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How Policymakers Can Thwart the Rise of Fake Reviews

By Morgan Stevens and Daniel Castro | September 12, 2022

As businesses compete for customers in the digital economy, some use deceptive tactics to manipulate consumer reviews about their goods or services, or those of their competitors, including by posting fake reviews. These fake reviews can damage honest companies' reputation and deceive consumers into purchasing goods or services of substandard quality. To address this problem, federal and state policymakers should significantly strengthen enforcement actions against the perpetrators of fake reviews, work with the private sector to develop best practices to prevent and detect fake reviews, and enact legislation to protect honest reviewers.

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INTRODUCTION

Online consumer reviews play two important roles. First, reviews can inform consumers about the quality of products and services and the reputation of companies. Second, online reviews give companies information they can use to improve or modify their offerings. By receiving feedback from customers, companies can further develop products to match market trends, rectify any issues with their goods or services, and monitor the quality of their handiwork.

Consumers heavily rely on online reviews when determining whether to purchase a product or service. In 2021, 77 percent of U.S. consumers always or regularly read online reviews when browsing a local business.[1] And these reviews matter: Just 3 percent of U.S. consumers would patronize a business with an average of two or fewer stars (out of five).[2] Consumers depend on reviews to inform their purchases, and companies depend on reviews to entice consumers to choose their offerings over a competitor's.

The importance of online reviews has opened a new market for fake reviews that present a dishonest impression of companies, goods, and services. Companies may turn to employees or bad actors to fraudulently leave positive reviews to boost the image of their products, or negative reviews to discredit those of a competitor. These actions both hurt honest businesses and mislead consumers as to the quality of relevant goods and services.

To address this problem, policymakers should take the following steps:

First, the Federal Trade Commission (FTC) and state attorneys general should combine their investigations and heighten enforcement actions against the actors pursuing or posting fraudulent reviews. Penalties on companies that solicit fake reviews or those that post them should significantly outweigh any monetary benefits they expect to gain. Creating stronger enforcement would deter more parties from pursuing fraudulent reviews.

Second, the FTC should work with review websites, e-commerce sites, and consumer brands to develop best practices for combating fake reviews. Collaboration between these parties would allow all involved to better prevent and detect fraudulent reviews. In addition, the FTC should form a public-private partnership with private sector stakeholders to share data related to known bad actors to improve automated detection techniques and make it easier to identify bad actors using shared data from many platforms.

Third, the FTC should work with the private sector to create best practices for social media companies to address fake reviews. Bad actors frequently use groups on social media to coordinate posting fake reviews. Social media companies could use the best practices as a guide on how to identify and remove more fraudulent activities. Further, smaller social media companies that may not have the same resources as those available to larger organizations could use the best practices to stem the proliferation of fake review offerings on their platforms before bad actors establish themselves.

Finally, policymakers should enact legislation to protect consumers who leave honest reviews from lawsuits (a type of lawsuit known as a strategic lawsuit against public participation, or SLAPP). In pursuit of positive online recommendations, companies often retaliate against consumers who leave negative reviews of their goods or services. Laws protecting consumers from such actions would preserve the integrity of their reviews and ensure that reviews of goods and services remain reflective of their quality.

WHY ONLINE REVIEWS MATTER

Reviews have always played a role in consumers' shopping behavior. Before the Internet, many companies relied on word of mouth, testimonials in advertising, or trusted reviews in the media, such as from a magazine or newspaper columnist or guidebook, to provide consumers with confidence in the quality of their products and services or to bolster their brands' reputation. With the Internet, many platforms emerged to allow consumers to share their direct feedback, allowing users to harness the "wisdom of the crowd" in making purchasing decisions. Indeed, researchers at the University of Baltimore and CHEQ, a software company based in Israel, determined that online reviews affected $3.8 trillion of global e-commerce revenue in 2020.[3]

