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GOOD PRACTICE GUIDE ON ONLINE CONSUMER RATINGS AND REVIEWS

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Foreword

Building on the OECD *Recommendation of the Council on Consumer Protection in E-Commerce*, this paper aims to provide practical guidance to businesses on online consumer ratings and reviews. The document focuses on four issue areas: (i) fake ratings and reviews; (ii) incentivised ratings and reviews; (iii) negative ratings and reviews; and (iv) misleading moderation practices.

This paper was prepared by Akira Yoshida under the supervision of Michael Donohue and Brigitte Acoca, of the OECD Secretariat. The author acknowledges the contributions from a number of jurisdictions to the guide, which was approved and declassified by the Committee on Consumer Policy by written procedure on 14 August 2019 and subsequently prepared for publication by the OECD Secretariat.

This publication is a contribution to the OECD Going Digital project, which aims to provide policymakers with the tools they need to help their economies and societies prosper in an increasingly digital and data-driven world.

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1. Introduction

Today, millions of consumers rate and review goods and services ("products"), as well as businesses online, and rely on ratings and reviews created by other consumers to inform their purchasing decisions. Businesses have recognised the power of online consumer ratings and reviews for advertising and marketing purposes, and have developed systems to obtain, curate, and display them online.

Given their growing importance, businesses need to manage online ratings and reviews to safeguard their reputation, prevent consumers from being misled, and ensure they are complying with relevant laws. A key starting point for doing this is the 2016 OECD *Recommendation of the Council on Consumer Protection in E-commerce* (E-commerce Recommendation) (OECD, 2016[1]), which sets out general fair advertising principles that apply to online ratings and reviews (see Annex A). In addition, most jurisdictions have truth-in-advertising laws and statutory prohibitions against misleading, deceptive, and unfair practices that apply in this area. In some jurisdictions, there are also laws and regulations specifically designed to ensure authenticity and impartiality of online consumer ratings and reviews.

This good practice guide, which complements the principles in the E-commerce Recommendation, provides practical guidance to businesses for protecting consumers in relation to online consumer ratings and reviews. The document draws from examples of enforcement cases and policy initiatives in OECD jurisdictions, as well as guidance from the business community and other stakeholders. It incorporates previous work developed by the Committee on Consumer Policy (CCP) on this topic (OECD, 2019[2]; OECD, 2019[3]; OECD, forthcoming[4]).

The guide focuses on four areas: (i) fake ratings and reviews; (ii) incentivised ratings and reviews; (iii) negative ratings and reviews; and (iv) misleading moderation practices. These four areas may overlap in practice, but each presents distinct issues. Under each of the chapters, the paper starts with key business tips, some of which, it should be noted, may be legally required in some jurisdictions (see Box 1).

For the purposes of this guide, consumer ratings refer to non-narrative user assessments of products presented on a scale, while consumer reviews refer to a consumer's opinion and/or experience of a product or business (ICPEN, 2016[5]). Narrative reviews are sometimes presented as rating scores (ACM, 2017[6]). Such ratings and reviews may be found on an online platform, search engine, retailer's website, review website, or a comparison tool run by a third party.

Box 1. Summary of key business tips

Fake ratings and reviews

- Do not write or knowingly publish fake ratings and reviews that appear to come from real consumers or independent third parties.
- Do not hire third parties who have not used your product to post ratings and reviews.
- Do not create the impression that posted ratings and reviews are provided by real consumers, if you cannot verify them.
- Let consumers report potentially fake ratings and reviews, and react swiftly to such reports.

Incentivised ratings and reviews

- Be clear about your relationship with a brand or business, regardless of the media used (e.g. online platforms, review sites, and social media)
- Disclose any incentives you provide for consumer ratings and reviews in a clear and conspicuous manner, so that consumers can readily identify incentivised ratings and reviews.
- Do not offer incentives to consumers that are conditioned on positive feedback.
- If you aggregate scores of ratings and reviews, disclose whether the overall score includes incentivised feedback.

Negative ratings and reviews

- Do not discourage consumers from posting honest negative ratings and reviews.
- Process negative ratings and reviews in a fair manner.
- Publish all ratings and reviews, whether positive or negative, or inform consumers that not all relevant feedback are posted.
- Use negative ratings and reviews as a chance to interact with your customers, learn about problems, and respond with helpful information and service.

Misleading moderation practices

- Present a clear and conspicuous explanation of how you handle ratings and reviews.
- Treat all ratings and reviews you receive in accordance with your explanation.
- Publish all ratings and reviews as quickly as possible.
- Display ratings and reviews in a fair and transparent manner.
- When creating an aggregated score from ratings and reviews from multiple platforms, ensure the same feedback is not counted more than twice.

