



Dealerships and the Use of Consumer Reviews and Testimonials

Frequently Asked Questions

On August 22, 2024, the Federal Trade Commission (“FTC”) published its anticipated final rule on the [Use of Consumer Reviews and Testimonials](#) (“Rule”), marking a significant development in the regulation of online reviews and endorsements.¹ The FTC has long had the [Guides Concerning the Use of Endorsements and Testimonials](#), which dealers have relied on. The new Rule is more detailed than the Guides as discussed below. The FTC’s stated purpose of the Rule is to curb certain unfair or deceptive uses of consumer reviews and testimonials and promote accuracy and truthfulness in reviews and testimonials to aid consumers in making better informed purchasing decisions.²

Q When is the effective date?

A The Rule becomes effective October 21, 2024.³

Q Are dealerships covered by the Rule?

A Yes. The Rule applies broadly to “businesses” selling products or services.⁴

Q What are the penalties for violating the Rule?

A The Rule authorizes the FTC to seek civil penalties of over \$50,000 per violation.⁵

Q How does the Rule define reviews and testimonials?

A The Rule differentiates between reviews, review hosting, and testimonials and applies different requirements to each.

Consumer review is defined as a consumer’s evaluation of a product or service published to a website or platform dedicated in whole or in part to displaying such evaluations. These reviews include ratings without any text or narrative.⁶

¹Trade Regulation Rule on the Use of Consumer Reviews and Testimonials, 89 Fed. Reg. 68,034-68,079.

²*Id.* at 68,037.

³*Id.* at 68,034.

⁴16 C.F.R. Part 465.1(a).

⁵At the time of publication of this FAQ, the civil penalty amount is \$51,744. However, the FTC adjusts the maximum civil penalty dollar amounts for violations of law the FTC enforces, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The Act directs the FTC to implement annual inflation adjustments based on a prescribed formula. The new maximum civil penalty amounts become effective once they are published in the Federal Register, typically in January.

⁶16 C.F.R. Part 465.1(d).

Consumer review hosting is defined as providing the means to post consumer reviews on a website.⁷

Consumer testimonial means an advertising or promotional message that consumers are likely to believe reflects the opinions, beliefs, or experiences of a consumer who had experience with a product, service, or business.⁸

Q What does the Rule prohibit?

A • **Fake reviews and testimonials:** The Rule prohibits dealerships from creating, purchasing, or disseminating fake reviews and testimonials that “materially misrepresent” that the reviewer exists, the reviewer has experience with the product, service, or business reviewed, or that the reviewer’s review is based on their experience with the product, service, or business reviewed.⁹

• **Insider reviews and testimonials:** The Rule prohibits businesses and its officers and managers from creating, soliciting, and disseminating insider reviews and testimonials without clear and conspicuous disclosures of the material relationship to the business.¹⁰

• **Incentivized reviews:** The Rule allows businesses to offer incentives for reviews, but prohibits conditioning these incentives on the sentiment of the review.¹¹ For example, offering a discount, coupon, or chance to win a prize only if a positive review is left would violate this Rule.¹² Further, encouraging past customers to submit reviews in order to be eligible for a \$100 “Best Monthly Review Award” given to “the review with the most captivating subject line and best content” would also violate the Rule.¹³

⁷16 C.F.R. Part 465.1(e).

⁸16 C.F.R. Part 465.1(f).

⁹16 C.F.R. Part 465.2.

¹⁰16 C.F.R. Part 465.5.

¹¹16 C.F.R. Part 465.4.

¹²89 Fed. Reg. at 68,056.

¹³*Id.* at 68,055.

- **Review suppression:** The Rule prohibits the suppression of negative reviews or selectively publishing only positive reviews while misrepresenting them as representative of all consumer feedback.¹⁴
- **Fake social media indicators:** The Rule bans the purchase, sale, or use of fake social media indicators, such as followers or likes, that a dealer knew or should have known to be fake and that can be used to materially misrepresent a business's influence.¹⁵
- **Company-controlled review websites:** The Rule prohibits businesses from misrepresenting that a website or entity they control provides independent reviews or opinions. This provision is designed to prevent businesses from misleading consumers by presenting controlled review sites as independent.¹⁶

Q Are there exemptions?

A Yes. The provisions related to purchasing or disseminating fake reviews and testimonials¹⁷ and insider reviews and testimonials¹⁸ do not apply to 1) generalized solicitations to customers to post reviews or testimonials; or 2) reviews that appear on a website or platform as a result of the business merely engaging in consumer review hosting.

This means dealerships can still send review solicitations to a large group of customers who purchased a particular item or service as long as the customers were not chosen specifically to provide a particular sentiment. In contrast, solicitations made only to customers whom the dealership believes to be happy customers for the purpose of soliciting a positive review would not be exempt and could be a violation of the Rule.¹⁹

Further, the FTC does not intend for these sections of the Rule to apply to any website or part of a website which hosts third-party content and publishes customer reviews. For example, an unsolicited employee review merely appearing on a website that hosts review content cannot violate the rule against disseminating insider testimonials.²⁰

Q What is the difference between a paid endorsement and an incentivized review?

