Consumer Reviews and Testimonials Rule - Informal Hearing | February 13, 2024

Judge Foelak:

Good morning. This is the informal hearing in the rulemaking on the use of consumer reviews and testimonials, which is Project P2145404. And I am Judge Foelak, and also with me in the room is this attorney from our office, Joseph Lindell. All right, you can go ahead with the presentations.

Kathryn Dean:

Thank you, your Honor. Thank you, your Honor. Good morning.

I'm Kathryn Dean and I run Fake Review Watch. I've been investigating online review fraud for over six years and have produced over 90 videos documenting the scope of the problem across multiple third party review platforms. My research and commentary have been featured in over 60 news stories, opinion pieces, and podcasts, including in the New York Times and the Washington Post, as well as on international broadcasts such as the Canadian Broadcasting Corporation's Evening News, and Australia's A Current Affair.

Most Fake Review Watch videos, present case studies, displaying evidence of fake reviews, businesses benefiting from them, and the failure of the review platforms to address the problem adequately. My work emphasizes this last point. The review platforms themselves bear most of the responsibility for the massive problem of fake online reviews. Interested parties can find the videos on Fake Review Watch's YouTube channel or Rumble channel.

Also, I've posted supporting documentation for this presentation on the Federal Register's website as a comment to the notice for this hearing. The supporting documentation includes evidence for my assertions. As the FTC itself has concluded, consumers today use online reviews extensively and ample evidence exists showing fake online reviews meant to deceive consumers are prevalent. The proposed rule is therefore a positive step and will hopefully deter many from engaging in this fraud.

However, the rule fails dramatically in one key aspect. It will not apply to third party review platforms, the architects of the whole corrupt system who profit from online reviews, whether real or fake. When I began researching online review fraud, I initially intended to present my research to platforms such as Google and Yelp so that they could act. Quickly however, I realized these companies could easily see all the fraud I was seeing, yet they failed to act.

trustworthiness with consumers. But in the case of the Yelp Elite program, it shouldn't. I've produced multiple videos documenting the corruption of Yelp's Elite program. An active black market exists for fake Yelp Elite reviews on Facebook and Instagram. And I have shown evidence of Yelp Elites on Facebook and Instagram being paid 20 to $50 to post fake reviews. Marketing researchers may view Yelp's Elite program as a good method to build trust with consumers, but it also attracts fraudsters. I see many suspicious Yelp profiles friend Yelp Elites, evidently with the intention of boosting the status of their profiles with Yelp's algorithm or even enhancing their chances of gaining Elite status themselves. While Yelp may claim it has systems in place to evaluate Elite nominees, I've shown multiple cases where Yelp community managers and ambassadors are reaching out to Yelp profiles who are posting fake reviews, even fake negative reviews, and recommending they apply for the Elite Squad. I've also seen Yelp representatives praising Elite reviewers who are at the same time posting fake reviews.

Moreover, I found numerous Yelp Elite profiles who aren't even real people and who are plagiarizing TripAdvisor reviews to curate their Yelp profiles. The fact that a lone researcher using no automation can find this level of fraud among Yelp's premier reviewers is reason enough to question Yelp's credibility. While Yelp touts its Status endowment Elite program as a means of becoming a guardian of trust for review information, the reality is that this program has created a black market for fake reviews. And why is that? I argue that Yelp Elite reviews are treated differently by Yelp's recommendation software and are never dumped into the reviews not currently recommended category. Businesses obviously agree, which accounts for the black market for Elite reviews. Yelp claims in its commons to the FTC, "Just like every other review on Yelp, Elite's reviews are evaluated by Yelp's recommendation

standards would disincentivize businesses particularly smaller or newer businesses, from displaying reviews to avoid liability under the proposed rule. This type of shift would cost consumers a valuable resource in making their purchasing decisions.

In addition, we do not think that the proposed rule is consistent with existing law including section 230 of the Communications Decency Act and the First Amendment. With respect to the hearing process, IAB has raised serious concerns that the commission denied IAB's request for cross-examination by applying a newly announced and incorrect legal standard. The commission recently employed a similar approach to the recent hearing on the negative option rule. This presents a disturbing pattern of the commission attempting to sidestep the statutory requirements for the informal hearing process, which is intended to be an important mechanism by which consumers, businesses and other members of the public may participate in developing the rulemaking record.

