

## CEP Magazine – May 2022 They said what?

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By Gerry Zack

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In January, the U.S. Federal Trade Commission (FTC) published two new guides on marketing issues associated with the use of customer reviews.<sup>[1]</sup> Put this risk area into the ever-growing bucket of things that compliance likely needs to consider.

The guides are just that—guidance. The law itself does not drill down to this level of detail when it comes to false or deceptive marketing and advertising (although it comes close with 2017’s Consumer Review Fairness Act).<sup>[2]</sup> But they go into a lot more detail than I would have thought, providing insight into what practices the FTC might take issue with and the controls it would want to see companies have. And for those readers working in an area outside the scope of the FTC, the guides might be useful in assessing what the company should or shouldn’t be doing in connection with protecting its reputation.

Fake reviews. Manipulated rankings. Excluding negative reviews. Displaying reviews in a misleading way. Failing to disclose financial relationships with customers who post positive reviews. Editing reviews.<sup>[3]</sup> Which of these could be considered illegal and/or merely unethical? Does it matter?

The list of potential problems is a lengthy one. And outsourcing the customer review function to a third party won’t absolve your company of this risk. The FTC is onto that. Everyone knows how third parties can create risk for us.

But, my point here is not necessarily about FTC and marketing compliance, although that is quite important. My broader point concerns the growing list of areas that present new or changing compliance risks. And many of these areas have a true compliance risk component, but also an ethical and environmental, social, and governance component. Even if some of these practices are technically legal, do we want to be engaged in them?

The compliance risk assessment has gotten significantly more complicated over the years. While it was never a good idea to do so, taking an annual checklist approach to performing the assessment—considering the exact same finite list of compliance risks each—has never been a worse idea. Considering the underlying drivers and forces that create risk is essential. Taking a proactive approach to knowing what our various business units are doing has never been more important.

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<sup>1</sup> Federal Trade Commission, *Featuring Online Customer Reviews: A Guide for Platforms*, January 2022, [https://www.ftc.gov/system/files/documents/plain-language/1006a\\_featuring-online-customer-reviews-508\\_0.pdf](https://www.ftc.gov/system/files/documents/plain-language/1006a_featuring-online-customer-reviews-508_0.pdf); Federal Trade Commission, *Soliciting and Paying for Online Reviews: A Guide for Marketers*, January

2022, [https://www.ftc.gov/system/files/documents/plain-language/1007a\\_soliciting-and-paying-for-online-reviews-508\\_0.pdf](https://www.ftc.gov/system/files/documents/plain-language/1007a_soliciting-and-paying-for-online-reviews-508_0.pdf).

215 U.S.C. § 45b.

3 “Endorsements, Influencers, and Reviews,” Federal Trade Commission, accessed March 4, 2022, <https://www.ftc.gov/tips-advice/business-center/advertising-and-marketing/endorsements%2C-influencers%2C-and-reviews>.

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