A The prohibition against incentivizing consumer reviews which express a particular sentiment does not apply to customer or celebrity testimonials, only

¹⁴16 C.F.R. Part 465.7.

¹⁵16 C.F.R. Part 465.8.

¹⁶16 C.F.R. Part 465.6.

¹⁷16 C.F.R. Part 465.2(b).

¹⁸16 C.F.R. Part 465.2(c) and 465.5(b)-(c).

¹⁹89 Fed. Reg. at 68,051.

²⁰*Id.* at 68,060.

to consumer reviews, and then only to reviews that appear on a website or portion of a website dedicated to displaying such reviews. This means, a paid endorsement such as a blogger's review or a celebrity endorsement is not considered a consumer review for purposes of this prohibition and the Rule.²¹

Incentivized testimonials are addressed in the [Endorsement Guides](#), which provide that material connections such as incentives given in exchange for customer reviews without any requirement as to the sentiment of the reviews must be disclosed clearly and conspicuously.²²

Q What if a dealership did not know about a fake or false review or testimonial?

A Only certain provisions, including those related to purchasing or disseminating fake reviews²³ and insider reviews,²⁴ are limited to situations in which businesses “knew or should have known” that they were engaging in prohibited conduct.²⁵

Whether a dealership “knew or should have known” is a fact-specific inquiry. While a dealership may not be aware of every employee's or agent's activities, it should be pay attention to red flags.²⁶ According to the FTC, there are various indications that a review is likely fake, in which case a failure to reasonably investigate them may trigger liability under the “should have known” standard.²⁷

These include:

- Named reviewer not being a business's actual customer;
- The content of the review being vague or odd;
- Many reviews arriving at once;
- The use of unnatural language or “keyword stuffing;”
- The review text describes a product or service that is not offered by the business;
- The review clearly references the wrong business name; and
- The review acknowledges that the reviewer has never shopped there.

Q Are any affirmative disclosures required?

A The Rule's only disclosure requirements apply to reviews from company insiders and immediate relatives.²⁸ See below for more details.

²¹*Id.* at 68,055.

²²Endorsement Guides, 16 CFR 255.5(a) & (b)(6)(ii). See also: <https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking#onlinereviewprograms>.

²³16 C.F.R. Part 465.2(b).

²⁴16 C.F.R. Part 465.2(c).

²⁵89 Fed. Reg. at 68,052.

²⁶*Id.* at 68,054.

²⁷*Id.*

²⁸*Id.* at 68,079.

The FTC does not provide specific guidance on the content of disclosures. However, the FTC states that disclosures must be “clear and conspicuous,” meaning easily noticeable (i.e., difficult to miss) and easily understandable by ordinary consumers.²⁹ For example, an online disclosure is not clear and conspicuous if a consumer must take any action, such as clicking on a hyperlink or hovering over an icon, to see it.

Q How does the Rule define and restrict reviews from “insiders” and “immediate relatives?”³⁰

A Under the Rule “insiders” are a business’s officer, managers, employees, agents, or immediate relatives. “Manager” means an employee of a business who supervises other employees or agents and “officers” include owners, executives, and managing members of a business.³¹ “Immediate relative” means a spouse, parent, child, or sibling.³²

The Rule is split into four separate prohibitions.

- 1. Business cannot procure fake reviews and testimonials by insiders:** Prohibits businesses from procuring a review from its company insiders, for posting on a third-party platform or website, when the review is about the business and when the business knew or should have known that the review was false or fake.³³
- 2. Officer or managers cannot create reviews and testimonials without disclosing their connection:** Prohibits an officer or manager from creating consumer reviews or testimonials about the business or the products or services it sells that fails to have a clear and conspicuous disclosure of their connection to the business, unless, the relationship is otherwise clear.³⁴
- 3. Businesses cannot disseminate testimonials by company insiders without disclosing their connection:** Prohibits businesses from disseminating a testimonial about the business by one of its officers, managers, employees, or agents, which fails to have a clear and conspicuous disclosure of the testimonialist’s connection to the business when the relationship is not otherwise clear and the business knew or should have known the testimonialist’s relationship to the business.³⁵ This does not apply to generalized solicitations for testimonials or unsolicited employee testimonials appearing on the reviewing hosting sites.³⁶

²⁹16 C.F.R. Part 465.1(c).

³⁰89 Fed. Reg. at 68,079.

³¹16 C.F.R. Part 465.1(k)-(l).

³²16 C.F.R. Part 465.1(i).

³³16 C.F.R. Part 465.2(c).

³⁴16 C.F.R. Part 465.5(a).