I'd like to start by first underscoring just how important consumer reviews are to consumers and IAB's members. For this reason, IAB supports the FTCs goal of combating the abuse of reviews and testimonials. Authentic reviews and testimonials are important sources of information for consumers, allowing consumers easy access to genuine positive and negative feedback, which enables them to make informed purchasing decision without having to purchase the product themselves. Authentic reviews

Moreover, the commission has attempted to constrain the presiding officer's important role in the hearing process. Mag-Moss provides for a presiding officer who must make a recommended decision based upon the findings and conclusion of such officers as to all relevant and material evidence. In the hearing notice, the commission purports to relieve the presiding officer of her statutory duty stating that the ALJ presiding today is not anticipated to make a recommended decision and that her role will be restricted to ensuring an orally hearing. The procedures the commission has prescribed for this hearing are also contrary to the legislative history of Mag-Moss.

In passing Mag-Moss, congress set forth heightened procedural and substantive requirements to ensure that section 18 rules will be issued based on a well-developed record necessary to support such rules. The informal hearing process is one of those heightened procedural requirements designed to permit the fullest possible participation in any such rulemaking proceeding and make available to the commission the widest possible expression of views in data on the issues presented by the proposed rules. The commission does the rulemaking process and the public a disservice by shortchanging this hearing's potential to develop a substantive, thoughtful, rulemaking record.

The commission also has not explained its stark departure from the commission's historical approach to informal hearings in past section 18 rulemakings. In these past proceedings, stakeholders were given the opportunity to develop the record more fully with the opportunity to set forth all key viewpoints. For instance, during the rulemaking process for the credit practices rule, the FTC held 10 weeks of hearings during which 319 witnesses testified. According to the final statement of basis and purpose, all of the following interests were represented at the hearing. Finance companies and their trade association, banks and bank association, retailers, credit unions, legal services attorneys, consumers and consumer groups, which were hundreds of people involved.

Hundred of organizations involved [inaudible 00:33:56]. Similarly, when considering the used car rule, the FTC provided all witnesses an opportunity to make an opening presentation, allow for cross-examination by representatives of all key stakeholder groups, including used car dealers, the auto rental and leasing industries and consumers groups, and accepted rebuttal statements after the hearings. More recently, the FTC has held a day long public workshop to explore proposed changes to the business opportunity role. The workshop was open to the public and welcome comments from the public as well. For reasons unknown and unexplained, the commission has elected to provide only a 90-minute hearing with no cross-examination and no opportunity for interested persons other than the three parties here. I'm fortunate IAB were one of them who were invited to speak today to participate. The process the commission has provided here appears to be designed to minimize the informal hearing's important role in the rulemaking process by limiting oral presentation to three commoners, denying IAB'S requests for cross-examination and prohibiting documentary submissions from any interested person except the three hearing participants.

IAB has unfortunately already seen the consequences of these procedural flaw at the recent informal hearing for the negative option rule. The commission's procedural choices in the negative option rule hearing undercut the informal hearing's important role and the rulemaking process. Presenters were given a scant 10 minutes each to highlight important issues and were not allowed the opportunity to conduct cross-examination. Additionally, the commission foreclosed input from other commentators who were not invited to present at the hearing.

At the initial presentations and in supplemental submissions, IAB and other commenters urge the presiding officer to designate disputed issues of material fact and have submitted evidence in support of those issues. In response to disputed issues of material fact were designated and cross-examination was permitted, although the commission has thus far put forward no witnesses or evidence to support the proposed rule. IAB urges presiding officer to designate disputed issues of material fact in this rulemaking

businesses for disseminating content of others that the business did not know violate the law. Finally, IB remains concerned to the extent the commission intends for this provision to apply to online retailers with hundreds of thousands of employees that the commission has not demonstrated that this is a prevalent, unfair, or deceptive practice as required by Magnuson-Moss.

IB has concerns with the commission's proposed Section 465.7 regarding review suppression, because it includes a discrete list of reasons for which the suppression of review is permissible and it is not clear from the text of the rule whether this list is exhaustive. Such an interpretation will be problematic for a few reasons. First, the commission has not just demonstrated that the suppression of reviews for reasons besides negativity is a prevailing, deceptive or unfair practice. Second, the commission has not considered that a prescriptive list of reasons for which reviews can be permissibly suppressed would hamper company's efforts to engage in legitimate non-deceptive review moderation practices.

The list and the proposed rule does not take into account the countless situations that can arise when moderating consumer reviews. Lastly, this discreet list of permissible reasons to suppress reviews is also contrary to section 230's protections for websites that engage in content moderation and would significantly infringe on the right of a company under the First Amendment to judge what content

Judge Foelak:

And can you stop the clock?

Dr. Ben Beck:

Thank you.

Kathryn Dean:

Yeah, this is Secretary Taper. We were not aware that there will be slides, so we had asked that it be not enabled. But thank you to Open Exchange for exploring whether it may be enabled in the middle of the Zoom.

Judge Foelak:

Okay. Just keep the clock stopped. The commenter is not speaking.

