



# An In-House Lawyer's Guide to Consumer Reviews and Testimonials

Matthew Fitzpatrick, Procter & Gamble

Laura Kim, Covington & Burling

Serena Viswanathan, Federal Trade Commission

---

**COVINGTON**

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT  
JOHANNESBURG LONDON LOS ANGELES NEW YORK  
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

# Panelists



**Matthew Fitzpatrick**

Vice President &  
Associate General Counsel  
*Procter & Gamble*



**Laura Kim**

Partner & Chair,  
Advertising and Consumer  
Protection Investigations Practice  
*Covington*



**Serena Viswanathan**

Associate Director, Division of  
Advertising Practices  
*Federal Trade Commission*

# FTC Developments in Consumer Reviews and Testimonials

## January 2022

FTC issues guidance  
on reviews

*Fashion Nova*

## February 2023

*Bountiful Company*

## August 14, 2024

Final Rule announced

## October 2019

*Sunday Riley &  
Devumi*

## August 2022

*Roomster*

## June 2023

Revised Endorsement  
Guides issued

## October 21, 2024

Rule went into effect

# Significance of the New Rule



**Detailed guidance for industry**

**Civil penalty authority**

**Part of broader trend in FTC rulemaking**

**Builds on prior FTC enforcement actions and guidance**

**FTC priorities going forward**

## § 465.2 Fake or False Consumer Reviews, Consumer Testimonials, or Celebrity Testimonials



The screenshot shows a carousel of three review cards. Each card features a profile picture of a man, a name, a location, a 5-star rating, and a short review snippet. A left arrow is visible on the left side of the carousel, and a 'Read more reviews' button is at the bottom.

Reviewer	Location	Review Snippet
Chase L.	San Diego	Honestly this site is legit had a bedroom in San Diego for 1070 a month. interviewed a few
Kevin C.	New York	It had everything I looked for It wasnt long ago when I was the one looking at all these websites, looking for
Albert K.	New York	If you want it fast and secure, stop looking at those other sites I have moved in and out of so many places in this city, I am basically more

- **Fake or false** means the reviewer:
  - **Does not exist**
  - **Did not use the product**
  - **Misrepresents their experience**

Covers writing, creating, selling, purchasing, disseminating, procuring

## Review Repurposing (formerly § 465.3)



- Proposed provision would have **prohibited the use or repurposing of reviews** written for one product so that they appear to have been written for a substantially different product

**Not adopted in the Final Rule**



## § 465.4 Buying Positive or Negative Consumer Reviews

- Prohibits providing compensation or other incentives in exchange for, or conditioned on, writing a review with a specific sentiment

