

You Can't Stifle Consumer Reviews: Complying with the Consumer Review Fairness Act

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As of March 14, 2017, the recently enacted [Consumer Review Fairness Act](#) (the “Act”)¹ will prohibit “gag clauses” – contract provisions that prohibit or restrict a consumer’s ability to write negative reviews of products and services. While enforcement by the Federal Trade Commission (“FTC”) and state attorneys general is set to begin on December 14, 2017, businesses should act now to ensure compliance. Starting March 14, it will be unlawful to offer a form contract to customers if it contains a gag clause.

Under the Act, it is illegal for a company to include in a form contract any provision that: (1) prohibits or restricts a consumer from providing reviews; (2) imposes a penalty or fee against a consumer who provides a review; or (3) transfers or requires transfer of the intellectual property in a review from the reviewer to the business being reviewed. As of March 14, 2017, it will be unlawful to offer form contracts with such provisions. If such a provision is offered nonetheless, it will be void.

The Act applies to “form contracts,” which include website terms and conditions. Contracts that have been meaningfully negotiated, however, are not covered by the Act. Further, the Act specifically exempts contracts between employers and employees or independent contractors. Businesses may still prohibit, and website operators may still remove, reviews that: (1) contain confidential or private information; (2) are libelous, defamatory, and/or harassing; (3) are unrelated to the business’s products or services; or (4) are clearly false or misleading. On this last point, FTC has taken it upon itself in its [Guidance](#) to state that a review with which one disagrees is unlikely to be “clearly false or misleading.”

Starting in December of this year, state attorneys general and the FTC will enforce the Act. FTC enforcement action means that a business violating the Act could be subject to financial penalties and a federal court order. Businesses should therefore act now to ensure compliance by taking the following steps:

1. Review and revise form contracts, including website terms and conditions, and remove provisions that restrict or prohibit consumers from sharing reviews, impose a penalty on consumers who share reviews, or claim intellectual property rights over consumer reviews.
2. Review and modify any internal policies or procedures regarding the enforcement of contract provisions concerning reviews.
3. Conduct trainings and educate employees about the Act, especially those employees responsible for drafting or maintaining form contracts, and those who are typically involved in activities regarding consumer reviews.

For more information, please contact one of the lawyers listed below.

¹ Pub. L. No. 114-258, 130 Stat. 1355.