

New Federal Law Protects Consumers' Right to Post Negative Online Reviews

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In the digital age, online reviews of a business are often the first place consumers turn to in order to gather information about a business, such as a restaurant, retail store or even a professional

service provider. It is well known that a negative online review may not only impact the reputation of a business, but also its bottom line. For that reason, businesses have sought to control what customers are saying about them by including non-disparagement clauses in their form contracts, such as standard customer agreements and online terms of service. A non-disparagement clause essentially works to stop consumers from posting negative reviews or comments about products or services they may have purchased by imposing a penalty or fee for such actions.

Attempts by businesses to enforce these types of “gag” or non-disparagement clauses in a form contract have made their way into the news and into the courts in recent years. For example, an inn located in upstate New York threatened a wedding party with \$500 fines for every bad review they left on Yelp. In a second example, a pet-sitting company in Texas unsuccessfully sued a couple who was unhappy with the services they had received and who posted a negative review to that effect on Yelp for \$1 million in damages, based on their alleged violation of a non-disparagement clause the company had included in its customer agreement.

To create more clarity at the federal level about the legal viability of non-disparagement clauses, which have been examined so far under differing state laws, such as anti-SLAPP statutes and under voluntary guidelines such as those set by the Better Business Bureau, President Obama signed into law on December 14, 2016 the Consumer Review Fairness Act of 2016. The new federal law voids any form contract clause that seeks to prohibit a purchaser of goods or services from submitting a negative review of a business, or that seeks to impose a penalty or fee against the purchaser for doing so. It

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also precludes a business from securing rights in review or feedback content, other than a non-exclusive license.

The new federal law does not stop a business from suing for defamation, libel or similar causes of action, or from removing obscene, discriminatory or other inappropriate content. A business will also still have leeway to pull down content that “is clearly false and misleading.” It is unclear how that standard will be interpreted.

The new federal law will take effect in March 2017 and will be enforced by the Federal Trade Commission under its authority to police unfair or deceptive business practices.

Businesses need to be aware of this new federal legal protection for consumers, which affords consumers greater protection to speak their mind about their customer experiences, when dealing with negative online reviews and when crafting their customer contracts and terms.