FTC's New Rule on Consumer Reviews: Ensuring Compliance with Human- and AI-Generated Content

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Authors:

Nilesh (Neal) Patel

In a significant move aimed at bolstering consumer protection and ensuring fair competition, the Federal Trade Commission (FTC) has finalized the *Trade Regulation Rule on the Use of Consumer Reviews and Testimonials*, codified under 16 CFR Part 465. As businesses increasingly rely on online feedback to attract and retain customers, quickly understanding and complying with this new FTC rule is critical.

The rule takes effect on **October 21, 2024**, and violations could result in significant financial penalties. The FTC may seek civil penalties of up to $51,744 per violation.

Key Provisions of the Rule

The new rule prohibits several deceptive practices, including:

- **Fake reviews and testimonials**: Businesses are banned from creating, purchasing, or disseminating fake reviews and testimonials, whether generated by humans or artificial intelligence (GenAI). This includes reviews from nonexistent individuals or those that misrepresent a consumer's experience.
- **Insider reviews**: Reviews written by company insiders, such as employees or their immediate family members, must include clear disclosures of the relationship between the reviewer and the business. The rule also prohibits businesses from disseminating insider reviews that they knew or should have known were undisclosed.
- **Incentivized reviews**: While the rule allows businesses to offer incentives for reviews, it prohibits conditioning these incentives on the sentiment of the review. For example, offering a discount only if a positive review is left would violate this rule.

- **Review suppression**: The rule explicitly prohibits the suppression of negative reviews, whether through legal threats, intimidation, or by selectively publishing only positive reviews while misrepresenting them as representative of all consumer feedback.
- **Company-controlled review websites**: Businesses are prohibited 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 sites as independent.
- **Fake social media indicators**: The rule bans the purchase, sale, or use of fake social media indicators, such as followers or likes, that misrepresent a business's influence.

Application to GenAI Content

While the new rule itself does not explicitly mention AI, the FTC has clarified through corresponding guidance that the rule applies to GenAI reviews. The FTC has expressed concern over the increasing use of AI to create fake reviews that are (nearly) indistinguishable from genuine ones, emphasizing that these practices fall under the prohibited actions outlined in the rule. This clarification is crucial as businesses increasingly use AI tools in their marketing strategies. Despite the absence of direct references to AI in the rule's text, the FTC's guidance makes it clear that the principles of authenticity and transparency apply equally to content generated by AI and humans.

This focus on AI highlights the FTC's intent to address the challenges posed by new technologies in the digital marketplace. As such, businesses using AI must ensure that any content produced by these tools complies with the same standards as human-generated content, particularly regarding accuracy and disclosure.

Ambiguities and Challenges

While the FTC's rule is comprehensive, several aspects of the rule, as detailed below, raise concerns and may present difficulties in interpretation and enforcement.

- **Definition of "fake reviews"**: The rule does not provide a clear-cut definition of what constitutes a "fake review," particularly concerning GenAI content. For instance, it is unclear how the rule applies to GenAI reviews based on actual customer feedback or how businesses can ethically use AI to summarize or aggregate genuine reviews.
- **Legal threats and suppression**: The broad prohibition against suppressing negative reviews through legal threats or intimidation does not specify what constitutes a "groundless" threat. This could create a gray area for businesses that are legitimately concerned about defamatory content but wary of potential FTC scrutiny.
- **Social media influence metrics**: The prohibition on fake social media indicators is somewhat vague. Given the complex nature of social media marketing, where genuine and bot-driven activities often overlap, businesses may struggle to ensure compliance without more detailed guidance.
- **Enforcement and penalties**: The rule imposes significant penalties—up to $51,744 per violation—but does not clearly define what constitutes a single violation. This ambiguity could lead to inconsistent enforcement and make it difficult for businesses to gauge their potential liability under the rule.
- **Impact on small businesses**: The rule may disproportionately impact small businesses that lack the resources to thoroughly audit and ensure compliance with these new standards. This is particularly concerning in industries where consumer reviews are crucial for attracting and retaining customers.

Steps for Ensuring Compliance

To comply with the FTC's new rule and related regulations, businesses should (at a minimum) take the actions identified below. Even those businesses that have previously implemented policies to ensure compliance with the FTC's *Guides Concerning Use of Endorsements and Testimonials in Advertising* ("Endorsement Guides") should take a fresh look at these policies. In particular, updates are necessary to address the role of AI in reviews, ensure accurate social media indicators, and adhere to other requirements under the new rule.

1. Conduct a Comprehensive Audit of Review Practices

- **Review all current practices:** Conduct a thorough audit of how consumer reviews are solicited, collected, and published. This audit should assess both human and AI-driven review processes, including any use of GenAI to summarize or generate reviews.
- **AI-specific auditing:** Implement an AI review governance protocol to evaluate GenAI summaries or conclusions drawn from consumer reviews. Ensure these outputs accurately reflect actual consumer feedback and avoid any unintentional manipulation of the sentiment.
- **Transparency of AI influence:** Identify any AI-influenced reviews or summaries, ensuring they are not misleading. If AI impacts how reviews are presented, this should be transparent to consumers.

2. Implement Clear Disclosure Policies

- **Material connections:** Establish and enforce policies requiring the disclosure of material connections in all reviews, particularly for employees, affiliates, or insiders. Ensure these disclosures are clear and conspicuous, adhering to the new rule and the Endorsement Guides.
- **GenAI disclosure:** Implement clear policies requiring disclosure when any review, review summary, or conclusion is influenced by or involves the use of GenAI. This is crucial for ensuring consumers are aware of the role AI plays in shaping the feedback they read.