An online review provides consumers with an opinion about a good or service from a past customer.[4] Consumers' trust in online reviews can affect their decision to purchase a product or service, with 49 percent of American consumers trusting reviews as much as recommendations from friends and family, and another 28 percent trusting reviews as much as articles written by topic experts.[5] Further, reviews can offer a different perspective than that of the seller's description—which may be exaggerated or embellished for the sake of acquiring sales—and provide a more relevant view of the eventual purchase.[6] Having access to reviews can ultimately sway a consumer's purchase decision more than the product listing itself can. In a 2014 study, researchers at the University of Texas at Arlington found that online reviews have a significant impact on sales elasticities.[7]

Further, reviews have become increasingly important for businesses and e-commerce platforms too.[8] Businesses rely on consumer reviews to understand market reception to their goods or services.[9] Unhappy consumers may reveal inconspicuous issues with a business's offerings and allow for improvement. Online reviews can then inform business operations to ensure market growth. In a 2012 study, researchers examined the impact of online reviews on new products on Amazon.com and found that the number and quality of online reviews shortly after a product's launch can change its market outcome.[10]

Finally, online reviews affect e-commerce sites, including online retailers and marketplaces. Many online retailers do not manufacture or sell their own goods but instead sell products from other brands, and online marketplaces serve as a platform for sellers and buyers to interact. Consumers are more likely to shop on e-commerce sites they can trust.[11] Online reviews allow consumers to make more-informed purchases than would otherwise be possible and establish this level of trust.[12] Thus, online reviews increase the chance that consumers will return to a certain e-commerce site.

TYPES OF REVIEWS

Online reviews can take multiple forms.[13] Most websites with consumer reviews offer users the opportunity to rate a business, purchase, or experience on a numerical scale. Others allow customers to leave written comments as well. When customers can elaborate in their response, written reviews can range from one-word answers to detailed feedback about the experience with a product or service, such as the condition of the product when they received it or its longevity. Some sites also allow consumers to leave photo or video reviews as well. And sites often aggregate reviews, such as by displaying a certain number of stars.[14]

Consumers can also leave reviews outside of e-commerce or retail websites. Often, these reviews occur on social media platforms when users post their opinions about a good or service there. Users can post these reviews with any amount or type of information they wish to add. As such, the reviews may reflect the format, such as a short video or set of images, of the particular platform.[15]

Reviews can focus on a variety of subjects. Some reviews describe a business. For example, some reviewers on sites such as Yelp or Google may choose to review a restaurant without mentioning a particular dish or experience, whereas others may hone in on a specific part of their meal. These sites then display an aggregated review for the entire establishment regardless of whether individual reviews contain such encompassing information.

Other reviews focus on a specific product or service. These reviews are commonly found on retail and e-commerce websites, where customers typically describe individual purchases rather than reflect on a business as a whole. Consumers can similarly provide reviews for professional services such as tax preparation or medical care. The content of these reviews can focus on the individual providing the service or more broadly on the establishment where the service is being provided.

Some retailers and platforms allow consumers to prove the veracity of their review by verifying that they have purchased a good or service they are reviewing. For example, Amazon tags reviews with a verified purchase label if it has determined that the consumer writing the review purchased the product and did not receive a deep discount for it.[16] However, other retailers offer all website visitors the opportunity to leave a review for a product. For example, Nike does not require its retail website's visitors to leave an accurate name or otherwise verify their purchase when leaving a review. While its terms of service require posts to be accurate, a lack of further protective measures renders the review process open to any posts.[17]

Some websites enable further verification by requiring users to leave an identifying piece of information with their review.[18] For example, Airbnb requires guests to provide their full name when booking a stay.[19] This name then appears in reviews left on the booking's webpage, offering future visitors the opportunity to associate the review with a person, instead of a random username. However, the same is not true for many websites, where visitors can leave reviews under a cloak of anonymity.

Finally, some websites allow visitors to peruse customers' past reviews. For example, eBay customers and sellers can allow others to see reviews they've received and posted.[20] In fact, the platform restricts selling capabilities if customers choose to make their reviews private. By enabling customers to see past reviews, eBay offers platform visitors the opportunity to verify the authenticity of reviews and ensure that reviewers are not participating in suspicious or deceptive practices.