**“Tell us how much you liked this product and get a \$5 coupon”**  
is an example of an implied condition



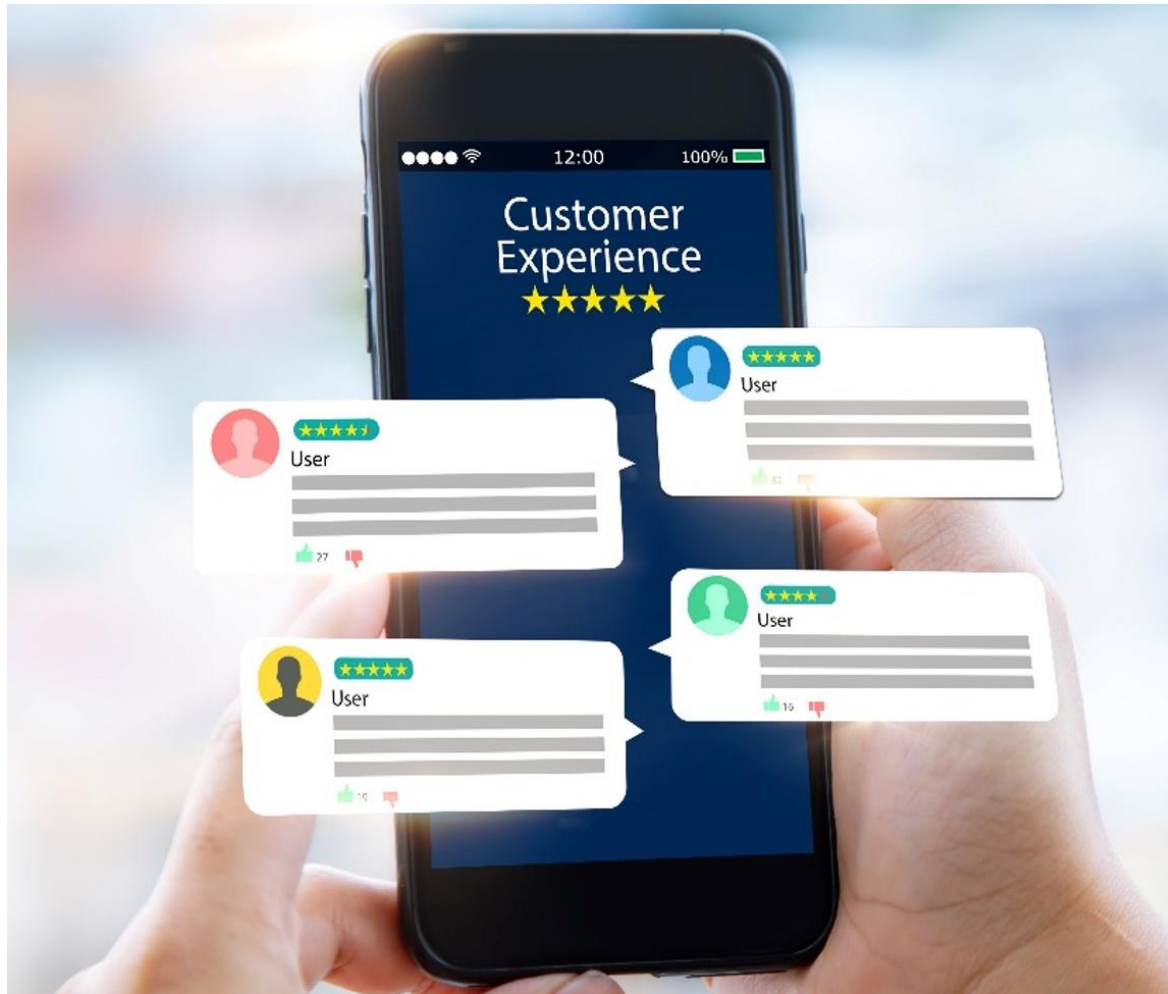
## § 465.5 Insider Consumer Reviews and Consumer Testimonials

- Prohibits reviews and testimonials about the business or its products/services that **lack clear and conspicuous disclosures** of insider relationship
- “Insider” includes officer, manager, employee, or agent – *plus their relatives*

**Insider connection must be material**



## § 465.7 Review Suppression



- Groundless **legal & physical threats, intimidation, and false accusations** to prevent a review from being posted or to get a review removed
- **Misrepresenting** that reviews on a website represent all or most reviews **when reviews are being suppressed for negativity**

Does **not** cover suppression of certain reviews, including false or misleading reviews, fake reviews, and reviews unrelated to the product



