

Comments of Consumer Reports
In Response to the
Federal Trade Commission
Notice of Proposed Rulemaking on the
Use of Consumer Reviews and Testimonials

By

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September 29, 2023



Consumer Reports¹ appreciates the opportunity to provide feedback on the Federal Trade Commission's (FTC) Request for Comment on its Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials. We thank the Commission for initiating this proceeding and for its other efforts to provide strong consumer protections in the marketplace.

As was thoroughly evidenced in the Commission's commentary in the Advanced Notice of Proposed Rulemaking (ANPR), as well as in comments responsive to the ANPR, the state of online consumer reviews currently leaves much to be desired,² despite (or, more likely, because of) consumers' heavy reliance on reviews as an input of their decision making processes.³ Review platforms admittedly remove millions of fake reviews every year,⁴ yet the quantity that remain in public view is staggering.⁵ Respondents to the ANPR cited statistics suggesting that a substantial portion of reviews consumers encounter are fake, with estimates ranging between 8.5 to 40 percent.⁶ While consumers may have a growing sense that many online reviews are inauthentic, spotting a fake can be difficult for the untrained eye and consumers deserve to be protected by a more aggressive enforcement regime than exists today.⁷

Previous Consumer Reports research illustrates that misleading review tactics have mutated on large e-commerce platforms like Amazon, who seemingly struggle to keep up with the scale of

¹ Consumer Reports is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. For over 80 years, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers' interests, including their interest in securing effective privacy protections. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices of consumers.

² See, e.g., The Transparency Company, Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (January 9, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0044>; Fake Review Watch, Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (January 5, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0026>; Fakespot, Inc., Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (January 9, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0035>.

³ Local Consumer Review Survey 2023, BrightLocal (February 7, 2023), <https://www.brightlocal.com/research/local-consumer-review-survey/>

⁴ Google, Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (January 9, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0034>

⁵ U.S. Public Interest Research Group, Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (January 9, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0045>;

⁶ See, e.g., Id.; The Transparency Company, Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (January 9, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0044>

⁷ Power Reviews, How Fake Reviews Destroy Consumer Trust – and How Brands and Retailers Can Combat Them, (August, 2022), <https://www.powerreviews.com/research/how-fake-reviews-destroy-consumer-trust/>

the problem.⁸ When we reported fraudulent behavior to Amazon, the company generally remedied the instances of suspicious reviews we provided to them.⁹ However, in other cases that we did not affirmatively flag for the company, deceptive reviews continued to be presented to potential buyers, suggesting that the company does not take effectively proactive steps to mitigate such harms.

Clearly, current marketplace incentives to profit through the use of misleading consumer reviews outweigh the risk of punishment in many cases. Indeed, the pressure for businesses to leverage fake reviews seems to increase in more competitive marketplaces.¹⁰ Under the current regime, fraudsters can too easily hide out amongst the crowd, correctly assuming that the chances of getting caught are extremely low. The FTC is right to move forward with this rulemaking, which will ensure it can more easily seek civil penalties against violators and obtain monetary redress for their victims. However, review platforms are not meaningfully addressed by this proposed Rule, even as they continue to reap the benefits and attention garnered by publishing reviews greatly, while not investing nearly enough time or resources into comprehensively rooting out the problem.

Below, we respond to several of the questions posted in the Request for Comment, describing our views on the proposed Rule in further detail

General Questions for Comment

1. Does the proposed Rule further the Commission's goal of protecting consumers from clearly unfair or deceptive acts or practices involving consumer reviews and testimonials? Why or why not?

In general, we believe the proposed Rule will reduce the incentives for businesses to purchase, disseminate, or sell fake consumer reviews or testimonials. The proposed Rule clearly states that each of those behaviors is an unfair or deceptive act or practice, which will allow the Commission to seek civil penalties against offenders under Section 5 of the FTC Act. We are also pleased that the Rule extends beyond just inauthentic reviews and addresses newer types of deceptive review tactics. For example, we believe Section 465.3 will reduce the incidence of review repurposing, addressing the concerns mentioned in the introduction.¹¹

However, because the Rule does not place any explicit restrictions on review platforms (such as Google, Yelp, Trip Advisor) that host reviews of third-party businesses, the Rule falls short of its

⁸Jake Swearingen, Hijacked Reviews on Amazon Can Trick Shoppers, Consumer Reports (August 26, 2019),

www.consumerreports.org/customer-reviews-ratings/hijacked-reviews-on-amazon-can-trick-shoppers.