TYPES OF REVIEW WEBSITES

The interests of the owners of online review sites can vary. Some sites, such as Google, Yelp, and TrustPilot, strive to be a neutral platform for other businesses. Their primary interest is in convincing consumers that the reviews on their site are trustworthy in order to gain web traffic so they can sell online advertising or marketing tools to businesses. They have little incentive to manipulate reviews for a particular business because they earn revenue even when customers do not make a purchase. Instead, these sites strive to maintain their credibility as a crowdsourced review platform reflective of consumer opinion. Other sites may also strive to be a trusted intermediary; however, they do have a financial interest in whether consumers make a purchase. Such sites earn commissions from affiliate links, booking fees, or other payments for referrals. For example, many hotel booking sites, such as TripAdvisor, Expedia, and Priceline.com earn revenue when consumers make a purchase. While they may have some incentives to use reviews to steer consumers to purchases from which they would make more revenue, these sites also have an incentive to maintain their credibility as a trusted intermediary to ensure repeat customers. Indeed, e-commerce sites that sell third-party goods have similar incentives (e.g., to use reviews to steer consumers to products with higher profit margins), but they also have an incentive to maintain the trust of their users over time. Other review sites, such as home services sites Angi (formerly Angie's List), HomeAdvisor, and Thumbtack, earn revenue by selling leads to businesses. These review sites need to maintain their trustworthiness to attract consumers and remain a valuable source of lead generation for businesses.

However, e-commerce sites that sell their own brands—either next to products from other brands or on sites dedicated to their own products—face different incentives. In this case, the e-commerce site may be more interested in maintaining a positive view of its brand or particular products and have stronger incentives to hide unflattering reviews that may cause consumers to avoid purchasing its products. In particular, e-commerce sites owned and operated by the same brand they are selling (e.g., fashion brands, beauty brands, luggage brands, etc.) face little oversight for the accuracy of their user reviews and may have a strong incentive to manipulate results.

A number of social media platforms allow users to leave reviews, either on a public page of a brand or as comments on posts. Many companies interact with their consumers on social media platforms by posting about their products or services or asking public figures to do the same in a sponsored review post. Both present consumers with the opportunity to comment on the companies' offerings, with various moderation tools available to the companies to remove unwanted reviews or posts.

Finally, some websites profit from consumers leaving reviews. For example, the Better Business Bureau (BBB) provides companies with a grade according to a range of factors, including consumer reviews. They then sell membership models to companies that allow them to display BBB's logo and their grade to consumers. These models make up the majority of BBB's revenue, thus providing the website a massive incentive to pursue positive relationships with companies. A *CNNMoney* investigation found that BBB is likely to be more responsive to companies who have purchased a membership model by offering several chances to respond to negative comments or appease customers with nothing more than a good faith effort.[21] The same is not true for companies that have not purchased a membership.

The number and content of reviews on platforms depends on their industry and the review features available to consumers.[22] Some platforms, such as Yelp, offer consumers the opportunity to leave reviews for a wide range of companies and service providers and thus receive a multitude of reviews, including for restaurants, attractions, stores, and more. By the end of 2021, the company had received more than 220 million reviews and ratings, making the platform a considerable source of information for consumers.[23] Others, such as TripAdvisor, receive more narrow reviews tailored to specific industries such as the travel industry. In February 2022, TripAdvisor reached a milestone of one billion travel reviews and opinions left on its platform.[24] The company, which offers consumers the opportunity to write long-form reviews of travel accommodations, attractions, and restaurants, first reached 500 million reviews in 2017.

TYPES OF FAKE REVIEWS

Given the impact reviews can have on consumer purchases, companies have a strong incentive to ensure that their products and services receive good reviews. While many companies seek to gain these reviews by delivering high-quality products and services and cultivating a good relationship with their customers, others may seek to cheat the system by soliciting fake reviews that artificially inflate the positive perceived value of their offerings or hurt that of their competitors. Fake reviews can take several forms.

Bought Fake Reviews

Companies can buy or trade positive reviews from others with a vested interest in fake review schemes such as other companies interested in swapping reviews or individuals or companies offering to post fake reviews for compensation. Unscrupulous sellers often turn to social media platforms to exchange positive reviews with other sellers or bribe others with refunds to leave positive reviews. Researchers with the consumer rights group Which? found thousands of sellers using Twitter to hunt for positive reviews, with some sending spreadsheets of thousands of products to review in exchange for full or partial refunds.[25] Another study by the same group found Facebook groups operating similar schemes with hundreds of thousands of members.[26] These members either trade reviews on products or receive a commission for acquiring fake reviews for their products from others.

