

FEDERAL TRADE COMMISSION

16 CFR Part 461

RIN 3084-AB71

Trade Regulation Rule on Impersonation of Government and Businesses

AGENCY: Federal Trade Commission.

ACTION: Initial notice of informal hearing; final notice of informal hearing; list of Hearing Participants; requests for submissions from Hearing Participants.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) published a supplemental notice of proposed rulemaking (“SNPRM”) in the *Federal Register* on March 1, 2024, titled “Trade Regulation Rule on Impersonation of Government and Businesses,” which requested additional public comment on whether the Commission should revise the title of the Rule, add a prohibition on the impersonation of individuals, and extend liability for violations of the Rule to parties who provide goods and services with knowledge or reason to know that those goods or services will be used in impersonation schemes that violate the Rule. The SNPRM announced the opportunity for interested parties to present their positions orally at an informal hearing. Six commenters requested to participate at the informal hearing. The Commission has decided not to proceed with the SNPRM’s proposed means and instrumentalities provision at this time. The purpose of the informal hearing will be to address issues relating to the proposed prohibition on impersonating individuals.

DATES:

Hearing date: The informal hearing will be conducted virtually on January 17, 2025, at 1:00 p.m. Eastern.

Participation deadline: If you are a Hearing Participant and would like to submit your oral presentation in writing or file a supplementary documentary submission, you must do so on or before January 9, 2025.

ADDRESSES: Hearing Participants may submit their oral presentations in writing or file supplementary documentary submissions, online or on paper, by following the instructions in part IV of the **SUPPLEMENTARY INFORMATION** section. Write “Impersonation SNPRM, R207000” on your submission and send it electronically to *electronicfilings@ftc.gov*, with a copy to *OALJ@ftc.gov*. If you prefer to file your submission on paper, mail it via overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex I), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Thomas Harris, *tharris1@ftc.gov*, (202-326-3620), Claire Wack, *cwack@ftc.gov*, (202-326-2836), and Ryan McAuliffe, *rmcauliffe@ftc.gov*, (202-326-3044).

SUPPLEMENTARY INFORMATION:

I. Background

Following public comment on an advance notice of proposed rulemaking (“ANPRM”), 86 FR 72901 (Dec. 23, 2021), the FTC published a notice of proposed rulemaking (“NPRM”), 87 FR 62741 (Oct. 17, 2022), entitled “Trade Regulation Rule on Impersonation of Government and Business” (“Rule”) in the *Federal Register*, proposing to add part 461 to title 16 of the Code of Federal Regulations, Chapter I, to prohibit the

impersonation of government, businesses, or their officers. On March 30, 2023, the Commission published an initial notice of informal hearing, 88 FR 19024, and on May 4, 2023, Chief Administrative Law Judge Michael Chappell presided over the informal hearing, which was viewable live to the public from the Commission's website, <https://www.ftc.gov>. Based upon the comments submitted regarding the proposed provision imposing means and instrumentalities liability,¹ the Commission decided that this provision warranted further analysis and consideration, and stated that it would continue to consider the issue, including soliciting additional comment.

On March 1, 2024, the Commission published its final Rule in the *Federal Register*, 89 FR 15017. In that same issue of the *Federal Register*, the Commission also published the SNPRM, 89 FR 15072, requesting additional public comment on whether the Commission should revise the title of the Rule, add a prohibition on the impersonation of individuals, and extend liability for violations of the Rule to parties who provide goods and services with knowledge or reason to know that those goods or services will be used in impersonation schemes that violate the Rule.

In accordance with section 18(b)(1) of the FTC Act, 15 U.S.C. 57a(b)(1), which requires the Commission to provide the opportunity for an informal hearing in section 18 rulemaking proceedings, the SNPRM also announced the opportunity for interested persons to present their positions orally at an informal hearing. Six of the commenters requested the opportunity to present their position orally or participate at an informal hearing. Three additional commenters requested the opportunity to participate in a hearing if one were held but did not request a hearing themselves.

¹ See SNPRM, 89 FR 15072 (Mar. 1, 2024), <https://www.federalregister.gov/documents/2024/03/01/2024-03793/trade-regulation-rule-on-impersonation-of-government-and-businesses>.

After further consideration, the Commission has decided not to proceed with the SNPRM's proposed means and instrumentalities provision (proposed § 461.5) at this time. Therefore, the purpose of the informal hearing will be to address issues relating to the proposed prohibition on impersonating individuals (proposed § 461.4).

