



January 9, 2023

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex B)  
Washington, DC 20580

Re: Reviews and Endorsements ANPR, P214504

Truth in Advertising, Inc. (“TINA.org”) welcomes the opportunity to submit the following in conjunction with the Federal Trade Commission’s (“Commission,” “Agency” or “FTC”) November 8, 2022 request for comments regarding whether to commence a rulemaking proceeding to address certain deceptive or unfair uses of reviews and endorsements.<sup>1</sup> TINA.org supports the FTC’s commencement of such a rulemaking, and reincorporates by reference its June 22, 2020<sup>2</sup> and September 26, 2022<sup>3</sup> Comments to the FTC regarding the Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising.

TINA.org is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, independent experts, synergy organizations, self-regulatory bodies and government agencies to advance countermeasures that effectively prevent and stop deception in our economy. At the center of TINA.org’s efforts is its website, [www.tina.org](http://www.tina.org), which provides information about common deceptive advertising techniques, consumer protection laws, and alerts about specific deceptive marketing campaigns—such as nationally advertised “Built in the USA” vans manufactured abroad;<sup>4</sup> pillows and essential oils falsely marketed as being able to treat chronic diseases;<sup>5</sup> and a delivery meal kit service that falsely advertises free meals.<sup>6</sup>

The website functions as a clearinghouse, receiving consumer complaints about suspicious practices, which TINA.org investigates and, when appropriate, takes up with businesses and regulatory authorities. The website is also a repository of information relating to consumer protection lawsuits and regulatory actions. Through its collaborative approach and attention to emerging issues and complexities, TINA.org has become a trusted source of expertise on matters relating to consumer fraud, and has testified before Congress on issues related to consumer protection, deceptive marketing and economic justice.<sup>7</sup>

TINA.org regularly draws on its expertise to advocate for consumer interests before the FTC and other governmental bodies and appears as amicus curiae in cases raising important questions of consumer protection law.<sup>8</sup> Since its inception, TINA.org has filed legal actions against hundreds of companies and entities, published more than 1,300 ad alerts, written approximately 1,000 news articles, and tracked more than 4,000 federal class actions alleging deceptive marketing. Notably, since 2015, state and federal agencies have obtained more than \$250 million from wrongdoers based on TINA.org legal actions and evidence, and returned millions in ill-gotten gains to consumers.

For years, TINA.org has taken an active role in working to hold marketers accountable for campaigns that use deceptive reviews and endorsements. Specifically, TINA.org:

- has been at the forefront in identifying issues surrounding virtual, or CGI, influencer marketing, cataloguing a sampling of more than 250 posts by more than 25 virtual influencers collectively promoting more than 80 brands<sup>9</sup>;
- spearheaded an examination into the emerging use of AI-controlled avatar influencers, a deceptive marketing tactic flagged in TINA.org's April 2022 Complaint to the FTC regarding stealth marketing on the gaming metaverse platform Roblox,<sup>10</sup> and presented at various conferences, including a World Federation of Advertisers conference in May and an International Council for Advertising Self-Regulation conference in July;
- has sent several letters to companies and regulators regarding the use of fabricated testimonials<sup>11</sup>;
- has documented instances of consumer reviews written by agents of the promoted company, thereby artificially raising the company's star rating<sup>12</sup>; and
- has sent more than 140 warning letters and more than 25 complaints to regulators regarding the use of endorsements that misrepresent the experience with a product or service, including the almost universal use of false and unfounded earnings claims made by distributors in the direct selling industry to promote business opportunities (TINA.org has documented more than 11,000 examples of deceptive earnings claims used by MLM companies and their agents to recruit and retain distributors).<sup>13</sup>

As TINA.org's work makes clear, the use of fake reviews (as defined by the FTC<sup>14</sup>) has been and continues to be a serious and widespread issue.

