



January 9, 2023

*Via electronic filing<sup>1</sup> and U.S. Mail*

Federal Trade Commission  
Office of the Secretary  
Constitution Center  
400 7th Street SW, 5th Floor, Suite 5610 (Annex B)  
Washington, DC 20024

**Re: Reviews and Endorsements ANPR, P214504**

The National Retail Federation (“NRF”) appreciates the interest of the Federal Trade Commission (“the Commission” or “the FTC”) in soliciting information regarding the issue of deceptive and/or unfair marketing tactics. NRF offers the following comments and responses.

NRF is the world’s largest retail trade association, and is dedicated to supporting the people, policies, and ideas that help the retail industry—the nation’s largest private-sector employer—thrive. Our members include retailers of all kinds, ranging from household names to emerging brands, brick-and-mortar stores to e-commerce, and small family-owned businesses to multinational companies. For over a century, NRF has been a voice for our membership and a passionate advocate in educating, inspiring, and communicating the powerful impact the industry has on local communities and global economies.

As an organization, NRF supports truthful and responsible marketing. NRF shares the Commission’s interest in maintaining a level playing field on which to compete. NRF has consistently supported the Commission’s efforts to provide businesses with clear rules and guidance on how to apply the principles of truthful advertising across their marketing efforts, and is proud of its track record of active and productive engagement with the Commission, including to update the Guides Concerning the Use of Endorsements and Testimonials in Advertising (“Endorsement Guides”).<sup>2</sup>

NRF believes that the issue of fake and misleading reviews is important. However, we do not support regulation imposing new obligations on retailers, which we believe would be duplicative of existing laws and FTC guidance. Moreover, further regulation of retailers would not adequately address third-party fake review brokers—companies devoted to generating false reviews and the true culprits behind the issue. As explained further below, any regulations should be directed towards them.

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<sup>1</sup> This Comment has also been submitted on <https://www.regulations.gov/commenton/FTC-2022-0070-0001>, pursuant to the Commission’s Advance Notice of Proposed Rulemaking published as 87 FR 67424.

<sup>2</sup> See, e.g., NRF’s Comment on The Commission’s Endorsement Guides Review, Project No. P204500, Comment ID FTC-2020-0017-0097 (June 2020) available at <https://www.regulations.gov/comment/FTC-2020-0017-0097>.

Below, please find the specific feedback from NRF on the ANPRM further explaining our position.

**A. Scope of the Fake Review Problem (ANPRM Question 1)**

NRF members recognize the problems posed by fake reviews, which NRF defines to include the marketing tactics identified in ANPRM Question 1 (a-d)—i.e., reviews for products or services that: (i) originate from fake consumers (including nonexistent persons and those without experience using or testing the product or service); (ii) misrepresent the user’s experience with the product or service; (iii) “hijack” or otherwise “repurpose” feedback related to a different product or service; (iv) are incentivized to require certain feedback (whether positive feedback or negative reviews of a competing product or service).<sup>3</sup> NRF has not collected or reviewed data related to the scope and extent of the fake review problem. To the best of NRF’s knowledge, however, fake review “brokers” are much more likely to mislead consumers *and* create issues for retailers given the potential for the brokers to submit fake reviews in volume.

**B. Cause of the Fake Review Problem (ANPRM Question 10)**

NRF members believe that fake review brokers are the primary drivers behind the problem of fake reviews. These entities facilitate the creation and publication of fake reviews across digital marketing formats, including on a retailer’s own website or digital storefront within an online marketplace, as well as on social media platforms.

The fraudulent tactics employed by review brokers may include:

- Using “bots” and artificial intelligence tools to generate reviews on behalf of nonexistent consumers;
- Posting identical, or substantially identical, reviews for multiple different products and/or under multiple consumer accounts;
- Flooding social media platforms such as Twitter, Instagram, and Facebook with false review content, including as standalone posts and as comments or replies to genuine reviews or consumer questions;
- Creating and operating social media groups or standalone websites that purport to offer benefits like refunds or coupons in exchange for specified types of reviews or ratings;
- Running fraudulent schemes to push fake 5-star reviews onto online marketplaces by providing free products and/or payments to writers in exchange for reviews specifically designed to evade detection by, for example, imposing minimum word limits designed to mimic what authentic users might write or requiring the fake “reviewers” to include pictures;

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<sup>3</sup> NRF does not, at this time, offer any comments related to the additional marketing tactics identified in ANPRM Question 1(e-f), Question 2, and Question 3. NRF’s decision to focus this submission on the issue of fake reviews should not be construed as any implicit comment, denial, or disagreement with the Commission’s efforts to further explore these other actions.

