



November 4, 2024

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, NW  
Suite CC-5610 (Annex C)  
Washington, DC 20580

***Re: Rytr LLC; File No. 232-3052***

Consumer Reports<sup>1</sup> thanks the Federal Trade Commission (“FTC”) for the opportunity to comment on the proposed consent agreement with Rytr for offering a “Testimonial and Review” generative-AI product that was designed to create unlimited reviews based on limited input.<sup>2</sup> Fake online reviews are a massive informational problem for consumers and despite the focus of FTC in recent years, they persist as a source of significant harm to consumers due to a lack of consequences for violators — including for platforms that tolerate or even facilitate abuse.<sup>3</sup> Rytr’s review generation service was designed in such a way that the overwhelmingly most likely use of its service would be for the streamlined creation of misleading and fraudulent reviews that would poison the marketplace of information for consumers, leading to substantial and foreseeable consumer injury. We urge the Commission to approve the settlement to hold Rytr accountable for the harms likely to derive from the use of its product.

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<sup>1</sup> Consumer Reports is an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumer Reports is the world’s largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 6 million members and publishes its magazine, website, and other publications.

<sup>2</sup> In the Matter of Rytr, LLC, Fed. Trade Comm’n, File No. 232-3052, Agreement Containing Consent Order, (Sep. 25, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2323052rytracco.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2323052rytracco.pdf).

<sup>3</sup> See Comments of Consumer Reports In Response to the Federal Trade Commission Notice of Proposed Rulemaking on the Use of Consumer Reviews and Testimonials, (Sep. 29, 2023), <https://advocacy.consumerreports.org/wp-content/uploads/2023/10/Comments-of-Consumer-Reports-In-Response-to-the-Federal-Trade-Commission-Notice-of-Proposed-Rulemaking-on-the-Use-of-Consumer-Reviews-and-Testimonials-.pdf>.

## *Deterring Fraudulent Reviews is in the Public Interest*

First, it is worth briefly noting the strong public interest in rooting out fraudulent online reviews. While the FTC and some state regulators have focused increased attention on the issue in recent years, insufficient clarity and enforcement — especially for the intermediaries who facilitate the promulgation of fake reviews<sup>4</sup> — have led to widespread misinformation that distorts marketplaces and harms consumers by making it harder to make informed decisions. The FTC’s recently released rule on fraudulent reviews is an important step forward, but greater enforcement will be needed to provide sufficient deterrence for companies who are otherwise strongly incentivized to promote misleading testimonials.<sup>5</sup> In considering whether the proposed settlement is in the public interest, it is disappointing that neither dissent addresses the significant problem of fake online reviews and the harm caused to consumers by them. We strongly believe that the Rytr settlement is in the public interest because it clarifies that intermediaries who facilitate the creation of fake reviews have obligations to take steps to prevent the abuse of their platforms by bad actors.

### *Consumer Rely on Reviews*

Consumers rely on online reviews to make purchasing decisions.<sup>6</sup> And marketers know this: as the defendant in a recent FTC enforcement action pointed out, favorable online ratings “directly translates to sales[.]”<sup>7</sup> According to Pew, 82% of adult consumers consult online reviews, and almost half of those consumers always or nearly always check them before making a new purchase.<sup>8</sup> Those numbers are even higher for consumers under fifty.<sup>9</sup> Consumers’ reliance on online reviews is reflected in the fact that favorable restaurant reviews on Yelp correlate with

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<sup>4</sup> Comments of Consumer Reports on Endorsement Guides, P204500, (Sep. 26, 2022), at 2-4 <https://advocacy.consumerreports.org/wp-content/uploads/2022/09/CR-Endorsement-Guides-comments-September-2022-3.pdf> (urging the FTC to clarify obligations of platforms that host and facilitate review fraud).

<sup>5</sup> Press Release, *Consumer Reports applauds FTC rule banning fake reviews and testimonials*, Consumer Reports, (Aug. 14, 2024), [https://advocacy.consumerreports.org/press\\_release/consumer-reports-applauds-ftc-rule-banning-fake-reviews-and-testimonials/](https://advocacy.consumerreports.org/press_release/consumer-reports-applauds-ftc-rule-banning-fake-reviews-and-testimonials/).

