

WHAT THE FTC'S FINAL RULE MEANS FOR FAKE INDICATORS OF SOCIAL MEDIA INFLUENCE AND FAKE REVIEW WEBSITES

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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 FTC means in prohibiting the use of fake indicators of social media influence, and fake review websites.

Fake indicators of social medial influence: Section 465.8 of the Final Rule broadly prohibits the sale, distribution, or purchase of fake indicators of social media influence—such as followers, friends, connections, subscribers, views, plays, likes, saves, shares, reposts, and/or comments—where (1) the person “knew or should have known” the indicator to be fake and (2) the indicator can be used by individuals or businesses “to materially misrepresent their influence or importance for a commercial purpose.” For example, the Final Rule prohibits purchasing “views” to make it seem as though a social media post is gaining greater scale than it actually is receiving.

The Final Rule adopts the proposed rule's definition of “indicators of social media influence” as “any metrics used by the public to make assessments of an individual's or entity's social media influence, such as followers, friends, connections, subscribers, views, plays, likes, saves, shares, reposts, and comments.” The FTC decided against expanding this definition to include metrics that are not publicly visible but are used to gain an algorithmic advantage.

Like the proposed rule, the Final Rule uses the term “fake.” In response to comments regarding the ambiguous nature of this word, the FTC defined “fake indicators of social media influence” to include indicators “generated by bots, purported individual accounts not associated with a real individual, accounts created with a real individual's personal information without their consent, or hijacked accounts, or that otherwise do not reflect a real individual's or entity's activities, opinions, findings, or experiences.”

The FTC further explained that it is focused on prohibiting the intentional distribution of fake indicators. In other words, it is not seeking to impose vicarious liability on businesses who unknowingly distribute fake indicators of social media influence, for example, by hiring an influencer may have fake followers or likes.

Fake review websites: Section 465.6 of the Final Rule prohibits businesses from materially misrepresenting a review website as being “independent” in nature when it is, in fact, controlled, owned, or operated by the business and features products or services of that business. The FTC makes clear in its comments that this rule does not apply to websites that “are not materially misrepresenting independence.” In short, if a review website is sponsored,, affiliated with, or controlled by a particular business, that should be made apparent to consumers.

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 and final post in the series, we explore further what the Final Rule means for potential FTC enforcement and penalties.

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](#).

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