



Office of Commissioner
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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

STATEMENT OF COMMISSIONER ROHIT CHOPRA JOINED BY COMMISSIONER REBECCA KELLY SLAUGHTER

*In the Matter of Sunday Riley
Commission File No. 1923008
October 21, 2019*

Summary

- Fake reviews distort our markets by rewarding bad actors and harming honest companies. The problem is growing, and the Federal Trade Commission should attack it.
- Regulators around the world are concerned about fake review fraud. But by proposing a no-money, no-fault order for an unambiguous violation of law, this action does little to address the epidemic of fake reviews online.
- Going forward, the FTC should seek monetary consequences for fake review fraud, even if the exact level of ill-gotten gains is difficult to measure. The agency should also comprehensively analyze the problem of fake reviews, including whether or not e-commerce firms have the right incentives to police their platforms.

False Advertising and Fake Review Fraud

When it comes to searching for a restaurant, booking a hotel, or shopping for a product online, consumers rely on reviews in making purchasing decisions. Over the last several years, numerous studies and surveys have confirmed the importance of online reviews. A highly cited study estimated that a one-star rating increase on Yelp translated to an increase of 5 to 9 percent in revenues for a restaurant.¹ Another study found that a one-point boost in a hotel's online ratings at sites like Travelocity and TripAdvisor is tied to an 11% jump in room rates, on average.² There is also a growing body of research suggesting that early, positive signals can even create a herd effect,³ leading many more consumers to purchase a product.

¹ Michael Luca, *Reviews, Reputation, and Revenue: The Case of Yelp.com* 14 (Harv. Bus. Sch. Working Paper No. 12-016, 2016), https://www.hbs.edu/faculty/Publication%20Files/12-016_a7e4a5a2-03f9-490d-b093-8f951238dba2.pdf.

² Chris Anderson, *The Impact of Social Media on Lodging Performance*, 12(15) CORNELL HOSPITALITY REPORT 6, 11 (2012), <https://scholarship.sha.cornell.edu/chrpubs/5/>.

³ See, e.g., Georgios Askalidis & Edward C. Malthouse, *The Value of Online Customer Reviews*, RECSYS 155–58 (2016), <https://dl.acm.org/citation.cfm?id=2959181> (finding that “the conversion rate of a product can increase by as much as 270% as it accumulates reviews...with the first 5 reviews driving the bulk of the aforementioned increase” and that “the existence of reviews provides valuable signals to the customers, increasing their propensity to purchase”); Lev Muchnik et al., *Social Influence Bias: A Randomized Experiment*, 341 Sci. 647, 649 (2013), <https://science.sciencemag.org/content/341/6146/647> (finding that, for a given product, a single initial positive “up-vote” creates an accumulating herd effect that results in a 25% higher average rating for that item at the end of a 5-month observation window compared to an initial negative “down-vote”).

A fake review from a seller is false advertising. Marketers may use fake reviews to influence algorithms and recommendation engines that can determine whether or not a consumer ever sees a product or service listing. Fake reviews pollute our markets and distort fair competition, especially online. Section 5 of the FTC Act prohibits deceptive practices and unfair methods of competition,⁴ and Section 12 specifically prohibits deceptive advertising of food, drugs, and cosmetics.⁵ Serious violations can even be prosecuted as misdemeanors.⁶

Sunday Riley

Sunday Riley is a successful cosmetics brand founded and operated by Ms. Sunday Riley. The company sells high-end cosmetics largely through digital marketing on social media.⁷ Last year, a whistleblower publicly accused the company of ordering employees to write fake reviews of its products.⁸

The Commission's investigation confirmed the whistleblower's claim and found that the scheme to generate fake reviews of Sunday Riley products involved Ms. Riley herself. Rather than relying on satisfied customers to generate real buzz about her products, she directed her employees to write glowing reviews and bury negative ones, while offering detailed instructions on how to avoid detection.⁹

As detailed in the Commission's complaint, Sunday Riley and other senior managers were acutely focused on boosting their products' ratings at the expense of competitors. For example, Ms. Riley personally complained that the 4.2 rating on two of her products was too low, and instructed her employees that she'd "like to see them at 4.8+."¹⁰ On another occasion, a manager directed employees to discuss how a Sunday Riley acne mask "increases radiance and doesn't dry out the skin like all other acne masks do" and "works incredible [sic] well compared to the cheaper masks out there."¹¹

This scheme was ongoing for almost two years,¹² and Sunday Riley and her company expected it would yield substantial benefits.¹³

⁴ 15 U.S.C. § 45(a).

