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Federal Trade Commission Finalizes Sweeping New Rule Aimed at Combating Deceptive Reviews

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The Federal Trade Commission (FTC) has finalized a sweeping new rule (Rule)¹ aimed at combating deceptive practices in online reviews and testimonials. The Rule, which received unanimous support from the FTC's five commissioners, marks a pivotal step in the agency's ongoing efforts to protect consumers from misleading information and ensure market transparency.

After reviewing public comments, the FTC made several changes to its notice of proposed rulemaking in June 2023. Notably, the FTC removed a provision that would have penalized businesses for using "highjack reviews," a consumer review written for one product and applied to a substantially different product. In the Rule, the commission stated that it could not immediately resolve a factual dispute about the definition of "substantially different product" and, therefore, chose not to finalize that provision.

However, the essence of the proposed rule remains unchanged: The Rule still prohibits six categories of conduct that the FTC deems deceptive, as discussed below.

FAKE OR FALSE REVIEWS

At the heart of the Rule is a strict prohibition on fake or false consumer reviews and testimonials. The Rule targets reviews that misrepresent the reviewer's identity – including those generated by artificial intelligence (AI) – or falsely claim to reflect the experiences of real consumers. This also applies to testimonials obtained from insiders or purchased from third parties, especially when a business knew or should have known that the reviews were fake or false. Under this new regulation, the FTC has made it clear that companies are barred from creating, purchasing, selling or disseminating such reviews.

INCENTIVIZED REVIEWS

The FTC's Rule also addresses the issue of incentivized reviews, where compensation or other incentives are offered in exchange for reviews expressing specific sentiments. Businesses are now prohibited from

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Online Reviews

conditioning such incentives on the content of the review, whether positive or negative.

INSIDER REVIEWS AND TESTIMONIALS

The Rule not only targets fake and incentivized reviews, but also imposes strict limits on reviews and testimonials from company insiders. The FTC now requires any material connection between a reviewer and a business to be clearly and conspicuously disclosed. Reviews and testimonials by officers, managers or employees without proper disclosure are prohibited. It is also unlawful if an officer or manager encourages nondisclosure, fails to instruct on disclosure or neglects to address undisclosed reviews of which they are aware. Additionally, the Rule prohibits officers or managers from soliciting reviews from immediate relatives, employees or agents without ensuring full disclosure of their connection to the business.

COMPANY-CONTROLLED REVIEW WEBSITES

Another significant aspect of the Rule is the prohibition against businesses misrepresenting the independence of review websites or entities they control. The FTC has made it unlawful for a business to falsely claim that a website or entity it manages provides impartial reviews or opinions on products or services, including its own offerings.

FAKE SOCIAL MEDIA INDICATORS

The Rule also addresses the misuse of fake social media indicators, such as followers or views artificially generated through bots or hijacked accounts. It prohibits businesses from inflating their social media influence and deceiving consumers about its popularity or credibility for a commercial purpose. The FTC's regulation prohibits the purchase or sale of such indicators when the buyer knew or should have known that they were fake.

REVIEW SUPPRESSION

Finally, the Rule prohibits the suppression of reviews by threats or intimidation, as well as the suppression of reviews that contain negative or unfavorable sentiments. It states that organizing reviews alone does not qualify as suppressing reviews, but businesses may not feature or highlight favorable reviews in a way that distorts the full universe of consumer feedback. The FTC acknowledges companies' rights to suppress

certain reviews, including those that contain defamatory, harassing, abusive, obscene, vulgar or sexually explicit content. Additionally, companies may suppress clearly false content or reviews that the seller reasonably believes are fake.

IN SUMMARY

- The FTC recently finalized a sweeping new Rule designed to combat deceptive practices in online reviews and testimonials.
- The Rule covers six categories of conduct the FTC deems deceptive, including providing false or fake reviews, incentivized reviews and fake social media indicators.
- In light of the FTC's stronger stance on the review process, businesses now will face more significant legal risks and compliance challenges.

KEY TAKEAWAYS

The FTC's Rule on fake reviews and testimonials introduces significant legal risks and compliance challenges for businesses. The Rule, which addresses the evolving role of AI in generating content that could mislead consumers, adds a layer of complexity for businesses, as they must not only ensure that their practices are transparent and authentic, but also safeguard against the misuse of emerging technologies. The FTC's aggressive stance, bolstered by past enforcement actions against businesses using fake social media indicators, underscores all businesses' need to audit their practices thoroughly.

Businesses must now develop and enforce stringent policies for handling consumer reviews, while also ensuring that third-party advertising and marketing partners are well-trained and monitored under the new FTC regulations. Noncompliance could result in severe financial penalties of up to \$51,744 per violation and lead to lengthy, burdensome investigations that disrupt operations. As enforcement ramps up, businesses must stay ahead through proactive compliance strategies. Given the FTC's history of pursuing deceptive reviews under Section 5 of the FTC Act, it is clear that businesses can expect heightened scrutiny and more rigorous enforcement as the Rule comes into effect.

Note

1. https://www.ftc.gov/system/files/ftc_gov/pdf/r311003consumerreviewstestimonialsfinalrulefrn.pdf.

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