade Commission (“Commission” or “FTC”) published an advance notice of proposed rulemaking (“ANPR”) to address certain deceptive or unfair acts or practices involving consumer reviews or testimonials.¹ Specifically, the ANPR discussed: (1) reviews or endorsements by people who do not exist, who did not actually use or test the product or service, or who were misrepresenting their experience with it; (2) review hijacking, where a seller steals or repurposes reviews of another product; (3) marketers offering compensation or other incentives in exchange for, or conditioned on, the writing of positive or negative consumer reviews; (4) owners, officers, or managers of a company (a) writing reviews or testimonials of their own products or services, or publishing testimonials by their employees or family members, which fail to provide clear and conspicuous disclosures of those relationships, or (b) soliciting reviews from employees or relatives without instructing them to disclose their relationships; (5) the creation or operation of websites, organizations, or entities that purportedly provide independent reviews or opinions of products or services but are, in fact, created and controlled by the companies offering the products or services; (6) misrepresenting that the consumer reviews displayed represent most or all of the reviews submitted when, in fact, reviews are being suppressed based upon their negativity; (7) the suppression of customer reviews by physical threat or unjustified legal threat; and (8) selling, distributing, or buying followers, subscribers, views,



Timeline

June 29, 2023

- Updated version of the Endorsement Guides

August 14, 2024

- Final rule on fake reviews and testimonials announced

June 30, 2023

- Proposed rule to ban fake reviews and testimonials

October 21, 2024

- Rule goes into effect

Overview

- What the rule covers:
 - ✓ Fake or false reviews or testimonials
 - ✓ ~~Buying positive or negative consumer reviews~~
 - ✓ Insider consumer reviews and testimonials
 - ✓ Company-controlled review sites or entities
 - ✓ Review suppression
 - ✓ ~~Fake indicators of social media influence~~
- And a word on what the rule does not cover....



Beyond the FTC



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Why a Rule?

Short answer: MONEY

- AMG decision removes agency ability to obtain consumer redress under primary statute (2021)
- Agency efforts to find other avenues for obtaining money:
 - State AG partnerships
 - Aggressive interpretations of existing authority (ROSCA, GLBA)
 - Penalty offense authority
 - Rulemaking