<sup>6</sup> *Local Consumer Review Survey 2019*, BrightLocal, (Dec. 11, 2019), [www.brightlocal.com/research/local-consumer-review-survey](http://www.brightlocal.com/research/local-consumer-review-survey).

<sup>7</sup> In the Matter of Sunday Riley Modern Skincare, LLC, Fed. Trade Comm’n, File No. 192-3008, Agreement Containing Consent Order, (Oct. 21, 2019), at ¶ 10, [https://www.ftc.gov/system/files/documents/cases/192\\_3008\\_sunday\\_riley\\_acc0\\_0.pdf](https://www.ftc.gov/system/files/documents/cases/192_3008_sunday_riley_acc0_0.pdf).

<sup>8</sup> Aaron Smith and Monica Anderson, *Online Reviews*, Pew Research Ctr. (Dec. 19, 2016), <https://www.pewresearch.org/internet/2016/12/19/online-reviews/> [hereinafter *Online Reviews*].

<sup>9</sup> *Id.*

5-9% increases in revenue.<sup>10</sup> Online reviews are particularly important for more expensive merchandise, where consumers have more to lose if a product turns out to be a dud.<sup>11</sup>

Consumers are generally aware that information available online may be biased or outright wrong.<sup>12</sup> Nevertheless, that does not mean they are satisfied with the amount of misinformation online, or that they are curbing their overall reliance upon online reviews. In many cases, one subset of the population may mistrust a particular source of information, while another heavily relies upon it. For example, a 2019 Civic Science poll found that while 69% of Americans surveyed had no trust in influencers, 15% of consumers made a purchase because an influencer recommended a product.<sup>13</sup> The study also found that 66% of survey respondents believed social media influencers should disclose sponsored content “all of the time.”<sup>14</sup>

Consumers rely on these online reviews in part because the marketplace is not adequately policed: only about 25% of consumers claim that government regulations help consumers feel confident about their purchases. In contrast, nearly twice as many consumers say that online reviews give them that confidence.<sup>15</sup>

### *Review Fraud is Rampant*

Consumers place a great deal of faith in online reviews and endorsements because they appear to be unbiased reports from fellow shoppers or social media personalities, but in many instances that faith is misplaced.<sup>16</sup> Biased and downright fraudulent reviews are rampant online. Popular sites are riddled with thousands of dubious reviews, polluting the information available to consumers to make an informed choice.<sup>17</sup> Amazon alone claims to have detected more than

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<sup>10</sup> Michael Luca, *Reviews, Reputation, and Revenue: The Case of Yelp.com*, Harvard Business School Working Paper, No. 12-016 at 4 (Sept. 2011), [https://www.hbs.edu/faculty/Publication%20Files/12-016\\_a7e4a5a2-03f9-490d-b093-8f951238dba2.pdf](https://www.hbs.edu/faculty/Publication%20Files/12-016_a7e4a5a2-03f9-490d-b093-8f951238dba2.pdf).

<sup>11</sup> *How Online Reviews Influence Sales*, Spiegel Research Center (June 2017), at 7, [https://spiegel.medill.northwestern.edu/\\_pdf/Spiegel\\_Online%20Review\\_eBook\\_Jun2017\\_Pv2.pdf](https://spiegel.medill.northwestern.edu/_pdf/Spiegel_Online%20Review_eBook_Jun2017_Pv2.pdf).

<sup>12</sup> Online Reviews, *supra* note 8.

<sup>13</sup> Kaitin Augustine, *Nearly Half of Daily Instagram Users Have Made a Purchase Based on an Influencer*, Civic Science (Dec. 3, 2019), <https://civicscience.com/nearly-half-of-daily-instagram-users-have-made-a-purchase-based-on-an-influencer/>.

<sup>14</sup> *Id.*

<sup>15</sup> Online Reviews, *supra* note 8.

<sup>16</sup> Nicole Lyn Pesce, *This is Exactly How Many Reviews it Takes to Get Someone to Buy Something*, Marketwatch (Oct. 22, 2019), <https://www.marketwatch.com/story/this-is-exactly-how-many-reviews-it-takes-to-get-someone-to-buy-something-2017-08-22-12883123>.

