

September 29, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington, DC 20580

Comment submitted electronically via <https://www.regulations.gov>

RE: Reviews and Testimonials NPRM, R311003 ("Fake Reviews Ban")

Dear Commissioners:

The undersigned civil society organizations are writing to express strong support for the Federal Trade Commission's crackdown on unfair or deceptive business tactics involving consumer reviews and testimonials. The FTC's rulemaking to ban fake reviews,¹ in particular, is a critical opportunity to more effectively stop scammers from swindling consumers and honest businesses in the online marketplace. We urge the FTC to resist any self-interested industry opposition to this rulemaking and to move forward with a robust final rule, which as we explain below is necessary given the economics of today's online user review ecosystems and a deeply flawed decision recently issued by the U.S. Supreme Court.²

Modern commerce is fueled by reviews and testimonials by customers who go online to share their personal experiences, good or bad, with specific products or services. In fact, surveys³ show that virtually all online shoppers research their purchases and consult user reviews before buying. Nine in 10 consumers also look up local businesses on the internet and say that a business's positive reviews make them more likely to shop there.⁴

Thus, for businesses competing for sales in brick-and-mortar stores or on the internet, the ubiquitous consumer reliance on online product reviews can mean the difference between turning a profit or losing money. That, in turn, translates into powerful incentives for companies to cheat with fraudulent reviews, such as sabotaging criticism of a competitor by nonexistent persons or glowing feedback from paid shills—to the tune of an estimated \$152 billion globally in 2021 in

¹ 88 Fed. Reg. 49364 (July 31, 2023).

² *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021).

³ See, e.g., Power Reviews, Survey: The Ever-Growing Power of Reviews (2023 Edition) ("99.5% of shoppers research purchases online at least sometimes"), <https://www.powerreviews.com/research/power-of-reviews-2023/>; Uberall, STUDY: 67% of US Consumers Say Fake Online Reviews a Growing Problem (Oct. 28, 2021) ("nearly 90% of online consumers consult reviews before buying"), <https://uberall.com/en-us/company/press-releases/study-67-of-us-consumers-say-fake-online-reviews-a-growing-problem>.

⁴ BrightLocal, Why Are Fake Reviews a Problem? (accessed Sept. 26, 2023), <https://www.brightlocal.com/learn/review-management/fake-reviews/why-are-fake-reviews-a-problem/>.

losses for consumers, including \$28 billion in consumer costs in the U.S.⁵ Another study indicated that online shoppers overpay 12 cents for every dollar spent due to fake reviews.⁶ When people buy defective or unsafe products as a result of misleading reviews, the harms can even go beyond monetary damage to physical injury.

The shopping experience on Amazon, the world's largest online retailer, illustrates these troubling dynamics. On the Amazon platform, an increase in just one star in customer ratings out of five stars correlates with a 26 percent increase in sales.⁷ At the same time, as explained in the FTC's recent landmark antitrust lawsuit against Amazon, the tech giant uses various unfair and coercive tactics against third-party sellers to trap them in Amazon's marketplace and subject them to predatory fees that can amount to nearly half of revenues.⁸

The resulting incentives for sellers to attract patrons by any means available are enormous—which are compounded by incentives to game Amazon's platform algorithms, such as by generating high numbers of user reviews to boost a product's rank in Amazon's search results.⁹ Yet the ultimate beneficiary is Amazon. As the new antitrust lawsuit notes,¹⁰ more shoppers yield more customer-generated product ratings, reviews, and valuable consumer data for Amazon to exploit, thereby boosting Amazon's own growth.

Given these factors, there should be no surprise that as much as 42 percent of Amazon user reviews for the products on sale may be phony, according to an assessment of 720 million reviews in 2020 by the monitoring service Fakespot.¹¹ And as anyone who has recently tried to shop on Amazon can attest, its digital marketplace is rife with shady or dishonest practices to be prohibited by the FTC's proposed regulation, including bait-and-switch substitution of one product with favorable user reviews to swap in a different product and customer notes stating that the product vendor is seeking to pay people to submit positive reviews. News reports,

⁵ Jonathan Marciano, Cheq, Fake online reviews cost \$152 billion a year. Here's how e-commerce sites can stop them (Aug. 10, 2021), <https://www.weforum.org/agenda/2021/08/fake-online-reviews-are-a-152-billion-problem-heres-how-to-silence-them/>.

