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Fake Reviews Lead to Real FTC Enforcement Actions

The Federal Trade Commission recently settled two cases related to customer reviews alleged to be fake and unsupported. In addition to the takeaways below, here's another one: Don't fake reviews — the FTC is watching!

Key Takeaways:

- Disclose material connections with reviewers and endorsers, i.e., “Reviewer received free product, but all opinions are reviewer’s own” or “I am an employee of this company, but all views on the product are my own.”
- Always support health claims with competent and reliable scientific evidence (and have a reasonable basis for all express and implied claims in advertising).
- Don't require positive reviews in exchange for free product (in fact, don't require positive reviews at all!) — testimonials should always be truthful and substantiated.

The FTC on Oct. 22 settled a case with skincare company Sunday Riley over claims that the company misled consumers by posting fake reviews of the company's products on Sephora's website, at the CEO's direction, and by failing to disclose that the reviewers were company employees. Last week, in another case involving fake reviews, as well as bogus health claims, the FTC settled a suit against NatureCity LLC, Carl Pradelli and Beth Pradelli over claims that the defendants made unsupported health claims about their

aloe vera-based products, TrueAloe and AloeCran, and failed to disclose material connections with reviewers of defendants' products.

Sunday Riley

The proposed Sunday Riley settlement does not involve a fine but does prohibit Sunday Riley from misrepresenting the status of an endorser or reviewer (i.e., to suggest the reviewer is an ordinary user of the product, not an employee) and from posting reviews without clearly and conspicuously disclosing the material connection between the reviewer and the advertiser. The proposed order also requires Sunday Riley to remind employees about the obligation to disclose.

The complaint alleged that — at the CEO's written instruction — employees were asked to post five-star reviews on the website of popular beauty emporium Sephora. The instructions alleged to have been sent by the CEO and reproduced in the FTC's complaint are detailed enough to include calls to “Create a new persona. Choose their name, city, skin type”; “Before going onto Sephora.com, clear your cookie history EACH TIME”; and “The other thing, if you see a negative review – DISLIKE it. After enough dislikes, it is removed. This directly translates to sales!!” (emphasis in original).

Account managers also, the FTC's complaint alleges, specifically directed employees that “credibility is key” and that having a profile tied to a few other reviews for unrelated products would build a more believable profile history. Finally, account managers gave specific talking

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points for new products for employees to use in their reviews. While the more egregious conduct may seem to be the creation of fake profiles, the FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising would also prohibit *true* reviews written under real profiles if the reviewers did not disclose their relationship as employees of the advertiser.

While Sunday Riley won't have to pay a fine, not all of the FTC commissioners agree with the leniency of the settlement. Commissioner Rohit Chopra, joined by Commissioner Kelly Slaughter, declared that "going forward, the FTC should seek monetary consequences for fake review fraud, even if the exact level of ill-gotten gains is difficult to measure," particularly since "fake reviews distort our markets by rewarding bad actors and harming honest companies, [and] the problem is growing."

NatureCity

The NatureCity settlement requires defendants to pay the FTC \$537,500 and to refrain from making health claims without competent and reliable scientific evidence to support such claims. Defendants must disclose all material connections with anyone providing an endorsement of their products and must send out notices about the settlement to anyone who bought TrueAloe or AloeCran.

Defendants made wide-ranging health claims about their aloe-based products, claiming they could treat conditions such as chronic pain, ulcerative colitis, diabetes and acid reflux. And reviews seemed to confirm these claims — except that the glowing reviews were made by people who had received free products and were encouraged to be positive in their assessments. What's more, defendants hadn't conducted any studies to test or substantiate these claims.

The FTC's complaint alleged that "Defendants solicit the testimonials contained in their direct mail brochures with a promise to provide compensation ... Further, Defendants influence solicited responses by requesting consumers to 'imagine' they are 'trying to encourage a

friend to try' one of the products. Defendants state that they will only provide compensation if the testimonial is used in their advertising materials, so consumers are incentivized to provide positive details to obtain the offered compensation."

While paid testimonials aren't barred by the FTC's Guides, they must be clearly disclosed, and testimonials must represent the truthful views of someone who has actually used and experienced the product they are endorsing or reviewing.

The FTC has also taken a particular interest in health claims and continues to crack down on advertisers that do not possess the requisite competent and reliable scientific evidence to back up the claims they make. This evidence can include, according to the FTC, "tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." These tests or studies should be completed before any public-facing claims are made.

Finally, the judgment against defendants in this case was \$18.7 million, which is partially suspended upon payment of \$537,500 to the FTC. If the court finds, upon motion by the FTC, that defendants misstated or failed to disclose any material asset, it may lift the suspension, causing defendants to owe over \$18 million to the FTC for their violations.

Related Professionals

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