Consequences of Rule Violation

Consumer Redress

Section 19

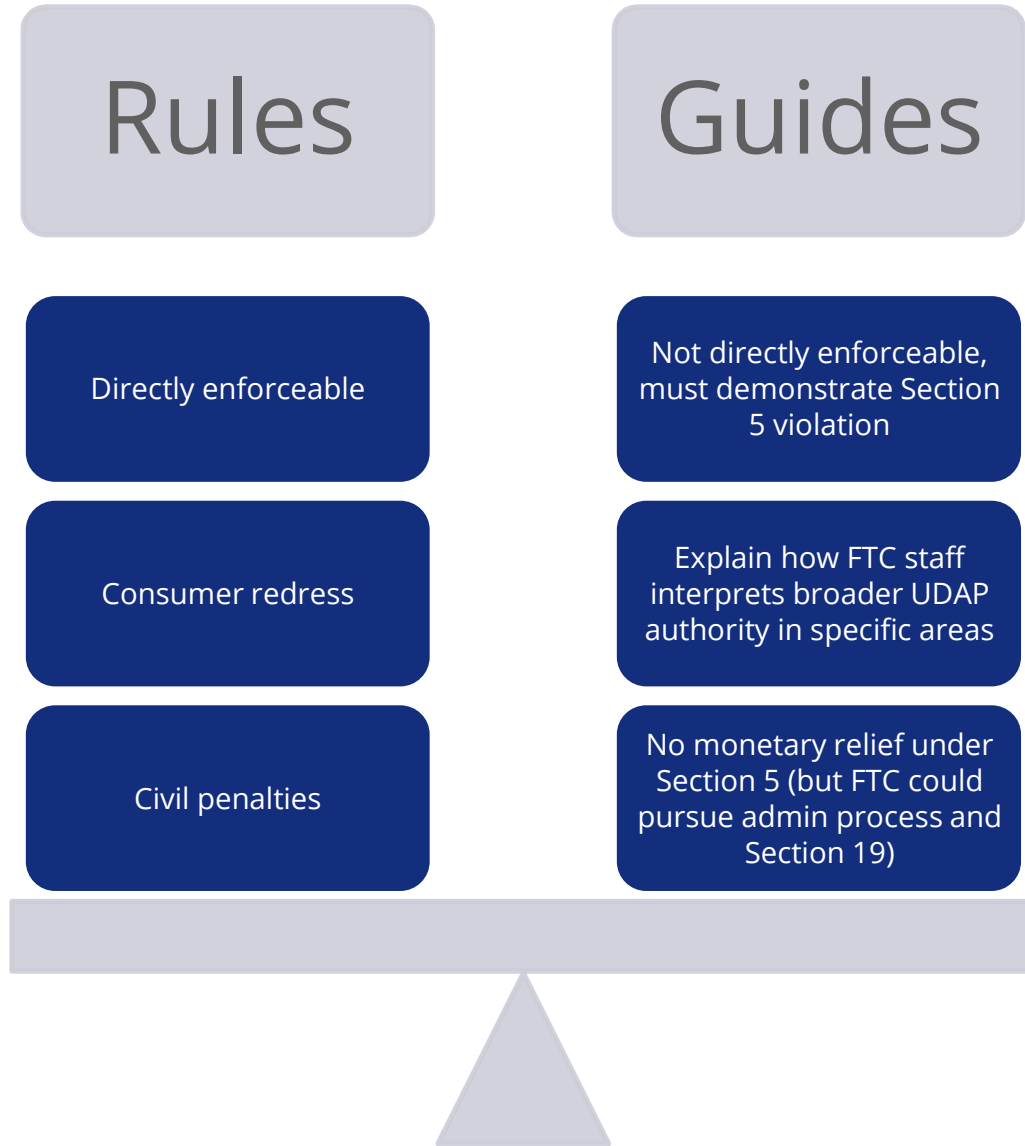
Relief must be “necessary to redress injury to consumers”

Civil Penalties

Section 5(m)(1)(A)

Current max: **\$51,744/per violation**

Violation must occur “with actual knowledge or knowledge fairly implied”



Fake Reviews and Testimonials

Misleading Reviews

- A business can't write, create, or sell a review or testimonial that materially misrepresents:
 - That a person exists;
 - That a person used the product, service, or business; or
 - The person's experience with the product, service, or business.
- A business can't purchase a review or disseminate a testimonial that the business "knew or should have known" makes the misrepresentations set forth above.
- A business can't procure insider reviews that that the business "knew or should have known" makes the misrepresentations set forth above.

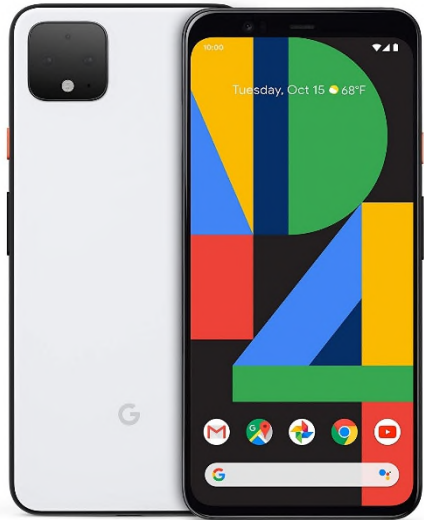


Misleading Reviews

- This section does not necessarily prohibit the use of:
 - Virtual influencers; or
 - A review or testimonial from a person who died after making an endorsement.
- This section does not apply to:
 - Reviews or testimonials that result from general solicitations; or
 - Reviews that appear on a site as a result of merely engaging in review hosting.