<sup>17</sup> Simon Hill, *Inside the Market for Fake Amazon Reviews*, Wired, (Nov. 2, 2022), <https://www.wired.com/story/fake-amazon-reviews-underground-market/>; Joe Enoch, *Can You Trust Online Reviews? Here's How to Find the Fakes*, NBC News (Feb. 27, 2019), [www.nbcnews.com/business/consumer/can-you-trust-online-reviews-here-s-how-find-fakes-n976756](http://www.nbcnews.com/business/consumer/can-you-trust-online-reviews-here-s-how-find-fakes-n976756).

250 million fake reviews in 2023, though many more still remain on the site.<sup>18</sup> Even if a site requires confirmation that a reviewer purchased a product, companies often find positive reviews sufficiently valuable to surreptitiously reimburse paid reviewers for the purchase price of their items.<sup>19</sup>

Many of these reviews are clearly deceptive and illegal under FTC law — including under the FTC’s recently finalized trade regulation on fake reviews.<sup>20</sup> However, because of historically sporadic and weak enforcement, marketers may find the benefits from false endorsements (which are substantial) may outweigh the relatively low risk and consequences of getting caught. In some cases, companies may simply not know that the FTC has stated that certain advertising practices are illegal.

For whatever mix of reasons, fake reviews and undisclosed endorsements are a widespread problem — and it is arguably getting worse.<sup>21</sup> One study finds that nearly half of reviews for clothes and apparel are faked — and, on average across all product lines, 39% of the reviews are false.<sup>22</sup> Another study put the number at closer to 30%.<sup>23</sup> And another found that online reviews are, overall, untrustworthy through a variety of metrics, including convergence with Consumer Reports ratings and resale value.<sup>24</sup>

Heavy reliance on online consumer reviews leaves consumers vulnerable to fake reviews and inflated star ratings.<sup>25</sup> This vulnerability is compounded when reviews and star ratings are bolstered by an algorithmically generated platform endorsement (such as an “Amazon’s Choice”

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<sup>18</sup> Justin Bachman, Amazon, Google sue over fake online reviews, Legal Dive, (Oct. 28, 2024), <https://www.legaldive.com/news/amazon-google-sue-over-fake-online-reviews/731247/>.

<sup>19</sup> Nicole Nguyen, *Her Amazon Purchases Are Real. The Reviews Are Fake*, BuzzFeed News, (Nov. 20, 2019), [www.buzzfeednews.com/article/nicolenguyen/her-amazon-purchases-are-real-the-reviews-are-fake](http://www.buzzfeednews.com/article/nicolenguyen/her-amazon-purchases-are-real-the-reviews-are-fake).

<sup>20</sup> Press Release, Federal Trade Commission Announces Final Rule Banning Fake Reviews and Testimonials, Fed. Trade Comm’n., (Aug. 14, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/08/federal-trade-commission-announces-final-rule-banning-fake-reviews-testimonials>.

<sup>21</sup> Brandie Weikle, Online reviews are increasingly fake, say researchers. Here's why, and how to spot them, CBC Radio, (Mar. 20, 2024), <https://www.cbc.ca/radio/thecurrent/fake-reviews-1.7148727>.

<sup>22</sup> Eric Griffith, *39 Percent of Online Reviews Are Totally Unreliable*, PCMag.com (Nov. 7, 2019), <https://www.pcmag.com/news/371796/39-percent-of-online-reviews-are-totally-unreliable>.

<sup>23</sup> Bettie Cross, *Up to 30% of online reviews are fake and most consumers can't tell the difference*, CBS Austin, (Nov. 1, 2022), <https://cbsaustin.com/news/local/up-to-30-of-online-reviews-are-fake-and-most-consumers-cant-tell-the-difference>.

<sup>24</sup> Bart de Langhe, Philip M. Fernbach, Donald R. Lichtenstein, *Navigating by the Stars: Investigating the Actual and Perceived Validity of Online User Ratings*, *Journal of Consumer Research*, Volume 42, Issue 6 at 818-19 (April 2016)

[https://www.colorado.edu/business/sites/default/files/attached-files/jcr\\_2016\\_de\\_langhe\\_fernbach\\_lichtenstein\\_0.pdf](https://www.colorado.edu/business/sites/default/files/attached-files/jcr_2016_de_langhe_fernbach_lichtenstein_0.pdf); Jake Swearingen, *Hijacked Reviews on Amazon Can Trick Shoppers*, Consumer Reports (Aug. 26, 2019), <https://www.consumerreports.org/customer-reviews-ratings/hijacked-reviews-on-amazon-can-trick-shoppers/>.