Moreover, companies can sell fake reviews or reputation management services. One company, AMZTigers, a marketing consultancy firm based in Germany, offers fake reviews from its worldwide network of 62,000 individuals for 15 euros per review or, when purchased in bulk, 1,000 reviews for 9,000 euros.[27] Another, Bury Bad Reviews, a U.S.-based public relations firm, offers reputation management services that include burying negative reviews.[28]

Both the importance of online reviews and the potential for misinformation about a company’s products begs further effort by consumers and companies alike to protect online reviews from such fraud.

Undisclosed Reviews

Some companies pay celebrities or influential individuals to advertise their goods or services publicly. Such agreements can take the form of a one-time payment, revenue or equity sharing, free or discounted products, or licensed endorsement deals in exchange for promoting the good or service.[29] These endorsements violate the FTC’s rules on truth in advertising if they are conducted in a manner that makes consumers think the endorser’s opinion is their own instead of that of the original company.[30] According to FTC guidance, endorsements such as these must reflect the honest opinion of the endorser.[31] Further, any endorsements made on social media need to reflect the connection between the advertiser and the company, often with a phrase such as “#Ad” or

“Sponsored” that can demonstrate the agreement between the two.[32] However, the FTC has pursued cases against companies that have failed to disclose the nature of their relationship with advertisers or influencers on social media. In 2016, the agency settled with the national retailer Lord & Taylor for failing to include language in advertisements made by 50 social media influencers.[33]

Employee Fake Reviews

Some businesses have their employees post fake reviews, even for products they have never used. These may be positive reviews on their own products or negative reviews for their competitors’ products.

In 2019, the FTC settled with skincare brand Sunday Riley after accusing the company of requiring employees to post positive reviews on Sephora’s website and dislike negative reviews.[34] These practices flooded the brand’s reviews with inaccurate assessments of their products and artificially inflated Sunday Riley’s standing on the website.

More recently, the FTC settled with LendEDU, a U.S.-based online marketplace for financial products, after it found that over 90 percent of LendEDU’s reviews on TrustPilot had been written by employees, friends, family members, or other individuals with a personal connection to the company.[35] LendEDU had to pay a fine of $350,000 as a result of its deceptive practices.

Finally, a *Wall Street Journal* investigation in 2019 found that Guaranteed Rate, Inc., a U.S.-based residential mortgage company, required employees to post positive reviews of their employment on Glassdoor, a U.S.-based website where former and current employees can review their workplaces. Guaranteed Rate’s rating on Glassdoor rose from 2.6 percent to 4.1 percent in the span of just a few months. In a written statement, Guaranteed Rate’s CEO admitted to requiring employees to post positive reviews because he believed that the company’s rating was not reflective of employees’ experiences. Further, the investigation found that several companies, including Clorox and Brown-Forman Corp., experienced similar spikes in positive reviews of their workplaces.[36]

Political and Social Activism

Individuals can also leave fraudulent reviews of companies associated with controversial characters in the name of social or political activism. For example, several consumers across the country left fake reviews of Four Seasons Total Landscaping on Yelp after the Trump campaign hosted an event there. The posters, whose locations did not match the same city or state as Four Seasons’, clearly did not visit the location or patronize the business. As such, their reviews left a false impression of the store.[37]

Fortunately, the company turned their newfound fame into a profitable business model, even selling T-shirts that spoofed the situation.[38]

However, politically motivated reviews often result in negative outcomes for business owners. Shortly before the 2016 presidential election, a pizzeria in Washington, D.C., known as Comet Ping Pong became the source of alt-right ire when extremist news organizations claimed that former secretary of state Hillary Clinton was running a child-trafficking ring out of the location. The company received so many negative reviews that Yelp had to block the comments section of its page.[39] The pizzeria continues to receive threats due to the online misinformation, including an active shooter and arsonist having targeted the premises.[40]