⁹ Id.

¹⁰ Michael Luca and Georgios Zervas, "Fake it till you make it: Reputation, competition, and Yelp review fraud," *Management Science* 62, no. 12 (2016): 3412-3427, (January 28, 2016),

<https://doi.org/10.1287/mnsc.2015.2304>

¹¹ Id.

potential. Review platforms benefit greatly from serving as the central repository for reviews about products and services other than their own. For some, like Yelp and TripAdvisor, such activity represents the entirety or nearly the entirety of their business. For others (Google), serving as a review platform gives them a privileged role in the marketplace,¹² creating use dependencies for both businesses and consumers, which subsequently provides them more opportunity to collect valuable data to fuel their surveillance advertising business model.

At the same time, review platforms' own filings at the ANPRM stage showed that fake reviews represent a massive problem that they have trouble managing.¹³ As a result, online review platforms are rife with misinformation, endangering consumers' health, safety, and economic security in the process.

The proposed Rule should obligate review platforms to take reasonable measures to root out fraud and deceptive reviews on their services — especially given that in many cases, their own sorting policies and algorithms actively incentivize bad behavior.¹⁴ Such an obligation would be consistent with companies' security obligations under Section 5 of the FTC Act to protect systems against abuse by any third party.

Finally, we note that any regulation is only as good as the regulator's ability to enforce it. We've repeatedly called on Congress to address the FTC's chronic under-funding, and reiterate that call here.¹⁵ The Commission will not be able to aggressively enforce this Rule without additional resources.

¹² Devesh Raval, Do Gatekeepers Develop Worse Products? Evidence from Online Review Platforms, Federal Trade Commission, (February 27, 2023), <https://deveshraval.github.io/reviews.pdf>

¹³ See, e.g., Yelp, Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (January 6, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0028>; Trustpilot, Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials (January 9, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0031>; Google, Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (January 9, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0034>; TripAdvisor, Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (January 9, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0036>; Amazon.com, Comments on the FTC's Advanced Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (January 9, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0041>

¹⁴ See, e.g., Nicholas Confessore et al., The Follower Factory, N.Y. Times (January 27, 2018), <https://www.nytimes.com/interactive/2018/01/27/technology/social-media-bots.html>; The Truth About Online Ratings Services, Consumer Reports (September 2013), www.consumerreports.org/cro/2013/09/online-ratings-services/index.htm.

¹⁵ Privacy Coalition Letter on FTC Funding, Consumer Reports, (September 23, 2021), <https://advocacy.consumerreports.org/wp-content/uploads/2021/09/Group-letter-in-support-of-FTC-privacy-funding.pdf>

Specific Questions for Comment

§ 465.1 Definitions

6. Are the proposed definitions clear? Should changes be made to any definitions? Should the scope of any of the proposed definitions be expanded or narrowed, and if so, why?

7. What additional definitions, if any, are needed?

Section 465.8 asserts that it is an unfair or deceptive act or practice to “purchase or procure fake indicators of social media influence to misrepresent their influence or importance for a commercial purpose.” However, the terms “purchase” and “procure” are not currently defined in the Rule, which leaves ambiguity regarding which types of incentives are restricted. For example, would the Rule cover an agreement to receive fake “likes” on a social media post in exchange for another “like” or other non-cash consideration?¹⁶ Meanwhile, Section 465.1(h) provides more clarity for a related construct, defining the term “purchase a consumer review” to mean “to provide something of value, such as money, goods, or another review, in exchange for a consumer review.” We believe the Commission should similarly define a term “purchase or procure fake indicators of social media influence” to mean to provide something of value, such as money, goods, or another indicator of social media influence (i.e. a “like”), in exchange for a fake indicator of social media influence.

