



Office of Commissioner  
Rohit Chopra

UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

**STATEMENT OF  
COMMISSIONER ROHIT CHOPRA  
JOINED BY COMMISSIONER REBECCA KELLY SLAUGHTER**

*Regarding Final Approval of the Sunday Riley Settlement  
Commission File No. 1923008*

*November 6, 2020*

## Summary

- The FTC is doubling down on its no-money, no-fault settlement with Sunday Riley, who was charged with egregious fake review fraud. This weak settlement is a serious setback for the Commission's credibility as a watchdog over digital markets.
- To defend this settlement, the Commissioners supporting this outcome claim they had no basis to seek more than \$0. Their analytical approach favors the fraudster, and it will undermine our mission in future cases.
- The Commission can end its no-consequences settlement policy by publishing a Policy Statement on Equitable Monetary Remedies, restating legal precedent into formal rules, and designating specific misconduct as penalty offenses through an unused FTC Act authority.

## Introduction

With millions of retailers closed during the pandemic, Americans are relying more than ever on online reviews to compare products. Fake reviews are polluting digital marketplaces, harming consumers and honest sellers.

Fake review fraud is illegal, and the FTC has a responsibility to combat it. In the fake review fraud case before us today, Chairman Simons, Commissioner Phillips, and Commissioner Wilson have voted to finalize a settlement with a popular cosmetics company, Sunday Riley. The settlement includes no redress, no disgorgement of ill-gotten gains, no notice to consumers, and no admission of wrongdoing. Instead, Sunday Riley is merely being ordered to not break the law again.

Unsurprisingly, little has changed for Sunday Riley. Sephora, where Sunday Riley is alleged to have committed its fraud, continues to be a major sales channel. United Airlines retains its high-profile exclusive deal with Sunday Riley.<sup>1</sup> Influencers continue to promote the brand, which recently launched a new product line.<sup>2</sup>

Despite almost unanimous opposition to the proposed settlement, Chairman Simons, Commissioner Phillips, and Commissioner Wilson are voting to finalize it without changes. Rather than taking action today, they kick the can down the road and suggest the Commission will one day take this problem more seriously. But it is not every day that whistleblowers come forward to reveal massive fake review fraud. This case was an opportunity for the Commission to signal that disinformation campaigns have costs. Instead, they're sending a clear signal that the cost is \$0.

The Commission's insistence on seeking only a number that was 100 percent accurate led us to seek a number that was 100 percent inaccurate. This was not our only option. As I described in my original statement on this matter, empirical literature shows that positive reviews can

---

<sup>1</sup> See *Amenity Kits*, UNITED AIRLINES, <https://www.united.com/ual/en/us/fly/travel/inflight/amenity-kits.html> (last visited on Oct. 6, 2020).

<sup>2</sup> See Madge Maril, *The New Sunday Riley Clean Rinse Serum Is A Chemical Exfoliator — For Your Scalp*, THE ZOE REPORT (Apr. 23, 2020), <https://www.thezoereport.com/p/the-new-sunday-riley-clean-rinse-serum-is-a-chemical-exfoliator-for-your-scalp-22841796>.

materially and measurably increase sales. When a newly launched product attracts a slew of positive reviews, this can lead to a herd effect that generates massive revenue, because these reviews may affect how e-commerce platform algorithms prioritize listings. Given these effects, the Commission was in a strong position to estimate ill-gotten gains. But rather than relying on evidence and analysis, Chairman Simons, Commissioner Phillips, and Commissioner Wilson relied on a less rigorous approach that favors the fraudster.

The Commission's decision sends the unfortunate message to other fake review fraudsters that they, too, might be able to extract a no-consequences settlement from the FTC. In matters involving dishonest or fraudulent conduct, I do not support seeking nothing in settlement negotiations. To be credible as a digital regulator, we must change this approach.

### **Background on Sunday Riley's Scam and the No-Consequences Settlement**

Sunday Riley is a successful cosmetics brand founded and operated by Ms. Sunday Riley. As detailed in the Commission's allegations, in 2018, Ms. Riley orchestrated an elaborate scheme to generate fake reviews of her firm's high-end skincare products, a practice that harms both consumers and honest competitors. To address these allegations of egregious lawbreaking, Chairman Simons, Commissioner Phillips, and Commissioner Wilson subsequently voted to propose a settlement under which Sunday Riley agreed to not break the law again, and to simply submit periodic paperwork.