Kathryn Dean:

Mr. Beck, this is Secretary Taper again. I would invite you to please send the slides or circulate the slides to our attention at electronic filings at ftc.gov when this hearing's concluded, please.

Dr. Ben Beck:

Thank you for looking into that, I will be-

Judge Foelak:

It might be somewhat difficult for him to... Go ahead, if you can describe the situation without looking at the slides.

Dr. Ben Beck:

Thank you, your Honor, and thank you Open Exchange and Secretary for looking into that. I will do my best to verbally explain what is in the slides.

First, I would like to introduce my collaborators. Sandy Jap is the Sarah Beth Brown professor of marketing at Emory University's Goizueta Business School. And step Dr. Stefan Wuyts is a professor of marketing and he's the director of the Institute for the Study of Business Markets. He is at the Smeal College of Business at the Pennsylvania State University. And I am Dr. Ben Beck. I am an assistant professor of marketing at the Marriott School of Business at Brigham Young University. We greatly appreciate the opportunity to present our research because this topic is one of such importance. We have spent thousands of hours over the last four years analyzing how online review platforms can become guardians of trust. Namely, how they can fight fakery and build consumer trust.

As consumers rely more than ever on user reviews for consumption activities, the dangers that arise from fakery, misinformation, and fictitious word of mouth increases. Despite the potential for fakery, even if consumers continue to rely on reviews, they slowly lose trust in them as they come across inappropriate review solicitation practices, such as one that I received recently in a package from a major retailer. In this package with, I purchased a webcam for my son's new computer, there was a card that solicited a five-star review. And I will read part of this card to you. It says, "If you are satisfied with the item, would you mind leaving a positive review with full five stars on Amazon? We will provide you a $10 gift card for free and you can use it to buy anything on Amazon."

Monitoring is where the review platform looks at the reviews as they come in and judges them for authenticity and decides to hide them or remove them if found unauthentic. This monitoring is usually done algorithmically with some manual level of reviews if the algorithm is not able to catch the fake review.

Another aspect that applies to the firm, another mechanism that applies more to the firm is that of sanctioning. Public exposure of firms that propagate fake reviews does lead to trust according to our research.

Two other mechanisms, governance mechanisms that apply more to the reviewer include community building and status endowment. Community building is when a platform allows the community, the community of reviewers and review readers or consumers, to connect together and have some kind of dialogue. This can take place in an online forum such as TripAdvisor is very popular when I'm going to go and stay at a new resort or in a new country. I will go to TripAdvisor and explore the community feature before I book with a hotel.

Status endowment, on the other side, is where you award a badge of credibility to the reviewer for doing good work, for leaving good reviews, for having those reviews being voted up if that is a mechanism on the platform, or if the platform identifies maybe longer content reviews. However it be done, status endowment is as seen as a badge of credibility.

So we have these five mechanisms; identity disclosure, monitoring, sanctioning, community building, and status endowment. And we wanted to explore how platforms are using these and if those use of those mechanisms does lead to trust. So our first... In our actual paper that was recently published in the Journal of Marketing Research, we have five studies. For the respect of your time, we're only going to go over two studies and these studies are more relevant to this hearing.

The first study looks at which platforms are using which mechanisms. We're doing this to see if there's external validity around these mechanisms. If the mechanisms aren't being used by anyone, this research isn't that helpful. But if they're being used by some players and if that's leading to benefits for the firm and the consumer, that's a great thing. That's what study one does. In study two, we test our theories that using these mechanisms leads to greater consumer trust.

So allow me to talk about study one here. So if you could see my slides, you would see that we have a number of different review platforms, several that I will tell you that we have on this slide. Yelp, Edmonds, Trustpilot, Angie, TripAdvisor, Healthgrades, Nextdoor Glassdoor apartments.com. These are some of just 25 different review platforms that we looked at. And we had three independent judges look at each of the platforms and evaluate if the platforms had adopted our five mechanisms or they had not done so. And then we compared the results from these three reviewers to see if there was continuity between their judging. And there was continuity, a high level of continuity.

So on my slide, if you could see it, you would see that there are some leaders in the space such as Yelp, Trustpilot, and TripAdvisor. Yelp and TripAdvisor have adopted all five of our mechanisms to at least some degree, and Trustpilot has adopted four of the five. So we see some leaders in the space.

We see other platforms such as Angie, previously known as Angie's List, where they have adopted almost one of the five mechanisms. And we would like to posit that this might result in different performances of the platform.

So the next step we did in study one, after we had evaluated which platforms had adopted which mechanisms and practices, we wanted to look and see if the adoption of those mechanisms actually resulted in benefits to the platforms.

As a marketer for many years, I have managed websites, and one of the most important things for a website is how many people are coming to your website. This is known as organic traffic. Other things