UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
Mark R. Meador

In the Matter of **RYTR LLC,** **a limited liability company.**	**DOCKET NO. C-4806**

ORDER REOPENING AND SETTING ASIDE ORDER

On January 23, 2025, President Donald J. Trump took decisive steps toward ensuring that the United States is positioned to win the race to achieve global dominance in artificial intelligence (AI) by signing Executive Order 14179, "Removing Barriers to American Leadership in Artificial Intelligence."[1] That Order called for the creation of an AI Action Plan.[2]

In July 2025, the White House released "Winning the Race: America's AI Action Plan."[3] America's AI Action Plan requires the Federal Trade Commission ("FTC" or "Commission") to, among other things, "review all FTC final orders, consent decrees, and injunctions, and, where appropriate, seek to modify or set-aside any that unduly burden AI innovation."[4] In connection with this review, the Commission has determined that the public interest requires that the Final Decision and Order ("Order")[5] issued by the Commission in *In the Matter of Rytr LLC* ("this matter") be reopened and set aside.

The Complaint issued by the Commission in this matter ("Complaint") alleges that Rytr LLC's ("Rytr") artificial intelligence-enabled writing assistance service violated Section 5 of the FTC Act.[6] To settle these allegations, Rytr agreed to the Order which, among other things, bans Rytr from providing any AI-enabled service generating consumer or customer reviews or testimonials.[7]

But the specific facts set forth in the Complaint do not support a finding that Rytr violated Section 5 of the FTC Act. Since Rytr's AI-enabled services did not violate Section 5 of the FTC Act, the Order fails to provide any benefit to consumers and the public and accordingly

[1] Executive Order 14179 of January 23, 2025, "Removing Barriers to American Leadership in Artificial Intelligence," 90 Fed. Reg. 8741, www.govinfo.gov/content/pkg/FR-2025-01-31/pdf/2025-02172.pdf.
[2] *Id*. § 4.
[3] https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf.
[4] *Id*. at 3-4.
[5] Decision and Order, *In re Rytr LLC*, Docket No. C-4806 (Dec. 16, 2024) ("Order")
[6] Complaint, *In re Rytr LLC*, Docket No. C-4806 (Dec. 16, 2024) ("Complaint").
[7] Order § 1.

unduly burdens AI innovation, in contravention of EO 14179 and America's AI Action Plan. As a result, the Commission is reopening this matter and setting aside the Order. Rytr has informed the Commission that it consents to vacating the Order and waives any rights it may have under Rule 3.72(b) of the Commission's Rules of Practice.[8]

I. BACKGROUND

Rytr is a Delaware limited liability company with its principal office or place of business in Wilmington, Delaware.[9] Rytr sells a writing service through its Rytr.me website, which uses generative AI to produce written content for subscribers.[10]

On September 25, 2024, the Commission published for public comment the Complaint in this matter, an action which elicited dissenting statements from now-Chairman Ferguson and Commissioner Holyoak.[11] According to the Complaint, Rytr purportedly violated Section 5 of the FTC Act in two ways. First, the Complaint alleged that Rytr's writing service provided the means and instrumentalities to deceive consumers by providing a service that generates written content for consumer reviews.[12] Second, the Complaint alleged Rytr engaged in an unfair practice by offering a review writing service that could generate numerous reviews without regard for accuracy.[13]

In order to settle these allegations, Rytr consented to an Order that banned it from offering any service dedicated to or advertised, promoted, or offered as generating consumer or customer reviews or testimonials.[14] On December 16, 2024, the outgoing Commission majority voted to approve the Order, over the dissents of now-Chairman Ferguson and Commissioner Holyoak.[15]

II. STANDARDS FOR REOPENING

The Commission may vacate a prior order on its own initiative when it determines the order is contrary to the public interest. "[T]he Commission exercises a broad discretion" in determining what is in the public interest.[16] The Commission's decision to reopen an order is not subject to any "higher standard of public interest" than its initial decision.[17]

Section 5(b) of the FTC Act authorizes the Commission, after notice and opportunity for hearing, to alter, modify, or set aside a prior order whenever it believes: (a) that conditions of

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[8] 16 C.F.R. § 3.72(b).
[9] Compl. ¶ 1.
[10] *Id*. ¶ 2.
[11] Dissenting Statement of Comm'r Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *In re Rytr LLC*, Matter No. 2323052 (Sept. 25, 2024) ("Ferguson Dissent"); Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *In re Rytr LLC*, Matter No. 2323052 (Sept. 25, 2024) ("Holyoak Dissent").
[12] Compl. ¶¶ 15-16.
[13] *Id*. ¶¶ 17.
[14] Order § 1.
[15] *Id*. § 5.
[16] *FTC v. Klesner*, 280 U.S. 19, 28 (1929).
[17] *Elmo Co. v. FTC*, 389 F.2d 550, 552 (D.C. Cir. 1967).