<sup>25</sup> *The Real Impact of Fake Reviews: A Behavioral Experiment on How Fake Reviews Influence Consumer Choices*, Which? and The Behavioralist (May 2020), 8, <https://consumerinsight.which.co.uk/articles/fake-reviews>.

label).<sup>26</sup> A study by the UK watchdog Which? shows that when these metrics are artificially bolstered, consumers were significantly more likely to purchase a product which Which? Had recommended avoiding at all costs.<sup>27</sup> Exposure to a combination of the factors further increased their likelihood of buying the inferior product. As fake review schemes become more sophisticated, for example, by adding fake negative reviews to competitors' products, the harm from purchasing inferior products becomes more difficult to avoid.

Currently, online platforms do not have sufficient incentives to police for fraudulent promotion. To the contrary, fake reviews, views, accounts, and other social engagement artificially amplify the metrics by which they are judged by users and investors.<sup>28</sup> Perhaps in part for this reason, social media sorting algorithms tend to prioritize posts that receive more engagement from users with higher followers — providing further incentives for marketers to use deceptive tactics to augment those numbers. This is not a new phenomenon limited to fake accounts on social media. Consumer Reports has been focused on platforms and the role they play in policing (or sometimes encouraging) false information for years. In 2013, for example, CR analyzed six leading review platforms (such as Yelp and Angie's List) to assess whether their policies were likely to lead to accurate assessments; to the contrary, CR determined that many of the platforms had policies — such as allowing companies to pay to move well-reviewed products higher in search results — that skewed reviews toward being overly positive.<sup>29</sup>

### *Companies Have a Legal Obligation to Protect Their Products from Being Used for Harm*

The FTC has long held that companies' failure to take action to identify and remediate harmful uses by bad actors of their products will in many cases be an unfair business practice. One analogous line of cases is the FTC's enforcement actions on data security. In nearly a hundred cases since 2005, the FTC has said that companies have a legal obligation to anticipate and respond to ways that attackers could misuse their systems to gain access to consumers' personal information.<sup>30</sup> In these cases, the FTC has said that companies' failure to take steps to

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Nicholas Confessore et al., *The Follower Factory*, N.Y. Times (Jan. 27, 2018), <https://www.nytimes.com/interactive/2018/01/27/technology/social-media-bots.html>.

<sup>29</sup> *The Truth About Online Ratings Services*, Consumer Reports (Sept. 2013), [www.consumerreports.org/cro/2013/09/online-ratings-services/index.htm](http://www.consumerreports.org/cro/2013/09/online-ratings-services/index.htm).

<sup>30</sup> See Press Release, *BJ's Wholesale Club Settles FTC Charges*, Fed. Trade Comm'n., (Jun. 16, 2005), <https://www.ftc.gov/news-events/news/press-releases/2005/06/bjs-wholesale-club-settles-ftc-charges>; Press Release, *DSW Inc. Settles FTC Charges*, Fed. Trade Comm'n., (Dec. 1, 2005), <https://www.ftc.gov/news-events/news/press-releases/2005/12/dsw-inc-settles-ftc-charges>; Press Release, *FTC Releases 2023 Privacy and Data Security Update*, Fed. Trade Comm'n., (Mar. 28, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-2023-privacy-data-security-update>; Staff Report, *Start with Security: A Guide for Business*, Fed. Trade Comm'n., (Jul. 2017), <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>.

remediate likely abuses by third parties caused a substantial likelihood of injury that was unavoidable by consumers and not offset by countervailing benefits to consumers or competition. As just one example, earlier this year, the FTC brought an action against the security camera company Verkada for failure to take steps to prevent attackers from accessing video feeds from consumers' cameras.<sup>31</sup>

Beyond data security, the FTC has held companies responsible for how others use their products to cause harm to consumers.<sup>32</sup> For example, the FTC successfully sued QChex for violating Section 5 for allowing any customer to create checks for any bank account number without implementing reasonable safeguards to ensure that fraudsters were not creating checks for accounts they did not control. In that case, QChex's failure to take steps to prevent foreseeable harmful and illegal uses constituted an unfair business practice.