- Recruiting fake reviewers using instant messaging services and other methods to avoid detection; and
- Reimbursing consumers for what would otherwise appear to be bona-fide purchases in exchange for positive 5-star reviews and ratings.

### **C. Impact of the Problem (ANPRM Question 5)**

Consumers and retailers are both affected by fake review brokers and the fake reviews they generate. Consumers often read and rely on honest and forthright consumer reviews when deciding to purchase a good or service. False and misleading reviews, whether they are positive or negative, may inform consumer purchasing decisions. Retailers also have a vested interest in trustworthy reviews, which provide valuable market insight and consumer feedback that businesses can use to improve their goods and services, and to inform their business operations and growth. NRF members also value and are interested in preserving consumer trust and protecting the reputations of the brands they have worked so hard to create and forge relationships with. The actions of review brokers interrupt the valuable information-gathering and relationship-building functions that honest consumer reviews serve.

### **D. Existing Laws Sufficiently Address Retailers' Compliance Obligations (ANPRM Question 8)**

NRF agrees with Commissioner Wilson's statement noting that a "multi-pronged strategy" already exists with regards to retailers' obligations to address the issue of fake reviews.<sup>4</sup> Existing laws, both at the federal and state level, provide numerous requirements and best practices for retailers regarding fake reviews, including under:

***The FTC Act:*** The Commission has provided businesses with various forms of guidance on how to best comply with their obligations under the FTC Act's broad prohibition on deceptive and unfair marketing and business practices. The Endorsement Guides and related publications clearly articulate the Commission's policy against false and/or misleading endorsements of any kind, including consumer reviews. Among other things, the current version of the Endorsement Guides already requires businesses to prioritize transparency in consumer reviews, including by:

- Instructing businesses to clearly and conspicuously disclose any incentives that may be motivating the review;
- Cautioning against acts that may skew the contents of reviews, including by conditioning any incentives offered, selectively soliciting reviews, or otherwise discouraging and/or preventing people from submitting negative reviews;
- Taking reasonable steps to verify that reviews are genuine, and to be proactive in monitoring reviews and updating internal processes as required; and

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<sup>4</sup> *Dissenting Statement of Commission Christine S. Wilson*, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Commissioner%20Wilson%20Dissenting%20Statement%20Fake%20Reviews%20ANPR%2010.20.22revd.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Commissioner%20Wilson%20Dissenting%20Statement%20Fake%20Reviews%20ANPR%2010.20.22revd.pdf) (Oct. 20, 2022).

- Responding to reports of fake reviews, including by investigating and taking appropriate action as needed.

Moreover, the proposed updates to the Endorsement Guides would provide even further instructions on the issue of fake reviews by adding, among other things, prohibiting advertisers from taking actions that would “have the effect of distorting or otherwise misrepresenting what consumers think of their products” and by adding examples illustrating what this would mean in practice. NRF and its members have actively participated in the Commission’s efforts to update the Guides and look forward to reviewing the final version, which will further enable retailers to continue their good faith efforts to comply with the law.

**Other Federal Laws:** Retailers may also be subject to compliance requirements under additional federal laws that further address the issue of fake reviews:

- The Consumer Review Fairness Act of 2016 prohibits any contractual relationships that would restrict a party’s ability to offer a truthful review of the other party’s goods and/or services;
- The Lanham Act’s numerous prohibitions against false and misleading advertising, unfair competition and other business torts provide a further potential mechanism for redress against false and misleading reviews; and
- The Consumer Financial Protection Bureau has also warned that fake reviews related to financial products may violate the Consumer Financial Protection Act.