“It’s my favorite phone camera out there, especially in low light, thanks to Night Sight Mode.”

“The only thing I love more than taking the perfect photo? Taking the perfect photo at night.”

Practice Points

You shouldn't buy or sell fake reviews (obviously).

Be careful when scripting content or providing talking points for your endorsers.

Do some due diligence before using testimonials.

Insider Reviews and Testimonials

No Insider Endorsements Without Disclosure

- Rule covers only reviews and testimonials by INSIDERS (officers, managers, employees, agents, relatives)
- Endorsement Guides go much further, requiring disclosures for other material connections:
 - Payments
 - Free product
 - Sweepstakes or prizes
 - Promise to be featured in advertisements



Clear & Conspicuous Disclosures

- Detailed and prescriptive
- Form of disclosure must follow form of claim
- Online disclosure must be “unavoidable” – no hyperlinks or “see more”
- Visual disclosures must “stand out”

Clear and conspicuous means that a required disclosure is easily noticeable (i.e., difficult to miss) and easily understandable by ordinary consumers, including in all of the following ways:

(1) In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented in at least the same means as the representation(s) requiring the disclosure.

(2) A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

(3) An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

(4) In any communication using an interactive electronic medium, such as social media or the Internet, the disclosure must be unavoidable. A disclosure is not clear and conspicuous if a consumer must take any action, such as clicking on a hyperlink or hovering over an icon, to see it.

(5) The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

(6) The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

(7) The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

(8) When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes members of that group.

How to make disclosures

- OK:
 - #BrandEmployee
 - “My company”
- May or may not be ok, depending on context and how displayed:
 - #ad (likely ok at the beginning of online social media post but not in a TV or magazine ad)
 - Using social media platform’s built-in disclosures



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value)
★★★★★



SUNDAY RILEY
C.E.O. 15% Vitamin C
Brightening Serum
\$85.00 - \$122.00
★★★★★



SUNDAY RILEY
Luna Retinol Sleeping Night Oil
\$55.00 - \$105.00
★★★★★



SUNDAY RILEY
A+ High-Dose Retinol Serum
\$85.00 - \$122.00
★★★★★








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Practice Points

Create policy and detailed playbook for making disclosures related to employee/insider endorsements.

Train prospective endorsers on how to follow policies and playbook.

Monitor compliance.

Take remedial steps where necessary.

Review Suppression

Threats & Accusations

- A business can't make "unfounded or groundless" threats or "public false accusations" to prevent a review from being written or cause it to be taken down.
- The rule does not prohibit reaching out to consumers who have posted negative reviews and attempting to improve their reviews by addressing their concerns.





Non-Disparagement Clause

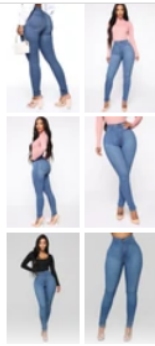
You agree that regardless of your personal experience with PL, you will **not** disparage RL and/or any of its employees, products, or services. This means that you will not speak, publish, cause to be published, print, review, blog, or otherwise write negatively about RL or its products or employees in any way. This encompasses all forms of media, including and especially the internet. This paragraph is to protect RL and its current and future customers from the harm of libelous or slanderous content in any form, and thus, your acceptance of these Terms and Conditions prohibits you from taking any action that negatively impacts RL, its reputation, products, services, management, or employees. We make it clear that RL and its Regimen may not be for everyone, and in that regard, the foregoing clause is meant to prevent “one person ruining it for everyone.” Should any customer violate this provision, as determined by RL in its sole discretion, you will be provided with seventy-two (72) hours to retract the content in question. If the content remains, RL would be obliged to seek all legal remedies to protect its name, products, current customers, and future customers.