Angry Customer

In an indication of the power of online reviews, consumers can threaten to leave negative reviews in an effort to get a product or service for free.[41] Such tactics essentially extort businesses for their goods or services. This phenomenon is particularly prevalent on social media, where users can post an embellished account of their interactions with the company in order to publicly shame the business into providing the users' original ask.[42]

Airbnb considers extortion or incentivization to be a misuse of the review system and clearly prohibits guests from threatening a negative review to receive a refund, additional compensation, or a reciprocal positive review, as well as prohibiting hosts from requiring guests to leave a positive review in exchange for a refund or reciprocal review or offering free or discounted stays in exchange for revising a review.[43]

ADDITIONAL SOURCES OF MISREPRESENTATION

In order to cultivate a positive image of their goods or services, some companies may choose to suppress negative reviews or pursue customers who have left a negative review online and intimidate, harass, or bribe them into removing it. While their efforts do not culminate in the posting of a fake review, the absence of negative reviews can similarly mislead consumers about the quality of companies' goods or services.

Suppressing Negative Reviews

Some businesses may attempt to suppress negative feedback about their goods or services. In this effort, they may delete negative reviews or flag only negative reviews for removal.

Moreover, businesses may engage in review gating, a practice in which businesses ask only satisfied customers to leave reviews.[44] For example, a business may solicit feedback privately and direct customers with positive feedback to a public forum, while sending customers with negative feedback a private form to express their complaints.[45]

Lawsuits Over Negative Reviews

Businesses occasionally seek legal action over negative reviews posted on online platforms. For example, a farmer in Kansas left a three-star review for a theme park attraction on TripAdvisor, writing that it was a decent experience but that he would have been disappointed had the tickets been more expensive. The park's owner threatened and later filed a lawsuit over the review, claiming that it was libelous and defamatory. The court ultimately dismissed the case in a summary judgment.[46] The case is one of many examples of companies taking or threatening legal action to intimidate customers into removing negative reviews.[47]

Another consumer left a negative review of an animal hospital after its staff was unable to find a surgeon for his dog and failed to notify him in time to rush the pet to another clinic. The hospital sued him for defamation, alleging that his comments were false, malicious, and reckless. After a year-long court battle, he was left with $26,000 in legal fees, which far exceeds his annual income of $20,000.[48] A consumer in New York posted an online review of her doctor’s appointment after her doctor had billed her insurance incorrectly. She removed her review after her doctor sued her; however, her doctor still pursued the case and asked for over a million dollars in damage.[49]

These cases are examples of SLAPPs, which effectively silence critics by threatening them with high legal fees, lengthy court cases, and similar nuisances.[50] By invoking the court system, companies can ensure that online reflections of their goods or services remain either neutral or positive instead of revealing the negative nature of some consumers’ experiences, even when they are accurate.

Harassing Customers

Some companies harass customers who leave negative reviews until the customer removes or revises their comment to inaccurately reflect positive sentiments. Auxten, a kitchen goods seller on Amazon, repeatedly offered to refund and pay off customers who left negative reviews if they would remove those reviews.[51] Amazon later removed the product and the seller from its platform, but other oil sprayer reviews reflect similar actions taken by other sellers.

Paying to Silence Critics

If a company receives a bad review for its good or service, it can contact the customer and offer to pay them to remove it. In a 2016 study, researchers at the University of Central Florida, Kent State University, and Case Western Reserve University found that consumers are more likely to consider extremely negative reviews more useful than extremely positive reviews and suggested that managers take steps to address negative reviews before they deter future customers.[52] Paying a customer to remove a negative review serves as an example of such a step. However, the measure is prohibited by most platforms.[53]

SCOPE OF THE PROBLEM

Given the nature of online reviews, it is unclear how many fake reviews exist on the Internet.[54]

Researchers at the Massachusetts Institute of Technology and Northwestern University conducted a study analyzing reviews left for a major private-label apparel company.[55] The team found that around five percent of reviews were left by customers who did not purchase a product. These fake reviews were overwhelmingly negative, which can generate lower market ratings and less consumer demand for the product.

