

PART 2: WHAT THE FTC'S FINAL RULE MEANS FOR FAKE REVIEWS, TESTIMONIALS

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The Federal Trade Commission, as we previously reported, has published a Final Rule on consumer reviews and testimonials that prohibits certain practices the FTC deems to be deceptive or misleading in six areas: (1) fake or false consumer reviews, consumer testimonials, or celebrity testimonials; (2) buying positive or negative consumer reviews; (3) insider consumer reviews and consumer testimonials; (4) company-controlled review websites or entities; (5) review suppression; and (6) misuse of fake indicators of social media influence.

This is part of a six-part series explaining the FTC's new rule in each of those areas, with today's post focusing on fake or false consumer reviews and testimonials, and celebrity testimonials.

Section 465.2 of the Final Rule prohibits businesses from using, creating or purchasing consumer reviews or testimonials, or celebrity testimonials, that materially misrepresent the existence of the reviewer, whether the reviewer actually used or had experience with the product, service or business being reviewed, and the nature of the reviewer's experience.

The "materially misrepresent" language is key. Under the Final Rule, a company can use a virtual influencer to promote a product or service so long as they do not materially misrepresent the virtual influencer's existence or the virtual influencer's use of or experience with the product, service, or business being promoted.

The Final Rule also prohibits a business from procuring consumer reviews from "officers, managers, employees, or agents, or any of their immediate relatives" for posting on a third-party platform or website when that review is about the business or one of its products or services and materially misrepresents any of the above-listed factors.

The Final Rule provides an exemption from Section 465.2 for reviews resulting from (1) general solicitations sent to large groups of customers where "[i]t would not be reasonable to expect a business to know whether such resulting reviews or testimonials were fake or false," and (2) reviews resulting from "consumer review hosting," or a platform simply publishing or hosting reviews that it did not purchase. Notably, therefore, an unsolicited employee review that merely appears on a business's website would not violate this provision.

These Final Rule principles align with the FTC’s guidelines on fake reviews from its [Featuring Online Customer Reviews: A Guide for Platforms | Federal Trade Commission \(ftc.gov\)](#), in which the FTC advises: “Have reasonable procedures to identify fake or suspicious reviews after publication. If a consumer or business tells you a review may be fake, investigate and take appropriate action. That may include taking down suspicious or phony reviews, leaving them up with appropriate labels, issuing an alert about them, and addressing the issue with those responsible for it.”

The Final Rule takes effect on October 21, and will empower FTC 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 post, we take a deeper dive into what the FTC’s Final Rule means for incentivized reviews.

For questions or more information, or to schedule a company webinar on this topic, contact the authors listed, [Meritt Jones](#), Co-Leader of BCLP’s [Retail & Consumer Products Sector](#), and BCLP partner [David Schwartz](#), former Lead Investigative Attorney with the FTC.

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