



February 20, 2024

***Via Electronic Filing***

Presiding Officer Foelak  
c/o Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

**Re: Reviews and Testimonials Rule (16 CFR Part 465) (Project No. P214504)**

Presiding Officer Foelak:

The Interactive Advertising Bureau (IAB) submits this additional evidence in response to the Presiding Officer's February 13, 2024 order inviting further submissions concerning the two disputed issues of material fact proposed by IAB, including the citation of "specific evidence that shows a material issue of fact is disputed."<sup>1</sup> To provide "specific evidence" showing that its proposed issues are disputed, IAB surveyed its member companies to learn more about the anticipated impact of the proposed rule on their review moderation practices and compliance costs. Eighteen member companies responded, and the survey results demonstrate that there are two disputed issues of material fact at issue in this rulemaking that require further development through cross-examination.

The survey questions are attached to this submission. All respondents to the survey either allow customer reviews to be posted on the business's website, use or solicit customer reviews or testimonials to market the business's products, or both. Of those members who responded, more than half estimate their initial compliance costs to be at least \$1,000, which is more than double what the Commission estimated for large companies in even a "heightened compliance review" scenario.<sup>2</sup> Additionally, more than half of the respondents indicated that their business would be somewhat or very likely to "change its current review process to delete, suppress, or otherwise display fewer consumer reviews," if specific provisions of the proposed rule are enacted. These results constitute specific, affirmative evidence showing that IAB's proposed issues are genuinely disputed, and should be designated as such in this hearing.

**I. Compliance Costs**

---

<sup>1</sup> Order of Presiding Officer Foelak, Rule on the Use of Consumer Reviews & Testimonials, Rulemaking Proceeding (Feb. 13, 2024).

<sup>2</sup> Rule on the Use of Consumer Reviews and Testimonials, 88 Fed. Reg. 49,364, 49,386 (July 31, 2023) (hereinafter "NPRM").

IAB's first proposed disputed issue of material fact was "whether the compliance costs for businesses will be minimal, particularly if the 'knew or should have known' standard is finalized."<sup>3</sup> The Commission's Preliminary Regulatory Analysis posits that in a "heightened compliance review" scenario, large companies will spend approximately \$492 "conducting a one-time review of the proposed Rule and notifying employees whose role involves creating new product pages, managing the company's social media presence, and any other relevant practices covered by the proposed Rule."<sup>4</sup> However, the survey shows that 55.5% of respondents estimate their initial compliance costs—including costs related to employee time, seeking advice of counsel, and technological investments—will be at least \$1,000 if the proposed rule goes into effect. Even a conservative reading of this result puts estimated compliance costs for companies at more than double the amount the Commission assumed in the Preliminary Regulatory Analysis. This is not even considering that approximately 20% of respondents estimated initial compliance costs would be over \$50,000, which is over 100 times the Commission's estimate. These survey results also should be interpreted in light of the short amount of time IAB had to survey its members. In light of this evidence demonstrating the compliance costs will be significantly higher than the Commission has estimated, the Presiding Officer should designate IAB's proposed disputed issue of material fact as such and allow for cross-examination and further development of the record on this issue.

## II. Unintended Negative Consequences

IAB's second proposed issue was "whether the Commission's finding that unintended consequences from the NPRM are unlikely (e.g., for fear of violating the review suppression section, businesses will allow more fake reviews to stay up on their websites)."<sup>5</sup> The survey results illustrate the negative consequences that will flow from the proposed rule as well as the tension between the proposed requirements. For instance, over half of respondents stated they would be somewhat or very likely to "change [their] current review process to delete, suppress, or otherwise display fewer consumer reviews," in light of proposed Section 465.2's imposition of liability on businesses that purchase or procure a review or disseminate a testimonial that the business knew or should have known was (1) "by a reviewer or testimonialist who does not exist;" (2) "by a reviewer or testimonialist who did not use or otherwise have experience with the product, service, or business that is the subject of the review or testimonial;" or (3) "materially misrepresents, expressly or by implication, the reviewer's or testimonialist's experience with the product, service, or business that is the subject of the review or testimonial." These results show that the proposed rule is likely to lead to the suppression of helpful information for consumers, which is an important negative consequence that the Commission has not adequately considered.

Additionally, most businesses indicated that they would be somewhat or very likely to "require reviewers to submit more information to authenticate their identity before leaving a review" in response to proposed Section 465.2. As discussed at the hearing by both IAB and the presenting researchers, collecting more personal information from consumers may (i)

---

<sup>3</sup> Comment of Interactive Advertising Bureau to NPRM, at 15 (Sept. 29, 2023) (hereinafter, "IAB Comment to NPRM").