II. The Requests for an Informal Hearing; Presentation of Oral Submissions

Section 18 of the FTC Act, 15 U.S.C. 57a, as implemented by the Commission's Rules of Practice, 16 CFR 1.11(e), provides interested persons with the opportunity to present their positions orally at an informal hearing upon request.² To make such a request, a commenter must submit, no later than the close of the comment period for the SNPRM, 1) a request to make an oral submission, if desired; 2) a statement identifying the interested person's interests in the proceeding; and 3) any proposal to add disputed issues of material fact to be addressed at the hearing.³

The following six commenters requested an informal hearing generally in accordance with the requirements of 16 CFR 1.11(e):

1. The Abundance Institute;⁴
2. Andreessen Horowitz (a16z);⁵
3. The Consumer Technology Association (CTA);⁶

² 16 CFR 1.11(e).

³ 16 CFR 1.11(e)(1) through (e)(3).

⁴ The Abundance Institute describes itself as "a mission-driven non-profit dedicated to creating the policy and cultural environment where emerging technologies can develop and thrive in order to perpetually expand widespread human prosperity." Abundance Institute Cmt. at 1.

⁵ Andreessen Horowitz of a16z states that a16z is the "world's largest venture capital firm" and a "leading investor" in generative artificial intelligence ("AI") "with a wide-ranging portfolio of companies" and the belief that AI "should be able to do a better job than unaided human intelligence in solving the complex challenges facing humanity, thereby creating a better world." a16z Cmt. at 1-2.

⁶ CTA states that it is the largest technology trade association in North America, whose members range from startups to established brands. CTA Cmt. at 1.

4. Software & Information Industry Association (SIIA);⁷
5. TechFreedom;⁸ and
6. TechNet.⁹

In addition, while the following commenters stated that an informal hearing was not necessary, they requested the opportunity to make an oral presentation if the Commission holds an informal hearing at others' request:

1. Electronic Privacy Information Center (EPIC), et al.;¹⁰
2. The Internet & Television Association (NCTA);¹¹ and
3. Truth in Advertising (TINA).¹²

The Commission finds that the requests submitted were generally adequate and therefore will hold an informal hearing. The nine commenters listed will have the opportunity to make oral presentations during the informal hearing. The Commission

⁷ SIIA states that it is a trade organization made up of companies engaged in the information economy, "including digital content providers and users in academic publishing, education technology companies, software developers, cloud service providers, financial information firms, and companies that host platforms used by billions of people worldwide." SIIA Cmt. at 1.

⁸ TechFreedom states that it is a "nonprofit, nonpartisan think tank . . . dedicated to promoting technological progress that improves the human condition." TechFreedom Cmt. at 1.

⁹ TechNet describes itself as "the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level." TechNet Cmt. at 1.

¹⁰ This comment was "submitted by the following consumer and privacy advocacy organizations: Electronic Privacy Information Center (EPIC), National Consumer Law Center on behalf of its low-income clients, Consumer Federation of America, National Consumers League, Consumer Action, and National Association of Consumer Advocates." EPIC, et al. Cmt. at 2.

¹¹ NCTA states that it is "the principal trade association for the U.S. cable industry, representing cable operators serving nearly 90% of the nation's cable television households and cable program networks." NCTA Cmt. at 1.

¹² TINA describes itself as "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." TINA Cmt. at 2.

does not find it necessary to identify any group of interested persons with the same or similar interest in the proceeding.¹³

III. Disputed Issues of Material Fact; Final Notice

In the SNPRM, the Commission did not identify any disputed issues of material fact that needed to be resolved at an informal hearing. However, the Commission may still do so in this initial and final notice of informal hearing, either on its own initiative or in response to a persuasive showing from a commenter.¹⁴ To be appropriate for cross-examination or rebuttal, a disputed issue of material fact must raise “specific facts” that are “necessary to be resolved.”¹⁵

In response to the SNPRM, six commenters proposed disputed issues of material fact related to proposed § 461.5 (*Means and Instrumentalities: Provision of Goods or Services for Unlawful Impersonation Prohibited*) regarding extending liability to parties who provide goods or services with knowledge or reason to know that they will be used in impersonation schemes.

The Abundance Institute claimed in its comment: “The record contains reports of business practices described as ‘means and instrumentalities’ violations. But none of the reports identify even a single incident (let alone a ‘prevalent’ practice) of a party

¹³ 16 CFR 1.12(a)(5) requires the initial notice of informal hearing to include a “list of the groups of interested persons determined by the Commission to have the same or similar interests in the proceeding.” 16 CFR 1.12(d) explains that the Commission “will, if appropriate, identify groups of interested persons with the same or similar interests in the proceeding.” Doing so facilitates the Commission’s ability to “require any group of interested persons with the same or similar interests in the proceeding to select a single representative to conduct cross-examination on behalf of the group.” *Id.*

¹⁴ See 16 CFR 1.12(a)(3); 15 U.S.C. 57a(c)(2)(B); see also 89 FR 15072 (Mar. 1, 2024).