It is important to note that an obligation to identify and remediate likely harmful behaviors does not amount to strict liability for any harm caused by another bad actor using a company's product.<sup>33</sup> Section 5's requirement that any harm not be offset by countervailing benefits to consumers or competition means that companies are not expected to spend unlimited resources to try to chase down potential offenders. Instead, the FTC only intervenes when companies fail to take cost-effective measures whose implementation would have prevented an even greater risk of injury.

Product design is also an important consideration in assessing the extent to which a company must take steps to remediate potential harm from bad faith actors. If the potential harms from a platform are especially significant, or the platform's design makes it likely that it will be used for harmful purposes, then companies should have a greater obligation to expend resources

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<sup>31</sup> See Press Release, *FTC Takes Action Against Security Camera Firm Verkada over Charges it Failed to Secure Videos, Other Personal Data and Violated CAN-SPAM Act*, Fed. Trade Comm'n., (Aug. 30, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/08/ftc-takes-action-against-security-camera-firm-verkada-over-charges-it-failed-secure-videos-other>.

<sup>32</sup> See, e.g., Press Release, *FTC Sues Walmart for Facilitating Money Transfer Fraud That Fleeced Customers Out of Hundreds of Millions*, Fed. Trade Comm'n., (Jun. 28, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-walmart-facilitating-money-transfer-fraud-fleeced-customers-out-hundreds-millions>; Press Release, *U.S. Circuit Court Finds Operator of Affiliate Marketing Network Responsible for Deceptive Third-Party Claims Made for LeanSpa Weight-loss Supplement*, Fed. Trade Comm'n., (Oct. 4, 2016), <https://www.ftc.gov/news-events/news/press-releases/2016/10/us-circuit-court-finds-operator-affiliate-marketing-network-responsible-deceptive-third-party-claims>. Press Release, *Court Orders Permanent Halt to Illegal Qchex Check Processing Operation Court Finds Qchex Unfair Practices Created a Dinner Bell for Fraudsters Operators to Give Up All Their Ill-Gotten Gains*, Fed. Trade Comm'n., (Feb. 9, 2009), <https://www.ftc.gov/news-events/news/press-releases/2009/02/court-orders-permanent-halt-illegal-qchex-check-processing-operation-court-finds-qchex-unfair>.

<sup>33</sup> However, it is worth noting that in some other legal contexts, online platforms may be deemed strictly liable for harms caused by third-party use of their systems. For example, in the product liability context, platforms such as Amazon that host third-party sellers of defective products may be held strictly liable for the damages caused by those products. See *Oberdorf v. Amazon.com Inc.*, 930 F.3d 136 (2019).



to remediate those uses. QChex, for example, allowed attackers to generate checks on consumers' bank accounts; given the high risk of substantial financial harm, the company had an obligation to ensure that the check writers in fact controlled those accounts and to monitor and respond to complaints of fraud. If a company creates a product that has a high likelihood of being used for illegitimate purposes, it should have a greater obligation to take steps to account for those harms to ensure the harms do not outweigh any potential benefits to consumers from the product.<sup>34</sup>

*Rytr's Product Design Was Likely to Lead to Substantial Harm that Outweighed any Theoretical Beneficial Uses*

The FTC's settlement with Rytr concerns Rytr's offering of a generative AI platform for its paying customers to generate "Testimonials and Reviews."<sup>35</sup> Rytr's interface contained few fields for users to input details about the products or services they wanted to review; instead, the company offered various toggles for desired tone or levels of creativity. Based on these limited inputs, Rytr would generate detailed reviews with specific invented anecdotes unrelated to any information provided by the customer.<sup>36</sup> Rytr set no limits on how many reviews a customer could create, or even how many reviews a customer could create for one particular company. In fact, a number of Rytr customers generated literally thousands of reviews for similar products, and, in at least one case, thousands of reviews for a business with the same name as the customer's business email address.<sup>37</sup>

Rytr created a platform whose overwhelming use case was to be used for fraud. Because of the lack of customer inputs and the way the system was designed to provide specific details about supposed consumer interactions with products or services, almost by definition *any* review generated by the platform was likely to be deceptive. However, customers were not just limited to creating one review for a product: instead, they had the capacity to create dozens, even thousands, each with their own manufactured details.