During the public comment period that followed the settlement proposal, consumers pleaded with the Commission to do more to hold the company and its CEO accountable.<sup>3</sup> Numerous commenters detailed their personal experiences relying on reviews to purchase Sunday Riley products. One commenter warned that this order further diminishes their confidence in ordering skincare products online, and another commenter, a retail employee, observed that, when consumers lose trust, all sellers suffer.<sup>4</sup> Many called the settlement a "slap on the wrist" and argued it would be a "green light" for further fake review fraud.<sup>5</sup> An objection filed by

---

<sup>3</sup> Comments are available at *Fed. Trade Comm'n., Sunday Riley Modern Skincare, LLC; Analysis To Aid Public Comment*, Docket ID FTC-2019-0086 (Oct. 25, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0001> [Hereinafter Sunday Riley AAPC].

<sup>4</sup> See Audrey Cooper, Comment No. 06 on Sunday Riley AAPC, FTC File No. 1923008 (Oct. 29, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0006>; Ivy M., Comment No. 08 on Sunday Riley AAPC, FTC File No. 1923008 (Oct. 29, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0008>; Anonymous Consumer, Comment No. 10 on Sunday Riley AAPC, FTC File No. 1923008 (Oct. 30, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0010>; Nupur Patel, Comment No. 21 on Sunday Riley AAPC, FTC File No. 1923008 (Nov. 1, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0021>; Anonymous Consumer, Comment No. 22 on Sunday Riley AAPC, FTC File No. 1923008 (Nov 4, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0022>.

<sup>5</sup> See Jeffrey Heft, Comment No. 03 on Sunday Riley AAPC, FTC File No. 1923008 (Oct. 28, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0003>; Anonymous Consumer, Comment No. 04 on Sunday Riley AAPC, FTC File No. 1923008 (Oct. 28, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0004>; Terri Morgenson, Comment No. 5 on Sunday Riley AAPC, FTC File No. 1923008 (Oct. 28, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0005>; Anonymous Consumer, Comment No. 10 on Sunday Riley AAPC, FTC File No. 1923008 (Oct. 30, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0010>; Anonymous Consumer, Comment No. 11 on Sunday Riley AAPC, FTC File No. 1923008 (Oct. 30, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0011>; Kristina, Comment No. 16 on Sunday Riley AAPC, FTC File No. 1923008 (Oct. 30, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0016>; Linda Pan, Comment No. 20 on Sunday Riley AAPC, FTC File No. 1923008 (Nov. 1, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0020>;

Consumer Reports noted that Sunday Riley “will face no real consequences for its actions” and detailed the Commission’s clear legal authority to go beyond the proposed no-money, no-fault order.<sup>6</sup>

Rejecting these nearly unanimous comments, the agency is doubling down on its deficient approach, with Chairman Simons, Commissioner Phillips, and Commissioner Wilson voting to finalize the proposed no-money, no-fault settlement without changes. They tout the paperwork the order requires, while warning that, if Ms. Riley and her company are charged with breaking the law *again*, they may face an actual penalty. This approach does little to deter digital deception, and the Commission can and must do better.

### **Commission’s Authority to Seek Equitable Monetary Relief**

The objection filed by Consumer Reports was correct in arguing that the Commission can seek monetary relief in cases such as this one. For companies engaged in deceptive advertising, full redress is an appropriate starting point for estimating restitution, with wrongdoers bearing the burden of showing which sales were untainted by deception.<sup>7</sup> Any uncertainty in this estimation is to be resolved not against consumers but against “the wrongdoer whose illegal conduct created the uncertainty.”<sup>8</sup>

Because the agency can seek monetary relief in federal court, through either Section 13(b) or Section 19, past Commissions have been able to recover funds in cases involving fake reviews without time-consuming litigation.<sup>9</sup> In 2011, the FTC charged Legacy Learning Systems with using fake reviews, in the form of undisclosed paid endorsements, to sell DVDs.<sup>10</sup> The

---

Victoria Burns, Comment No. 28 on Sunday Riley AAPC, FTC File No. 1923008 (Nov. 18, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0028>; Anonymous Consumer, Comment No. 32 on Sunday Riley AAPC, FTC File No. 1923008 (Nov. 18, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0032>; Anonymous Consumer, Comment No. 42 on Sunday Riley AAPC, FTC File No. 1923008 (Nov. 25, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0042>; Sophia Brunetti, Comment No. 45 on Sunday Riley AAPC, FTC File No. 1923008 (Nov. 27, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0045>.

