



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 192 3008]

Sunday Riley Modern Skincare, LLC; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement; Request for Comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write: "Sunday Riley Modern Skincare, LLC; File No. 192 3008" on your comment, and file your comment online at

<https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address:

Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer (202-326-2699),

Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 21, 2019), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Sunday Riley Modern Skincare, LLC; File No. 192 3008” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Sunday Riley Modern Skincare, LLC; File No. 192 3008” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary,

600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and

must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Sunday Riley Modern Skincare, LLC (“Sunday Riley Skincare”) and its Chief Executive Officer, Ms. Sunday Riley (collectively “respondents”).

The proposed consent order (“order”) has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again

review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondents' marketing of their Sunday Riley brand cosmetic products. The respondents have sold their cosmetic products through Sephora's website, www.sephora.com, which provides consumers the opportunity to leave product reviews. According to the complaint, on multiple occasions, Sunday Riley Skincare managers, including Ms. Riley, posted reviews of Sunday Riley brand cosmetic products on the Sephora website using fake accounts created just for that purpose or requested that other employees do so. The complaint alleges that the respondents violated Section 5(a) of the FTC Act by misrepresenting that certain reviews of Sunday Riley brand products on the Sephora website reflected the independent experiences or opinions of impartial ordinary users of the products, when they were written by Ms. Riley and her employees. The complaint further alleges that the respondents deceptively failed to disclose that certain online consumer reviews were written by Ms. Riley or her employees.

The order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future.

Provision I prohibits the respondents, in connection with the sale of any product, from misrepresenting the status of any endorser or person providing a review of the product, including misrepresenting that the endorser or reviewer is an independent or ordinary user of the product.

Provision II prohibits the respondents from making any representation about any consumer or other endorser of a product without disclosing, clearly and conspicuously, and in close proximity to that representation, any unexpected material connection

between the consumer or endorser and (1) any respondent, or (2) any other individual or entity affiliated with the product. The order defines the terms “clearly and conspicuously,” “close proximity,” and “unexpected material connection.”

Provision III requires that the respondents instruct their employees, officers, and agents as to their responsibilities for disclosing their connections to any respondent’s product they endorse and that the respondents obtain signed acknowledgements from them. **Provision IV** mandates that the respondents acknowledge receipt of the order, distribute the order to principals, officers, and certain employees and agents, and obtain signed acknowledgments from them. **Provision V** requires that the respondents submit compliance reports to the FTC one year after the order’s issuance and submit notifications when certain events occur. **Provision VI** requires the respondents to create certain records for twenty years and retain them for five years. **Provision VII** provides for the FTC’s continued compliance monitoring of the respondents’ activity during the order’s effective dates. **Provision VIII** provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order’s terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.