In a 2016 study of Yelp reviews, researchers at Harvard curated a dataset of reviews for restaurants in Boston.[56] They found that Yelp flagged 16 percent of reviews and filtered them out. At the time, the platform contained more than 70 million reviews of companies across the country. While the researchers did notice that the algorithm tended to flag false positives and negatives, 16 percent of 70 million reviews implies that users had posted over 11 million fake reviews on the platform. In another study, researchers at the Hong Kong Polytechnic University and Harbin Institute of Technology in China analyzed 41,572 reviews on TripAdvisor and found that around 20 percent of them were suspicious.[57]

In 2008, researchers at the University of Illinois Chicago analyzed 5.8 million reviews and 2.1 million reviewers on Amazon.[58] They found that 60 percent of reviews were five stars and another 20 percent were four stars, with many of the analyzed reviews appearing to be duplicates or near duplicates posted by the same reviewer under different products or by different reviewers for one product. Further, the team estimated that about one-third of the analyzed reviews were fake.

Given the continued development of the Internet and e-commerce industry, the problem of fake reviews has likely grown bigger since that work. For example, in 2017, researchers at the University of Chicago created an AI system that can write reviews on online platforms.[59] In tests, the AI-generated reviews were nearly indistinguishable from reviews written by humans.[60] Their AI system serves as an example of the growth of misinformation online, especially misinformation created by AI systems or bots.[61] As more services and businesses go online, consumers may start to see more AI-generated content—including consumer reviews.

Further, though the FTC has always worked with advertisers to ensure the truthfulness and accuracy of their work, the agency has recently taken special notice of fake reviews. In October 2021, the FTC sent a notice to over 700 companies warning about fake online reviews and misleading advertisements.[62] The list of companies included social media platforms, online retailers, advertising agencies, and other organizations associated with advertising practices. This notice serves as the best guidance from the FTC on the scope of the problem.

However, fake reviews harm more than consumer trust and business operations. In a recent study, an international team of researchers asked 10,000 consumers in the United Kingdom to peruse an online platform similar to Amazon and choose between five similar products with the same price and varying qualities.[63] The researchers showed some consumers informative product reviews and others informative product reviews in addition to reviews with misleading characteristics, such as inflated star averages or overly positive content for products of lower qualities. They found that consumers who saw fake reviews were more likely to choose products of lower quality. In fact, consumers who saw both inflated star averages and unnoticeably fake written text on products were 13 percent more likely to choose these products than consumers who saw informative reviews. Further, the researchers estimated that the fake reviews caused consumers to overpay for products by 12 cents for every dollar.

On a larger scale, in a 2021 study, researchers at the University of Baltimore and CHEQ found that fake reviews likely influence billions in consumer spend. In 2020, global revenue from the e-commerce industry reached $4.28 trillion.[64] Around 89 percent, or $3.8 trillion, of global e-commerce revenue is affected by online reviews.[65] Using transparency reports from review websites such as Yelp and TrustPilot, the team estimated that around four percent of online reviews are fake. Thus, around four percent of global e-commerce revenue, or $152 billion, was affected by fake reviews.[66]

ATTEMPTS TO ADDRESS THE PROBLEM OF FAKE REVIEWS

Both the industry and government have taken steps to address the problem of fake reviews.

Industry

To be clear, e-commerce companies, review websites, and social media platforms have taken action to remove fake reviews and punish the writers behind them. As one of the largest e-commerce companies in the world, Amazon receives millions of reviews every year. The company has a robust program to identify and remove fake reviews and hold those responsible accountable. For example, Amazon adds a Verified Purchase label to reviews written by a customer who has purchased the product on its platform. The company uses machine learning to analyze millions of reviews every week; it removed over 200 million fake reviews before they were posted in 2020.[67] Its review policy also states that it blocks sellers accused of fake review schemes and pursues legal action against accounts found to be in violation of its terms and services.

