

**Request for Comments: Trade Regulation Rule on Use of Consumer Reviews and Testimonials**

**Federal Trade Commission**

**Matter No. R311003**

**Response of the Responsible Online Commerce Coalition (ROCC)**

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**I. Introduction**

On July 31, 2023, The Federal Trade Commission (FTC) issued a Notice of Proposed Rulemaking (NPRM) to address certain specified unfair or deceptive acts or practices involving consumer reviews or testimonials.<sup>1</sup> The Responsible Online Commerce Coalition (ROCC) thanks the FTC for the opportunity to submit these comments regarding an issue critical to the digital marketplace, our members, and consumers.

ROCC is a non-profit association that represents businesses that rely on Amazon and other online commerce platforms to reach their customers. The Coalition seeks to ensure fair play for all businesses that operate in online commerce, so that businesses who offer the best

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<sup>1</sup> Trade Regulation Rule on the Use of Consumer Reviews and Testimonials, 88 Fed. Reg. 49364 (proposed Jul. 31, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-07-31/pdf/2023-15581.pdf>.

products for the best consumer value can prosper. Our members range in size and are located in the U.S., as well as Europe and the U.K.

ROCC applauds the FTC for addressing the issue of fake consumer reviews and other types of consumer review manipulation. Due to the importance of consumer reviews and testimonials in purchasing decisions, sellers rely on these product feedback sources in order to maintain a successful business model.<sup>2</sup> Unfortunately, the manipulative behavior by companies to inflate their own reviews or sabotage those of competitors negatively impacts the many sellers that seek an honest and level playing field in the online marketplace, as well as the consumers who rely on those false reviews to make purchasing decisions. The widespread availability of A.I. has made the problem of mass manipulation of consumer reviews even worse.<sup>3</sup>

The prevalence of review-related misconduct is not a new problem. In fact, legislators have identified the issue as an area in need of increased oversight for years.<sup>4</sup> This calls for a final rule that tackles review manipulation tactics both at the individual and aggregate levels. It is also vital that the FTC acknowledges the role that dominant digital commerce platforms, such as Amazon, play in facilitating or negligently allowing widespread review manipulation on their platforms. A final rule must place some responsibility on the platforms which serve, at the very least, as a vehicle for fake reviews and testimonials.

In this submission, ROCC provides its observations in response to the questions posed by the NPRM that are most relevant for its members based on member feedback and input from e-commerce experts who face the challenges associated with fake reviews on a daily basis.<sup>5</sup>

## **II. Amazon’s Self-Policing of Review Manipulation Is Insufficient and Ineffective**

Almost all online shoppers use product reviews to evaluate their purchasing decisions, meaning that poor ratings can significantly hurt seller revenue.<sup>6</sup> The importance of product reviews for seller success provides incentives for bad actors to engage in review-related

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<sup>2</sup> Staff of Subcomm. On Antitrust, Com., & Admin. L. of the H. Comm. On the Judiciary, 117<sup>th</sup> Cong., 2d Session, Investigation of Competition in Digital Markets at 239 (published July 2022), <https://www.congress.gov/117/cprt/HPRT47832/CPRT-117HPRT47832.pdf>. (“In interviews with market participants, many sellers said that good reviews are critical for a product to be successful online. Accordingly, sellers aim to obtain as many positive reviews as possible early in a product’s life cycle”)

<sup>3</sup> See, e.g., Annie Palmer, *People Are Using A.I. Chatbots to Write Amazon Reviews*, CNBC (Apr. 25, 2023), <https://www.cnbc.com/2023/04/25/amazon-reviews-are-being-written-by-ai-chatbots.html>.

<sup>4</sup> See Press Release, Democrats, Energy and Commerce Committee, Pallone & Schakowsky Question Amazon’s Oversight of Fake Online Product Reviews (Jul. 9, 2019), <https://democrats-energycommerce.house.gov/newsroom/press-releases/pallone-schakowsky-question-amazon-s-oversight-of-fake-online-product>.

<sup>5</sup> ROCC thanks Chris McCabe and Leah McHugh of eCommerceChris for their assistance with these comments.

