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I. Background and Overview

The Federal Trade Commission (FTC) issued a comprehensive rule under [16 CFR Part 465](#) to regulate the use of consumer reviews and testimonials, such as social media reviews. Effective Oct. 21, 2024, this rule is a response to the increasing prevalence of deceptive practices in online reviews, endorsements, and social media influence, which undermine consumer trust and distort market competition. The rule stems from the FTC's mandate to protect consumers from unfair and deceptive practices under Section 5 of the FTC Act.

The rule applies to advertisers generally, including in the rental housing industry. Advertisers are responsible for the activities of their employees and agencies under the rule. In contrast to the FTC's voluntary advertising Guides, the new reviews rule represents a new minimum standard, the violation of which may subject an advertiser to enforcement action and civil money penalties of as much as \$51,744 per violation. Violations of the rule are also potential evidence for private plaintiffs' claims under state consumer protection laws.

The FTC has a history of enforcement activities directed at rental housing industry advertising. In 2022, the agency obtained a multi-million-dollar settlement against a leasing service provider over allegations that the service provider and its agents manufactured fake social media reviews of listed rental properties. The service provider and its operators flooded the internet with fake positive reviews to overshadow genuine negative feedback from consumers. The company falsely claimed to offer millions of "verified listings" and used phony listings on classified websites to attract users to their platform, charging fees for access to non-existent listings.

The agency has also obtained enforcement settlements against advertisers whose employees did not disclose their employee status when posting social media reviews, and against advertisers that suppressed negative reviews with the aid of an agent.

II. Key Provisions of the Rule

A. Prohibition of Fake or False Consumer Reviews and Testimonials

The final rule sets stringent prohibitions against the creation, dissemination and use of fake or false consumer reviews and testimonials. The following practices are explicitly banned:

1. Compensation for Positive or Negative Reviews

- Any individual or entity is prohibited from providing compensation or other incentives (to include prizes, gift cards, etc.) in exchange for a consumer review expressing a particular view, star rating, or sentiment (positive or negative). However, incentives and campaigns for reviews without the obligation or solicitation of a particular sentiment are permitted, provided that the review includes a disclosure that it resulted from an incentive or campaign.

2. Creating or Distributing Fake Reviews:

- Any individual or entity, such as an endorser, is prohibited from writing, selling or distributing reviews for products or services they have not actually used. This includes both positive and negative reviews intended to manipulate consumer perception.

3. Misrepresentation of Experiences:

- The rule bans testimonials or reviews that falsely claim to reflect the experiences, opinions or beliefs of the reviewer. This includes situations where a review is falsely attributed to a real person who did not provide the review, including AI-generated reviews or where the reviewer's experience has been exaggerated or fabricated.

B. Regulation of Review Suppression and Manipulation

The rule addresses various forms of review suppression and manipulation that distort the marketplace, providing new guidelines for reputation management by advertisers and their agents:

1. Selective Display of Reviews:

- Businesses are prohibited from selectively displaying only positive reviews while suppressing or removing negative ones. The FTC considers this practice deceptive as it misleads consumers into believing the overall sentiment about a product or service is more favorable than it actually is. Advertisers and their vendors may take steps under the rule to flag or delete reviews they reasonably believe to be fake but should take extra steps to verify the inauthenticity.

2. Review Hijacking:

- The rule bans the practice of review hijacking, where a business reuses or repurposes reviews from one product or service to falsely enhance the reputation of a different product or service. This is particularly deceptive as it leads consumers to believe the reviews pertain to the product or service they are considering purchasing.

3. Unjustified Legal Threats:

- The rule explicitly prohibits businesses from using unjustified legal threats to suppress negative reviews. This includes threats of defamation lawsuits or other legal actions intended to intimidate consumers into removing or altering their reviews.

C. Disclosure of Material Connections

The rule emphasizes transparency by requiring clear disclosures of material connections between reviewers and businesses. In the rental housing industry, social media reviews by employees and insiders, for example, require new disclosures:

1. Insider Reviews:

- Reviews or testimonials provided by business owners, employees or their relatives must include clear and conspicuous disclosures of their relationship to the advertiser. Failure to disclose material connections is considered deceptive because it can lead consumers to believe that the reviews are unbiased and independent. Officers and managers of the business may not solicit reviews from immediate relatives or employees or agents of the business. Companies will not be deemed to violate the rule unless they fail to instruct employees and insiders to make clear disclosures, reviews appear without required disclosures, and officers and managers who should have known such reviews appeared fail to take steps to remove the reviews or amend the disclosures.

2. Independent Review Websites:

- Marketers and businesses that operate websites purporting to offer independent reviews must clearly disclose any connections to the businesses being reviewed. The FTC has found that consumers rely heavily on the perceived independence of review platforms, and undisclosed affiliations can significantly mislead consumers.

D. Misuse of Social Media Influence Indicators

Social media plays a critical role in shaping consumer perceptions, and the rule addresses the misuse of indicators of social media influence:

1. Fake Social Media Influence:

- The sale, purchase or distribution of fake social media indicators, such as fake followers, likes or shares, is prohibited under the rule. These practices are deemed inherently deceptive because they create a false impression of popularity, trustworthiness or social approval.

2. Commercial Use of Fake Indicators:

- Businesses that engage in the commercial use of fake social media influence indicators are subject to penalties. This includes using such indicators to falsely enhance the credibility or popularity of a product, service, or social media account.

III. Implementation and Enforcement

The final rule grants the FTC enhanced enforcement capabilities to ensure compliance. The rule enables the FTC to seek monetary redress for consumers directly under Section 19(a)(1) of the FTC Act. Violations of the rule can result in civil money penalties of up to \$51,744 per violation.

IV. Conclusion

The new minimum standards in the FTC's final rule on the use of consumer reviews and testimonials represent a significant step in regulating the online marketplace. By targeting deceptive practices and enhancing transparency, the rule seeks to restore consumer trust in online reviews, which are a critical component of modern commerce. The rule is intended to protect consumers, promote fair competition and ensure that businesses engaging in ethical marketing practices are not disadvantaged by those who resort to deception.

The rule is effective Oct. 21, 2024, giving businesses limited time to adjust their practices and ensure compliance. Well-prepared advertisers will ensure policies and procedures are updated and communicated to employees and marketing representatives, training has been provided, and advertising oversight practices are in place to demonstrate compliance with the new mandates.

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