3. Reevaluate Incentive Programs

- **Neutral incentives:** Review any programs offering incentives for reviews to ensure they do not promote positive bias.

Incentives should be neutral in nature, such as "Write a review and receive a discount," rather than conditioning incentives on positive feedback.

- **Incentivized review disclosure:** Ensure that incentivized reviews clearly disclose the incentive to maintain transparency.
- **GenAI and incentives:** Consider whether additional disclosures are warranted when GenAI processes reviews from incentivized sources. Clearly indicate how the AI system incorporates such reviews into its analysis and output.

4. Strengthen Review Moderation and Suppression Policies

- **Clear moderation guidelines**: Establish clear, transparent guidelines for moderating reviews, including the use of AI systems for moderation. AI-driven moderation should avoid unjustly suppressing legitimate negative reviews unless they contain defamatory, obscene, or irrelevant content as permitted by the rule.
- **AI moderation oversight:** Implement governance checks to audit AI moderation systems and ensure involvement of human oversight in reviewing AI decisions to prevent bias or unfair review suppression.
- **Balanced AI summaries:** Ensure that GenAI summaries fairly represent both positive and negative feedback. The GenAI summary should not disproportionately favor one type of review, and regular audits should be conducted to ensure balance.

5. Monitor Third-Party Review Platforms

- **Third-party platform compliance:** Ensure that any third-party review platforms you use comply with the new rule (and Endorsement Guides), especially when these platforms employ AI to generate or moderate reviews.

- **AI review standards for third parties:** Review agreements with third-party platforms to ensure they implement governance measures for AI, such as disclosing AI's role in review processing or moderation.
- **Regular monitoring:** Conduct regular audits of third-party platforms to ensure their use of AI is compliant with FTC guidelines and internal governance protocols. Platforms should disclose if GenAI summaries or reviews are being presented.

6. Educate and Train Employees

- **Compliance training:** Conduct comprehensive training sessions for employees, particularly those in marketing, customer service, and IT, to ensure they understand the new rule and how to remain compliant.
- **AI-specific training:** Provide specialized training on how AI tools are used in customer review processes. Employees should understand how AI influences review collection, moderation, and summarization, and how to ensure transparency in these processes.

7. Develop a Crisis Management Plan

- **Preparedness for regulatory inquiries:** Prepare a response plan that outlines steps for addressing any regulatory inquiries or instances of non-compliance. This plan should include actions to promptly correct issues, particularly those involving GenAI content or review moderation.
- **AI crisis protocols:** Establish specific protocols for handling compliance issues related to AI tools, including GenAI summaries or moderation. These protocols should involve immediate review of the AI system's output, corrective measures, and clear communication with regulators and consumers.
- **Transparency in communication:** If a compliance issue arises related to AI or review manipulation, ensure that your response plan includes transparent communication with both

regulators and customers, outlining corrective steps taken to resolve the issue.

8. Adopt Additional Governance Measures for AI Components

- **AI governance framework:** Ensure that any existing AI governance framework properly accounts for—or develop a dedicated AI governance team to oversee—the use of AI in review processes. This team or framework should continuously evaluate algorithms for compliance with fairness, accuracy, and transparency standards.
- **Regular AI audits:** Establish regular audits of AI systems used to generate or summarize reviews to ensure outputs are compliant with FTC rules. This includes testing for biases in AI summaries and verifying that AI-generated outputs accurately represent consumer feedback.
- **AI accountability:** Incorporate specific AI accountability measures into agreements with AI vendors, or, if the AI system is internal, regularly review the tool to ensure compliance with current FTC regulations and evolving best practices.
- **Real-time monitoring of AI outputs:** Implement real-time monitoring systems for GenAI content to quickly detect and correct any misleading or non-compliant outputs. This allows for swift corrective action before consumers or regulators raise concerns.

Significance of the FTC’s Approach: New Rule vs. Endorsement Guides

The FTC’s approach in implementing this new rule represents a significant shift from the broader, non-binding Endorsement Guides to a legally enforceable regulation providing the agency with direct enforcement authority. This shift is particularly important in light of the U.S. Supreme Court’s *AMG Capital Management, LLC v. FTC* decision, which limited the FTC’s ability to seek monetary relief under Section 13(b) of the FTC Act. Unlike the Endorsement Guides, which serve as a framework for understanding deceptive practices, this new rule allows the FTC to impose immediate civil penalties, enhancing its enforcement capabilities and providing a clear deterrent against deceptive practices in consumer reviews and testimonials.

Key Takeaways

The FTC's *Trade Regulation Rule on the Use of Consumer Reviews and Testimonials* marks a major change in how reviews and other advertising materials are regulated, particularly with the rise of AI. It sets a clear, enforceable standard for compliance and transparency, requiring businesses to go beyond previous guidelines and adopt robust governance programs. As emphasized above, these programs should audit AI-driven review practices, enforce transparent disclosure policies, and ensure fairness in GenAI summaries. Compliance is now a legal requirement with significant financial and reputational risks. By proactively managing AI use and training employees, businesses can avoid penalties and maintain consumer trust.

For more information about artificial intelligence and consumer compliance, please contact the author or any attorney with the firm's Data, Digital Assets, & Technology practice or the Artificial Intelligence team.

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