

PART 4: WHAT THE FTC'S FINAL RULE MEANS FOR INSIDER REVIEWS

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In this post, part of a [six-part series](#) on the FTC's Final Rule on Consumer Reviews and Testimonials, [1] we explore what the Final Rule means for so-called "insider" consumer reviews and testimonials, and also review suppression.

Insider Reviews/Testimonials: Section 465.5 of the Final Rule prohibits businesses from creating, soliciting or posting reviews or testimonials by officers, managers, employees or agents without clearly disclosing their relationship to the business, unless that relationship would be clear to the audience.

There are two exceptions to this prohibition – it doesn't apply to (1) unsolicited social media posts by employees or social media posts that result from generalized, i.e., non-employee specific, solicitations and (2) unsolicited employee reviews merely appearing on the business's website because of its "consumer review hosting" function.

The Final Rule defines "consumer review hosting" as "providing the technological means by which a website or platform enables consumers to see or hear the consumer reviews that consumers have submitted to the website or platform." In other words, if an employee happens to post an unsolicited review on your company's website as to a product or service they actually purchased and used, it would not necessarily violate the FTC rule. The best practice, however, is to advise employees that they should disclose their business relationship when posting a review.

Businesses also should not solicit reviews, or encourage employees to do so, from immediate relatives (defined as a spouse, parent, child, or sibling) without disclosing the reviewer's material relationship to the business.

This aligns with the FTC's previously published [Soliciting and Paying for Online Reviews: A Guide for Marketers | Federal Trade Commission \(ftc.gov\)](#), which states:

- Don't ask your staff to write reviews of your business, at least not without ensuring that they disclose in their review that you employ them and asked them to write it.

- Don't ask family and friends for reviews, at least not without ensuring that they disclose their personal connection in the reviews.

Review Suppression: Section 465.7 of the Final Rule prohibits businesses from attempting to suppress negative or unfavorable reviews, except in limited circumstances. These include when a review contains trade secrets, privileged or confidential information, personal information of another individual, or content that is defamatory, harassing, abusive, obscene, vulgar, sexually explicit, discriminatory, or “clearly false or misleading.”

It also is not considered to be review suppression where a business “reasonably believes the review is fake” or “wholly unrelated to the products or services” being offered. Additionally, the provision prohibits businesses from suppressing negative reviews and thereby misrepresenting that select consumer reviews represent most or all reviews.

The above principles from the Final Rule align with those in the FTC's [Featuring Online Customer Reviews: A Guide for Platforms | Federal Trade Commission \(ftc.gov\)](#):

- Publish all genuine reviews and don't exclude negative ones.
- Don't display reviews in a misleading way. For example, it could be deceptive to feature the positive ones more prominently or requiring multiple clicks to see just the negative reviews.
- If you display reviews when the reviewer has a material connection to the company offering the product or service – for example, when the reviewer has received compensation or a free product in exchange for their review or is affiliated with the business – that relationship should be clearly and conspicuously disclosed.
- Clearly and conspicuously disclose how you collect, process, and display reviews, and how you determine overall ratings, to the extent necessary to avoid misleading consumers.

In short, the Final Rule does not require a material change from practices that were already discouraged in earlier FTC guidance, but the Final Rule now adds “teeth” to that past guidance with penalty provisions. 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.

In our next post, we explore what the FTC's Final Rule means for using “fake” review websites and indicators of social media influence.

For questions or more information, or to schedule a company webinar on this topic, contact the authors listed, [Merrit Jones](#), Co-Leader of BCLP's Retail & Consumer Products Sector, and BCLP partner [David Schwartz](#), former Lead Investigative Attorney with the FTC. For more information on BCLP's Marketing & Advertising Team, click [here](#).

[1] The Federal Trade Commission has published a [Final Rule](#) on consumer reviews and testimonials that prohibits certain practices the FTC deems to be deceptive or misleading in six areas: (1) fake or false consumer reviews, consumer testimonials, or celebrity testimonials; (2) buying positive or negative consumer reviews; (3) insider consumer reviews and consumer testimonials; (4) company-controlled review websites or entities; (5) review suppression; and (6) misuse of fake indicators of social media influence. This is part of a six-part series explaining the FTC's new rule in each of those areas.

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