⁵ *Id.* § 52(a).

⁶ *Id.* § 54(a) (authorizing criminal penalties against deceptive food, drug, or cosmetic advertising that may lead to injury or that was intended to mislead).

⁷ See Deanna Pai, *Sunday Riley: Why Everyone Is So Obsessed With the Skin-Care Brand Right Now*, ALLURE (Mar. 20, 2017), <https://www.allure.com/story/sunday-riley-skin-care-facts> (reporting that for Sunday Riley, social media has been a successful alternative to "a giant budget for advertising"); Peter Born, *How Instagram and a New Zeitgeist Are Driving Skin Care's Growth*, WWD (July 23, 2018), <https://wwd.com/beauty-industry-news/skin-care/instagram-new-zeitgeist-driving-skin-cares-growth-1202762529/> (highlighting Sunday Riley's "social media dexterity").

⁸ See u/throwawayacctSRiley, *Sunday Riley Employee: We Write Fake Sephora Reviews*, REDDIT (Oct. 15, 2018, 4:21 PM), https://www.reddit.com/r/SkincareAddiction/comments/9ogete/psa_sunday_riley_employee_we_write_fake_sephora/.

⁹ See Compl. ¶ 10.

¹⁰ *Id.*

¹¹ *Id.* ¶ 12.

¹² *Id.* ¶ 8.

Commission’s Proposed No-Money, No-Fault Settlement

Today’s proposed settlement includes no redress, no disgorgement of ill-gotten gains, no notice to consumers, and no admission of wrongdoing. Sunday Riley and its CEO have clearly broken the law, and the Commission has ordered that they not break the law again.

Unfortunately, the proposed settlement is unlikely to deter other would-be wrongdoers. Consider the cost-benefit analysis that a firm might undertake in considering whether to engage in review fraud. The potential benefits are substantial: higher ratings, more buzz, better positioning relative to competitors, and higher sales. The direct costs of generating reviews are minimal, certainly far less expensive than traditional advertising. The biggest potential cost is if the wrongdoer is caught, but it is likely that the vast majority of fake review fraud goes undetected. Even fake reviews that are detected may simply be removed with no sanction against the creator.

The proposed resolution of this matter suggests that even the narrow subset of wrongdoers who are caught and attract law enforcement scrutiny will face minimal sanctions. Sunday Riley is an unusual case. Because of a whistleblower, the fraud was exposed, and the FTC’s investigation uncovered additional “smoking gun” evidence implicating other executives. It is difficult to imagine more egregious facts, yet all the Commission is imposing is an order that the company and its CEO not repeat their lawbreaking.

This settlement sends the wrong message to the marketplace. Dishonest firms may come to conclude that posting fake reviews is a viable strategy, given the proposed outcome here. Honest firms, who are the biggest victims of this fraud, may be wondering if they are losing out by following the law. Consumers may come to lack confidence that reviews are truthful.

Our peer agencies around the world have tackled fake review fraud more systemically, recognizing that it constitutes not just a one-off scam but a major threat to honest competition online. The Chief Executive of the United Kingdom’s Competition and Markets Authority, Andrea Coscelli, recently urged Facebook and eBay to conduct an “urgent review of their sites” and noted that fake reviews harm not only consumers but also “businesses who do the right thing.”¹⁴ Canada’s Competition Bureau criticized fake reviews as giving “inferior businesses an unfair advantage,”¹⁵ and Australia’s Competition and Consumer Commission warned online platforms that they could face liability for selectively removing reviews or for failing to remove reviews known to be fake.¹⁶ Although we operate under different laws, we must all recognize the global threat that fake reviews pose to fair competition.

¹³ *Id.* ¶ 10 (quoting Sunday Riley as claiming review manipulation “directly translates to sales”); *id.* ¶ 12 (quoting a Sunday Riley account manager instructing employees that “[t]he power of reviews is mighty”).

¹⁴ Press Release, Competition Markets and Authority, The CMA has urged Facebook and eBay to act to stop the sale of fake reviews through their sites (June 21, 2019), <https://www.gov.uk/government/news/cma-expects-facebook-and-ebay-to-tackle-sale-of-fake-reviews>.