If you breach this Agreement, as determined by RL in its sole discretion, all discounts will be waived and you agree to pay the full price for your product. In addition, we retain all legal rights and remedies against the breaching customer for breach of contract and any other appropriate causes of action.

Suppressing Negative Reviews

- The rule prohibits “misrepresenting that reviews represent most or all the reviews when reviews are being suppressed based upon their ratings or their negative sentiment.”
- The rule does not prohibit:
 - Suppressing reviews based on certain enumerated reasons, as long as the criteria for suppression is applied neutrally; or
 - Highlighting positive reviews in a way that isn’t misleading.



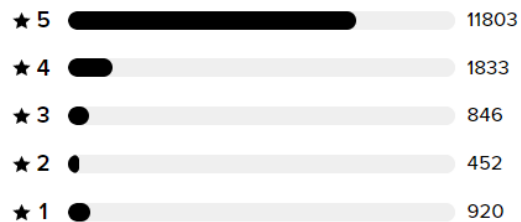


\$20.99 ~~\$34.99~~

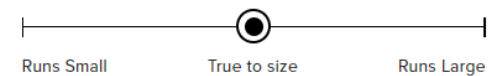
4.5/5



15854 reviews



How did it fit?



Write a review



Practice Points

Don't make unfounded legal threats or false accusations.

If you offer to fix problems, don't make the fix contingent on an improved review.

Don't suppress reviews just because they're negative.

Apply suppression criteria in a neutral manner.

Company-Controlled Sites & Entities

Company-Controlled Sites and Entities

- The rule prohibits a business from representing that:
 - A website it controls provides independent reviews or opinions; and
 - An entity it controls provides independent reviews or opinions.





10 Foot Olympus Pro Trampoline Combo

41 Review(s)

Regular Price: ~~\$899.00~~

SPECIAL PRICE \$799.00

ADD TO CART

- [Add to Wishlist](#)
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10 Foot Olympus Pro Trampoline EXTRA HEAVY DUTY Combo

43 Review(s)

Regular Price: ~~\$976.00~~

SPECIAL PRICE \$899.00

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STYLING TIPS

How To Beat Humidity At Its Own Game

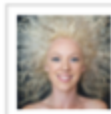
by HFW on August 27, 2013

When summer sunshine beckons outside, it seems humidity is always lurking to transform our sleek hairstyle into a wild mess! It's almost enough to keep us indoors all summer!

But don't let the weather rain on your parade this Labor Day weekend. The experts revealed their salon tricks to put an end to humidity wreaking havoc on your 'do.



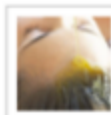
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2 2

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Practice Points

Don't create sites to review your products that appear independent (obviously).

If you review your products or competitors' products, be clear about who you are.

Don't create icons that could be interpreted as third-party certifications.

Knowledge Standard

“Knew or should have known”

- Applies to:
 - Fake review procuring/purchasing;
 - Use of insider reviews; and
 - Misuse of social media influence indicators.
- FTC still needs to demonstrate act was committed with “actual knowledge or knowledge fairly implied” to get civil penalties BUT ambiguity remains



Wrap-Up & Final Thoughts

New Rule > Guides

- Don't ignore Guides, but evaluate risk differently

Final practice tips:

- Create a clear endorsement policy
- Conduct internal trainings
- Provide endorsers with guidance
- Monitor, monitor, monitor
- Take action when necessary

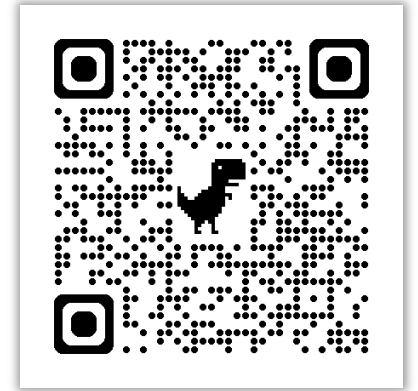
Questions?



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