§ 465.2 Fake or False Consumer Reviews, Consumer Testimonials, or Celebrity Testimonials

8. Is the “knew or should have known” standard appropriate for purposes of proposed § 465.2(b) and (c)? Why or why not? One alternative would define a violation as occurring whenever a business engages in a deceptive practice with respect to a review or testimonial if the business “knew or could have known” that the review or testimonial was deceptive. Should the Commission adopt this alternative? Why or why not? Should the Commission adopt a different knowledge requirement, and if so, what should it be and why? Should there be no knowledge requirement at all for proposed § 465.2(b) and (c)? Why or why not?

Consumer Reports does not believe there is a need for a knowledge or intent requirement under this Rule. Section 5 of the FTC Act does not otherwise require the Commission to prove knowledge or intent when enforcing against entities engaging in deceptive practices, so we do not see the necessity of introducing a novel standard here. Regulation should incentivize companies to proactively monitor themselves to ensure that they are not purchasing fake reviews or disseminating fake testimonials. If consumers are harmed or deceived because of a company's practices, the FTC should act to redress the harm. Of course, the Commission can

¹⁶ Hannah Walsh, Facebook fake review groups targeting Amazon, Google and Trustpilot, Which?, (April 21, 2023), <https://www.which.co.uk/news/article/facebook-still-infiltrated-by-fake-review-factories-aTTJ24L5vYyJ>

and should consider knowledge and intent in deciding the equities of bringing any enforcement action, but we do not believe that should be a condition for liability.

9. Under what circumstances should a business purchasing or procuring a consumer review know that it is fake or false?

Again, whether or not a company knows or should know that a review is fake or false should be immaterial to liability; the Commission should primarily rely upon their observations about prevalence, materiality, disparate impact, or perniciousness of specific harms in the marketplace when deciding which enforcement actions to bring.

However, if the Commission insists on applying a knowledge standard, Consumer Reports believes:

- Any material inducements to provide reviews without clearly instructing the reviewer to clearly disclose material conflicts should constitute knowledge.
- Materially incentivizing reviews where it's impossible to convey material conflicts (e.g., providing a five-star review with no accompanying narrative on TripAdvisor) should be considered per se knowledge.
- Failure to meaningfully police (e.g. a business should regularly scan its database of reviews to check for suspicious review activities, such as the sudden appearance of more reviews than normal) should also be considered constructive knowledge.

10. Under what circumstances should a business disseminating or causing the dissemination of a consumer testimonial or celebrity testimonial know that it is fake or false?

See Answer 9 (*supra*). In general, we do not support a knowledge standard for purposes of establishing liability under this proposed Rule. If the Commission does include a standard, failure to take meaningful steps to confirm the existence of the purported celebrity or meaningfully document the celebrity's purported experience with the product or service or should be considered constructive knowledge.

§ 465.3 Consumer Review Repurposing

11. Is the description of “substantially different product” appropriate for purposes of this provision? Why or why not? If not, how should it be modified?

Section 465.1 defines “substantially different product” to mean a product that differs from another product in one or more material attributes other than color, size, count, or flavor. Section 465.3 then asserts that it is “an unfair or deceptive act or practice and a violation of this Rule for a business to use or repurpose a consumer review written or created for one product so that it

appears to have been written or created for a substantially different product, or to cause such use or repurposing.”

We believe this definition and accompanying provision will address “review hijacking” previously reported on by Consumer Reports, a practice that is, at a minimum, creating unnecessary uncertainty (and in many cases, explicitly abetting fraud) in the marketplace.¹⁷ Businesses should be required to create different review pages for products with materially different attributes that are likely to affect a consumer’s experience of that product so that the consumer can make fully informed decisions about their willingness to purchase that product.

12. Under what circumstances do consumers consider products to be significantly different enough that they should not share the same consumer reviews?