Two Commissioners dissented to the Rytr settlement arguing that just because a product *could* be used for harmful purposes does not mean that the company has committed an unfair business practice by putting that product into commerce.<sup>38</sup> It is true that under Section 5

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<sup>34</sup> Press Release, *U.S. Circuit Court Finds Operator of Affiliate Marketing Network Responsible for Deceptive Third-Party Claims Made for LeanSpa Weight-loss Supplement*, Fed. Trade Comm'n., (Oct. 4, 2016), <https://www.ftc.gov/news-events/news/press-releases/2016/10/us-circuit-court-finds-operator-affiliate-marketing-net-work-responsible-deceptive-third-party-claims>.

<sup>35</sup> In the Matter of Rytr, LLC, Fed. Trade Comm'n, File No. 232-3052, Complaint, (Sep. 25, 2024), <https://advocacy.consumerreports.org/wp-content/uploads/2022/09/CR-Endorsement-Guides-comments-September-2022-3.pdf> [hereinafter Rytr Complaint]

<sup>36</sup> *Id.* at ¶¶ 6-8.

<sup>37</sup> *Id.* at ¶ 13.

<sup>38</sup> In the Matter of Rytr, LLC, Fed. Trade Comm'n, File No. 232-3052, Dissenting Statement of Commissioner Melissa Holyoak, (Sep. 25, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/holyoak-rytr-statement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-rytr-statement.pdf); In the

companies do not have strict liability for every harmful use of their product. But the FTC’s case is not based on the fact that Rytr’s service *could* have been used for harm. It is based on the fact that Rytr’s review product’s design was *overwhelmingly likely* to lead to deception even when used as purportedly intended, and that bad actors could easily take advantage of the system to generate thousands of fraudulent reviews at scale.<sup>39</sup>

The dissenting Commissioners stress that Rytr could theoretically also have been used for good, since a Rytr customer could simply use Rytr’s generated reviews as “drafts” or just creative prompts to help them remember details about the reviewed product or service. Given the design of Rytr’s review-writing system however, this seems incredibly unlikely. The *entire purpose* of customer reviews is for real customers to convey their own personal experience with a product to other potential purchasers. Rytr’s system strictly limited customer inputs and did not even allow customers to add their own details or anecdotes; instead Rytr’s generative AI system invented those for them. It is theoretically possible that these invented details could precisely mirror what a real consumer experienced, but those serendipitous coincidences are likely to be the exception and not the rule. Instead, to render the reviews truthful and relevant, a customer would have to excise the majority of invented details and add back in their own, raising the question of what utility the initial review generation offered in the first place.

In any event, there is no evidence in the FTC’s record that Rytr characterized their service as recommending “drafts” or ideas to potential reviewers. While it is unlikely that a prominent notice to consumers to review and edit potential reviews would be sufficient to undo the deception likely to derive from Rytr’s reviews given the design of the system, there is no evidence that such a warning was made to Rytr customers. Indeed, it is not clear from the complaint whether it was even possible for customers to edit Rytr’s reviews on the Rytr platform, or whether customers would have to export the review to third-party word processing software to undo Rytr’s deceptive embellishments. Archives of Rytr’s website indicate Rytr advertised that users could “quickly write candid testimonials and reviews for people and services.”<sup>40</sup> Customers were told they could create reviews in “four easy steps” — “select language,” “select tone,”

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Matter of Rytr, LLC, Fed. Trade Comm’n, File No. 232-3052, Dissenting Statement of Commissioner Andrew N. Ferguson, (Sep. 25, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/ferguson-rytr-statement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-rytr-statement.pdf) [hereinafter Ferguson Dissent].

