

Advertising Your Glowing Online Reviews – How To Substantiate Ad Claims Based on Consumer Reviews

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We've blogged a few times about consumers' rights to post negative reviews online, and what businesses should know about the Consumer Review Fairness Act (the "CRFA"), but what happens if you are lucky enough to receive so many glowing reviews that you'd like to advertise the accumulation of over 10,000 five star reviews? The National Advertising Division (the "NAD") recently decided a case involving this very issue. Based on this decision, prior NAD cases and some other resources, we put together a list of issues to consider when you are relying on crowd-sourced data to support your advertising claims:

Here are a few substantiation guidelines:

- Online crowd-sourced data is treated no different from traditional survey data – the

data must be reliable and representative.

- Lots of online consumer reviews are gathered and republished on other sites, so make sure not to double count any reviews.
- While astroturfing (the practice of covering the field with fake reviews) is frowned upon by regulators, it still happens. Verified reviews are therefore the gold standard.
- As with other types of advertising claims, make sure your claim is narrowly tailored to the data
- If customers provide ratings based on overall satisfaction (quality of the product, price, shipping and customer experience), your advertising claim should speak to general satisfaction and not specific attributes of the product.
- If you rely on reviews from outside of the country in which you are making the ad claim, think about whether the location of the reviews should be disclosed
- Just because a review website (Yelp!, TripAdvisor, Amazon, etc.) allows you to advertise your star rating doesn't mean that the above guidelines don't apply or that the NAD, the FTC, the courts or any other regulator will give you a free pass

And speaking of using consumer reviews in advertising, can you or should you quote



from or reproduce Yelp! or other online reviews on your own website or in marketing materials? Yelp! provides some guidance on this question and suggests that you “don’t reuse photos with recognizable faces, as it infringes on personal privacy rights.” But brands should also consider copyright and other privacy and right of publicity issues. As Yelp! recommends, it is best to “get permission from the reviewer and provide attribution.”