In August 2022, Amazon sued Auction Sentinel, an online business that sold fake reviews to Amazon sellers, and its owner, alleging that the defendants violated the Washington Consumer Protection Act and provisions of Amazon's contract. Auction Sentinel's website offered a range of fake review packages, including a basic package of 10 reviews for one store and an enterprise package of 100 reviews for six stores; however, after news of the lawsuit broke, the company posted a disclaimer stating that it does not sell product reviews. The case represents the first time Amazon has sued a fake reviews broker.[68]

Review websites such as TripAdvisor also experience fake reviews and have taken similar steps to combat them. TripAdvisor allows individuals to post reviews and guidance about travel spots for other travelers to make decisions about where to visit. The company uses a review analysis system and content moderation team to evaluate reviews for truthfulness and community standards violations. According to its 2021 TripAdvisor Review Transparency Report, the company received more than 26 million reviews in 2020 and rejected over 900,000 after they were determined to be fraudulent.[69]

Further, the issue of fake reviews is not limited to traditional review websites or e-commerce platforms. Valve, a U.S.-based video game company, runs a platform for consumers to develop and access video games. After few of its users were found to be manipulating product codes in a manner that artificially generated positive reviews, Valve added new features to read and filter reviews and changed review scores to no longer reflect reviews associated with the codes.[70]

Finally, companies without review programs have taken similar steps to stem the organization of fake review schemes on their platforms. For example, many responsible for fake reviews turn to social media platforms to offer their services or request reviews from the Internet at large. A number of groups on Facebook exist for this purpose, though the company bans both groups and content dedicated to fraudulent activity such as fake reviews. After an investigation brought by the U.K. Competition and Markets Authority, Facebook removed over 16,000 groups used to buy and sell fake reviews and pledged to make such groups more difficult to find.[71] In the beginning of 2020, social media companies took an average of 45 days to remove fraudulent groups identified and reported by Amazon;

however, by the beginning of 2021, social media companies took an average of only five days to remove groups.[72]

Government

Congress took an important step to combat fake reviews when it passed the Consumer Review Fairness Act in 2016.[73] The law renders form contracts void from inception if one party is prohibited or restricted from offering a truthful review of another party's goods, services, or conduct, or is penalized for doing so.[74] Essentially, the law prohibits companies from including antidisparagement clauses in service contracts.

However, while policymakers can employ several other legal or legislative maneuvers to combat the spread of fake reviews, their efficacy is limited by a lack of cohesion. Federal efforts to combat fake review schemes are led by the FTC, which has broad jurisdiction to enforce consumer protection measures, including any efforts to engage in unfair or deceptive trade practices and violate its truth in advertising standards. This includes the use of fake reviews to deceive customers about the quality of products or services. In pursuit of its objectives, the FTC has brought several cases against companies engaged in fake review schemes. In 2011, the FTC settled a case against Legacy Learning Systems, a guitar-lesson DVD seller, when the latter was accused of paying affiliates to promote its DVDs on the Internet.[75] The agency claimed that such efforts resulted in misleading reviews, as affiliates were not instructed to disclose the arrangement. Later, in 2019, the FTC brought its first case involving the use of paid fake reviews on an independent retail website when the agency settled with Cure Encapsulations after alleging that the company paid a third-party website to write and post positive reviews on its Amazon page.[76] Further, in late 2021, the FTC sent a Notice of Penalty Offenses to 700 companies warning about steep civil penalties if the companies make use of fake reviews or misleading endorsements.[77] Continuation of any such efforts by these companies could result in fees of $43,792 per violation.

The FTC has also taken action against companies that censor negative reviews. In January 2022, the agency settled with fast-fashion retailer Fashion Nova after alleging that the company blocked negative reviews from posting to their website. The FTC required Fashion Nova to pay over $4 million as part of the settlement.[78]

More recently, the FTC announced plans to revise its Endorsement Guides to tighten guidelines on positive fake reviews or the suppression of negative reviews.[79] The agency has asked for public comment and plans to host an event on some of the proposed changes in October 2022. Along with the announcement, the agency released a notice with a number of clarifications on fake reviews. First, in response to the Fashion Nova settlement, the FTC added a new principle that advertisers should not misrepresent consumer opinions of their goods or services when editing, procuring, or organizing reviews. Second, the agency warned social media companies that many of their disclosure tools do not effectively enable advertisers to comply with advertising guidelines and could therefore leave them open to liability. Finally, the FTC clarified that virtual, fictional characters and tags made in social media posts fall under the guidelines.