<sup>39</sup> The dissenters also raise First Amendment objections to the settlement, arguing that the enforcement action stifles free speech rights simply because Rytr’s product *could* be used for fraudulent purposes. See Ferguson Dissent, *supra* note 38 at 10. Again, Rytr is not liable under Section 5 simply because it could be used for illegitimate ends. It is being held liable under Section 5 because the most obvious use is for illegal ends. Companies do not have a First Amendment right to engage in deceptive practices or unfair business practices. The Supreme Court has repeatedly held that longstanding content-based speech restrictions such as prohibitions against fraud and defamation are legitimate as “historic and traditional categories long familiar to the bar.” See *United States v. Alvarez*, 567 U.S. 709 (2012); *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976).

<sup>40</sup> “Generate testimonial & review using AI,” Archive.org capture of Rytr.me (archived May 18, 2022), <https://web.archive.org/web/20220518040313/https://rytr.me/use-cases/testimonial-review-generator>.



“choose testimonial and review,” and “add input” (which was extremely limited as discussed above).<sup>41</sup> “Editing” or “revising” are not mentioned as additional steps.

It is also notable, as pointed out by TruthInAdvertising.org in its comment on this proceeding, that Rytr marketed its services to *businesses* and not *consumers*, further increasing the likelihood that it would be used by companies interested in generating fake reviews than by ordinary consumers who just needed a creative boost to craft the perfect testimonial.<sup>42</sup>

Further, given the prevalence of review fraud and the ease with which Rytr’s service can generate fake reviews at scale, Rytr had an obligation to set rules in place to limit the quantity of reviews one user could generate (at the very least for the same product) and to monitor and redress potential abuses of the system. From the record in the FTC’s complaint, Rytr did neither. Instead, some customers were able to generate thousands of reviews for similar if not the same product.<sup>43</sup>

Given the combination of Rytr’s platform design, the widespread prevalence of fake reviews, and Rytr’s failure to account for and remediate abuse, it is clear that Rytr has committed unfair business practices. The misleading reviews churned out by Rytr’s engine were likely to lead to substantial consumer injury as potential consumers who encountered the reviews would be misled as to the merits of the reviewed products or services. These consumers would not be able to avoid the injury as they would have no means to determine that the reviews were fraudulent — to the contrary, Rytr’s reviews were presumably designed to look authentic and convincing.

The injury likely to derive from Rytr’s system was not offset by countervailing benefits to consumers or competition. As discussed above, Rytr was not set up to draft helpful and truthful reviews. While it is theoretically possible that a customer could repurpose Rytr’s invented anecdotes into a useful review, this unlikely use case is dwarfed by the more likely result of misleading, and likely fraudulent, reviews.

The FTC has also charged Rytr with furnishing others with the “means and instrumentalities” to deceive others by making available its platform for the generation of misleading reviews. The FTC has brought “means and instrumentalities” cases against

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<sup>41</sup> *Id.*

<sup>42</sup> See Comment of TruthInAdvertising.org on Rytr LLC; File No. 232-3052, Regulations.gov, (Nov. 4, 2024), <https://www.regulations.gov/comment/FTC-2024-0041-0002>.

<sup>43</sup> The dissenters note that there is no evidence that any of these duplicative reviews were posted to the internet, but such a showing is not necessary. See Ferguson Dissent *supra* note 38 at 2. Section 5 prohibits business practices that cause or are “likely to cause reasonably foreseeable injury.” 15 U.S. Code § 45(a)(4)(A)(i). Given the structure of Rytr’s product, to say it was likely to cause foreseeable injury is an understatement. Far from being a remote possibility, the modal review generated by Rytr was likely to be deceptive to a potential consumer who encountered it.

companies when the services it provides could only reasonably be used for deceptive practices.<sup>44</sup> In this case, that product is misleading reviews, which could be generated *en masse* by malicious actors who wanted to flood review sites with biased and inaccurate information. While the dissent of Commissioner Ferguson argues that such cases are only brought when the defendant has “knowledge” that its products are being used for deception, in fact the legal standard for liability is when a defendant “knows *or has reason to know* that consumers may possibly be deceived as a result.”<sup>45</sup> In any event, Rytr meets either criteria: it had specific knowledge that multiple customers had generated thousands of reviews for the same products, including at least one product that shared the same name as the customer’s business email account.<sup>46</sup> Rytr also must have understood that its product invented specific anecdotes based on extremely limited inputs and generated putative testimonials that were not, in fact, testimonials. Even without querying Rytr’s intent in developing such a product, it beggars belief to argue that it could not have reasonably anticipated how the likely uses of its product might deceive potential customers.