Fake reviews are an insidious problem primarily because consumers have come to heavily rely on reviews in making their online purchasing decisions. Indeed, online reviews have become the key to success for many businesses. Most consumers trust online reviews,<sup>15</sup> and the vast majority of online shoppers read reviews before making a purchase.<sup>16</sup> Companies are obviously impacted by negative reviews.<sup>17</sup> And companies who improve their reviews experience an attendant increase in sales.<sup>18</sup> But products showing no reviews are also disadvantaged compared to similar products with reviews: Consumers are 270 percent more likely to buy a product with five-star reviews than with no reviews at all, a number that increases with higher-priced products.<sup>19</sup> Crucially, the

initial reviews for a product account for nearly all of the increase in purchase likelihood.<sup>20</sup>

The importance of online reviews has made them ripe for manipulation and deception. Without reviews, a new company can struggle to get off the ground, and an existing company may struggle to launch a new product. Companies are, therefore, incentivized to do whatever they can to generate early, positive reviews. Unfortunately, this has led to a proliferation of false and fake reviews – a deceptive marketing tactic that will only continue to flourish if not effectively reined in by regulators.

TINA.org supports the Commission’s commencement of a rulemaking proceeding to address fake reviews as such a proceeding would be in the public’s interest, particularly in the wake of the Supreme Court’s AMG Capital Management decision, as a rule will substantially improve the agency’s ability to combat and deter deception and unfairness in this area. As former Commissioner Chopra once noted, “Fake reviews distort our markets by rewarding bad actors and harming honest companies. The problem is growing, and the FTC should attack it.”<sup>21</sup>

Sincerely,



Bonnie Patten  
Laura Smith  
Truth in Advertising, Inc.

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<sup>1</sup> Trade Regulation Rule on the Use of Reviews and Endorsements, 87 Fed. Reg. 67424 (Nov. 8, 2022) (advanced notice of proposed rulemaking), <https://www.federalregister.gov/documents/2022/11/08/2022-24139/trade-regulation-rule-on-the-use-of-reviews-and-endorsements>.

<sup>2</sup> TINA.org’s June 22, 2020 Comment to the FTC regarding Endorsement Guides, P204500, <https://truthinadvertising.org/wp-content/uploads/2020/06/TINA.org-Endorsement-Guides-Comment.pdf>.

<sup>3</sup> TINA.org’s September 26, 2022 Comment to the FTC regarding Endorsement Guides, P204500, [https://truthinadvertising.org/wp-content/uploads/2022/09/9\\_26\\_22-TINA-Endorsement-Guide-Comment.pdf](https://truthinadvertising.org/wp-content/uploads/2022/09/9_26_22-TINA-Endorsement-Guide-Comment.pdf).

<sup>4</sup> TINA.org’s Mercedes-Benz Investigation, <https://truthinadvertising.org/brands/mercedes-benz>.

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<sup>5</sup> TINA.org’s MyPillow Investigation, <https://truthinadvertising.org/brands/mypillow/>;  
TINA.org’s doTerra Investigation, <https://truthinadvertising.org/brands/doterra/>;  
TINA.org’s Young Living Investigation, <https://truthinadvertising.org/brands/young-living/>.

<sup>6</sup> TINA.org’s HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>.

<sup>7</sup> Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic Before the Subcomm. on Consumer Prot. and Com. of the Comm. on Energy and Com., 117th Congress (Feb. 4, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/house-testimony-2021-summary-action/>; Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles Before the Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. of the Comm. on Com., Sci., & Transp., 117th Congress (Apr. 27, 2021), (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/senate-testimony-2021-summary-action/>.