¹⁵ 16 CFR 1.13(b)(1)(i) (issues that “must” be considered for cross-examination or rebuttal are only those disputed issues of fact the Commission determines to be “material” and “necessary to resolve”).

‘pass[ing] on a false or misleading representation’ as is necessary to meet the first prong of the two-prong test for M&I violations of Section 5.”¹⁶

CTA proposed three disputed issues of material fact:¹⁷

1. “Whether the Means and Instrumentalities Proposal imposes an affirmative obligation on companies to address the misuse of their products and services, and whether there are any costs associated with implementing compliance plans to satisfy this requirement.”
2. “Whether the Means and Instrumentalities Proposal will chill the development of new products and services that could be misused by fraudsters.”
3. “Whether the Means and Instrumentalities Proposal’s liability framework is responsive to the known trends and evidence of online fraud.”

TechNet proposed two disputed issues of material fact:

1. “Whether the means and instrumentalities provision imposes an affirmative obligation to address the misuse of tools, products, and services and the costs associated with such compliance programs.”
2. “Whether the means and instrumentalities provision will chill the development and deployment of legitimate tools that can be misappropriated for impersonation.”

SIIA proposed three disputed issues of material fact:

¹⁶ The Abundance Institute Cmt. at 15.

¹⁷ CTA Cmt. at 11-12. CTA additionally requested to cross examine witnesses pursuant to 15 U.S.C. 57a(c)(2)(B) as to these proposed disputed issues of material fact.

1. “Whether the Commission has accurately estimated the costs associated with the proposed rule.”¹⁸
2. “Whether the means and instrumentalities provision would impose an affirmative obligation on companies to address misuses of goods and services and, if so, costs associated with implementing additional compliance programs or efforts to address potential misuse.”
3. “Whether the means and instrumentalities provision will impede the development of technologies that have positive societal benefits but could be misused to enable impersonation.”

a16z quoted the following portion of a paragraph from the SNPRM, noting that it disputed “those material facts[:]” “Because the deceptive impersonation of individuals is already prohibited by section 5 of the FTC Act, and section 5 similarly makes unlawful providing the means and instrumentalities for a violation of section 5 of the Act, the SNPRM would not change the state of law in terms of what is legal and what is illegal. Furthermore, the proposed amendments to the Rule would impose no recordkeeping requirement and would not create or impose any compliance costs.”¹⁹ Relatedly, it proposed as a disputed issue of material fact “the existence and magnitude” of “direct and

¹⁸ See SIIA Cmt. at 7. Although it mentions generally the estimate of potential costs of the “proposed rule,” the Commission understands the substance of this proposed disputed issue of material fact to concern the estimated costs specifically associated with proposed § 461.5 because SIIA stated in its comment that it recommends adoption of the other proposed amendments regarding individual impersonation. *Id.* at 1 (“SIIA supports the Commission’s proposed extension of the impersonation rule to individuals.”).

¹⁹ a16z Cmt. at 20 (quoting SNPRM, 89 FR 15078). The Commission does not understand a16z’s proposed disputed issue of material fact regarding the quoted portion of this paragraph to concern proposed § 461.4. Like SIIA, “a16z supports expanding the Impersonation Rule’s scope to impersonations of individuals.” *Id.* at 2.

indirect harms” that the “proposed constructive knowledge standard” in § 461.5 would, in a16z’s view, “inflict.”²⁰

TechFreedom proposed as disputed issues of material fact whether “the rule would apply to AI tools covered by Section 230” and “the applicability of a constructive knowledge standard” in proposed § 461.5.²¹

Each of these proposed disputed issues of material fact relates to the § 461.5 proposal to extend liability to parties who provide goods or services with knowledge or reason to know that they will be used in impersonation schemes. After further consideration, the Commission has decided not to proceed with proposed § 461.5 at this time. It is therefore not necessary to address the proposed disputed issues concerning § 461.5, and the purpose of the informal hearing will be to address issues relating to proposed § 461.4’s prohibition on impersonating individuals.

Thus, the Commission finds that there are no “disputed issues of material fact” to resolve at the informal hearing²² and no need for cross-examination or rebuttal submissions.²³

This initial notice of informal hearing also serves as the “final notice of informal hearing.”²⁴ A final notice of informal hearing is limited in its substance to matters that arise only when the Commission designates disputed issues of material fact: who will conduct cross-examination; whether any interested persons with similar interests will be grouped together for such purposes; and who will make rebuttal submissions.²⁵ Because

²⁰ *Id.* at 20-21.