<sup>6</sup> Consumer Reports added that “[a]llowing companies to engage in and profit from egregious behaviors with merely a prospect of penalties if caught a second time and some limited recordkeeping responsibilities will hardly strike fear in the heart of potential fraudsters. Given the Commission’s limited staff and capacity to police an \$18 trillion economy, unscrupulous actors know there is a relatively low chance of getting caught by the FTC. Those that do shouldn’t get what amounts to a “Get Out of Jail Free” card for their first offense.” See Maureen Mahoney on Behalf of Consumer Reports, Comment No. 46 on Sunday Riley AAPC, FTC File No. 1923008 (Nov. 27, 2019), <https://www.regulations.gov/document?D=FTC-2019-0086-0046>.

<sup>7</sup> Generally, if the Commission can establish that materially false claims were widely disseminated, the starting point for calculating restitution is the total revenue of the enterprise. See, e.g., *FTC v. Kuykendall*, 371 F.3d 745, 764 (10th Cir. 2004) (holding, in a contempt action, that, after the Commission establishes a presumption of reliance, “the district court may use the Defendants’ gross receipts as a starting point” for awarding monetary relief). In my view, there is no doubt that Sunday Riley’s fake reviews met this standard – a view confirmed by the comments received by the Commission in response to this proposed settlement.

<sup>8</sup> *FTC v. Commerce Planet, Inc.*, 815 F.3d 593, 603 (9th Cir. 2016) (internal quotation marks omitted). This also makes sense as a matter of policy, since resolving uncertainty in favor of wrongdoers only incentivizes them to keep poor records.

<sup>9</sup> It has taken the Commission nearly a year to finalize this settlement, and, in the intervening months, the Supreme Court has granted certiorari to challenges to the FTC’s authority under Section 13(b), while issuing a ruling in *Liu v. SEC* that raised questions about whether “legitimate expenses” should offset disgorgement orders. See *Liu v. SEC*, 140 S. Ct. 1936, 1946 (2020). The majority does not argue that the Commission lacked authority to seek monetary relief in this matter, nor does it argue that the expenses incurred in furthering this scheme would be seen as legitimate.

<sup>10</sup> Press Release, Fed. Trade Comm’n, Firm to Pay FTC \$250,000 to Settle Charges That It Used Misleading Online “Consumer” and “Independent” Reviews (Mar. 15, 2011), <https://www.ftc.gov/news-events/press-releases/2011/03/firm-pay-ftc-250000-settle-charges-it-used-misleading-online>.

Commission settled the matter for \$250,000, or approximately five percent of sales attributable to affiliates who posted reviews, in spite of the fact that the DVDs worked as advertised, that the reviews were posted by third parties, and that our complaint did not detail which consumers, if any, relied on the reviews.<sup>11</sup>

We obtained this judgment with the same authority we have today, employing the same legal theory we are employing today, in the same forum we are using today. The only thing that has changed is the five Commissioners responsible for the decision.

### **A More Permissive Approach to Fake Reviews**

While our authority remains the same as it was in 2011, Chairman Simons, Commissioner Phillips, and Commissioner Wilson are signaling a shift in the FTC's approach to policing fake reviews. Ordinarily, as discussed above, the Commission approximates disgorgement based on a firm's total revenue connected to the illegal practice, which incentivizes the firm to rebut that approximation with more granular data. But here, Chairman Simons, Commissioner Phillips, and Commissioner Wilson abandon this time-tested and judicially recognized approach, announcing it would be inappropriate to even *approximate* Sunday Riley's illegal profits. The predictable result of this new approach is a windfall for fake review fraudsters, who can count on their misconduct carrying no real costs.<sup>12</sup>

Chairman Simons, Commissioner Phillips, and Commissioner Wilson claim this settlement imposes certain hidden costs, but they seem to rely on speculation. They suggest the settlement may have a "reputational effect,"<sup>13</sup> but they cite no data or analysis, and it is unclear why they assume that news reports would affect Sunday Riley's sales, while the consumer reviews at issue in this case would not.<sup>14</sup> They claim that Sunday Riley may face collateral consequences from business partners, but the company continues to be promoted on Sephora,<sup>15</sup> and it remains the "signature skincare partner" of United Airlines.<sup>16</sup> Finally, they suggest Sunday Riley could face