We believe the “one or more material attributes” test proposed by the Commission is appropriate. While materiality is likely to vary amongst consumers (and we agree that “color, size, count, or flavor” should not count as material differences), the current definition is likely to encourage businesses to err on the side of caution. Our and other research showed that many businesses abuse currently lax standards and bundle wildly disparate products together on the same review page, which makes it difficult for consumers to ascertain the worthiness of the particular product they wish to learn about.¹⁸ This proposed Rule makes it clear that review pages for different products must be disambiguated.

§ 465.4 Buying Positive or Negative Consumer Reviews

12(2). Should the proposed prohibition distinguish in any way between an explicit and implied condition that a consumer review express a particular sentiment? Why or why not? If so, how should it be addressed?

Section 465.4 currently states that it is unfair or deceptive for a business to provide compensation or other incentives in exchange for a positive or negative review. We believe the Rule should be finalized as is, with no distinction made between explicitly and implicit conditioning of compensation or other incentives. When a reviewer feels pressured to express a certain sentiment, regardless of how that pressure was generated, the net result is a deceptive review. Such influence over reviews reduces the ability of consumers to make fully informed purchasing decisions.

¹⁷ Jake Swearingen, Hijacked Reviews on Amazon Can Trick Shoppers, Consumer Reports (August 26, 2019),

www.consumerreports.org/customer-reviews-ratings/hijacked-reviews-on-amazon-can-trick-shoppers.

¹⁸ See, e.g., Id; Jon Keegan, “Is This Amazon Review Bullshit?,” The Markup, July 21, 2020, <https://themarkup.org/ask-the-markup/2020/07/21/how-to-spot-fake-amazon-product-reviews>; Josh Dzieza, “Even Amazon’s own products are getting hijacked by imposter sellers,” The Verge, Aug. 29, 2019,

<https://www.theverge.com/2019/8/29/20837359/amazon-basics-fake-sellers-imposters-third-party-marketplace>

§ 465.5 Insider Consumer Reviews and Consumer Testimonials

13. Is it appropriate that proposed § 465.5(a) and (c) apply to “officers” and “managers”? Why or why not? If not, how should either or both prohibitions be modified?

Consumer Reports believes that the prohibitions in 465.5(a) and (c) should apply to all employees and board members of a business, rather than just its officers and managers. Employees and board members can be just as self-interested in creating a biased or fabricated review or testimonial or pressuring others to do so as an officer or manager, and should disclose their potential conflict of interest. For example, an employee may feel their job security is aligned with the success of a given product or service and may wish to put their finger on the scale to create the impression that the product or service is more popular than it truly is. For this reason, we urge the Commission to adopt broader coverage in these provisions, while using its discretion to focus enforcement against particularly harmful examples of fraud in the marketplace.

The FTC should also consider extending coverage of Section 465.5(c) to include solicitations or demands of employees of companies with which the business conducts material business. Often, the success of a product or service may depend on the support of business partners, who may in turn have an incentive to create a biased or fabricated review or testimonial, or be susceptible to pressure from higher ranking employees at the other organization. Employees of partnering companies should be required to disclose their potential conflict of interest in posting reviews.

14. Should the term “managers” be defined or described? Why or why not? If so, how should it be defined or described?

See Question 13 (*supra*). Consumer Reports believes Section 465.5(a) and (c) should apply to all employees or board members of a business. Employees may in some cases have the same or greater incentives to produce biased or fabricated reviews or testimonials as those that rank higher in the organization and thus should be required to disclose their potential conflict of interest.

15. Is it appropriate that proposed § 465.5(a), (b), and (c) are limited to circumstances in which the requisite disclosure is absent? Why or why not? If not, how should any of the prohibitions be modified?

With regard to Section 465.5(a) and (b), we agree that it is appropriate that the Rule only requires the disclosure of a potential conflict of interest, rather than barring the practice outright. However, employees of a business should not be permitted to provide star or numerical reviews that count toward an aggregate or average rating, even if their conflict of interest is otherwise disclosed in an accompanying narrative review. An abundance of self-interested employee reviews could unfairly boost the aggregate score of a product in a way that may be difficult (or

impossible, if no review narrative is provided) for a consumer to understand.¹⁹ Consumers should be protected from businesses gaming review scores in this manner.

