



United States of America
FEDERAL TRADE COMMISSION
Washington, DC 20580

Office of the Secretary

{DATE}

Re: *Sunday Riley*
FTC File No. 192-3008

Dear _____:

Thank you for your comment regarding the above-referenced matter. Your letter was placed on the public record pursuant to Section 2.34 of the Commission's Rules of Practice, 16 C.F.R. § 2.34, and was given serious consideration by the Commission.

The Commission believes that fake, inauthentic, and manipulated user reviews are a serious problem in the online marketplace and that they harm both consumers and honest companies. Commission staff is taking an in-depth look at this complex and widespread problem to determine, among other things, how fake reviews affect consumer purchasing behavior; what platforms and other relevant players are doing—and what they could be doing better—to combat fake reviews; and what the FTC can do in this area beyond important law enforcement actions like this one. This settlement is a part of a broader campaign to educate industry and consumers as to the consequences of this type of false advertising.

The Commission has determined that the conduct relief obtained by the order will serve to remedy the alleged violations of the FTC Act by Sunday Riley Modern Skincare and Ms. Sunday Riley and deter future violations. Ms. Riley and her company will be subject to the Commission's final order for twenty years and liable for civil penalties of up to \$42,530 per violation should they violate that order, pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l).

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Decision and Order in final form without modification. A copy of the final Decision and Order, and other relevant materials, are available from the Commission's website at <http://www.ftc.gov>.

Thank you again for your comment. The Commission is aided in its analysis by hearing from a variety of sources, and we appreciate your interest in this matter.

By direction of the Commission.

April J. Tabor
Acting Secretary



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In your comment, you object to the proposed settlement because you believe it is too lenient or that it will not have a sufficient deterrent effect. The Commission has determined that the conduct relief obtained by the order will serve to remedy the alleged violations of the FTC Act by Sunday Riley Modern Skincare and Ms. Sunday Riley and deter future violations. Ms. Riley and her company will be subject to the Commission's final order for twenty years and liable for civil penalties of up to \$42,530 per violation should they violate that order, pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l). Administrative orders, such as the proposed settlement, constrain future behavior and impose compliance costs as well as reputational costs.

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In your comment, you object to the proposed settlement because it did not contain a monetary component. The Commission's proposed complaint alleges violations of Section 5 of the FTC Act, and the Commission is not authorized to collect fines or penalties based on such violations. Under the current law, in the absence of a reasonable estimation of consumer injury or unjust enrichment, the Commission does not have the authority to obtain a monetary payment.

The Commission has determined that the conduct relief obtained by the order will serve to remedy the alleged violations of the FTC Act by Sunday Riley Modern Skincare and Ms. Sunday Riley and deter future violations. Ms. Riley and her company will be subject to the Commission's final order for twenty years and liable for civil penalties of up to \$42,530 per violation should they violate that order, pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l). Administrative orders, such as the proposed settlement, constrain future behavior and impose compliance costs as well as reputational costs.

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In your comment, you object to the proposed settlement because it did not contain a monetary component. The Commission's proposed complaint alleges violations of Section 5 of the FTC Act, and the Commission is not authorized to collect fines or penalties based on such violations. Under the current law, in the absence of a reasonable estimation of consumer injury or unjust enrichment, the Commission does not have the authority to obtain a monetary payment.

Your comment also urges the Commission to require the respondents to admit wrongdoing. Such a requirement is not the Commission's general practice.

The Commission has determined that the conduct relief obtained by the order will serve to remedy the alleged violations of the FTC Act by Sunday Riley Modern Skincare and Ms. Sunday Riley and deter future violations. Ms. Riley and her company will be subject to the Commission's final order for twenty years and liable for civil penalties of up to \$42,530 per violation should they violate that order, pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l). Administrative orders, such as the proposed settlement, constrain future behavior and impose compliance costs as well as reputational costs.

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In your comment, you object to the proposed settlement because it did not contain a monetary component. The Commission's proposed complaint alleges violations of Section 5 of the FTC Act, and the Commission is not authorized to collect fines or penalties based on such violations. Under the current law, in the absence of a reasonable estimation of consumer injury or unjust enrichment, the Commission does not have the authority to obtain a monetary payment.

Your comment urges the Commission to require the respondents to admit wrongdoing. Such a requirement is not the Commission's general practice.

Your comment also recommends that the settlement require that the respondents hire a compliance auditor. Such an auditor would have no greater ability to monitor compliance than the FTC's Division of Enforcement, which has extensive experience in monitoring consent orders in advertising cases.

The Commission has determined that the conduct relief obtained by the order will serve to remedy the alleged violations of the FTC Act by Sunday Riley Modern Skincare and Ms. Sunday Riley and deter future violations. Ms. Riley and her company will be subject to the Commission's final order for twenty years and liable for civil penalties of up to \$42,530 per violation should they violate that order, pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l). Administrative orders, such as the proposed settlement, constrain future behavior and impose compliance costs as well as reputational costs.

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In your comment, you object to the proposed settlement because it did not contain a monetary component. The Commission's proposed complaint alleges violations of Section 5 of the FTC Act, and the Commission is not authorized to collect fines or penalties based on such violations. Under the current law, in the absence of a reasonable estimation of consumer injury or unjust enrichment, the Commission does not have the authority to obtain a monetary payment.

Your comment urges the Commission to require the respondents to admit wrongdoing. Such a requirement is not the Commission's general practice.

Your comment also recommends that the settlement require the removal of any fraudulent reviews. Some, if not all, of the fake reviews have been deleted by Sephora and the Commission believes that Sunday Riley would be unable to identify any remaining fake reviews.

The Commission has determined that the conduct relief obtained by the order will serve to remedy the alleged violations of the FTC Act by Sunday Riley Modern Skincare and Ms. Sunday Riley and deter future violations. Ms. Riley and her company will be subject to the Commission's final order for twenty years and liable for civil penalties of up to \$42,530 per violation should they violate that order, pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l). Administrative orders, such as the proposed settlement, constrain future behavior and impose compliance costs as well as reputational costs.

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Dear Mr. Brookman and Ms. Mahoney:

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In your comment, you object to the proposed settlement because it did not contain a monetary component. The Commission's proposed complaint alleges violations of Section 5 of the FTC Act, and, as you recognize, the Commission is not authorized to collect fines or penalties based on such violations. Under the current law, as you also recognize, in the absence of a reasonable estimation of consumer injury or unjust enrichment, the Commission does not have the authority to obtain a monetary payment. Based on the facts of this case, the Commission does not believe, as you suggest, that "all revenues [Sunday Riley] made during the period in which the illegal activity occurred" is a reasonable approximation of unjust enrichment.

Your comment also suggests that the Commission update the Endorsement Guides to "explicitly deal with the issue of social media promotion, such as likes, retweets, and other engagement" and "to clarify that buying likes, shares, and followers online ... is illegal." As part of its on-going regulatory review program, the Commission is soliciting comments on whether and how to revise the Endorsement Guides and the Commission encourages you to submit comments.¹

The Commission has determined that the conduct relief obtained by the order will serve to remedy the alleged violations of the FTC Act by Sunday Riley Modern Skincare and Ms. Sunday

¹ See <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-seeks-public-comment-its-endorsement-guides>.

Riley and deter future violations. Ms. Riley and her company will be subject to the Commission's final order for twenty years and liable for civil penalties of up to \$42,530 per violation should they violate that order, pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l). Administrative orders, such as the proposed settlement, constrain future behavior and impose compliance costs as well as reputational costs.

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