



Office of Commissioner  
Melissa Holyoak

UNITED STATES OF AMERICA  
**Federal Trade Commission**  
WASHINGTON, D.C. 20580

**Concurring Statement of Commissioner Melissa Holyoak**

*In re Sitejabber*, Matter No. 2323060

November 6, 2024

I support today’s settlement with Sitejabber, an online review platform that collected customer ratings and reviews about shopping experiences and products through surveys displayed on the checkout screen. The crux of the Complaint is that Sitejabber allegedly (1) misrepresented that customer ratings and reviews displayed on its website and in internet search results were from consumers who had the opportunity to experience the products or services purchased, and (2) provided its clients using the embeddable web widget with the “means and instrumentalities” to misrepresent that the displayed customer reviews and ratings were from customers who had actually purchased or experienced the product or service. I write in brief to note our proper use of the “means and instrumentalities” doctrine here, a form of primary liability appropriate where the defendant itself engages in deception.<sup>1</sup>

The Complaint alleges that Sitejabber’s embeddable web widget, which displayed Instant Feedback Product Reviews (“IFPRs”), was, as designed, an inherently deceptive tool. While Sitejabber collected real feedback about customers’ shopping choices at the point-of-sale,<sup>2</sup> Sitejabber’s widget displayed it on customer-facing websites as “star” ratings of products themselves. According to the Complaint, Sitejabber built a mismatch into IFPRs, limiting real customer reviews to one aspect (shopping choices), while displaying those reviews about an entirely different aspect (the product itself).<sup>3</sup> Importantly, there is no suggestion that Sitejabber’s clients had the ability to control or customize the output from the embeddable web widget. Thus, Sitejabber allegedly designed, distributed, and deployed IFPRs for its clients, in short, to mislead consumers about what product ratings signified.

Unlike the Commission’s Complaint against review writing platform Rytr,<sup>4</sup> this Complaint properly alleges that Sitejabber provided the “means and instrumentalities” to deceive consumers. Whereas Rytr provided a neutral review-writing tool that may have been used deceptively in some

---

<sup>1</sup> See, e.g., *In re Shell Oil Co.*, 128 F.T.C. 749, 764 (1999) (majority statement) (“It is well settled law that the originator is liable if it passes on a false or misleading representation with knowledge or reason to expect that consumers may possibly be deceived as a result.”) (citing *Regina Corp. v. FTC*, 322 F.2d 765 768 (3d Cir. 1963) (affirming liability under means and instrumentalities theory where defendant distributed its own misrepresentative price lists that were used, in turn, to deceive consumers)); *id.* at 766 (Commissioner Swindle, dissenting) (“Means and instrumentalities is a form of primary liability, and a respondent is primarily liable only for its own misrepresentations to consumers.”).

<sup>2</sup> Compl. ¶ 22.

<sup>3</sup> *Id.* ¶¶ 23-25.

<sup>4</sup> Dissenting Statement of Comm’r Melissa Holyoak, Joined by Comm’r Andrew N. Ferguson, *In re Rytr, LLC*, FTC Matter No. 2323052 (Sept. 25, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/holyoak-rytr-statement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-rytr-statement.pdf).

instances,<sup>5</sup> we allege here that the only function of Sitejabber's embeddable web widget, as designed, was to enable its clients to display a deceptive description of its instant ratings and reviews on their own websites.

Of course, there is nothing inherently deceptive about the collection, use, and display of consumer reviews, where the output accurately reflects the input. Indeed, such products could be highly valuable to both consumers and the market, enabling businesses to tout real customer reviews about their products or services and facilitating more informed consumer decisions about their shopping experience or the product itself. But design choices matter when developing these types of products. And Sitejabber's design choice here conflated real customer feedback about shopping choices with an actual rating for a product, harming its clients and consumers.

---

<sup>5</sup> See generally *id.*; see also Dissenting Statement of Comm'r Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *In re Rytr LLC*, Matter No. 2323052 (Sept. 25, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/ferguson-rytr-statement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-rytr-statement.pdf).