<sup>6</sup> Abi Schuman, *What Fake Reviews Can Mean For Your Business*, The Bazaar Voice (Nov. 14, 2022), <https://www.bazaarvoice.com/blog/what-fake-reviews-can-mean-for-your-business/#:~:text=While%20almost%20all%20%2888%25%29%20shoppers%20use%20ratings%20and,have%20a%20significantly%20negative%20impact%20on%20your%20revenue.>

misconduct. Fake reviews can severely affect third-party sellers, not only directly, but also indirectly through damage to their reputation and a loss of consumer trust.<sup>7</sup> With e-commerce expected to account for over 20% of all U.S. sales in 2023, developing confidence in products that consumers cannot see or touch in person is more important than ever.<sup>8</sup> In this environment, it is an unfortunate reality that legitimate sellers who do not engage in review manipulation suffer competitive disadvantage and are hurt by a growing distrust in the online marketplace because of others' misconduct.<sup>9</sup>

Although Amazon has recently made public-facing moves to counter fraudulent review manipulation on its platform, its current approach is insufficient and ineffective.<sup>10</sup> In addition, Amazon's enforcement efforts against sellers who are accused of review-related policy violations are highly erratic, inconsistent, and severely lacking in transparency. One study found that for the fake reviews that have been successfully deleted, it took Amazon an average of more than 100 days to do so.<sup>11</sup> This is too long of a period, during which wrongdoers are able to gain from their misconduct and legitimate sellers can suffer significant harm.

Consistent with public reports, while there has been some improvement, ROCC's members continue to view Amazon's current efforts as problematic. In response to a member survey, one seller observed that "the policing is flawed." He added that "there are few obstacles placed in the way of any fake reviewer." Another member responded that the FTC needs to "require Amazon to take action" in order to solve the problem. Importantly, whatever measures Amazon volunteers or is forced to take must be applied in a transparent and consistent manner. ROCC is aware that, currently, Amazon enforces its review-related policies in an arbitrary and unfair manner. In some cases, reoffenders are allowed back on Amazon within days or hours while, in others, first-time offenders are permanently banned.

A significant source of review manipulation activity originates with independent actors operating under the guise of Amazon consultants, to which Amazon turns a blind eye. These bad actors contribute to many of the fake review tactics identified by the FTC's proposed rule. One such operation purports to assist sellers in "updating the brand name" on their Amazon listing,

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<sup>7</sup> *Why Fake Reviews Hurt Retailers*, ResellerRatings, (Mar. 17, 2021), <https://blog.resellerratings.com/2021/03/17/why-fake-reviews-hurt-retailers/>.

<sup>8</sup> Jia Wertz, *Customer Confidence Is Key to E-Commerce Success*, Forbes (Oct. 22, 2020), <https://www.forbes.com/sites/jiawertz/2020/10/22/customer-confidence-is-key-to-e-commerce-success/?sh=1a8ff3ab5416>; Anna Baluch, *38 eCommerce Statistics of 2023*, Forbes: Advisor (Feb. 8, 2023), <https://www.forbes.com/advisor/business/ecommerce-statistics/>.

<sup>9</sup> Katie Tarasov, *Amazon Is Filled With Fake Reviews And It's Getting Harder To Spot Them*, CNBC (Sep. 6, 2020), <https://www.cnbc.com/2020/09/06/amazon-reviews-thousands-are-fake-heres-how-to-spot-them.html#:~:text=In%20recent%20months%2C%20fake%20reviews%20have%20boosted%20sales,causing%20huge%20brands%20to%20sever%20ties%20with%20Amazon.>

<sup>10</sup> Jon Keegan, *Is This Amazon Review Bullshit?*, The Markup: The Breakdown (Jul. 21, 2020), <https://themarkup.org/the-breakdown/2020/07/21/how-to-spot-fake-amazon-product-reviews> (reporting that Amazon has spent more than \$500 million and employed more than 8,000 people to address the issue).

