

WHAT THE FTC'S FINAL RULE MEANS FOR REVIEWS AND TESTIMONIALS – PART I

Sep 03, 2024

The Federal Trade Commission (FTC) has published a long anticipated Final Rule that prohibits certain practices that the FTC deems misleading or deceptive when it comes to consumer reviews and testimonials. As we anticipated in reporting on the FTC's proposed rule last year, the Final Rule provides legal guardrails in six areas:

1. The purchase, sale, or procuring of consumer or celebrity reviews or testimonials that are “fake”, either because (i) the reviewer doesn't actually exist, (ii) the reviewer didn't actually use or otherwise have experience with the product or service, or (iii) the review materially misrepresents the reviewer's actual experience.
2. Providing compensation or other incentives in exchange for reviews that express a particular sentiment – for example, conditioning a gift card or free product on a review being positive.
3. Facilitating “insider” reviews by officers, employees, or family members that do not contain a clear and conspicuous disclosure of the relationship.
4. Setting up sites that appear to be independent review sites when in fact they are controlled by the business whose products or services are reviewed.
5. Suppressing reviews, either by intimidation or by only publishing certain reviews (for example, only positive reviews).
6. Misusing fake indicators of social media influence, such as buying or selling fake followers, likes, subscribers, views, etc.

The Final Rule takes effect on October 21. This is the first in a six-part series that dissects the FTC's nuanced clarifications on each of the above.

The Final Rule largely tracks the proposed rule with modifications characterized by the FTC as “mostly clarifications and limitations.” Noticeably absent from the Final Rule was the FTC's proposal on “review hijacking” – using a review written or created for one product or service for a

substantially different product or service. The FTC has stated that it is not able to resolve concerns expressed in public comments and therefore decided not to include that provision.

Nearly all of the final rules adopted represent a subset of the practices discussed in the FTC's [Guides Concerning the Use of Endorsements and Testimonials in Advertising](#) (Endorsement Guides), which were released in June 2023. But unlike the Endorsement Guides, which are not themselves independently enforceable, violations of the Final Rule can result in significant consequences. The FTC will be empowered to impose penalties against violators of up to \$51,744 per rule violation, along with other relief—including consumer redress, conduct restraints, and broad oversight authority.

As an initial matter, the FTC clarified that a “consumer review” is a consumer’s evaluation of a product, service or business published to a website or platform dedicated in whole or in part to receiving and displaying such evaluations, including consumer ratings “regardless of whether they include in text or narrative.” In contrast, a “consumer testimonial” is “an advertising or promotional message ... that consumers are likely to believe reflects the opinions, beliefs, or experiences of a consumer who has purchased, used, or otherwise had experience with a product, service, or business.”

In our next post, we take a deeper dive into the FTC’s prohibition on false and fake reviews and testimonials.

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