

UNITED STATES OF AMERICA
Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20507

RULE MAKING PROCEEDING
Project No. P214504

RULE ON THE USE OF CONSUMER REVIEWS : ORDER
AND TESTIMONIALS : March 15, 2024

The Federal Trade Commission (FTC) commenced this proceeding with a Notice of Proposed Rulemaking, *Rule on the Use of Consumer Reviews and Testimonials*, 88 Fed. Reg. 49364 (July 31, 2023) (NPRM). The FTC appointed the undersigned Administrative Law Judge to preside over the informal hearing in the proceeding, *Rule on the Use of Consumer Reviews and Testimonials*, 89 Fed. Reg. 2526 (Jan. 16, 2024) (Hearing Notice). A hearing session was held on February 13, 2024, at which the following interested persons appeared: Fake Review Watch; the Interactive Advertising Bureau (IAB); a group of academic researchers (The Researchers); and the FTC Bureau of Consumer Protection (BCP).

A second hearing session was held on March 6, 2024, to address the following disputed issue of material fact¹: “Whether the compliance costs for businesses will be minimal.” IAB and BCP appeared.² The undersigned admitted in evidence exhibits offered by IAB that consisted of details from two surveys of its membership. *Rule on the Use of Consumer Reviews and Testimonials*, Order (A.L.J. Mar. 6, 2024). A post-hearing schedule was set: post-hearing briefs by March 13, 2024, and responsive briefs by March 18, 2024. *Id.*

BCP and IAB filed their post-hearing briefs on March 13. IAB’s brief attached six exhibits. One of the exhibits is already in evidence. Three others display the questions and results from the two surveys in different formats than previously submitted but provide the same information contained in the admitted exhibits, and/or respond to questions raised by BCP at the March 6 hearing. The final

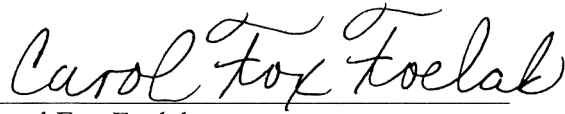
¹ See *Rule on the Use of Consumer Reviews and Testimonials*, Order (A.L.J. Feb. 23, 2024); FTC, Notice Regarding Requests Related to the Informal Hearing in Project No. P214504 (Feb. 7, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/notice_regarding_requests_relying_to_informal_hearing.pdf; see also 16 C.F.R. § 1.13(b)(1)(ii) (“The presiding officer may at any time on the presiding officer’s own motion or pursuant to a written petition by interested persons, add or modify any issues designated pursuant to § 1.12(a).”); See also *Rule on the Use of Consumer Reviews and Testimonials*, Orders (A.L.J. Feb. 28 & Mar. 4, 2024).

² Additionally, Fake Review Watch was present.

two exhibits are the emails IAB sent to its members requesting that they complete the surveys, which BCP also asked about at the hearing. On March 14 BCP filed a request that these attachments not be considered because they are new evidence and/or hearsay. BCP also requested that the portions of IAB's post-hearing brief containing new hearsay not presented at the hearing be excluded. IAB filed a response on March 14.

BCP's request will be denied, and neither the attachments nor the portions of IAB's post-hearing brief flagged by BCP will be excluded from consideration. In part, the exhibits merely restate information that has already been supplied. Additionally, hearsay evidence may be considered in any hearing before an Administrative Law Judge, including an informal hearing in a rulemaking proceeding like the instant proceeding.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Carol Fox Foelak". The signature is written in black ink and is positioned above a horizontal line.

Carol Fox Foelak
Administrative Law Judge