



FTC Accepts Comments on Potential Rule to Combat Fake Reviews and Other Deceptive Endorsements

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The Federal Trade Commission continues to make moves in its battle against deceptive and inaccurate information online. Endorsements, testimonials, and social media influencers still apparently sit near the top of the FTC's list of activities that have the potential to harm consumers.

Section 5(a) of the FTC Act provides that "unfair or deceptive acts or practices in or affecting commerce ... are ... declared unlawful." The FTC routinely enforces Section 5(a) in the advertising space and pays particular attention to endorsements and testimonials. The FTC's "Guides Concerning the Use of Endorsements and Testimonials in Advertising" set forth general principles to help advertisers ensure that their advertising does not violate Section 5(a). The FTC also created an accompanying Guide, a blog post, a dedicated webpage, and sharable videos providing further insight into its expectations.

Now, the FTC wants to put more bite behind its bark.

In November 2022, the FTC announced that it was "exploring a potential rule to combat deceptive or unfair review and endorsement practices, such as using fake reviews, suppressing negative reviews, and paying for positive reviews." The FTC's guides are not enforceable regulations, so a rule would simplify the FTC's enforcement activity and provide the FTC with an opportunity to impose civil penalties.

This advance notice of proposed rulemaking asked for comments on the costs/benefits of a potential rule and the potential harms to consumers related to the following categories:

- **Fake reviews:** These include reviews and endorsements by people who do not exist, who have not used the product or service, or who lie about their experiences.
- **Review reuse fraud:** Some sellers hijack or repurpose reviews posted about another product or service.
- **Paid reviews:** Marketers may pay for positive reviews about their products or negative reviews about competitors' products.
- **Insider reviews:** These include reviews written by a company's executives or solicited from its employees that don't mention their connections to the company.
- **Review suppression:** Companies might claim that their websites display all reviews submitted by customers when they suppress negative reviews or attempt to suppress reviews on other platforms by threatening the reviewers.

- **Fake review websites:** Some sellers set up purportedly independent websites or organizations to review or endorse their own products.
- **Buying followers:** This practice involves buying or selling followers, subscribers, views, or other indicators of social media influence.

FTC Chair Lina Khan stated in regard to the ANPR that “[b]usinesses have been caught leaving positive reviews for their own products or services, suppressing negative ones, and boosting bad reviews of their competitors.... These practices don’t only harm the consumers who place their trust in fake reviews. They also pollute the marketplace and put honest businesses at a competitive disadvantage.”

The comment period closed on January 9, 2023, and the FTC received more than 60 comments from individuals, businesses, and trade groups. Stay tuned for what happens next. If you haven’t given much thought to how you are using reviews, testimonials, and endorsements in your marketing, there’s no time like the present to do that review in light of the potential harms of concern to the FTC.