

RULE MAKING PROCEEDING  
Project No. P214504  
Washington, D.C. 20507

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TRADE REGULATION RULE ON THE USE OF : RECOMMENDED DECISION  
CONSUMER REVIEWS AND TESTIMONIALS : May 8, 2024

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APPEARANCES: Michael Atleson for the Federal Trade Commission,  
Bureau of Consumer Protection

Kathryn Dean for Fake Review Watch

Ben B. Beck for a group of academic researchers (“the Researchers”)

Lartease M. Tiffith for the  
Interactive Advertising Bureau

BEFORE: Rulshe4TJJeek.91 -.91 -18ie4TJn1 -18g1 -18 co(vo- 2022) -1. c2)627,vose3-12 (e)4 002 T0.14 Twus.7  
e basis. Id. at 67425-26 nn.4-10.

Testimonials § 88 Fed. Reg. 49364 (July 31, 2023) (NPRM).<sup>1</sup> The proceeding is a so-called Magnuson-Moss rulemaking, authorized pursuant to Section 18 of the FTC Act, 15 U.S.C. § 57a,<sup>2</sup> which provides additional procedural steps beyond those of



In its comments in response to the NPRM, the IAB articulated three instances of what it argued were potential issues of disputed material fact. The FTC decided not to proceed with the proposed section to which one of the three related. 89 Fed. Reg. at 2528. As to the two remaining potential issues, the Hearing Notice summarily found that these comments did not raise disputed issues of material fact.<sup>7</sup> At the first hearing session, IAB reiterated its arguments that there are disputed issues of material act. In dismissing IAB's argument that compliance costs will not be minimal, the FTC stated that its "cost estimates in the NPRM are specific and based on empirical data." 89 Fed. Reg. at 2528. However, during the hearing, IAB presented additional support for its contention that costs would not be minimal. In particular, it provided specific evidence concerning the issue of costs that the proposed rule will impose on businesses. It noted that, in the PRA, the FTC assumed that, for a heightened compliance review by affected businesses, a large business would spend approximately eight hours conducting a one-time review at a cost of \$61.54 per hour (a total of \$492.32 per business) and a small business would spend one hour at a cost of \$33.23. 88 Fed. Reg. at 49386. The basis for these assumptions is unclear. IAB surveyed its member companies, of which eighteen responded, and found 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." IAB's survey and other evidence that was not before the FTC when it issued the Hearing Notice were sufficient to rise to the level of a bona fide dispute.

Thereafter, as noted above, the undersigned designated this issue of disputed material fact: Whether the compliance costs for businesses will be minimal. This issue is the more specific and quantifiable of IAB's proposed disputed issues of material fact and is "necessary to resolve" because the FTC is required to consider it under 15 U.S.C. § 57b-3(a) and 5 C.F.R. § 1320.5, respectively. See 16 C.F.R. § 1.13(b) (disputed issues of material fact must be "necessary to resolve").

An additional issue – unintended consequences<sup>8</sup> – proposed by IAB, does not raise an issue of specific fact; it is a general concern that would be difficult to test through cross-