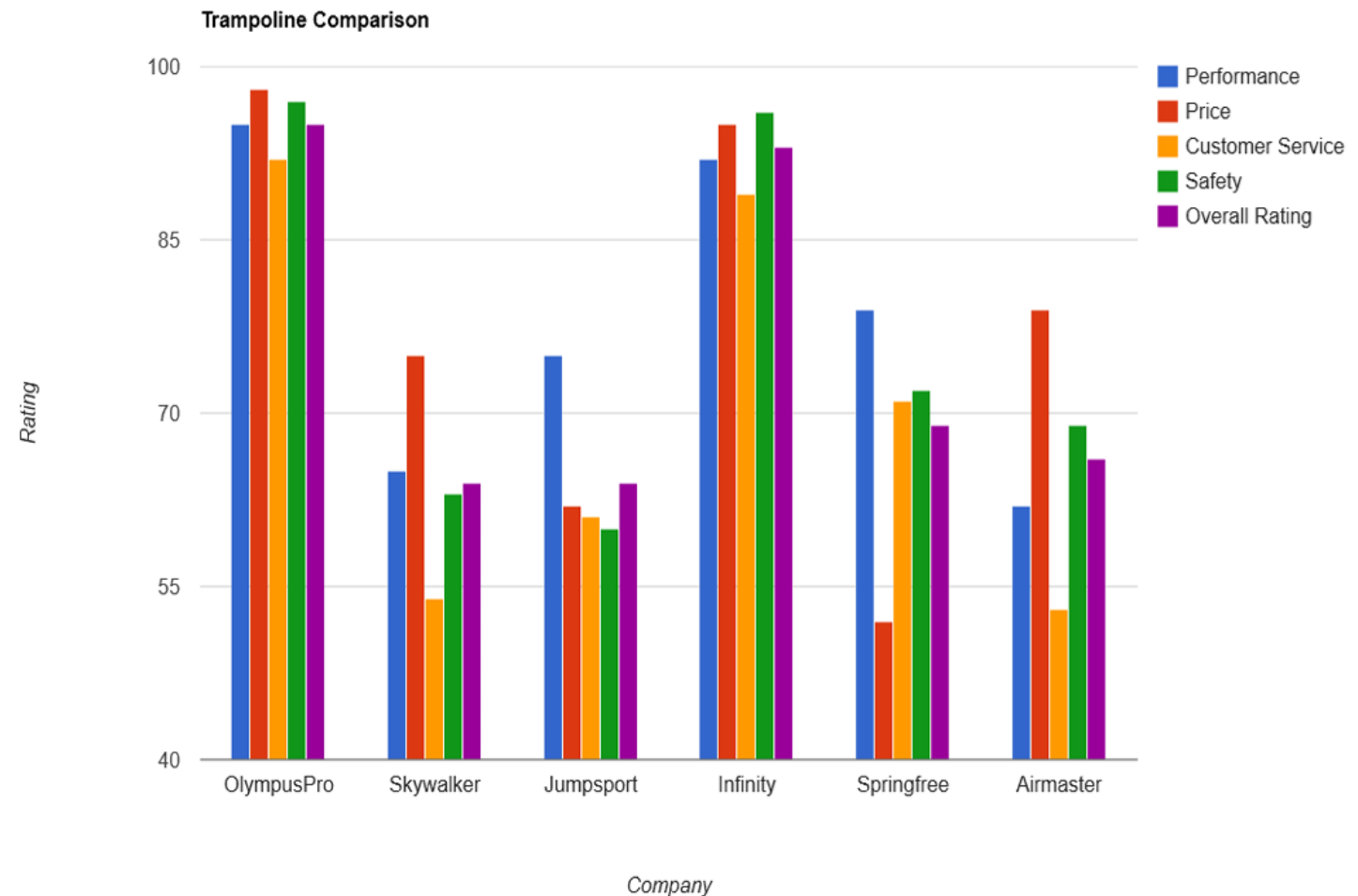
## § 465.8 Misuse of Fake Indicators of Social Media Influence

- **Prohibits** selling, distributing, purchasing, or procuring fake indicators of social media influence to **misrepresent influence or importance** for a commercial purpose

**Includes “knew or should have known” standard**

## § 465.6 Company-Controlled Review Websites or Entities

- Targets organizations / websites that:
  - Purport to provide “**independent**” reviews
  - about the **same category of businesses, products, or services** as the advertiser
  - and are **owned / controlled by the advertiser**



# Questions?

---

**COVINGTON**

---

- @covingtonllp
- @covington-burling-llp
- @covington-&-burling

[www.cov.com](http://www.cov.com)