³⁵16 C.F.R. Part 465.5(b).

³⁶16 C.F.R. Part 465.5(b)(2)(i).

4. Officers or managers cannot solicit reviews and testimonials by insiders without proper disclosure:

Prohibits officers or managers from soliciting consumer reviews from immediate relatives or employees and agents of the business if such solicitation results in a review without a disclosure of the reviewer’s connection to the business and the officer or manager encouraged the omission of a disclosure, failed to instruct reviewers about the need for a disclosure, or knew (or should have known) that such a review appeared and failed to take remedial action. This prohibition extends to soliciting employees or agents to seek such reviews from their relatives.³⁷

Q Are dealerships allowed to suppress reviews in certain situations?

A A review is not considered suppressed if it is removed based on criteria that is applied equally to all reviews, including when the dealership reasonably believes the review is fake or the review is unrelated to the products or services offered by the business.³⁸ Additional criteria include when the review contains:

1. Trade secrets or privileged or confidential commercial or financial information;
2. Defamatory, harassing, abusive, obscene, vulgar, or sexually explicit content;
3. The personal information or likeness of another individual;
4. Content that is discriminatory with respect to race, gender, sexuality, ethnicity, or another intrinsic characteristic; or
5. Content that is clearly false or misleading.

Q Can dealerships contact a customer that leaves a negative review and attempt to resolve the issue?

A Generally speaking, contacting customers to resolve issues reported in reviews, or asking satisfied customers to update their reviews is not viewed by the FTC as intimidation or prohibited review suppression. However, specifying that a consumer’s concerns will be addressed only if the consumer changes or removes a truthful negative review may be an unfair or deceptive act or practice in violation of the Rule.³⁹

³⁷16 C.F.R. Part 465.5(c).

³⁸16 C.F.R. Part 465.7(b).

³⁹That specific issue is beyond the scope of this rulemaking. 89 Fed. Reg. at 68,063.

Q What is the relationship between this Rule and the FTC's Guides Concerning the Use of Endorsement and Testimonials in Advertising?

A Dealerships must familiarize themselves with both the Rule and with the FTC's updated Guides Concerning the Use of Endorsements and Testimonials in Advertising (Endorsement Guides), as both include important nuances that have practical significance when it comes to reviews and endorsements. The Endorsement Guides address a broader range of conduct than the Rule including to the use of endorsements and testimonials in *all* advertising.

Q Are there any recordkeeping requirements?

A No. The Rule primarily prohibits certain unfair or deceptive acts or practices involving consumer reviews or testimonials and does not impose a reporting or recordkeeping requirement upon businesses.⁴⁰

Q What about AI tools?

A The Rule doesn't specifically refer to AI. However, the FTC has stated that the Rule covers situations when a business uses an AI tool to generate deceptive review and testimonial content.⁴¹

Q What recommendations are there to comply with the Rule?

A The FTC encourages businesses to have endorser oversight programs, and whether a company has and follows such a program could impact the exercise of prosecutorial discretion. The FTC does not intend, however, for companies to be liable under this section of the Rule due to the absence of an oversight program.⁴² The FTC has said they will issue more guidance would be forthcoming at www.ftc.gov/reviews to assist businesses with compliance.

Q What should dealerships do to prepare?

A The FTC has used enforcement actions to pursue alleged unfair and deceptive practices regarding

reviews and testimonials.⁴³ Following the implementation of the Rule, the FTC will likely pursue more aggressively the types of deceptive or unfair practices described in these regulations. Dealerships should review and update their policies and practices to ensure compliance with these and other relevant FTC requirements. Some key steps could include:

- Auditing review and testimonial practices to identify and address any potential areas of noncompliance;
- Modifying and implementing existing procedures for disclosing material connections in reviews and testimonials;
- Ensuring all customer reviews are treated and published fairly, without bias or manipulation;
- Review programs offering incentives for reviews to ensure they do not promote positive bias. Incentives should be neutral, rather than conditioning incentives on positive feedback, such as "Write a review and receive a discount on your next service visit!"
- Educating employees on the Rule, as well as ensuring that third-party advertising and marketing vendors understand them to prevent unintentional violations.

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⁴⁰89 Fed. Reg. at 68,076.

⁴¹Business Blog, Fed. Trade Comm'n, "We'll pay you to give our new rule a good review" (Aug. 14, 2024), <https://www.ftc.gov/business-guidance/blog/2024/08/well-pay-you-give-our-new-rule-good-review>.

⁴²89 Fed. Reg. at 68,053.

⁴³Press Release, Fed. Trade Comm'n, Fashion Nova will Pay \$4.2 Million as part of Settlement of FTC Allegations it Blocked Negative Reviews of Products (Jan. 25, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/fashion-nova-will-pay-42-million-part-settlement-ftc-allegations-it-blocked-negative-reviews>.