<sup>11</sup> Davide Proserpio, Brett Hollenbeck & Sherry He, *How Fake Customer Reviews Do – and Don't – Work*, Harvard Business Review (Nov. 24, 2020), <https://hbr.org/2020/11/how-fake-customer-reviews-do-and-dont-work>.

enabling review hijacking.<sup>12</sup> Another illicit operation explicitly offers sellers the ability to merge “zombie” listings which provides a workaround for prohibitions that block the similar tactic of merging listing variations.<sup>13</sup> Even when clear evidence of review hijacking is shown on Amazon seller forums, the platform does not appear to do anything to address or resolve the misconduct. As multiple online sellers put it, Amazon’s touting of brand registration as a means of protection for sellers is “only as good as Amazon is willing to intervene.”<sup>14</sup> A final rule should require digital platforms like Amazon to intervene in a targeted way that does not inadvertently punish innocent sellers.

### **III. To Effectively Address Review Manipulation, A Final Rule Must Not Rely on Amazon Self-Policing Efforts**

Historically, Amazon’s self-policing efforts have been overly broad, self-serving, and ineffective. For example, an investigation into Amazon’s banned products list shows that a significant number of hazardous items, including tools used to create fentanyl-laced counterfeit drugs, have made it past Amazon security measures in the past few years, resulting in several deaths.<sup>15</sup> In 2016, after public reporting exposed the widespread generation of fake reviews by sellers on the platform, Amazon announced that it would ban incentivized reviews not obtained through Amazon’s in-house program, Amazon Vine. Since the Vine program was only available to Amazon first-party sales and not available to third-party sellers, the House Judiciary Committee’s Digital Markets Investigation found that Amazon had thereby “allocated to itself a significant marketing advantage over the other businesses with which it competes on its platform.”<sup>16</sup>

In another example related to reviews, the Report described how Amazon’s cost-cutting on packaging caused third-party sellers to get a large number of bad reviews. Although Amazon’s poor fulfillment services were the reason for the bad reviews, the platform denied sellers’ requests to remove them.<sup>17</sup> This tactic unfairly lowered the ratings of sellers’ products without room for dispute but could be justified by Amazon as defending against “Review Suppression,” as mandated by the FTC’s proposed rule.

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<sup>12</sup> *Amazon Brand Name Change*, My Amazon Guy, <https://myamazonguy.com/amazon-brand-name-change/> (last visited Sep. 29, 2023).

<sup>13</sup> amz\_guardian, *I Will Merge Amazon Listings to Acquire Reviews*, Fiverr, [https://www.fiverr.com/amz\\_guardian/merge-amazon-listings-to-acquire-review](https://www.fiverr.com/amz_guardian/merge-amazon-listings-to-acquire-review), (last visited Sep. 29, 2023).

<sup>14</sup> Seller\_6gxmduAZ4G44b, *Watch this Brand Hijacking in Progress*, Amazon (Apr. 30, 2023), <https://sellercentral.amazon.com/seller-forums/discussions/t/b1d652d2-6330-46d7-a589-eb8f26b559a5>.

<sup>15</sup> Annie Gilbertson & Jon Keegan, *Amazon’s Enforcement Failures Leave Open a Back Door to Banned Goods - Some Sold and Shipped by Amazon Itself*, The Markup: Banned Bounty (Jun. 18, 2020), <https://themarkup.org/banned-bounty/2020/06/18/amazons-enforcement-failures-leave-open-a-back-door>.

<sup>16</sup> Staff of Subcomm. On Antitrust, Com., & Admin. L. of the H. Comm. On the Judiciary, 117<sup>th</sup> Cong., 2d Session, *Investigation of Competition in Digital Markets* at 239 (published July 2022), <https://www.congress.gov/117/cprt/HPRT47832/CPRT-117HPRT47832.pdf>.

<sup>17</sup> *Id.* at 243.

