

CONGRESS PASSES CONSUMER REVIEW FAIRNESS ACT OF 2016 TO PROTECT ONLINE REVIEWS

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New legislation passed by Congress attempts to curb aggressive tactics against the authors of negative online reviews. The legislation bans the practice of contractually prohibiting consumers from posting negative reviews on websites. President Barack Obama has indicated that he will sign the legislation.

The Consumer Review Fairness Act of 2016 (the “Act”) voids, from inception, clauses in form contracts that:

1. Prohibit or restrict the ability of an individual from providing an online review; or
2. Impose a penalty or fee against an individual for submitting an online review.

Such chilling gag clauses had been wielded by various businesses against customers who had written or encouraged negative reviews of those businesses’ products and services through online forums such as Yelp.

The Act further restricts any claim to ownership of the underlying intellectual property in such reviews except to the extent that a limited license is provided to display the content. Accordingly, a business cannot claim IP rights in a negative review such that the business could assert infringement if the negative review remains viewable.

The Federal Trade Commission is empowered to enforce the Act under its powers against deceptive trade practices and unfair competition, and will issue best practices for compliance within 60 days of the Act’s enactment. State attorneys general are also empowered to bring actions under the Act.

Importantly, the Act’s application is limited to the specifically identified contractual clauses. The Act does not, for example, prevent parties from adopting clauses related to legal duties of confidentiality or to civil actions for defamation, libel or slander. Further, the Act does not eviscerate a person’s right to establish terms and conditions for an employee’s or independent contractor’s creation of photographs or video of that person’s property that will be used by the person for commercial purposes.

The Act also does not affect any person's right to remove, or refuse to display, content that: (i) contains the personal information or likeness of another, or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or inappropriate with respect to race, gender, sexuality, ethnicity or another intrinsic characteristic; (ii) is unrelated to the goods or services offered by or available at the person's website; or (iii) is clearly false or misleading.

MEET THE TEAM



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