

**Statement of Chairman Joseph J. Simons and
Commissioners Noah Joshua Phillips and Christine S. Wilson**

In re Sunday Riley Modern Skincare, LLC
November 6, 2020

Today we announce finalization of a consent agreement against Sunday Riley Modern Skincare and its owner, Ms. Sunday Riley. This case is one of several recent FTC enforcement actions challenging fake or deceptive online reviews or endorsements for products and services.¹ These and similar cases seek to ensure that false and deceptive information is removed from the marketplace, enabling consumers to make informed purchasing decisions based on truthful and accurate information. In this case, the Commission's complaint alleges that Ms. Riley and her company polluted the online marketplace by writing and publishing fake positive reviews for Sunday Riley Modern Skincare products – conduct that would amount to clear violations of the FTC Act. The Commission's order holds Ms. Riley personally liable, prohibits both Ms. Riley and Sunday Riley Modern Skincare from making future misrepresentations (including through fake reviews), and requires them to instruct employees and agents about their legal responsibilities. Each violation of the order could result in a civil penalty of up to \$42,530. There is no reason to believe that the Commission's order will not protect consumers from further misconduct or that the potential for civil penalties will not deter future violations.

Every case presents unique circumstances, and there are many factors that must be considered in determining what constitutes an appropriate settlement. The primary factor is the law. For example, to obtain monetary relief, the Commission must have a viable legal basis to demonstrate consumer injury or ill-gotten gains from the alleged violations. In some cases, such as frauds where the consumer receives no value, this calculation may be obvious. In others, including *Sunday Riley*, a legally defensible calculation of ill-gotten gains may be difficult. In such cases, the expenditure of resources needed to develop an adequate evidentiary basis reasonably to approximate ill-gotten gains may substantially outweigh any benefits to consumers and the market. We believe the Commission's order strikes the right balance.

The relief obtained in this case is consequential and will provide both specific and general deterrence. The administrative order binds Sunday Riley and its CEO. It constrains their future behavior by imposing limitations on their conduct, with the threat of civil penalties for violations. When evaluating relief we also must consider the cost and effect of the other sanctions imposed in the context of an enforcement action, such as the costs and constraints of complying with the injunction; the fencing in of otherwise legal conduct; the reputational effect of the order; the threat of follow-on actions by shareholders, private plaintiffs and other regulators; and other collateral consequences, such as the effect on relationships with business partners, vendors, investors, and regulators. All of these non-monetary sanctions can have substantial deterrent effect on violative behavior. Our dissenting colleagues focus on the lack of monetary relief, dismissing the efficacy both of injunctive relief and the naming of the CEO in

¹ *FTC v. Devumi, LLC*, No. 9:19-cv-81419-RKA (S.D. Fla. 2019), <https://www.ftc.gov/enforcement/cases-proceedings/182-3066/devumi-llc>; *FTC v. Teami, LLC*, No. 8:20-cv-518-VMC-TGW (M.D. Fla. 2020), <https://www.ftc.gov/enforcement/cases-proceedings/182-3174/teami-llc>.

this matter. This latter position is particularly curious given that, in other matters, they touted naming CEOs as the *sine qua non* for accountability.² This action sends a clear message to other companies that the FTC will not tolerate fake reviews, and underscores the applicable legal standards to follow to avoid running afoul of the law.³

Fake and manipulated user reviews contaminate the online marketplace and inhibit informed decision-making by consumers. The FTC is intent on addressing this distortion of the marketplace, and is currently examining, among other things, how fake reviews affect consumer purchasing behavior; what platforms and other relevant market players are doing – and what they could be doing better – to combat fake reviews; and additional actions the FTC can take to address this problem beyond important law enforcement actions like this one. Advertisers and retailers should not doubt our resolve. Fake reviews, ratings, and rankings that pollute the digital marketplace are a high priority for the FTC, and we will continue to be active in this area. We also are mindful that true deterrence is not achieved via any single order but through concerted law enforcement campaigns. While this case standing alone will not cure advertisers of the urge to post fake reviews, it is part of a broader campaign to ensure that consumers are able to make purchasing decisions based on truthful and accurate information.

² See, e.g., Dissenting Statement of Commissioner Rohit Chopra, *In the Matter of Facebook* (July 2019), https://www.ftc.gov/system/files/documents/public_statements/1536911/chopra_dissenting_statement_on_facebook_7-24-19.pdf; Dissenting Statement of Commissioner Rebecca Kelly Slaughter, *In the Matter of Facebook* (July 2019), https://www.ftc.gov/system/files/documents/public_statements/1536918/182_3109_slaughter_statement_on_facebook_7-24-19.pdf; Joint Statement of Commissioner Rohit Chopra and Commissioner Rebecca Kelly Slaughter, *In the Matter of Musical.ly (now known as Tik Tok)*, https://www.ftc.gov/system/files/documents/public_statements/1463167/chopra_and_slaughter_musically_tiktok_joint_statement_2-27-19_0.pdf.

³ Press coverage following the announcement of the Sunday Riley matter referred to an “FTC crackdown” and noted, for example, that “it would be naïve for companies to not start adjusting. See James Brumley “What Might The FTC’s Crackdown On Deceptive Online Marketing Mean for Social Media Companies?” THE MOTLEY FOOL (Oct. 29, 2019), <https://www.fool.com/investing/2019/10/29/what-might-the-ftcs-crackdown-on-deceptive-online.aspx>; see also Klein, David, “Social Media Influencer Marketing And FTC Enforcement” MONDAQ (March 26, 2020) (noting that “[g]iven the potential for large fines and negative press, companies must be aware of their obligations to ensure that their influencer marketing campaigns comply with applicable law.”) (italics added), <https://www.mondaq.com/unitedstates/Media-Telecoms-IT-Entertainment/907658/Social-Media-Influencer-Marketing-And-FTC-Enforcement>.