---

<sup>11</sup> See Compl. ¶ 8, *In re Legacy Learning Sys. Inc.*, Docket No. C-4323 (2011), <https://www.ftc.gov/sites/default/files/documents/cases/2011/06/110610legacylearningcmpt.pdf>. Importantly, Legacy Learning Systems required its affiliates to comply with FTC guidelines, and some of the fake reviews at issue actually included disclosures of their authors' material connections. These disclosures, as well as Legacy's monitoring, were charged to be insufficient, but still represent a greater effort at ensuring compliance than what was undertaken by Sunday Riley. See *id.* ¶¶ 8–9.

<sup>12</sup> Chairman Simons, Commissioner Phillips, and Commissioner Wilson may not believe Sunday Riley's alleged scheme was profitable, but Sunday Riley and her employees certainly did. See Compl. ¶ 10, *In the Matter of Sunday Riley Modern Skincare, LLC*, File No. 1923008 (2019) (quoting Sunday Riley as claiming review manipulation "directly translates to sales"); *Id.* ¶ 12 (quoting a Sunday Riley Account Manager instructing employees that "[t]he power of reviews is mighty").

<sup>13</sup> Statement of Chairman Joseph J. Simons and Commissioners Noah Joshua Phillips and Christine S. Wilson *In re Sunday Riley Modern Skincare, LLC*, Fed. Trade Comm'n File No. 1923008 (Nov. 6, 2020).

<sup>14</sup> If imposing reputational costs is important to the majority, it is unclear why they did not require Sunday Riley to notify its customers of the fraud or forbid the company from manipulating search results to suppress information about this action. Relying solely on news reports to justify no-money settlements ignores the elaborate steps companies can take to "manage" their reputations, just as they "manage" consumer reviews. See Craig Silverman, *How To Game Google To Make Negative Results Disappear*, BUZZFEED NEWS (June 27, 2019), <https://www.buzzfeednews.com/article/craigsilverman/google-search-manipulation-online-reputation-expert> (reporting on a "global reputation management industry offering to cover up past arrests, poor customer reviews, allegations of fraud, and other character-killing online content.").

<sup>15</sup> *Sunday Riley*, SEPHORA, <https://www.sephora.com/brand/sunday-riley> (last visited on Oct. 6, 2020).

<sup>16</sup> *Supra* note 1.

consequences from other regulators, but that should not justify a no-consequences settlement by *this* regulator.<sup>17</sup>

Ultimately, even if there were concern that seeking full redress is excessive, is the logical conclusion to then ask for zero? As I noted when this matter was proposed for public comment, there is extensive literature on the impact of fake reviews,<sup>18</sup> and the Commission has authority to compel production of granular sales data from both Sunday Riley and Sephora if necessary. I am confident we could have developed a reasonable estimate of harm and ill-gotten gains, as we did in 2011, rather than presuming fake reviews are harmless or applying a different legal standard because Sunday Riley’s conduct doesn’t resemble that of other FTC defendants.

If Commissioners believe that moving the agency toward a more lenient approach against fake reviews is in the public interest, they should state as much. Alternatively, they could acknowledge that this settlement was mistaken and commit that they will change course. But claiming it was unrealistic to go beyond a no-money, no-fault order is not credible, and it will undermine us in future cases.<sup>19</sup>

## Ending No-Consequences Settlements

As detailed in the comments in the official public docket and in my initial statement, the majority’s approach does not bode well for honest businesses looking to compete online. Sunday Riley’s alleged conduct was illegal, indefensible, and wrong – but it was also understandable. As explained by one leading e-commerce consultant, “Incentives are incredibly high for brands to create fake reviews or incentivize reviews,” and many brands feel, “If I don’t do this, then I’m not staying level with my competition, I’m literally just falling behind.”<sup>20</sup>

While the incentives to post fake reviews and engage in disinformation tactics are very high, the likelihood of getting caught and facing consequences appears to be very low. It may be common for platforms to remove fake reviews, but it is unclear – and entirely discretionary – how and whether platforms hold perpetrators accountable. In this case, for example, there are allegations

---

<sup>17</sup> The majority also misunderstands the role of individual liability, suggesting that this matter should be compared to the Commission’s 2019 settlement with Facebook, where no individuals were charged. But one mistake does not justify another. In this matter, the Commission’s complaint cited specific emails that Sunday Riley sent her staff, which provided an ample basis for charging her personally. In Facebook, the Commission opted to not interview Facebook’s CEO, so it is unknown whether similar evidence existed. In every case, the decision of whether to name an individual should be based on the facts and circumstances, not on the size or clout of a firm.

