

Article Information

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ACCC review of Australian social media influencer testimonials and online reviews highlights concerning practices

The Australian Competition & Consumer Commission (ACCC) continues to scrutinise misleading online reviews and influencer endorsements.

Background

On 7 December 2023 the ACCC released two separate reports detailing its findings following an internet sweep of [118 social media influencers](#) and [137 businesses](#).

The report found that 81% of the social media influencers were making posts that raised concerns under the Australian Consumer Law (ACL) for potentially misleading advertising and 37% of the businesses reviewed had engaged in concerning conduct in respect of fake or misleading online reviews.

Influencer testimonials and endorsements

Under the ACL, businesses cannot mislead or deceive consumers. This applies to influencers engaging in trade or commerce, as well as marketers using influencers to advertise online. There are a number of ways that influencers and brands may mislead consumers on social media platforms, including by:

- making incorrect statements about their relationship with a brand, product or service;
- omitting key information on their posts such as commercial relationships, sponsorships or incentives received; and
- disclosing brand relationships in a way that is vague, confusing or hard to notice.

The ACCC also identified other examples of concerning conduct that did not relate to advertising disclosure but which may breach other provisions of the ACL. This includes multi-level marketing schemes in the health, fitness and wellbeing sector disguised as ordinary health programs and subscription traps where influencers promoted free trials that required consumers to provide credit or debit card details up front to access the free trial with difficult to cancel subscriptions once the trial had ended. The report noted that the ACCC will continue to examine these practices.

The 2023 influencer sweep follows the [ACCC's Digital Platform Services Inquiry Report 6](#) released in March 2023 that focused on the provision of social media services, including sponsored posts and influencer advertising. That report identified a range of competition and consumer issues. The most recent sweep reviewed influencers across seven sectors on Instagram, TikTok, Snapchat, YouTube, Facebook and Twitch. The most common issue identified in the sweep was influencers not disclosing brand relationships in their posts. The industry with the most concerning conduct was fashion, with 96% of fashion influencers reviewed making concerning posts.

The ACCC has reminded influencers that they should:

- clearly disclose a promotional post in a way that is immediately obvious to consumers. This includes when the influencer has received a free product or other incentive;
- not make misleading claims about a product; and
- not use manipulative or deceptive advertising practices.

Similarly, the ACCC has noted that businesses should:

- ensure that any influencers they engage are aware of their ACL obligations when promoting their products or services; and

- be careful when providing influencers with scripts to follow when making posts and, importantly, scripts should not require influencers to misrepresent their experience or views on a product.

Business online reviews

In a separate internet sweep the ACCC found 37% of the 137 businesses reviewed had engaged in concerning conduct, with the highest offenders in the household appliances and electronics, beauty products and home improvements and household products and services sectors. The sweep focussed on misleading online reviews and testimonials posted on businesses' websites, Facebook pages and third-party review platforms.

The sweep found that businesses appeared to be manipulating reviews in a variety of ways. Some serious issues identified included:

- Third-party professional reviewers and review removalists: The sweep found a prevalence of businesses using third party professional reviewers and review removalists as a tool to manage their online reputation. The ACCC reviewed 24 of these businesses that offer services to create fake reviews, remove negative reviews and prevent or edit negative reviews. In addition, these businesses directed customers with positive experiences to post a public review, while referring those with negative experiences directly to the business.

Businesses that seek to create fake reviews, or edit or remove genuine negative reviews with the intention of inflating their own ratings, lowering their competitors' ratings or hiding genuine negative reviews from public view are in breach of the ACL. Third-party professional reviewers or review removalists that operate such business models may also be contravening the ACL.

- Fake positive reviews: Positive reviews are misleading when they are created by the business or by someone who hasn't actually used the product or service. Such behaviour breaches the ACL.
- Unclear disclosure of incentivised reviews and encouraging inflated reviews: Businesses must ensure that they are asking for reviews in a fair and consistent way and that they are clearly labelling incentivised reviews. Failing to do so is misleading.
- Preventing, editing or removing reviews or testimonials: Under the ACL a business must not suppress or remove genuine negative reviews, or edit them to remove negative elements or add positive elements.
- Displaying ratings, reviews and review policies: The sweep found several issues with how ratings, reviews and review policies are displayed including misleading representations of ratings, non-disclosure of the source of reviews and not displaying all reviews. In addition, some businesses aggregated reviews from other sources to calculate an overall rating.

Next steps

The ACCC continues to prioritise consumer and fair-trading issues relating to manipulative or deceptive advertising and marketing practices in the digital economy.

The ACCC has noted that their next steps include developing strong guidelines for online operators so they are across their obligations, before the ACCC embarks on a renewed focus on enforcement. To this end the ACCC will release guidance shortly for influencers and businesses to remind them of their obligations under ACL in respect of advertising, social media posts and online reviews.