ML STRATEGIES

FTC Cracks Down on AI-Generated Fake Reviews – AI: The Washington Report

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VIEWPOINT TOPICS

- Artificial Intelligence
- AI: The Washington Report

- On August 14, the FTC announced its much-anticipated final rule banning fake reviews and testimonials.
- The final rule prohibits the purchase, sale, and dissemination of fake reviews, incentivized reviews, and certain insider reviews. It also blocks review suppression and the misuse of fake social media indicators.
- The final rule does not have requirements pertaining specifically to AI, but the rule's requirements will apply to AI-generated reviews.
- The rule will go into effect on October 21, 60 days after its publication in the *Federal Register*.

On August 14, the Federal Trade Commission (FTC) announced its much-anticipated **final rule** on fake reviews and testimonials. The final rule prohibits fake consumer reviews and testimonials, the purchase and sale of reviews and fake social media indicators, insider reviews made without certain disclosures, and certain practices to suppress reviews.

The final rule acknowledges that AI tools "make it easier for bad actors to write fake reviews" and aims to "deter AI-generated fake reviews." Below, we provide a brief background on the final rule as well as an overview of the rule's six main provisions:

Background

For over two years, the FTC has focused on cracking down on fake reviews and testimonials, which may mislead consumers and have harmful effects on competition. In January 2022, most notably, the FTC entered into a settlement agreement with Fashion Nova for suppressing negative reviews, among other related enforcement activities. Building onto those efforts, in November 2022, the FTC issued an **Advance Notice of Proposed Rulemaking** (ANPR) for a Trade Regulation Rule on the Use of Reviews and Endorsements "to address certain deceptive or unfair acts or practices involving consumer reviews or testimonials." The ANPR was followed by a **Notice of Proposed Rulemaking** (NPRM) in July 2023.

The NPRM prohibited six main practices related to false and fake reviews — including the dissemination of such reviews and the suppression of negative reviews. The NPRM specifically acknowledged the role AI plays in making fake reviews more ubiquitous. AI can "write reviews that are nearly indistinguishable from reviews written by people," according to the FTC, and "generate reviews on behalf of nonexistent consumers."

The Final Rule

The FTC's final rule keeps most of the proposed rule as is but, most notably, eliminates one part of the proposed rule, which we discuss below. The final rule empowers the FTC to take civil action against companies or individuals that engage in the following prohibited activities:

1. **The creation, purchase, or sale of fake or false consumer reviews, including consumer and celebrity testimonials.** The final rule prohibits businesses from writing, creating, selling, purchasing, or disseminating a consumer review or testimony that misrepresents the reviewers' experience with the business or its products or services. The rule also prohibits reviews that misrepresent the identity of the reviewer or testimonialists; AI-generated fake reviews that misrepresent the reviewer's identity are an area of concern specifically called out in the FTC's **press release**. Finally, businesses are also prohibited from knowingly procuring reviews from company insiders who misrepresent their identity or experience with the business or its services or products.

2. **The purchase of reviews.** The final rule also makes it an “unfair or deceptive act” for a business to “provide compensation or other incentives in exchange” for reviews about the business or its services or products. The rule clarifies that the ban applies to any reviews, whether positive or negative.
3. **Insider reviews without “clear and conspicuous” disclosures.** Reviews written by company insiders will have to have a “clear and conspicuous disclosure” of their material relationship to the company. However, the rule clarifies that companies are still allowed to make “generalized solicitations to purchasers for them” to post reviews.
4. **Company-controlled review websites.** A company is also prohibited from misrepresenting that a website it owns or controls “provides independent reviews or opinions” about its business or the products or services it sells.
5. **Negative review suppression.** Companies are also prohibited from suppressing negative reviews by highlighting only certain favorable reviews or claiming that the reviews featured are all the reviews that were submitted when some negative reviews are not featured. The final rule, however, makes certain exceptions when companies are allowed to suppress reviews, such as when the reviews contain defamatory or sexually explicit content or “the seller reasonably believes the review is fake.” Finally, the final rule prohibits companies from using threats or intimidation to prevent or remove reviews.
6. **Misuse of social media indicators.** Lastly, the rule prohibits anyone from selling or distributing, and purchasing or procuring, “fake indicators of social media influence,” such as content engagement or followers.

The FTC did not finalize the proposed rule’s provision to prohibit review hijacking — where “a business [uses] or [repurposes] a consumer review written or created for one product so that it appears to have been written or created for a substantially different product.” The FTC received comments and concerns about the definition of “substantially different product,” which it was not able to resolve in time.

Conclusion

The final rule expands the purview of the FTC to go after fake and false reviews and increases, for companies that feature reviews, the liability for fake or false reviews or negative review suppression. The FTC’s interest in doing so was sharpened by its recognition that AI provides a vehicle to create fake reviews on a large scale. We would expect that the FTC program will rapidly move to an enforcement phase. The final rule will become effective on October 21, 2024;companies should ensure that activities comply with the rule by that date.

Authors

Bruce Sokler

Bruce D. Sokler is a Mintz antitrust attorney. His antitrust experience includes litigation, class actions, government merger reviews and investigations, and cartel-related issues. Bruce focuses on the health care, communications, and retail industries, from start-ups to Fortune 100 companies.

Alexander Hecht, Executive Vice President & Director of Operations



Alex Hecht is a trusted attorney and policy strategist with over 20 years of experience advising clients across a broad range of industries on how to navigate complex policy environments. His strategic insight and hands-on experience in both legislative and regulatory arenas empower clients to advance their priorities with clarity and confidence in an evolving policy landscape.

Christian Tamotsu Fjeld, Senior Vice President



Christian Tamotsu Fjeld draws on two decades of Capitol Hill experience to support clients in building relationships, shaping policy, and engaging effectively with the federal government. His experience working with Congress and his insights help clients anticipate federal developments and advance their priorities with clarity and confidence.

Matthew Tikhonovsky

Matthew is a Mintz Senior Project Analyst based in Washington, DC.