¹⁵ *Don’t buy into fake online endorsements*, GOV. OF CANADA, COMPETITION BUREAU (July 28, 2014), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng%20/03782.html>.

¹⁶ *Managing online reviews*, AUS. COMPETITION & CONSUMER COMM’N, <https://www.accc.gov.au/business/advertising-promoting-your-business/managing-online-reviews> (last visited Oct. 8, 2019). *See also* TELECOMM. INDUS. OMBUDSMAN, SUBMISSION FROM THE TELECOMM. INDUS. OMBUDSMAN TO THE TREASURY’S CONSULTATION ON THE FINAL DIGITAL PLATFORMS INQUIRY REPT. at 19 (Sept. 2019),

Conclusion

A century ago, an appeals court sustained the FTC's finding that Sears, Roebuck & Company engaged in false advertising.¹⁷ The law has long recognized that false advertising is an unfair method of competition that harms both consumers and honest businesses.¹⁸ We must remember this when it comes to calibrating consequences for wrongdoers and comprehensively attacking the problem of fake reviews.

That monetary relief can be difficult to calculate should not deter the FTC from seeking it. When the agency's estimates are uncertain, the Commission sometimes demands no monetary relief whatsoever, which leads to under-deterrence of blatant fraud and dishonesty.¹⁹ This needs to change. As I noted in *Truly Organic*, the Commission needs to issue a Policy Statement regarding monetary remedies in cases involving blatant deception.²⁰ There are reasonable monetary demands between full relief and no relief that should be calibrated consistently according to the facts of each matter.

In addition, the FTC must comprehensively study the problem of fake reviews, given their distortionary effect on our markets. We must analyze how reviews influence recommendation engines and algorithms. We need to determine whether e-commerce marketplaces consistently enforce the removal of fake reviews or selectively enforce based on their own economic incentives. We must seek to uncover how fake reviews might contribute to the importation of unsafe or counterfeit goods from overseas.²¹ We should not fall behind our peers in tackling this problem.

For these reasons, I respectfully dissent.

https://www.tio.com.au/sites/default/files/2019-10/TIO%20Submission%20to%20Treasury%20-%20DPI%20FINAL%2012%20Sept%202019_0.pdf (proposing that a Digital Platform Ombudsman be given authority to order the removal of fake reviews).

¹⁷ *Sears, Roebuck & Co. v. Fed. Trade Comm'n*, 258 F. 307 (7th Cir. 1919).

¹⁸ See, e.g., *FTC v. Raladam Co.*, 316 U.S. 149 (1942) (affirming the FTC's determination that false advertising by a seller of a weight loss product constituted an unfair method of competition).

¹⁹ Disgorgement is an equitable remedy designed to restore the status quo prior to the wrongdoing, so even an order requiring 100% disgorgement is likely to under-deter to some degree. To meaningfully deter wrongdoers, the Commission could consider activating civil penalties through a fake review fraud rulemaking or proceeding under Section 5(m)(1)(B), 15 U.S.C. § 45. The Commission could also consider seeking damages through Section 19, *id.* § 57b.

²⁰ Statement of Comm'n'r Rohit Chopra, *In re Truly Organic*, Comm'n File No. 1923077, at 1 (Sept. 19, 2019), https://www.ftc.gov/system/files/documents/public_statements/1544655/commisisoner_rohit_chopra_statement_on_truly_organic_sept_19_2019.pdf.

²¹ See U.S. GOV'T ACCOUNTABILITY OFF., HIGHLIGHTS OF GAO-18216, INTELLECTUAL PROPERTY: AGENCIES CAN IMPROVE EFFORTS TO ADDRESS RISKS POSED BY CHANGING COUNTERFEITS MARKET 11 (2018), <https://www.gao.gov/assets/690/689713.pdf> (warning that counterfeiters may be posting fake reviews to trick consumers). See also Jon Emont & Clément Bürge, *How Scammers in China Manipulate Amazon*, THE WALL ST. J. (Dec. 17, 2018), <https://www.wsj.com/articles/how-scammers-in-china-manipulate-amazon-11545044402> (reporting that China-based scammers are using fake reviews to manipulate product listings).