

## FTC Promulgates New Rules on Deceptive Endorsements, Fake Reviews, and False Testimonials

By **Kathleen A. McGee** and **Bernadette L. Darcy**

Businesses that use and publish endorsements, reviews, or testimonials should be aware of the Federal Trade Commission's (FTC) updated Endorsement Guides and proposed new rule banning fake reviews and testimonials. Here's what you need to know.

### Updated Endorsement Guides

On June 29, the FTC announced its updated **Endorsement Guides**, which apprise businesses of unfair or deceptive practices that violate the Federal Trade Commission Act.

Through the updated Endorsement Guides, the FTC:

- Revises the definition of "endorsements" to mean any advertising, marketing, or promotional message for a product that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.
- Explains that in procuring, suppressing, boosting, organizing, publishing, upvoting, downvoting, or editing consumer reviews, advertisers should not take actions to distort or otherwise misrepresent what the consumers think of a product.
- Addresses incentivized reviews, stating that reviews that fail to clearly and conspicuously disclose incentives provided to reviewers are likely deceptive.
- Explains the definition of "clear and conspicuous" disclosures to mean the

disclosures are easily noticeable and easily understood by ordinary consumers.

The updated guides further outline potential liability for advertisers, endorsers, and intermediaries. Advertisers are subject to liability for misleading or unsubstantiated statements made through endorsements or for failing to disclose unexpected material connections between themselves and their endorsers. Endorsers may be liable for statements made in the course of their endorsements, such as when an endorser makes a representation that the endorser knows or should know to be deceptive, including when an endorser falsely represents that they personally used a product. Advertising agencies, public relations firms, review brokers, reputation management companies, and other similar intermediaries may be liable for their roles in creating or disseminating endorsements containing representations they know or should know are deceptive. They may also be liable for their roles with respect to endorsements that fail to disclose unexpected material connections, whether by disseminating advertisements without necessary disclosures or by hiring and directing endorsers who fail to make necessary disclosures.

### Proposed Ban on Fake Reviews and Testimonials

On June 30, the FTC announced its publication of a **notice of proposed rulemaking** on the use of consumer reviews and testimonials. The FTC proposed a new rule to ban marketers from using illicit review and endorsement practices that deceive consumers seeking authentic feedback

on products or services. Such practices include using fake reviews, suppressing honest negative reviews, and paying for positive reviews. The notice also highlights the widespread emergence of generative artificial intelligence, which may facilitate the promulgation of fake reviews.

Currently, the FTC seeks comments on proposed measures against deceptive practices. These proposed measures include prohibiting businesses from:

- Selling or obtaining fake consumer reviews and testimonials.
- Selling false indicators of social media influence, such as fake followers or views.
- Using or repurposing a consumer review written for one product so that it appears to have been written for a substantially different product.

- Providing compensation or other incentives conditioned on the writing of consumer reviews expressing a particular sentiment.
- Disseminating testimonials by company managers and officers without clear disclosures of these insider relationships.
- Creating or controlling a website that falsely claims to provide independent opinions.
- Using unjustified legal threats, other intimidation, or false accusations to prevent or remove a negative consumer review.

If you have any questions about the FTC's latest actions, please contact **Kathleen A. McGee** or your usual Lowenstein Sandler contact.

## Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

### **KATHLEEN A. MCGEE**

Partner

**T: 646.414.6831**

[kmcgee@lowenstein.com](mailto:kmcgee@lowenstein.com)

### **BERNADETTE L. DARCY**

Associate

**T: 862.926.6576**

[bdarcy@lowenstein.com](mailto:bdarcy@lowenstein.com)

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