Other federal agencies have similarly warned companies about posting fake reviews or laundering honest reviews. The Consumer Financial Protection Bureau recently issued a notice that fake review schemes may violate the Consumer Financial Protection Act by restricting the amount of information consumers can use when deciding between financial products and thereby effectively reducing competition in the marketplace.[80]

Should a company receive either a negative fake review that draws consumers to a competitor's business or injury from positive fake reviews left for a competitor's business, it can bring action against the perpetrators through Section 43(a) of the Lanham Act.[81] Under this law, plaintiffs must show a false or misleading representation of fact in connection with goods or services in commercial advertising that affects interstate commerce, deceives consumers, is material, and is likely to injure the plaintiff. However, courts have taken varied approaches in cases related to the Lanham Act, with plaintiffs in certain jurisdictions unable to wholly rely on its provisions for relief.[82]

State policymakers approach fake reviews in a similar manner to how the U.S. federal government does. Every state has laws similar to the federal government that prohibit deceptive business practices and enable punitive actions against perpetrators of fake review schemes. For example, in 2013, the New York state attorney general launched a fake yogurt shop to lure perpetrators of fake review schemes into offering their services on review platforms such as Yelp and Google.[83] Its investigation uncovered 19 companies producing fake reviews, resulting in an agreement to stop writing such reviews and pay more than $350,000 in fines. However, further action is necessary to better protect consumers from fake reviews.

RECOMMENDATIONS

Given the consequences of fake reviews, it is imperative that policymakers take steps to address their proliferation.

First, state attorneys general should partner with other state officials and the federal government to better combat the spread of fake reviews. While some state attorneys general have taken successful enforcement actions in the past, the scope of these efforts has been somewhat limited. Their efforts likely could have located and stopped more companies engaged in the production of fake reviews if they had worked with a wider pool of officials. Other states' officials and the FTC could have provided more resources and information for the investigation. Moving forward, state attorneys general and the FTC should partner to better identify and stop fake reviews. Further, federal and state officials should heighten enforcement actions against companies and individuals participating in fake review schemes. By increasing the likelihood of penalties, greater enforcement actions and subsequent punishments should deter bad actors from engaging in these schemes.

Second, the FTC should work with review websites, e-commerce sites, and consumer brands to develop voluntary best practices for preventing and detecting fake reviews. In addition, the FTC should form a public-private partnership between private sector stakeholders and enforcement agencies to share information on suspected fake review schemes. The anonymity of the Internet allows those trafficking in fake review to target multiple businesses and platforms repeatedly while escaping traditional detection methods. The creation of a partnership could help companies and enforcement agencies share what information they have to improve automation detection methods and collect information needed to take enforcement action against perpetrators.

Third, the FTC should enhance its guidelines for social media companies, e-commerce platforms, and other businesses or consumers affected by fake reviews to include best practices. The agency already has guidance on its website about identifying and removing fake reviews, but the continued development of new websites, technologies, and industry trends requires an evolving set of guidelines. The FTC should enact and regularly update best practices for businesses and consumers to follow. Further, the agency should partner with the private sector to receive input on the most effective and worthwhile practices to enact.

Finally, Congress should enact legislation to protect consumers against SLAPPs. Companies file SLAPP lawsuits against consumers who post negative reviews about their goods or services in an effort to intimidate them into removing the review.[84] Many Americans are unable to afford legal representation over the course of a lengthy court case, so these lawsuits are an effective tool to force consumers into removing their honest thoughts about a company. As of August 2022, 31 states and the District of Columbia have enacted laws against SLAPP lawsuits; however, their provisions vary by jurisdiction.[85] These inconsistencies have created an ineffective patchwork that leaves too many consumers vulnerable to threatening lawsuits. Congress should enact a national anti-SLAPP law that protects consumers' First Amendment rights, allows courts to award reasonable costs and attorneys' fees, and guarantees a quick hearing and a stay of discovery unless good cause is shown.

CONCLUSION

Fake reviews can deceive consumers and inaccurately reflect the quality of businesses' goods and services. To protect both consumers and businesses, state and federal policymakers should work with the private sector to identify and take enforcement actions against perpetrators of fake reviews and safeguard consumers' ability to provide truthful feedback about their purchases.

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