<sup>8</sup> For example, TINA.org participated as amicus curiae in *AMG Capital Management, LLC v. Federal Trade Commission*. Brief of Amicus Curiae Truth In Advertising, Inc. In Support of Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, No. 19-508 (U.S. Dec. 7, 2020), [https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389\\_19-508%20brief.pdf](https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20brief.pdf). TINA.org also filed an amici curiae brief in *Federal Trade Commission v. Quincy Bioscience Holding Co., Inc.*, which reinstated a Section 13(b) suit against a business falsely marketing a dietary supplement to the elderly as clinically proven to improve memory. Brief of Amici Curiae Truth In Advertising, Inc. et al. in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm’n v. Quincy Bioscience Holding Co., Inc.*, 753 Fed. Appx. 87 (2d Cir. 2019) (No. 17-3745), <https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen-Amici-Curiae-brief.pdf>.

<sup>9</sup> TINA.org’s Virtual Influencers Database, <https://truthinadvertising.org/evidence/virtual-influencers-database/>.

<sup>10</sup> TINA.org’s April 19, 2022 Complaint Letter to the FTC regarding Deceptive Marketing on Roblox, [https://truthinadvertising.org/wp-content/uploads/2022/04/4\\_19\\_22-Complaint-to-FTC-re-Roblox.pdf](https://truthinadvertising.org/wp-content/uploads/2022/04/4_19_22-Complaint-to-FTC-re-Roblox.pdf).

<sup>11</sup> TINA.org’s March 11, 2014 Letter to Stansberry & Associates Investment Research, LLC regarding Deceptive Advertising, [https://truthinadvertising.org/wp-content/uploads/2016/02/3.11.14-ltr-to-Stansberry\\_Redacted.pdf](https://truthinadvertising.org/wp-content/uploads/2016/02/3.11.14-ltr-to-Stansberry_Redacted.pdf); TINA.org’s June 16, 2021 Complaint Letter to the FTC regarding Violations of Stipulated Order in *FTC v. Agora Financial, LLC, et al.*, Case No. 19-cv-03100, D. Md., [https://truthinadvertising.org/wp-content/uploads/2021/06/6\\_16\\_21-ltr-to-FTC-re-Agora-Order-Violations\\_Redacted.pdf](https://truthinadvertising.org/wp-content/uploads/2021/06/6_16_21-ltr-to-FTC-re-Agora-Order-Violations_Redacted.pdf) <https://truthinadvertising.org/brands/nourishlife-speak-lifetrients/>; TINA.org’s March 27, 2013 Complaint Letter to the FTC regarding Deceptive Advertising of SpeechNutrients speak, <https://truthinadvertising.org/wp-content/uploads/2016/02/3.27.13-letter-to-FTC-signed.pdf>; TINA.org’s March 27, 2013 Complaint Letter to the FDA regarding Improper Marketing of SpeechNutrients speak, <https://truthinadvertising.org/wp-content/uploads/2016/02/3.27.13-letter-to-FDA-signed.pdf>; TINA.org’s March 27, 2013 Complaint Letter to Illinois Attorney General regarding Deceptive Advertising of SpeechNutrients speak, <https://truthinadvertising.org/wp-content/uploads/2016/02/3.27.13-letter-to-Illinois-AG-signed.pdf>.

<sup>12</sup> See, e.g., *Five Reasons the BBB Shouldn’t Be Your Only Stop*, TINA.org, Feb. 25, 2020, <https://truthinadvertising.org/articles/five-reasons-the-bbb-shouldnt-be-your-only-stop/> (“As part

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of a 2019 TINA.org investigation into Utah-based MLM New U Life – which resulted in TINA.org filing a complaint with the FDA and FTC – TINA.org found that 80 percent of the company’s 5-star customer reviews on the BBB at the time, some 100 reviews, came during a one-week period in March 2019. Several of these ‘customer’ reviews admitted a connection to the company as a distributor for the MLM...”)

<sup>13</sup> TINA.org’s May 10, 2022 Comment to the FTC regarding Earnings Claims ANPR, R111003, <https://truthinadvertising.org/wp-content/uploads/2022/05/TINA.org-Comment-re-Earnings-Claims-ANPR-R111003.pdf>.