Turning to Section 465.5 (c), Consumer Reports does not believe there is any circumstance where an officer or manager of a business should be permitted to demand or even induce an employee or family member to write a consumer review, even if the relationship between the two parties is disclosed. Disclosure of the existence of a potential conflict of interest will not clarify for consumers the *extent* to which a person was under duress in producing the review, which could thus reduce transparency in the marketplace and lead to perverse incentives for managers and officers to pressure (or condition certain benefits to) their employees or others to express a certain sentiment in a review. It is difficult to envision an employee review mandated by a manager of a company's own products providing useful or unbiased information to the marketplace. We urge the Commission to revise this provision to simply make it an unfair or deceptive act or practice for any employee or board member of a business to solicit or demand from another employee or board member (or relative of an employee or board member) a consumer review about the business or one of its products or services.

16. Is it appropriate that proposed § 465.5(b) and (c)(1) are limited to circumstances in which the business, officer, or manager knew or should have known of the relationship? Why or why not? One alternative would be to limit the circumstances of a violation to when the business, officer, or manager “knew or could have known” of the relationship. Should the Commission adopt this alternative? Why or why not? Should the Commission adopt a different knowledge requirement, and if so, what should it be and why? Should there be no knowledge requirement at all for proposed § 465.5(b) and (c)(1)? Why or why not?

As discussed in Questions 8,9, and 10 (*supra*), we advise the Commission against relying on knowledge standards that will introduce unnecessary evidentiary burdens in the enforcement process. The Commission's primary focus should rest with weighing the negative impact to consumer transparency caused by an undisclosed conflict of interest when deciding to bring an enforcement action. The Commission can and should consider knowledge and intent in deciding the equities of bringing any enforcement action, but we do not believe that should be a condition for liability.

17. Is it appropriate that § 465.5(b) and (c) are limited to testimonials and reviews from officers, managers, employees, agents, or relatives? Why or why not? If not, how should either or both prohibitions be modified?

See Question 13 (*supra*). We believe the restrictions on insider consumer reviews and testimonials should extend to employees or board members of other companies with a material business relationship with the first business.

¹⁹ FTC Complaint, Shop Tutors, Inc., Docket No. C-4719, (May 26, 2020), https://www.ftc.gov/system/files/documents/cases/c-4719_182_3180_lendedu_complaint.pdf

19. Is it appropriate that § 465.5(c)(2)(ii) is limited to circumstances in which the requestor knew or should have known that the review appeared without such a disclosure? Why or why not? One alternative would be to limit the circumstances of a violation to when the requestor “knew or could have known” that the review appeared without such a disclosure. Should the Commission adopt this alternative? Why or why not? Should the Commission adopt a different knowledge requirement, and if so, what should it be and why? Should there be no knowledge requirement at all for proposed § 465.5(c)(2)(ii)? Why or why not?

See Question 15 (*supra*). We do not believe there is any circumstance where an officer or manager of a business should be permitted to demand or induce an employee or family member to write a consumer review, even if the relationship between the two parties is disclosed. If the Commission retains Section 465.5(c) as is currently drafted, we urge it to drop the knowledge requirement for the same reasons articulated in Questions 8,9,10, and 16 (*supra*).

§ 465.6 Company-Controlled Review websites or Entities.

This section should be written more clearly to capture the intent expressed in Section V(F) of the NPRM commentary. The Commission seems to wish to prohibit businesses from creating review websites (e.g. the fictional site LaptopReviews.com) that appear to be independent but are actually controlled, owned, or operated by the business whose products or services are being reviewed (e.g., in this example, Lenovo). However, as written, it would make it illegal for companies to host *any* reviews whatsoever so long as some of the reviews touch on a category of business, products, or services the company provides. As such, customer review forums on sites such as Home Depot and Amazon would be wholly prohibited by this rule. While we have concerns about the unbiased nature of reviews hosted and potentially curated by sellers and manufacturers, we do not believe it is appropriate to prohibit these parties from hosting reviews. This Section should clarify that its prohibitions apply to the creation of distinctly branded websites that purport to provide independent reviews.