<sup>4</sup> NPRM, at 49,386.

<sup>5</sup> IAB Comment to NPRM, at 15.

unnecessarily put consumers' privacy at risk, and (ii) discourage some legitimate reviewers from submitting reviews due to privacy and other concerns. These are both harmful consequences that must be explored through further development of the record, including whether they could be avoided with a more narrowly tailored rule.

Furthermore, approximately 40% of respondents indicated that they would be somewhat or very likely to stop hosting consumer reviews when considering the various liability standards under proposed Section 465.2. Approximately 35% similarly stated they would be somewhat likely or very likely to stop using consumer reviews or testimonials to market the business's products or services in light of proposed Section 465.2. If businesses take this step to mitigate the risk of liability under the proposed rule, consumers and businesses alike would lose a valuable resource. Thus, to issue a properly tailored rule, the Commission should conduct more investigation and elicit more evidence as to the impact of the proposed rule. Doing so would help to determine whether the consequences of the proposed rule would be harmful to businesses and consumers and whether a narrower rule would effectively address the conduct at issue.

Finally, nearly 40% of respondents indicated that they would likely change their practices to post *more* consumer reviews in response to proposed Section 465.7's potentially exhaustive list of reasons for why a review may be permissibly suppressed, and almost 30% of respondents would be somewhat likely or very likely to allow all reviews to be posted in response to the language of Section 465.7. As businesses grapple with the implications of the Commission's proposed rule, these survey results demonstrate that businesses will react to the proposed rule in varied, sometimes contradictory ways. Allowing all reviews, for instance including reviews that include misleading information, is not a helpful outcome for consumers either. Thus, further development of the record on these issues, including through cross-examination, is needed so that the Commission can properly assess these important disputed issues.

\*\*\*

These survey results constitute affirmative evidence showing these two proposed issues are disputed, and that IAB as well as other interested persons should have the opportunity to further develop the record relating to these two issues by cross-examining witnesses. Similar evidence submitted in the Negative Option Rulemaking demonstrated that there was a genuine dispute as to the cost of the proposed rule. As in the Negative Option hearing proceeding, these issues "turn on specific facts that can be presented through testimony, cross examination, and documentary submissions."<sup>6</sup> IAB urges the Presiding Officer to allow a full and thorough analysis of these important issues by designating the raised issues as disputed issues of material fact.

Sincerely,



Lartese M. Tiffith, Esq.  
Executive Vice President for Public Policy  
Interactive Advertising Bureau

---

<sup>6</sup> Order of Presiding Officer Foelak, Negative Option Rulemaking Proceeding (Jan. 25, 2024).

## **Reviews and Testimonials Rule: Survey Questions**

**Instructions:** Thank you for filling out this survey. In responding to these questions, please provide as much information as is feasible. It is not required that you fill out every question.

### **1. Threshold Questions.**

- Does your business allow customer reviews to be posted on the business's website? [YES / NO]
- Do you use or solicit customer reviews or testimonials to market products offered by your business? [YES / NO]
- If no to *both* threshold questions, then terminate survey

### **2. Impact of the Proposed Rule on Whether Reviews Are Published or Removed.**

This question concerns the FTC's proposed rule on reviews and testimonials. For the purposes of this question, consider the following:

- *Purchase* is defined in the proposed rule as "to provide something of value, such as money, goods, or another review, in exchange for a consumer review."
- *Procure* is undefined in the proposed rule.
- *Disseminate* is undefined in the proposed rule.
- The proposed rule would impose liability on businesses that purchase or procure a review or disseminate a testimonial that the business knew or should have known was "by a reviewer or testimonialist who does not exist." If this standard were implemented, how likely would your business be to:
  - (a) change its current review process to delete, suppress, or otherwise display fewer consumer reviews?
    - A. Unlikely.
    - B. Somewhat unlikely.
    - C. Somewhat likely.
    - D. Very likely.
  - (b) change its current review process to require reviewers to submit more information to authenticate their identity before leaving a review?
    - A. Unlikely.
    - B. Somewhat unlikely.
    - C. Somewhat likely.
    - D. Very likely.
  - (c) stop hosting consumer reviews?
    - A. Unlikely.