<sup>14</sup> Trade Regulation Rule on the Use of Reviews and Endorsements, 87 Fed. Reg. 67424 (Nov. 8, 2022) (advanced notice of proposed rulemaking), <https://www.federalregister.gov/documents/2022/11/08/2022-24139/trade-regulation-rule-on-the-use-of-reviews-and-endorsements>.

<sup>15</sup> See *The Power of Reviews and How Consumers Rely on Them to Make Purchases*, Apr. 20, 2019, <https://medium.com/@BBBNWP/the-power-of-reviews-and-how-consumers-rely-on-them-to-make-purchases-51fcbcebd376> (noting that 72 percent of consumers trust online reviews as much as personal recommendations); Greg Sterling, *Report: ‘Incentivized Reviews’ Effective for Consumers and Brands*, Search Engine Land, Nov. 9, 2018, <https://searchengineland.com/report-incentivized-reviews-effective-for-consumers-and-brands-307919> (noting that “88 percent of US online shoppers believe ratings and reviews to be ‘extremely or very’ important when purchasing a high-consideration product. That number drops to 42 percent for low consideration items.”) (internal quotation marks omitted).

<sup>16</sup> See Kerry Bridge, *How to get more reviews for your business*, Bazaarvoice, Oct. 26, 2022, <https://www.bazaarvoice.com/blog/how-to-get-more-reviews-for-your-business/> (noting that 70 percent of shoppers use reviews to evaluate similar products before buying); Semila Fernandes et al., *Measuring the impact of online reviews on consumer purchase decisions – A scale development study*, 68 J. of Retailing and Consumer Servs, 1, (Sept. 2022), <https://www.sciencedirect.com/science/article/abs/pii/S096969892200159X> (noting that 70 percent of customers refer to online reviews before finalizing their purchase decisions); Tao Chen et al., *The Impact of Online Reviews on Consumers’ Purchasing Decisions: Evidence From an Eye-Tracking Study*, *Frontiers Psych.* (June 8, 2022), <https://www.frontiersin.org/articles/10.3389/fpsyg.2022.865702/full> (noting that nearly 60 percent of consumers browse online product reviews at least once a week and 82 percent of e-consumers read product reviews before making shopping choices); Jamie Pitman, *Local Consumer Review Survey 2022*, BrightLocal, Jan. 26, 2022, <https://www.brightlocal.com/research/local-consumer-review-survey/> (noting that “[m]ore consumers are reading online reviews than ever before. In 2021, 77% ‘always’ or ‘regularly’ read them when browsing for local businesses (up from 60% in 2020).”); Erica Turner & Lee Rainie, *Most Americans rely on their own research to make big decisions, and that often means online searches*, Pew Research Center, Mar. 5, 2020, <https://www.pewresearch.org/fact-tank/2020/03/05/most-americans-rely-on-their-own-research-to-make-big-decisions-and-that-often-means-online-searches/> (noting that “[a]n overwhelming majority (93%) of Americans report reading customer reviews and rating at least sometimes when buying a product or service for the first time.”); *New Data: 97% of Consumers Depend on Reviews for Purchase Decisions*, PowerReviews, Mar. 19, 2018, <https://www.powerreviews.com/events/consumers-depend-on-reviews/> (noting that 97 percent of consumers consult product reviews before making a purchase). See also Statement of Commissioner Rohit Chopra Joined by Commissioner Rebecca Kelly Slaughter, *In the Matter of Sunday Riley*, Commission File No. 1923008, Oct. 21, 2019,

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[https://www.ftc.gov/system/files/documents/public\\_statements/1550127/192\\_3008\\_final\\_rc\\_statement\\_on\\_sunday\\_riley.pdf](https://www.ftc.gov/system/files/documents/public_statements/1550127/192_3008_final_rc_statement_on_sunday_riley.pdf) (“[C]onsumers rely on reviews in making purchasing decisions.”).