⁶ Matt Stieb, Amazon's War on Fake Reviews, N.Y. Magazine (July 26, 2022), <https://nymag.com/intelligencer/2022/07/amazon-fake-reviews-can-they-be-stopped.html>.

⁷ Sapna Maheshwari, When Is a Star Not Always a Star? When It's an Online Review, N.Y. Times (Nov. 28, 2019), <https://www.nytimes.com/2019/11/28/business/online-reviews-fake.html>.

⁸ FTC Press Release, FTC Sues Amazon for Illegally Maintaining Monopoly Power (Sept. 26, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>.

⁹ Nicole Nguyen, Here's Another Kind Of Review Fraud Happening On Amazon, BuzzFeed News (May 29, 2018), <https://www.buzzfeednews.com/article/nicolenguyen/amazon-review-reuse-fraud>.

¹⁰ FTC's Complaint Against Amazon (Sept. 26, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/1910129AmazonCommerceComplaintPublic.pdf.

¹¹ Isabelle Lee, Can you trust that Amazon review? 42% may be fake, independent monitor says., Bloomberg News (Oct. 20, 2020), <https://www.chicagotribune.com/business/ct-biz-amazon-fake-reviews-unreliable-20201020-lfbjdq25azfdpa3iz6hn6zvtwq-story.html>.

scholars, and consumer advocates have extensively documented this rampant review fraud on Amazon as well, along with Amazon's inconsistent and inadequate response to it.¹²

Unless the FTC intervenes with a strong rule prohibiting these kinds of business practices, we share the concern that sham reviews and testimonials will continue to proliferate and pollute ecommerce spaces to the detriment of consumers and ethical companies. A new trade regulation is especially warranted now because a U.S. Supreme Court ruling in 2021 has restricted the FTC's procedural pathways for returning money to consumers that had been unlawfully taken from them through a business's unfair or deceptive acts. Under this *AMG Capital Management* decision, the FTC's process for providing monetary redress to consumers on a swifter and simpler timeline would hinge on the business violating a rule—hence the need for the rulemaking.

For all these reasons, we encourage the FTC to promulgate a strong final rule to prohibit deceptive consumer reviews and testimonials and look forward to providing our further assistance. Thank you for considering our views.

Sincerely,

Consumer Federation of America
Demand Progress Education Fund

Public Citizen
The Revolving Door Project

¹² See, e.g., Jake Swearingen, Consumer Reports, Hijacked Reviews on Amazon Can Trick Shoppers (Aug. 26, 2019), <https://www.consumerreports.org/customer-reviews-ratings/hijacked-reviews-on-amazon-can-trick-shoppers/>; Rajvardhan Oak and Zubair Shafiq, University of California Davis, Cmt. on ANPR (Jan. 9, 2023), <https://www.regulations.gov/comment/FTC-2022-0070-0030>; Timothy B. Lee, Amazon still hasn't fixed its problem with bait-and-switch reviews, ARS Technica (Dec. 20, 2020), <https://arstechnica.com/tech-policy/2020/12/amazon-still-hasnt-fixed-its-problem-with-bait-and-switch-reviews/>; Jon Keegan, Is This Amazon Review Bullshit?, The Markup (July 21, 2020), <https://themarkup.org/the-breakdown/2020/07/21/how-to-spot-fake-amazon-product-reviews/>; Josh Dzieza, Even Amazon's own products are getting hijacked by imposter sellers, The Verge (Aug. 29, 2019), <https://www.theverge.com/2019/8/29/20837359/amazon-basics-fake-sellers-imposters-third-party-marketplace>.