



## Online Reviews Become a Focus of the FTC

October 31st, 2019

**Andrea S. Cottrell**

Who doesn't love an online review? My family rarely buys anything of consequence without checking the reviews first. Online reviews allow us to get the skinny on anything and everything. In fact, my husband even reads reviews of our favorite restaurants periodically to ensure that some terrible incident hasn't occurred between our frequent visits. Insert the eye roll emoji here.

As much as I love online reviews, I admit that they sometimes induce decision paralysis and can be an incredible time suck. For that reason, I attempt to limit my dependence on them and take them with a grain of salt. The Federal Trade Commission's Bureau of Consumer Protection views online reviews with caution, too.

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).

On October 21, the FTC announced settlements of two complaints challenging deceptive online marketing tactics. One of those complaints charged skincare company Sunday Riley Modern Skincare, LLC, and its CEO with misleading consumers by allegedly using fake product reviews posted by its employees on a well-known retail website. The FTC's release on the settlements states:

Posting deceptive or inaccurate information online pollutes the e-commerce marketplace and prevents consumers from making informed purchasing decisions. With these two actions, the FTC makes it clear that it will take enforcement action against this type of illegal behavior.

Tough words and a clear warning from the FTC.

According to the FTC's complaint, Sunday Riley, the CEO and namesake of the Texas-based company, allegedly instructed employees (in writing using company email, no less) to create fake accounts, post positive reviews, and dislike negative reviews at online retailer Sephora. When Sephora caught on to the tactic and removed the offending reviews, the company started using a VPN to keep Sephora from knowing which reviews came from Sunday Riley-affiliated IP addresses. Insert the big eyes emoji here.

The FTC's complaint charges both Sunday Riley the company and Sunday Riley the CEO with

two violations of the FTC Act: 1) making false or misleading claims that the fake reviews reflected the opinions of ordinary users of the products; and 2) deceptively failing to disclose that the reviews were written by Ms. Riley or her employees.

As a recent Sunday Riley devotee and a follower of all things deceptive advertising-related, I was stunned. My two hobbies – skin care and advertising law – were combined into one article on BuzzFeed. I don't know which revelation was worse – that my newest favorite skincare line might not be as good as I thought or that advertisers are still not getting this right after the FTC's efforts to lay down the law. Sunday Riley (both the company and the CEO) surely will not err this way again. I am confident that the lesson was learned and that their advertising compliance will be as good as their skincare products going forward. Plus, the FTC will be watching them ever so closely in the future, according to the consent order.

The lesson *du jour* here is simple: Tell the truth and be absolutely transparent when it comes to reviews, endorsements, and testimonials. Have you paid someone to talk up your dealership on his or her podcast? Great. Make sure the podcast listeners know that you paid for that person's services. Do you allow your employees to post comments or reviews online about the benefits of service contracts? Fine. Make them disclose that they work for your dealership. Most importantly, believe the FTC when it says that it will not tolerate online advertising shenanigans.

Here's one final thought: Make your marketing department and ad agency aware of this FTC action. Better yet, send them this article, the FTC's press release and complaint, and the consent order, along with a copy of the FTC guides. Then, incorporate the FTC's guidance into your marketing and social media policies and procedures if it is not already there. Insert the smiling jazz hands emoji here.