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Locke Lord QuickStudy: New FTC Rule on Use of Consumer Reviews and Testimonials

Locke Lord LLP

WRITTEN BY

Sharon A. Blinkoff | Barry J. Bendes | Bradley C. Weber

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On August 14, the Federal Trade Commission (the “FTC”), acting unanimously pursuant to its authority under Section 5 of the Federal Trade Commission Act,^[1] announced the adoption of a final Trade Regulation Rule on the Use of Consumer Reviews and Testimonials (the “Rule”). The Rule goes into effect October 14, 2024 and will ban, among other social media activity, fake reviews and testimonials determined by the FTC to be illegal as unfair and deceptive practices. These practices include, but are not limited to fake or false consumer reviews, AI-generated fake reviews, celebrity testimonials and reviews or testimonials “by persons who did not have actual experience with the business or its products or services, or that misrepresent the experience of the person giving it.” The Rule also prohibits businesses from “creating or selling such reviews or testimonials” and from buying or selling such reviews, whether from third parties or company insiders, “when the business knew or should have known that the reviews or testimonials were fake or false.”

The buying and selling of positive or negative reviews will now violate this new Rule and be illegal. The Rule also will prohibit businesses from paying for reviews, as well as publishing insider reviews which fail to disclose any affiliation of the reviewer with the products at issue. In addition, the Rule covers many other activities which the Commission has banned or restricted, including, but not limited to the use or misuse of insider reviews and fake social media indicators (such as artificially generated review). It prohibits selling or buying fake indicators of social media influence, such as followers or importance for a commercial purpose or the payment of incentives based upon the content of a review (a so called, incentivized review).

The new Rule provides the FTC with a regulatory based means to assess civil penalties. As the Commission noted, “case-by-case enforcement without civil penalty authority might not be enough to deter clearly deceptive review and testimonial practices.”^[2]

Over the years, the Commission has issued and revised extensive Guides^[3] on how to properly use reviews, endorsements and social media, updated its Frequently Asked Questions^[4] on the subject, and has issued press releases, made blog posts and commenced cases alleging deceptive advertising practices. It has also issued warning letters to associations, brand ambassadors, influencers and endorsers concerning paid endorsements. Following the FTC’s published guidance will be a best practice to avoid enforcement action by the FTC when using social media, social media indicators, brand ambassadors, and influencers. The FTC states that the adoption of the new social media Rule is necessary to enable the Commission to efficiently regulate this area to

prevent improper and deceptive social media practices.

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[1] 15 U.S.C. §§ 41-58, as amended.

[2] [Federal Trade Commission Announces Final Rule Banning Fake Reviews and Testimonials](#)

[3] See, e.g., [Guides Concerning Use Of Endorsements And Testimonials In Advertising](#)

[4] [FTC's Endorsement Guides: What People Are Asking](#)

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