fact or of law have changed so as to require such action; or (b) if the public interest so requires.[18] Commission Rule of Practice 3.72(b) sets out the process for the Commission to reopen a proceeding to alter, modify, or set aside an order.[19] The Rule explains that, whenever the Commission is of the opinion that changed conditions of fact or law or the public interest may require an order to be altered, modified, or set aside, the Commission must serve upon the person subject to the decision an order to show cause, stating the changes it proposes to make and the reasons they are deemed necessary.[20] Within thirty days after service of such order to show cause, the respondent may file an answer.[21] If the order is not opposed, or is opposed but the pleadings do not raise issues of fact to be resolved, the Commission, in its discretion, may decide the matter on the order to show cause and answer.[22]

Rytr has informed the Commission that it consents to vacating the Order and waives any rights it may have under Rule 3.72(b). Accordingly, the Commission may now reopen and set aside the Order, if it determines that the public interest so requires, without serving Rytr with an order to show cause and providing it with a thirty-day period to submit an answer.

III. THE ORDER IS CONTRARY TO THE PUBLIC INTEREST

The public interest compels the Commission to revisit the Order. Section 5 of the FTC Act does not support the Commission's issuance of the Complaint or the Order. As explained below, the Complaint failed to plead a violation of Section 5. Accordingly, the Order fails to provide any benefit to consumers and the public. Maintaining an order untethered from an actual legal violation undermines the Commission's enforcement mission and U.S. markets. And because there was no violation of Section 5 of the FTC Act, the Order unduly burdens AI innovation in contravention of EO 14179 and America's AI Action Plan. For these reasons, and as explained below, the Order is not in the public interest.

A. The Complaint Fails to Plead a Violation of Section 5

Section 5 of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce."[23] The Complaint alleges two violations of Section 5 by Rytr: 1) means and instrumentalities to deceive; and 2) unfairness.[24] Neither purported violation, however, finds sufficient support in the Complaint.

Means and Instrumentalities: Courts have long held that "[t]hose who put into the hands of others the means by which they may mislead the public, are themselves guilty of a violation of Section 5 of the [FTC] Act."[25] The FTC and courts have referred to this theory of liability as "means and instrumentalities."[26] The courts and the Commission have recognized at

[18] 15 U.S.C. § 45(b).
[19] 16 C.F.R. § 3.72(b).
[20] *Id*. § 3.72(b)(1).
[21] *Ibid*.
[22] *Id*. § 3.72(b)(2).
[23] 15 U.S.C. § 45(a).
[24] Compl. ¶¶ 15-17.
[25] *Waltham Watch Co. v. FTC*, 318 F.2d 28, 32 (7th Cir. 1963).
[26] *See, e.g.*, *In re Shell Oil Co.*, 128 F.T.C. 749, 764 (1999).

least three situations in which the use of the means and instrumentalities theory of liability may be appropriate. The facts alleged in the Complaint align with none of these situations, nor does the Complaint surface any other cognizable application of the theory.

First, the courts and the Commission have recognized a means and instrumentalities theory when suppliers provide deceptive marketing material to sellers, who use this material to deceive consumers.[27] That is not the case here. The Complaint contains no allegations that Rytr itself created deceptive marketing material, only that its customers might have used its tool to do so, and fails even to provide a single allegation that such false reviews were in fact created and used. [28]

The Commission has also alleged a means and instrumentalities theory when an entity provides others with a product or service that is inherently deceptive.[29] That situation, again, is not present in this case. Indeed, when a product or service has a pro-consumer, legitimate use, it is plainly wrong to allege the product is inherently deceptive. The Complaint itself acknowledges that the Rytr platform has pro-consumer and non-deceptive uses – including creating an editable first draft of a review.[30]

Finally, the Commission and courts have found a cognizable means and instrumentalities theory when the defendant knows, or has reason to know, that the person to whom the product or service was supplied will use it to violate Section 5.[31] The closest the Complaint comes to this knowledge requirement is alleging that Rytr's records show that some users generated hundreds or even thousands of reviews.[32] But the Complaint never makes the necessary connection by alleging that Rytr had actual or constructive knowledge that these reviews were used to violate Section 5 or even that the reviews were ever in fact published.[33]