<sup>18</sup> See, e.g., Georgios Askalidis & Edward C. Malthouse, *The Value of Online Customer Reviews*, RECSYS '16: PROCEEDINGS OF THE 10TH ACM CONFERENCE ON RECOMMENDER SYSTEMS 155–58 (2016), <https://dl.acm.org/citation.cfm?id=2959181> (finding that “the conversion rate of a product can increase by as much as 270 percent as it accumulates reviews....with the first 5 reviews driving the bulk of the aforementioned increase” and that “the existence of reviews provides valuable signals to the customers, increasing their propensity to purchase”); Lev Muchnik et al., *Social Influence Bias: A Randomized Experiment*, 341 SCI. 647, 649 (2013), <https://science.sciencemag.org/content/341/6146/647> (finding that, for a given product, a single initial positive “up-vote” creates an accumulating 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>19</sup> Importantly, Chairman Simons, Commissioner Phillips, and Commissioner Wilson do not dispute the complaint’s allegation that the company and its CEO broke the law. Indeed, Sunday Riley’s alleged conduct likely violated the penalty statutes of many individual states. If the majority was genuinely concerned about the litigation risk under the FTC Act of seeking monetary relief, we could have simply enlisted states with their own penalty claims.

<sup>20</sup> 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>.



that at some point, Sephora detected Sunday Riley’s scheme, leading the retailer to delete certain reviews.<sup>21</sup> But, as alleged in the complaint, Sunday Riley simply adjusted its tactics, directing employees to conceal their IP addresses to evade further detection.<sup>22</sup> It is unclear whether Sephora took any further action, and Sunday Riley’s scheme became public only when a whistleblower came forward.<sup>23</sup>

Given this spotty private policing, it is critical that, in the rare circumstances when law enforcement steps in, we send an unambiguous message that posting fake reviews is not worth the risk. Today’s no-money order, I fear, will have the opposite effect, sending the message that if you get caught *and* attract law enforcement scrutiny, the price you’ll pay is zero.<sup>24</sup>

The problems with no-money orders were once widely understood. More than four decades ago, Robert Pitofsky, who would go on to serve on the Commission twice, including as its Chair, called no-money cease-and-desist orders “scandalously weak.”<sup>25</sup> He, too, argued that they did little to deter wrongdoing and nothing to redress victims.<sup>26</sup> Yet the Commission continues to rely on them, even in cases, like this one, involving allegations of clear dishonesty and fraud.

When companies engage in egregious misconduct, a no-money, no-fault settlement is ineffective, especially when there appear to be no material disputes of fact or law. The Commission should formally signal that it is terminating its no-money, no-fault settlement approach for dishonest or fraudulent conduct by:

- **Publishing a Policy Statement on Equitable Monetary Remedies:** The Commission should issue a Policy Statement on Equitable Monetary Remedies. At a minimum, it should establish a rebuttable presumption that the Commission will not pursue no-money settlements in cases involving dishonesty or fraud.<sup>27</sup> This will help establish consistency in our enforcement program, ensuring that fraud carries consequences regardless of whether it is committed by a fly-by-night operation or by an established firm like Sunday Riley.

---

<sup>21</sup> Sunday Riley Compl., *supra* note 12, ¶ 9.

<sup>22</sup> *Id.*

<sup>23</sup> See u/throwawayacctSRiley, *Sunday Riley Employee: We Write Fake Sephora Reviews*, REDDIT (Oct. 15, 2018, 4:21 PM), [https://www.reddit.com/r/SkincareAddiction/comments/9ogete/psa\\_sunday\\_riley\\_employee\\_we\\_write\\_fake\\_sephora/](https://www.reddit.com/r/SkincareAddiction/comments/9ogete/psa_sunday_riley_employee_we_write_fake_sephora/).

<sup>24</sup> This view echoes that of Fakespot chief executive Saoud Khalifah, who warned, following the announcement of this settlement, that “[n]ow, everybody is like, O.K., if that’s the penalty, then why not write more fake reviews and pump ourselves through the roof?” *Supra* note 20.