- B. Somewhat unlikely.
  - C. Somewhat likely.
  - D. Very likely.
- (d) stop using consumer reviews or testimonials to market the business's products or services?
    - A. Unlikely.
    - B. Somewhat unlikely.
    - C. Somewhat likely.
    - D. Very likely.
- The proposed rule would impose liability on businesses that purchase or procure a review or disseminate a testimonial that the business knew or should have known was "by a reviewer or testimonialist who did not use or otherwise have experience with the product, service, or business that is the subject of the review or testimonial." If this standard were implemented, how likely would your business be to:
    - (a) change its current review process to delete, suppress, or otherwise display fewer consumer reviews?
      - A. Unlikely.
      - B. Somewhat unlikely.
      - C. Somewhat likely.
      - D. Very likely.
    - (b) change its current review process to require reviewers to submit more information to authenticate their identity before leaving a review?
      - A. Unlikely.
      - B. Somewhat unlikely.
      - C. Somewhat likely.
      - D. Very likely.
    - (c) stop hosting consumer reviews?
      - A. Unlikely.
      - B. Somewhat unlikely.
      - C. Somewhat likely.
      - D. Very likely.
    - (d) stop using consumer reviews or testimonials to market the business's products or services?
      - A. Unlikely.
      - B. Somewhat unlikely.
      - C. Somewhat likely.
      - D. Very likely.

- The proposed rule would impose liability on businesses that purchase or procure a review or disseminate a testimonial that the business knew or should have known “materially misrepresents, expressly or by implication, the reviewer’s or testimonialist’s experience with the product, service, or business that is the subject of the review or testimonial.” If this standard were implemented, how likely would your business be to:
  - (a) change its current review process to delete, suppress, or otherwise display fewer consumer reviews?
    - A. Unlikely.
    - B. Somewhat unlikely.
    - C. Somewhat likely.
    - D. Very likely.
  - (b) change its current review process to require reviewers to submit more information to authenticate their identity before leaving a review?
    - A. Unlikely.
    - B. Somewhat unlikely.
    - C. Somewhat likely.
    - D. Very likely.
  - (c) stop hosting consumer reviews?
    - A. Unlikely.
    - B. Somewhat unlikely.
    - C. Somewhat likely.
    - D. Very likely.
  - (d) stop using consumer reviews or testimonials to market the business’s products or services?
    - A. Unlikely.
    - B. Somewhat unlikely.
    - C. Somewhat likely.
    - D. Very likely.
- If implemented, the proposed rule would impose liability on companies that misrepresent that the consumer reviews on their website represent most or all the reviews that were submitted when reviews are being suppressed (i.e., not displayed) based upon their ratings or their negativity. The rule states that “a review is not considered suppressed based upon rating or negativity if the suppression occurs” for a discrete list of reasons, including for instance that the review contains trade secrets, obscene content, personal information, false or misleading content, or the seller reasonably believes the review is fake. If this standard were implemented, how likely would your business be to:

- (a) change its current review process to allow more consumer reviews to be posted?
  - A. Unlikely.
  - B. Somewhat unlikely.
  - C. Somewhat likely.
  - D. Very likely.
- (b) allow all reviews to be posted?
  - A. Unlikely.
  - B. Somewhat unlikely.
  - C. Somewhat likely.
  - D. Very likely.

### 3. Compliance Cost.

- The FTC's proposed rule on reviews and testimonials will allow the FTC to obtain civil penalties for certain activities the FTC has determined are unfair or deceptive, including where the violator "knew or should have known" that a certain act or practice violated the rule.
- The proposed rule would prohibit:
  - Selling, writing, or creating fake or false reviews and testimonials as well as procuring and purchasing reviews or disseminating testimonials if the business knew or should have known they were fake or false.
  - Buying positive or negative reviews.
  - Creating reviews and testimonials written by "insiders" (e.g., officers, managers) that lack a clear and conspicuous disclosure of the relationship, as well as disseminating such testimonials and soliciting such reviews when the business knew or should have known of the relationship.
  - Creating websites that appear to provide independent opinions about the business or its products, when the website is created or controlled by the business.
  - Using threats to prevent or remove negative reviews and misrepresenting that the reviews on a business's website represent all reviews submitted when negative reviews have been suppressed. The proposed rule provides a list of permissible reasons to suppress a review that would not violate this section.
  - Selling and buying false indicators of social media influence, like fake followers or views.

- In light of the above and considering your answers to Questions 1-2, please estimate the total cost in dollars of scoping and implementing the initial, one-time changes that you believe would be needed in order to come into compliance with the proposed rule, including costs related to employee time, seeking advice of counsel, and technological investments:
  - A. \$0
  - B. \$1-\$1,000
  - C. \$1,001-\$10,000
  - D. \$10,001-\$50,000
  - E. More than \$50,000
  
- In light of the above and considering your answers to all other questions in this survey, please estimate the annual total cost of compliance to your business as a percentage of your business's total annual operational budget.
  - A. 0%
  - B. 1%-15%
  - C. 15%-30%
  - D. 30%-45%
  - E. Greater than 45%