§ 465.7 Review Suppression

20. Is it appropriate that proposed § 465.7(a) focuses on the specific types of listed threats or activities? Why or why not? If not, how should it be modified?

Section 465.7(a)'s prohibitions on review suppression should also apply to compelled creation of positive reviews. Just as businesses may use threats or intimidation to prevent a consumer from leaving a negative review, they may use similar tactics to ensure receipt of a positive review. Businesses should be prohibited from threatening or intimidating consumers into producing reviews of any particular tenor.

We support the list of prohibited threats or activities currently included in the proposed Rule. The term “intimidation” seems sufficiently broad to cover most types of threats not otherwise covered by “legal” or “physical” threats. For example, an instance where a business threatens to fire one of its employees unless they remove their negative review should be considered intimidation under the Rule as drafted.

21. Is the definition of “unjustified legal threat” sufficiently clear? Why or why not? If not, how should it be modified?

Section 465.1(l) defines “unjustified legal threat” to mean a threat to initiate or file a baseless legal action, such as an action for defamation that challenges truthful speech or matters of opinion.

We recommend that the Commission eliminate this definition. The definition’s verbiage “baseless legal action” seems to open just as many questions as the underlying term it attempts to define and may actually unduly narrow the definition. For example, a legal action can contain some shred of legitimacy (a person might invoke facts in support of a claim — even if those facts are significantly outweighed by other facts), and still be unjustified.

22. Is it appropriate that proposed § 465.7(b) is limited to circumstances in which reviews are being suppressed based on rating or negativity? Why or why not? If not, how should it be modified?

See Question 21 (*supra*). The proposed Rule should also apply to instances where a business seeks to compel positive reviews through threats or intimidation.

Additionally, we urge the Commission to narrow the list of permissible purposes to suppress reviews. Section 465.7(b)(1) currently allows businesses to suppress reviews when they contain “harassing”, “abusive”, or “obscene” content, which are highly subjective terms likely to be interpreted broadly by businesses that have a clear interest in suppressing reviews that may harm their public perception. For example, businesses should not be able to use the existence of curse words (which may disproportionately appear in reviews expressing a consumer’s frustration or negative experience with a product or service) to suppress those reviews, which may otherwise serve the public interest in their sharing of valid consumer experiences. Companies that are especially worried about objectionable content appearing in reviews are always free to ban it in their terms of use, but the Commission should not proactively provide this degree of leniency through its Rule. One compromise to preserve the public benefit of reviews that contain instances of objectionable content could be to allow businesses to redact such content but require them to leave the remainder of the review along with any corresponding score or numerical rating available for public consumption.

23. Is it appropriate that proposed § 465.7(b) is limited to the misrepresentations described therein? Why or why not? If not, how should it be modified?

Consumer Reports believes that reviews presented before consumers should be presumed to be representative of the reviews a business receives. If a business wishes to curate reviews, the business should have the burden to transparently communicate the fact and nature of the curation to consumers.

§ 465.8 Misuse of Fake Indicators of Social Media Influence.

Section 465.8(b) would make it an unfair or deceptive act or practice for anyone to “purchase or procure fake indicators of social media influence to misrepresent their influence or importance for a commercial purpose.” The Commission should clarify that “procure” includes the creation of automated bot or other fake accounts that “follow” or “subscribe” to an account, artificially inflating the popularity of that account. This would create harmony with Section 465.2(a)(1) of the proposed Rule, which bans the writing, creation, or sale of reviews “by a reviewer or testimonialist who does not exist.”

The Commission should also remove the word “fake” from the Rule to clarify that it covers the purchase or procurement of any social media engagement — including likes, follows, reposts, hashtags — from both real and fake accounts unless those incentives can be disclosed to people who can view the engagement. In many cases, meaningful disclosure will be impossible, so the practice itself should be forbidden.

We thank the Federal Trade Commission for its consideration of these points, and for its work to secure strong protections for consumers. We are happy to answer any questions you may have, and to discuss these issues in more detail. Please contact Matt Schwartz (matt.schwartz@consumer.org) or Justin Brookman (justin.brookman@consumer.org) for more information.