<sup>25</sup> Irving Scher et al., *Part II – FTC Improvement Act*, 45 ANTITRUST L.J. 96, 117 (1976).

<sup>26</sup> Here’s how Pitofsky described the effects of no-money orders on the broader marketplace:

Businessmen engaged in fraudulent practices knew in advance that the worst that could happen to them in most cases would be that if a fraud were detected, and if the Commission decided to proceed against that company as opposed to hundreds of other companies engaged in similar practices, and if the complaint ever proceeded to a conclusion, they would then be asked to discontinue the practice. In effect, the most significant deterrent to engaging in fraudulent practices in those days was the considerable lawyers’ fees that would be generated by a Commission investigation.

*Id.*

<sup>27</sup> See Statement of Commissioner Rohit Chopra In re Truly Organic, Fed. Trade Comm’n File No. 1923077 (Sept. 19, 2019), <https://www.ftc.gov/public-statements/2019/09/statement-commissioner-rohit-chopra-matter-truly-organic> (calling on the Commission to issue a policy statement on equitable monetary remedies). Importantly, there are many cases that do not involve dishonesty or fraud – such as cases involving unfair practices – where monetary relief is also appropriate.

- **Restate Existing Legal Precedent into Rules:** The FTC is authorized to prohibit prevalent unfair or deceptive practices through rules, and to seek civil penalties against violators.<sup>28</sup> These rules need not impose any substantive obligation on market participants, and can instead simply restate existing law. For example, the FTC is currently undertaking a rulemaking to consider codifying its existing Made in USA guidance, which would help increase accountability for those who abuse the label.<sup>29</sup> In this area, the Commission can codify basic tenets of the FTC Endorsement Guides – in particular, the requirement that endorsers disclose material connections to sellers – into a rule. This would impose zero regulatory burden on market participants, while ensuring real accountability for those who cheat.<sup>30</sup>
- **Designate Specific Misconduct as Penalty Offenses:** The Commission need not wait to issue a rule to seek civil penalties against fake review fraudsters and other wrongdoers. The Commission has authority under Section 5(m)(1)(B) of the FTC Act to seek penalties against parties who engage in conduct known to have been previously condemned by the Commission.<sup>31</sup> The practice of endorsing products without disclosing material connections was condemned decades ago,<sup>32</sup> and the Commission can act almost immediately to trigger substantial penalties against the worst violators.

## Conclusion

With disinformation pervading the digital world and fake reviews polluting online marketplaces, the Commission’s decision to finalize this flawed settlement is more than a missed opportunity. It is a serious setback for online shoppers, honest sellers, and the Commission’s credibility.

Rare is there a case as egregious as this one, with a whistleblower accusing a company of fraud in a public Reddit post. Despite clear authority to send a strong message through this case, the Commission is instead sending the message that there are no real consequences for online disinformation and fake review scams. This does not protect consumers. For these reasons, I respectfully dissent.

---

<sup>28</sup> See 15 U.S.C. § 57a.

<sup>29</sup> Press Release, Fed. Trade Comm’n, FTC Issues Staff Report on Made in USA Workshop, Seeks Comment on Related Proposed Rulemaking for Labeling Rule (June 22, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/ftc-issues-staff-report-on-made-in-usa-workshop>.

<sup>30</sup> See Statement of Commissioner Rohit Chopra Regarding the Endorsement Guides Review, Fed. Trade Comm’n File No. P204500 (Feb. 12, 2020), <https://www.ftc.gov/public-statements/2020/02/statement-commissioner-rohit-chopra-regarding-endorsement-guides-review>. This would also reduce gamesmanship by fraudsters around our Section 13(b) authority.

<sup>31</sup> The Commission can resurrect Section 5(m)(1)(B), the Penalty Offense Authority, to increase deterrence, reduce gamesmanship around Section 13(b), and promote market-wide compliance. See Rohit Chopra & Samuel A.A. Levine, *The Case for Resurrecting the FTC Act’s Penalty Offense Authority* (Oct. 29, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3721256](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256).

<sup>32</sup> Forty years ago, the Commission issued an order in *Cliffdale Associates* finding that it was deceptive under Section 5 to portray endorsements as objective when in fact they were written by the seller’s paid agents. See *In the Matter of Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984). The Commission could provide notice of this and other relevant orders to market participants, which would expose them to stiff civil penalties if they engage in fake review fraud or similar disinformation tactics.