²¹ TechFreedom Cmt. at 2-3.

²² If any interested person seeks to have additional disputed issues of material fact designated, the person may make such request to the presiding officer pursuant to 16 CFR 1.13(b)(1)(ii).

²³ 16 CFR 1.12(b).

²⁴ 16 CFR 1.12(c).

²⁵ *Id.*

cross-examination and submissions of rebuttal evidence are not anticipated to occur in this informal hearing, no separate final notice of informal hearing is necessary.

IV. List of Hearing Participants; Making an Oral Statement; Requests for Documentary Submissions

Pursuant to Commission Rule 1.12(a)(4), 16 CFR 1.12(a)(4), the following is the list of interested persons (“Hearing Participants”) who will have the opportunity to make oral presentations at the informal hearing:

1. The Abundance Institute;
2. Andreesen Horowitz (a16z);
3. The Consumer Technology Association (CTA);
4. Software & Information Industry Association (SIIA);
5. TechFreedom;
6. TechNet;
7. Electronic Privacy Information Center (EPIC) (et al.);
8. The Internet & Television Association (NCTA); and
9. Truth in Advertising (TINA).

Because the Commission has decided not to proceed with proposed § 461.5, the purpose of the hearing will be to address issues relating to the remaining proposal to prohibit impersonation of individuals in § 461.4. Oral statements will be limited to 15 minutes, although they may be supplemented by documentary submissions, and the presiding officer may grant an extension of time for good cause shown. Transcripts of the oral statements will be placed in the rulemaking record. Hearing Participants will be provided with instructions as to how to participate in the virtual hearing.

If you are a Hearing Participant and would like to submit your oral representation in writing or file a supplementary documentary submission, please write “Impersonation SNPRM, R207000” on your submission and send it electronically to *electronicfilings@ftc.gov*, with a copy to *OALJ@ftc.gov*. If you prefer to file your submission on paper, mail it by overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex I), Washington, DC 20580.

If you file a documentary submission under this section, your submission – including your name and your State – will be placed on the public record of this proceeding, including on the website <https://www.ftc.gov>. Because your documentary submission will be placed on the public record, you are responsible for making sure that it does not include any sensitive or confidential information. In particular, your submission should not contain sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other State identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your documentary submission doesn’t include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your documentary submission should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential” – as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Documentary submissions containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the submission must include the factual and legal basis for the confidentiality request and must identify the specific portions to be withheld from the public record. *See* Commission Rule 4.9(c). Your documentary submission will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your documentary submission has been posted publicly at <https://www.ftc.gov> – as legally required by Commission Rule 4.9(b), 16 CFR 4.9(b) – we cannot redact or remove it, unless you submit a confidentiality request that meets the requirements for such treatment under Commission Rule 4.9(c), 16 CFR 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of submissions to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive documentary submissions it receives from the Hearing Participants on or before January 9, 2025. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Hearing Participants who need assistance should indicate as much in their submissions, and the Commission will endeavor to provide accommodations. Hearing Participants without the computer technology necessary to participate in video

conferencing will be able to participate in the informal hearing by telephone; they should indicate as much in their submissions.

V. Conduct of the Informal Hearing; Role of Presiding Officer

The Commission's Chief Presiding Officer, the Chair, has appointed and designates Administrative Law Judge for the Federal Trade Commission, the Honorable Jay L. Himes, to serve as the presiding officer of the informal hearing. Judge Himes will conduct the informal hearing virtually using video conferencing starting at 1:00 p.m. Eastern on January 17, 2025. The informal hearing will be available for the public to watch live from the Commission's website, <https://www.ftc.gov>, and a recording or transcript of the informal hearing will be placed in the rulemaking record.

Because there are no "disputed issues of material fact" to resolve at the informal hearing, the presiding officer is not anticipated to make a recommended decision.²⁶ The role of the presiding officer shall include presiding over and ensuring the orderly conduct of the informal hearing, including selecting the sequence in which oral statements will be heard, and placing the transcript and any additional written submissions received into the rulemaking record. The presiding officer may prescribe additional procedures or issue rulings in accordance with Commission Rule 1.13, 16 CFR 1.13. In execution of the presiding officer's obligations and responsibilities under the Commission Rules, the presiding officer may issue additional public notices.

²⁶ See 16 CFR 1.13(d) ("The presiding officer's recommended decision will be limited to explaining the presiding officer's proposed resolution of disputed issues of material fact.").

**VI. Communications by Outside Parties to the Commissioners or Their
Advisors**

Pursuant to Commission Rule 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the participation deadline. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of “Sunshine” Meetings.²⁷

By direction of the Commission.

April J. Tabor,
Secretary.

²⁷ See 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).