**State Laws:** Nearly every state has consumer protection laws prohibiting a wide range of false advertising and unfair business actions. Such laws have been increasingly leveraged to tackle the issue of fake reviews, including by the attorneys general of New York<sup>5</sup> and Washington<sup>6</sup>, and recently, by the Commission in partnership with the attorneys general of California, Colorado, Florida, Illinois, and New York.<sup>7</sup>

#### **E. Retailers Are Proactively Acting to Address Fake Reviews (ANPRM Question 9)**

As discussed above, the nature of the retail industry already incentivizes NRF members to preserve fairness and consumer trust. Overwhelming numbers of NRF members have already taken steps to remove fake reviews and, in some cases, identify and block the review brokers

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<sup>5</sup> New York State Office of the Attorney General, *A.G. Schneiderman Announces Agreement with 19 Companies to Stop Writing Fake Online Reviews and Pay More Than \$350,000 in Fines*, <https://ag.ny.gov/press-release/2013/agschneiderman-announces-agreement-19-companies-stop-writing-fakeonline-reviews>, (Sept. 23, 2013).

<sup>6</sup> Washington State Office of the Attorney General, *AG Ferguson files lawsuit against Seattle-based plastic surgery clinic for bribing, threatening patients to falsely inflate its online ratings*, <https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuit-against-seattle-based-plastic-surgery-clinic-bribing> (Dec. 29, 2022).

<sup>7</sup> Federal Trade Commission, *FTC, States Sue Rental Listing Platform Roomster and its Owners for Duping Prospective Renters with Fake Reviews and Phony Listings*, <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-states-sue-rental-listing-platform-roomster-its-owners-duping-prospective-renters-fake-reviews> (Aug. 30, 2022).

behind them. Retailers have already invested considerable human and financial capital as well as valuable time and energy into taking these proactive efforts, including the measures<sup>8</sup> described below:

- Adopting strict terms of use and other policies prohibiting fake and misleading reviews;
- Clearly identifying reviews from verified purchasers as such, in order to distinguish them from potentially false reviews;
- Using human and/or AI reviewers to identify and delete fake reviews from their own websites, online storefronts, and other digital assets;
- Monitoring and identifying review broker activities on social media, and working with the platforms to remove and/or restrict their activity; and
- Creatively leveraging new technology to offer bona fide consumers new ways of providing reviews that represent their authentic experiences of the product or service, such as videos and photos demonstrating their use.

One NRF Member, Amazon, has even initiated several lawsuits against multiple major fake review brokers in courts in the U.S. and abroad.<sup>9</sup>

The decision by so many NRF members to voluntarily bear the hefty price of these measures, which often outweighs any fringe benefit of fake reviews, underscores both their good faith interest in complying with existing laws and the toll that the acts of fake review brokers has taken on retail.

#### **F. NRF Opposes Additional Regulations For Retailers (ANPRM Question 11)**

NRF members intend to continue their proactive efforts to tackle the problem of fake reviews. While NRF appreciates that the Commission is interested in brandishing monetary penalties as a tool for deterring bad actors, NRF does not support additional regulations aimed at retailers, who are also among the victims of the real bad actors.

NRF members oppose regulations for a number of reasons. First, many NRF members have employed a variety of means to try and prevent the use of fake reviews and are incentivized to do so given the overwhelming goal of having legitimate product reviews online. Second, existing law provides a potential mechanism for redress. Third, the number of different retailers in size, scope and business model does not lend itself to a regulation that would allow for the exact steps

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<sup>8</sup> See, e.g., Center for Data Innovation, *How Policymakers Can Thwart the Rise of Fake Reviews*, pp. 4-5, 12-14 (Sept. 12, 2022) available at <https://www2.datainnovation.org/2022-thwart-rise-of-fake-reviews.pdf>.

<sup>9</sup> See, e.g., Amazon Policy News, *Amazon files lawsuit against fake review brokers across more than 10,000 groups on Facebook*, <https://www.aboutamazon.com/news/policy-news-views/amazon-targets-fake-review-fraudsters-on-social-media> (July 19, 2022); Amazon Policy News, *Amazon continues legal actions to protect customers from fake reviews*, <https://www.aboutamazon.com/news/policy-news-views/amazon-continues-legal-actions-to-protect-customers-from-fake-reviews> (May 6, 2022).

retailers must take to tackle false reviews, as any “one size fits all” approach would fail to account for marketplace realities.