<sup>17</sup> See *2021 State of Reviews*, Podium, <https://www.podium.com/resources/podium-state-of-online-reviews/> (finding that 3.4 is the minimum average star rating required for a consumer to consider engaging with a business); *Online Reviews Statistics and Trends: A 2022 Report by ReviewTrackers*, ReviewTrackers, Jan. 9, 2022, <https://www.reviewtrackers.com/reports/online-reviews-survey/> (“Customers don’t trust companies with lower than 4-star ratings.”). But consumers are also suspicious of companies that are *too* highly rated. See *From Reviews to Revenue: How Star Ratings and Review Content Influence Purchase*, PowerReviews & Nw. Univ., 2015, <https://spiegel.medill.northwestern.edu/wp-content/uploads/sites/2/2021/04/Online-Reviews-Whitepaper.pdf> (“A shopper is more likely to purchase a product with an average star rating between 4.2 and 4.5 than one with a 5 star rating.”).

<sup>18</sup> See Press Release, N.Y. State Off. of the Att’y Gen., A.G. Schneiderman Announces Settlement with Machinima and Three Other Companies for False Endorsement (Feb. 11, 2016), <https://ag.ny.gov/press-release/2016/ag-schneiderman-announces-settlement-machinima-and-three-other-companies-false> (noting that a Harvard Business School study estimated that a one-star rating increase on Yelp translated to an increase of 5 to 9 percent in revenues for a restaurant); Sapna Maheshwari, *When Is a Star Not Always a Star? When It’s an Online Review*, N.Y. Times, Nov. 28, 2019, <https://www.nytimes.com/2019/11/28/business/online-reviews-fake.html> (noting that an increase of just one star in a rating on Amazon correlates with a 26 percent increase in sales, according to a recent analysis by the e-commerce consulting firm Pattern).

<sup>19</sup> See *No online customer reviews means BIG problems in 2017*, Fan & Fuel, Dec. 2016, <https://fanandfuel.com/no-online-customer-reviews-means-big-problems-2017/> (“92% of consumers hesitate to make a purchase if there are no customer reviews.”); Michael Luca & Georgios Zervas, *Fake It Till You Make It: Reputation, Competition, and Yelp Review Fraud*, 62 *Mgmt. Sci.* 3393, 3409 (Dec. 2016), [https://dash.harvard.edu/bitstream/handle/1/22836596/luca.zervas\\_fake-it-till-you-make-it.pdf](https://dash.harvard.edu/bitstream/handle/1/22836596/luca.zervas_fake-it-till-you-make-it.pdf), (finding restaurants “have stronger incentives to submit fake reviews when they have relatively few reviews” or have negative reviews).

<sup>20</sup> See Georgios Askalidis & Edward Malthouse, *The Value of Online Customer Reviews*, RECSYS ’16: Proceedings of the 10<sup>th</sup> ACM Conference on Recommender Systems, 155–58, <https://dl.acm.org/doi/10.1145/2959100.2959181> (“[T]he conversion rate of a product can increase by as much as 270% as it accumulates reviews . . . with the first five reviews driving the bulk of the aforementioned increase.”); Lev Muchnik et al., *Social Influence Bias: A Randomized Experiment*, 341 *Sci.* 647, 649 (2013), <https://science.sciencemag.org/content/341/6146/647> (finding a single initial positive “upvote” creates a “herd effect” that results in a 25 percent higher average rating for that item at the end of a 5-month observation window compared to an initial negative “down-vote”).

<sup>21</sup> Statement of Commissioner Rohit Chopra Joined by Commissioner Rebecca Kelly Slaughter, *In the Matter of Sunday Riley*, Commission File No. 1923008, Oct. 21, 2019, [https://www.ftc.gov/system/files/documents/public\\_statements/1550127/192\\_3008\\_final\\_rc\\_statement\\_on\\_sunday\\_riley.pdf](https://www.ftc.gov/system/files/documents/public_statements/1550127/192_3008_final_rc_statement_on_sunday_riley.pdf).