

# FTC Staff Issues FAQs on the “Fake Review” Rule

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November 14, 2024

As we noted in a [previous post](#), the FTC’s Rule on the Use of Consumer Reviews and Testimonials, which went into effect on October 21, 2024, addresses deceptive conduct involving consumer reviews and testimonials and authorizes courts to impose civil penalties for knowing violations. This month, FTC staff released an [FAQ](#) with answers to 74 questions about the rule. Here are some of the highlights that we think will be of most interest to our readers.

- FTC staff clarified that businesses can’t be held liable for hosting fake or false reviews on their site, assuming they didn’t write or buy them. Moreover, businesses aren’t required to investigate whether the reviews they host on their site are fake or false. However, the answer is different for testimonials which are, by definition, advertising or promotional messages. If a business uses a testimonial (or highlights a review) that is fake or false, the business could be liable.
- When a business hires an influencer to promote its products or services, it should not provide the text for a testimonial without a reasonable basis to conclude that the text accurately reflects the influencer’s experience. The business should also look for any red flags that may indicate that any testimonial provided by an influencer is false. For example, if the influencer expresses an opinion before using a product, that should be a warning sign.
- If a business gives incentives to people for writing reviews, it can’t require or suggest that the reviews have to express a particular sentiment. For example, asking people to post about how much they loved a product in exchange for a coupon could be problematic. Moreover, that problem can’t be cured with a disclosure.
- Businesses can’t be held liable if employees write reviews without disclosing that they’re employees, if that review was written in response to a general solicitation. If a business encourages employees to write reviews, though, it must inform the employees to clearly disclose their relationship to the company. Notably, the FTC does not expect businesses “to scour every review of the business for possible insider reviews appearing without a disclosure.” However, the business should look out for red flags.
- Similarly, although the Rule “does not impose a general duty for businesses to investigate whether each consumer review of its products is fake or false,” businesses should look out for “indications that purchased reviews are likely to be fake or false, in which case failing to investigate may trigger liability under the ‘should have known’ standard.”
- Certain disclosures have to be “unavoidable,” which staff writes “is an objective standard that turns on whether consumers could have avoided the disclosure.” A disclosure is avoidable when “a consumer must take any action, such as clicking on a hyperlink or hovering over an icon, to

see it.” Echoing guidance from the Endorsement Guides, staff wants the disclosure to match the medium in which a review appears. For example, if a review appears in a video, the disclosure should appear in the video itself, not just in the text description.

- The Rule states that testimonials may not need a disclosure if a material relationship with the business is “otherwise clear to the audience.” Staff explains that could be the case if the audience may already be aware that a person is associated with a business or if the context of a testimonial communicates a relationship with the business. For example, the a person giving a testimonial is seen “working in the company’s offices or wearing a company uniform,” the connection may be obvious.
- Staff explains that businesses have some flexibility in how they moderate reviews on their sites as long as the moderation criteria is applied equally to both positive and negative reviews. Staff also writes that “organizing reviews is not suppressing reviews under the rule,” so businesses have some flexibility in how reviews are displayed. For example, displaying reviews according to which have been rated most helpful should not violate the Rule. However, making it hard for people to find negative reviews could be deceptive under Section 5 of the FTC Act.

These (and other) answers provide helpful guidance to businesses as they attempt to comply with the Rule. As FTC staff notes throughout the answers, though, this guidance is primarily focused on the Rule itself. Conduct that doesn’t violate the Rule may still run afoul of the Endorsement Guides or the FTC Act, so it’s important to take those into account in your compliance strategy.