Further, employing blunt approaches to a nuanced problem may risk further distorting the range of product review information visible to consumers by inadvertently restricting and/or deleting authentic consumer opinions and creating other problems.

- For example, requiring retailers to restrict consumer reviews to verified purchasers would inadvertently exclude the authentic opinions of persons who received products as gifts, household members who share in its use, consumers who purchased a brand’s item through one of the many secondhand marketplaces, and numerous other bona fide consumers with actual experience using the item in question but who did not directly transact with the business.
- Other blanket approaches, like requiring manual review of every consumer review and the poster’s profile, are time-consuming, burdensome, and ultimately subjective processes that cannot be practically implemented.
- Furthermore, such approaches risk inadvertent discriminatory or disparate deletion of reviews based on implicit biases towards certain consumer classes.
- Nor can such approaches adequately account for the different practical constraints that businesses experience based on the particular circumstances in which they operate, including variations in the size of the company, market share, the geographic markets in which they operate, their target audiences, etc.

As discussed above, NRF members and a majority of retailers are already incentivized to combat the issue of fake reviews, and are acting in good faith to comply with applicable laws. And, should the Commission notice any issues or have concerns about any retailer’s efforts—the Commission already possesses effective tools for investigating and enforcing the various legal requirements to which retailers are subject:

- The Commission can, and has, used the notice of penalty offense process to investigate concerns of fake reviews. This process bears the advantage of initiating a good faith dialogue between the Commission and the recipient business through which a business may demonstrate why its particular practices are compliant, or, gain further clarification from the Commission and course-correct accordingly. These cooperative resolutions are often more efficient and effective than immediate litigation or harsh enforcement activity, and ultimately, are more beneficial to the ongoing collaboration between the Commission and the retail industry.
- If the Commission determines that dialogue is insufficient, or comes to suspect through this investigation process that a retailer is actually acting in bad faith (whether by itself or by intentionally engaging a fake review broker to act on its behalf), it can take the stronger step of filing a complaint and bringing formal enforcement action seeking monetary damages as it has done several times this year alone.

The threat of the Commission's enforcement actions on the issue of fake reviews, or a competitor lawsuit raising claims under the Lanham Act (and the reputational and resource costs associated with it) serve as powerful deterrents. Accordingly, NRF does not believe that any new enforcement mechanism is necessary for the Commission to ensure retailers comply with existing law, or to hold them accountable for violations.

**G. Any New Regulation Should Focus on Review Brokers (ANPRM Question 12)**

To the extent that the Commission decides to issue additional regulations, NRF would support a rule narrowly tailored to focus on the fake review brokers that are the true drivers and cause of this problem. Retailers cannot bear sole responsibility for playing this never-ending game of "whack a mole" with fake reviews generated by these review brokers, who have often escaped direct scrutiny and regulatory accountability. Such brokers often elude detection and attempts to curb their influence by operating online and in jurisdictions and platforms beyond the reach of retailers themselves, including independent websites, or by using multiple accounts and pseudonyms. Even if a retailer successfully shuts one down, very little stands in the way of these fake review brokers from resurfacing and continuing their manipulative actions.

The Commission can alleviate this problem by focusing its resources on the real culprits, and by approaching retailers as partners in the process. Any new regulations should seek to prohibit review brokers from soliciting and publishing false or misleading review content, create enforcement processes for the Commission to identify and take direct action against these bad actors, and provide authority to collect monetary penalties accordingly. Review brokers should also be liable for any actions that they have undertaken to mislead retailers and/or consumers as to the nature of their business or for otherwise misrepresenting themselves to be reputable and honest marketing services.

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NRF and its members would welcome the opportunity to discuss the problem of review brokers in more detail with the Commission and explore potential solutions through the upcoming public workshops and any future comment periods or conversations the Commission may chose to initiate.

Sincerely,



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