It is important to cabin Amazon’s ability to use the FTC’s final rule as an excuse for “self-preferencing,” by applying its provisions to competitors and third-party sellers, but not to its own products or vendors. The European Union’s Digital Markets Act observes the potential for this problem and suggests that a careful assessment of practices that treat first party and third-party offers differently is needed.<sup>18</sup>

One of the major reasons that Amazon has failed to effectively police review manipulation is that a significant source of the misconduct is carried out by Amazon’s own employees. There is an extensive history of Amazon employees directly contributing to illegal fake review manipulation. For example, Amazon employees have taken bribes from sellers seeking to have negative reviews removed, fleecing consumers by giving the false impression that shoddy products are well-liked and highly successful.<sup>19</sup> Employees, acting as illicit data brokers, have also leaked sensitive internal marketplace information for sale on the black market. This type of employee-perpetrated misconduct is facilitated, for example, by brokers who have referred to it as “Amazon Magic,” in a Telegram group of over 13,000 members.<sup>20</sup> This activity persists despite Amazon’s claims that it is mobilizing resources to stop its employees from engaging in fraudulent conduct.

#### IV. Conclusion

For these reasons, an effective final rule must include, at a minimum, the following:

- **No Self-Preferencing:** A requirement that platforms must implement the final rule in a way that applies equally to the platform itself, as a first-party seller, as to third-party sellers (i.e., a prohibition on self-preferencing).
- **Fair Dispute Resolution:** Platforms should not punish third-party sellers arbitrarily and without due process for conduct that may be perceived as a breach of the final rule. Furthermore, Platforms should provide transparency and a clear, impartial, and timely method of resolving disputes and appeals, including the factual basis for any alleged policy violation.
- **Employee Training and Oversight:** Platforms must properly train (or retrain) and monitor employees to prevent employee misconduct and investigate illegal behavior.

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<sup>18</sup> Regulation 2022/1925, of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), 2022 O.J. (L 265)1.

<sup>19</sup> Greg Synek, *Amazon Employees Are Allegedly Taking Bribes for Insider Data and Deletion of Product Reviews*, Techspot (Sep. 17, 2018), [https://www.techspot.com/news/76465-amazon-employees-allegedly-taking-bribes-insider-data-deletion.html#:~:text=Reports%20of%20Amazon%20employees%20accepting%20bribes%20to%20delete,merchants%20to%20gain%20an%20advantage%20over%20other%20sellers; Annie Palmer, DOJ Charges Six People In Scheme To Bribe Amazon Employees To ‘Gain Upper Hand’ On Marketplace, CNBC \(Sep.18, 2020\), https://www.cnn.com/2020/09/18/doj-charges-six-people-in-scheme-to-bribe-amazon-employees.html](https://www.techspot.com/news/76465-amazon-employees-allegedly-taking-bribes-insider-data-deletion.html#:~:text=Reports%20of%20Amazon%20employees%20accepting%20bribes%20to%20delete,merchants%20to%20gain%20an%20advantage%20over%20other%20sellers; Annie Palmer, DOJ Charges Six People In Scheme To Bribe Amazon Employees To ‘Gain Upper Hand’ On Marketplace, CNBC (Sep.18, 2020), https://www.cnn.com/2020/09/18/doj-charges-six-people-in-scheme-to-bribe-amazon-employees.html).

<sup>20</sup> Annie Palmer, *Amazon Employees Leak Info That Marketplace Sellers Can Buy on Telegram*, CNBC (Aug. 1, 2023), <https://www.cnn.com/2023/08/01/amazon-employees-leak-info-that-marketplace-sellers-buy-on-telegram.html>.

- **Platform Accountability to Consumers and Sellers:** Platforms should be required to be responsive to sellers who notify the Platforms of review manipulation and to provide transparency to all market participants. For example, Platforms should be required to disclose which measures they are deploying to address the problem of review manipulation and how successful they are, including on factors such as efficacy, repeat offenders, deterrence, and impact on innocent businesses/sellers.

ROCC thanks the Federal Trade Commission for opening this rulemaking and providing us the opportunity to comment on how the manipulation of consumer reviews and testimonials in digital marketplaces harms third-party sellers. As we have detailed throughout this comment, the FTC has the opportunity to hold dominant digital marketplaces like Amazon responsible as part of its mission to fight the harmful effects of fake reviews and similar tactics. We hope the Commission will consider not only our comment but the dozens of other comments from consumers, sellers, and their advocates urging the FTC to take immediate and concrete action in creating a level playing field for the online commerce industry.