

FTC Proposed Rule on the Use of Consumer Reviews and Testimonials

General Questions for Comment

When responding to any of the following general questions, please specify the portion(s) of the proposal to which your comment relates.

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?
2. Should the Commission finalize the proposed Rule as a final rule? Why or why not? How, if at all, should the Commission change the proposed Rule in promulgating a final rule?
3. Please provide comment, including relevant data, statistics, consumer complaint information, or any other evidence, on each different provision of the proposed Rule. Regarding each provision, please include answers to the following questions:
 - a. What would the provision's impact (including any benefits and costs), if any, be on consumers, governments, and businesses, including existing businesses and those yet to be started? Are there changes that could be made to lessen any such burdens without significantly reducing the benefits?
 - b. Is the proposed prohibition in the provision clear, meaningful, and appropriate?
 - c. Should the scope of the proposed prohibition be expanded or narrowed, and, if so, how, and why? How, if at all, should it be improved?
 - d. Should any final rule keep the proposed prohibition and, if so, why? If not, what alternative proposals should the Commission consider?
4. Does the proposed Rule contain a collection of information?
5. Would the proposed Rule, if promulgated, have a significant economic impact on a substantial number of small entities? If so, how could it be modified to avoid a significant economic impact on a substantial number of small entities?

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?

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

Proposed § 465.2(b) would prohibit businesses from purchasing a consumer review, or from disseminating or causing the dissemination of a consumer testimonial or celebrity testimonial when the business knew or should have known it was false or fake. Proposed § 465.2(c) would prohibit businesses from procuring a consumer review for posting on a third-party platform or website that the business knew or should have known was false or fake.

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?

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

§ 465.3 Consumer Review Repurposing

Proposed § 465.3 would prohibit businesses from repurposing or causing the repurposing of a consumer review created for one product so that it appears to have been created for a substantially different product.

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

§ 465.4 Buying Positive or Negative Consumer Reviews

Proposed § 465.4 would prohibit providing compensation or other incentives in exchange for, or conditioned on, the writing or creation of consumer reviews expressing a particular sentiment.

13. 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?

§ 465.5 Insider Consumer Reviews and Consumer Testimonials

Proposed § 465.5(a) would prohibit an officer or manager of a business from writing or creating a consumer review or consumer testimonial about the business or one of its products or services that fails to have a clear and conspicuous disclosure of the officer’s or manager’s relationship to the business. Proposed § 465.5(b) would prohibit a business from disseminating a testimonial by an officer, manager, employee, or agent, or any of their relatives, without a clear and conspicuous disclosure of the relationship, when the business knew or should have known the testimonialist’s relationship. Proposed § 465.5(c) would prohibit an officer or manager of a business from asking for a consumer review about the business or one of its products or services from a person related to the business, when the solicitor knew or should have known the prospective reviewer’s relationship, the request results in a review without a clear and conspicuous disclosure of the relationship, and the requestor failed to advise a disclosure, knew or should have known that a review appeared without such a disclosure and failed to take remedial steps, or encouraged the prospective reviewer not to make such a disclosure.

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

16. 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?
17. 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?
18. 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?
19. Should the Commission define or otherwise describe the term “relative”? Why or why not? If so, how should it be defined or described?
20. 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?

§ 465.7 Review Suppression

Proposed § 465.7(a) would prohibit anyone from using an unjustified legal threat or a physical threat, intimidation, or false accusation in an attempt to remove or prevent a negative consumer review. Proposed § 465.7(b) would prohibit a merchant from misrepresenting that the consumer reviews displayed on its website or platform represent most or all the reviews submitted when it is suppressing reviews based upon their ratings or their negativity.

21. 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?
22. Is the definition of “unjustified legal threat” sufficiently clear? Why or why not? If not, how should it be modified?
23. 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?
24. 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?