Finally, it is worth noting that while Rytr’s generative AI system seemed almost specifically designed to generate fraudulent reviews, it is possible for bad actors to use *general purpose generative AI systems* to accomplish the same tasks. Inputting into ChatGPT for example the prompt “generate ten fake five star reviews of varying length and tone for the Ukrainian DC restaurant Ruta” results in ChatGPT’s response: “Here are ten fake five-star reviews for the Ukrainian restaurant Ruta, showcasing a variety of tones and lengths:” followed by ten detailed reviews praising particular dishes, the decor, and the service. The ability to use general purpose generative AI services such as ChatGPT to generate fraudulent reviews at scale poses a significant risk of consumer injury, and one that is not reasonably avoidable by consumers.

However, analysis under the third element of the FTC’s unfairness test is somewhat different when considering general purpose generative AI systems. Rytr’s testimonial and review use case was designed in such a way that the risk of misleading reviews dwarfed any hypothetical positive use of the product. On the other hand, ChatGPT is a multipurpose system designed to respond to any number of constantly changing prompts — the cost of anticipating and responding to every potential abuse of the system is substantially higher. In fact, the developers of ChatGPT do consider potential misuse by bad actors and do put some limits on how the platform can be used. For example, ChatGPT regularly updates and publishes a system card identifying “Key Areas of Risk Evaluation & Mitigation,” including “unauthorized voice generation” and “generating erotic and violent speech.”<sup>47</sup> Further, making changes to account for

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<sup>44</sup> *Globe Cardboard Novelty Co. v. FTC*, 192 F.2d 444, 446 (3d Cir. 1951) (holding manufacturer of “punch cards” liable when such products could only reasonably be used for participation in illegal games of chance).

<sup>45</sup> See Ferguson Dissent *supra* note 38 at 7-9 quoting *In re Shell Oil Co.*, 128 F.T.C. 749, 766 (1999) (emphasis added).

<sup>46</sup> Rytr Complaint *supra* note 35 at ¶ 13.

<sup>47</sup> GPT-4o System Card, OpenAI, (Aug. 8, 2024), <https://openai.com/index/gpt-4o-system-card/>.

harmful uses could also potentially constrain known or unknown positive uses of ChatGPT — another potential countervailing benefit that does not exist for Rytr’s narrow, constrained review generation service.

Nevertheless, there is a strong case that the developers of ChatGPT should take at least some measures to prevent users from readily soliciting and receiving “fake reviews.” The extent to which such a multipurpose platform should take steps to respond to this particular threat is a complex question, balancing the costs of potential harm with the costs of remediation and potential limitations of beneficial uses.

However, while the case of ChatGPT is nuanced,<sup>48</sup> the case of Rytr’s review generation service is not. Rytr developed a product that was unlikely to help even good faith users generate relevant and truthful reviews, and instead was likely to lead to deceptive testimonials and abuse by bad actors. It did not take steps to identify or prevent these foreseeable abuses.

The fact that generative AI is a relatively new technology does not insulate developers from following the law. The recent history of technological progress is illustrative, as Silicon Valley boosters warned against applying privacy and platform accountability principles to emerging platforms such as the Web and social media. Now, decades later, policymakers are desperately trying to retrofit these values into established norms and business models. Generative AI holds enormous potential for consumers and businesses alike, but it cannot be left to develop outside of well established consumer protection law.

Respectfully submitted,

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<sup>48</sup> OpenAI is presently a nonprofit institution and not governed by Section 5 of the FTC Act. However, it is useful to consider how Section 5 should apply to general purpose generative AI platforms; also OpenAI is reportedly in the process of converting to for-profit status, which would subject the company to the FTC’s jurisdiction. *See* Krystal Hu and Kenrick Cai, *Exclusive: OpenAI to remove non-profit control and give Sam Altman equity*, Reuters, (Sep. 26, 2024), <https://www.reuters.com/technology/artificial-intelligence/openai-remove-non-profit-control-give-sam-altman-equity-sources-say-2024-09-25/>.