In sum, the Complaint fails to plead facts sufficient to support a cognizable means and instrumentalities theory of liability under Section 5 of the FTC Act. As Chairman Ferguson observed in his dissent, the Commission's theory against *Rytr* would just as well condemn the conduct of anyone who makes "pencils, paper, printers, computers, smartphones, word processors, typewriters, posterboard, televisions, billboards," or any other tool that someone, somewhere might use to create or disseminate a false advertisement.[34] That would be inconsistent with 'common-sense "principles recognized in every part of the law."'[35]

Unfairness: The Complaint also alleges that Rytr's AI-generated review product constituted an unfair act or practice.[36] Under the FTC Act, an act or practice is unfair if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by

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[27] *See, e.g.*, *Regina Corp. v. FTC*, 322 F.2d 765, 767-68 (3d Cir. 1963).
[28] Compl. ¶ 8.
[29] *See, e.g.*, *Gellman v. FTC*, 290 F.2d 666, 667-68 (8th Cir. 1961).
[30] Compl. ¶ 7.
[31] *See, e.g.*, *Waltham Watch*, 318 F.2d at 31-32.
[32] Compl. ¶ 13.
[33] Holyoak Dissent at 3 n.17; Ferguson Dissent at 6-7.
[34] Ferguson Dissent at 5.
[35] *Id.* at 9 (quoting *Metro-Goldwyn-Mayer Studios Inc. v. Grokster*, 545 U.S. 913 (2005)).
[36] Compl. ¶ 17.

consumers themselves and not outweighed by countervailing benefits to consumers or to competition."[37]

As a threshold matter, the Complaint fails to plead sufficiently that Rytr's platform causes or is likely to cause any injury to consumers, much less substantial injury. Nor does the Complaint plead facts sufficient to support a "likelihood" of substantial injury. Since the Complaint fails the first prong of Section 5(n), the Complaint fails as a matter of law. But the failure does not end there. The Complaint also fails to plead facts demonstrating that any harm is not outweighed by countervailing benefits to consumers or to competition. Without any empirical or even qualitative evidence, the Complaint asserts that the service "has no or *de minimis* legitimate use."[38] But this conclusion is contradicted by the Complaint's description of the Rytr platform as one that "enables users to generate written content for reviews"[39] and "generate[] genuine-sounding, detailed reviews quickly and with little user effort."[40] More generally, consumers benefit from the invention and availability of new tools, even though almost all tools have both legal and illegal uses. The allegations in the Complaint, taken as a whole, therefore fail to meet the threshold balancing analysis required for an unfairness theory of liability under Section 5 of the FTC Act.

B. The Order Unduly Burdens AI Innovation and is Not in the Public Interest

Because of the legal shortcomings described above, we conclude that the public interest requires setting aside the Order.[41] The Complaint does not contain sufficient allegations to support a violation of the FTC Act and, therefore, the Order is not correcting any violation of the law.

In determining whether to set aside an order on public interest grounds, the "affirmative need to modify the order must be weighed against the need for continuing the order."[42] We cannot conceive of any need to continue an order that was not based on any cognizable violation of the law and therefore does not protect consumers.

Instead, the Order unduly burdens innovation in the nascent AI industry. As stated in now-Chairman Ferguson's dissent, "[t]reating as categorically illegal a generative AI tool merely because of the possibility that someone might use it for fraud is inconsistent with our precedents and common sense. And it threatens to turn honest innovators into lawbreakers and risks strangling a potentially revolutionary technology in its cradle."[43] Where actors use AI to violate the law or deceive consumers about the capabilities of their generative AI, they should be held accountable, as the FTC has done and will continue to do.[44] But that is not the case here. Rushing in to impose aggressive law enforcement unsupported by facts or law is improper and is not in the public interest.

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[37] 15 U.S.C. § 45(n).
[38] Compl. ¶ 14.
[39] *Id*. ¶ 6.
[40] *Id*. ¶ 7.
[41] 15 U.S.C. § 45(b); 16 C.F.R. § 3.72(b).
[42] Order Reopening and Setting Aside Order, *In re Albertson's, Inc.*, 110 F.T.C. 1, 1987 WL 874631, at *2 (1987).
[43] Ferguson Dissent at 1.
[44] *See, e.g.*, Decision and Order, *In re DoNotPay, Inc.*, Docket No. C-4812 (F.T.C. Jan. 17, 2025).

IV. ORDER

Based on the record detailed above, and in light of Rytr's consent to setting aside the Order and waiver of its Rule 3.72 rights, the Commission has determined that the public interest requires that its December 16, 2024 Decision and Order in this proceeding be set aside in its entirety.

Accordingly, **IT IS ORDERED** that the Decision and Order be, and hereby is, reopened and set aside.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: