



The Federal Trade Commission (FTC) recently finalized its [Rule on the Use of Consumer Reviews and Testimonials](#) (Rule) to combat fake reviews and testimonials. The finalized Rule comes after the FTC reviewed 100 public comments to its Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials in June 2023. Violation of the Rule will allow the FTC to seek civil penalties of up to \$51,744 per violation, along with other relief, such as injunctive relief. The Rule is effective on October 21, 2024. Many brands seek, host, or otherwise use customer reviews and testimonials and should therefore review the Rule and tune their compliance as needed to avoid unwanted FTC scrutiny. Highlights from the Rule include:

- **False consumer reviews, consumer testimonials, or celebrity testimonials.** The Rule prohibits brands from writing, creating, or selling consumer reviews and testimonials that materially misrepresent

(expressly or by implication) (1) that the reviewer exists (*e.g.*, for an AI-generated fake review); (2) that the reviewer used or otherwise had experience with the product or service; or (3) the reviewer's experience with the product, service, or business.

The Rule also prohibits a brand from buying consumer reviews or disseminating (or causing the dissemination of) testimonials that fall into above categories (1) - (3) if the brand knew or should have known about the misrepresentation.

- **Buying positive or negative consumer reviews.** Brands must not provide compensation or other incentives in exchange for or conditioned on (expressly or by implication) creating consumer reviews expressing a particular position (positive or negative) about the brand or its products or services. The Rule defines “consumer reviews” as reviews published to a website or platform dedicated (in whole or in part) to receiving and displaying consumer evaluations, including, for example, via text reviews or star ratings.
- **Insider reviews and consumer testimonials.** Officers or managers of a brand cannot write or create consumer reviews or testimonials about their business, products, or services without a clear and conspicuous disclosure of their material relationship to the brand (unless, in a testimonial context, the relationship is clear to the audience).
  - If the brand knew or should have known of the material relationship between the testimonialist and the business, it is likewise a violation for the brand to disseminate or cause the dissemination of a consumer testimonial from its officer, manager, employee, or agent without a clear and conspicuous disclosure of such relationship (unless the relationship is clear to the audience).
  - When officers or managers solicit consumer reviews about the brand or its products or services from their own immediate relatives or from employees or agents (or when they tell employees or agents to solicit reviews from relatives), such solicited reviews must include a disclosure of the material relationship between the reviewer(s) and the brand. Relatedly, the officer or manager must instruct such reviewers to clearly and conspicuously disclose their relationship to the brand and, if they knew or should have known that a related review appears without a disclosure, take remedial steps to address the disclosure.
- **Definition of “clear and conspicuous.”** The Rule states that “clear and conspicuous” disclosures about material relationships—such as a manager or officer’s relationship to the brand—must be easy to notice and understand for ordinary consumers. For audiovisual content, disclosures must be presented in “at least the same means as the representations requiring the disclosure.” Further, for communications made using social media or the internet, the disclosure must be “unavoidable.”
- **Company-controlled review websites.** Brands must not materially misrepresent (expressly or by implication) that a website or entity that they control, own, or operate provides independent reviews or opinions, *other than consumer reviews*, about a category of business, product, or service that the company sells. This is meant to prevent brands from creating purportedly independent websites, organizations, or entities to review their products or services and, therefore, does not apply to general consumer reviews on a brand’s website, so long as those reviews otherwise comply with FTC and truth-in-advertising law requirements.
- **Review suppression.** Brands must not use unfounded or groundless legal threats, intimidation, or certain false public accusations (made with knowledge of the falsity or disregard for the truth) to prevent or remove a negative consumer review. Brands also cannot materially misrepresent (expressly or by implication) that the consumer reviews represent most or all of the reviews submitted to the website when reviews have been suppressed based on their rating or negative sentiment. A review is *not* considered suppressed based upon rating or negative sentiment if the suppression occurs based on criteria for withholding reviews that are applied *equally* to all reviews without regard to whether the review is positive or not (*e.g.*, criteria prohibiting communication of trade secrets, confidential information, or harassing or obscene content).

- **Purchase or use of fake social media indicators.** The Rule prohibits anyone from selling or buying fake indicators of social media influence (*e.g.*, likes, saves, or shares that are generated by bots, hijacked accounts, etc.) that materially misrepresent an individual or brand’s influence. This Rule only applies to those who knew or should have known such indicators to be fake.

Combined with the FTC’s [updated \*Guides Concerning the Use of Endorsements and Testimonials in Advertising\*](#) (the Guides), the FTC emphasizes that it will monitor and enforce against false and misleading testimonial and review practices. Brands should review the Rule and Guides, update applicable review policies and terms, and ensure their related practices are up to date. Perkins Coie is also happy to offer training to legal and marketing teams on these issues, as the Rule is nuanced as applied to different types of reviews and testimonials.

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