2. Fake ratings and reviews

2.1. Business tips

- Do not write or knowingly publish fake ratings and reviews that appear to come from real consumers or independent third parties.
- Do not hire third parties who have not used your product to post ratings and reviews.
- Do not create the impression that posted ratings and reviews are provided by real consumers, if you cannot verify them.
    - Take steps to check whether ratings and reviews are authentic (for example, by verifying a reviewer's identity and examining purchase history).
    - Inform consumers of whether and how they can make sure that ratings and reviews originate from real consumers.
- Let consumers report potentially fake ratings and reviews, and react swiftly to such reports.
    - Share evidence of fake ratings and reviews with consumer authorities.

2.2. Overview of the issue

Consumers benefit from unbiased product feedback based on actual experiences of peer consumers. However, there is evidence that some businesses mask their identities and often post on a large scale fake ratings and reviews as consumers to build their own positive reputation or degrade that of their competitors.

Businesses may use third parties such as "reputation enhancement firms" or employ "search engine optimisation" strategies to post such fake ratings and reviews (Competition Bureau Canada, 2015[7]). Online ratings and reviews have also been used to help improve search rankings, and they are factored in when optimising for local search (MOZ, 2019[8]). This implies potential risks of creating fake ratings and reviews by businesses to increase search rankings. In some countries such as the United Kingdom, some businesses used a network of Facebook groups to pay for fake ratings and reviews posted on Amazon (Which?, 2018[9]).

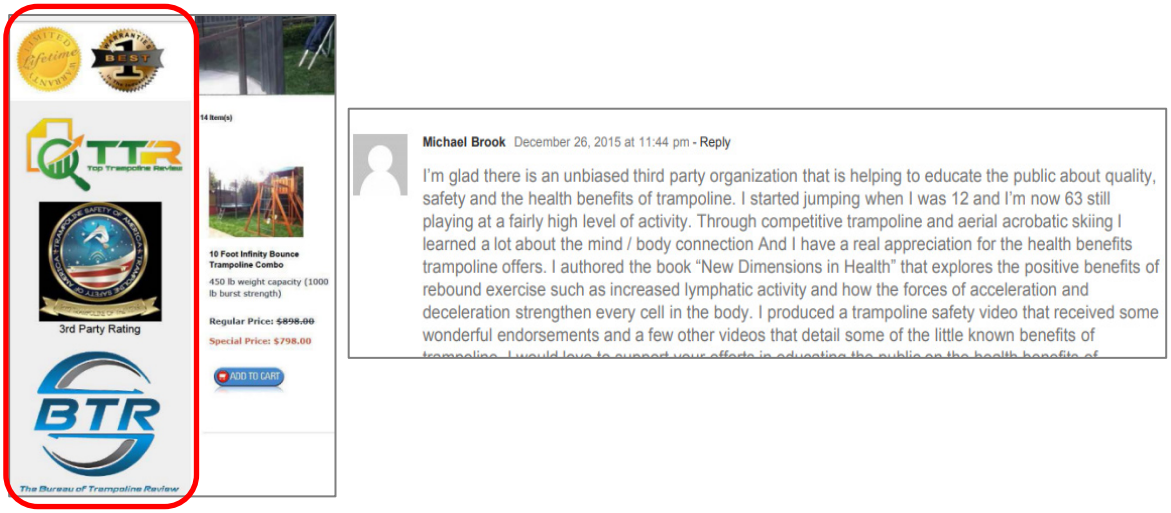
Fake ratings and reviews, which are sometimes called "astroturfing" (Competition Bureau Canada, 2015[7]), may lead consumers to make purchasing decisions that they would not have otherwise made if they were aware of the nature of the reviews. Fake ratings and reviews may erode consumer trust in not only the authenticity of online reviews, but also businesses and the market as a whole.

2.3. Examples of initiatives and guidance

2.3.1. Enforcement and policy initiatives

A number of consumer authorities have taken action against fake ratings and reviews. For instance, in 2017, in the United States, the Federal Trade Commission (US FTC) charged two brothers marketing and selling their trampolines for deceiving consumers through supposedly independent review websites (see Figure 1). According to the US FTC's complaint, the company owned by the brothers developed sales websites that prominently featured logos from supposedly independent review entities, including "Trampoline Safety of America," "the Bureau of Trampoline Review," and "Top Trampoline Review." These review websites, which claimed to provide objective information, were actually owned and run by the company. The information provided in the websites included fictitious consumer reviews, which were actually written by the owner of the company (US FTC, 2017[10]).

Figure 1. Website with logos of fictitious review entities and fake consumer review



Source: US FTC (2017[11])

In 2018, the Czech Market Surveillance Authority found a number of suspicious reviews that appeared to be written by consumers in advertisements for dietary supplements. Many of the reviewers were fictitious people, or the same people appearing repeatedly with different names, adapted to the different language versions of the company's website. The reviews offered extremely positive feedback on the products. The Authorities took action against these companies and warned consumers of these fake reviews (Czech Market Surveillance Authority, 2019[12]).

In France, in 2018, the Directorate General for Competition, Consumer Affairs and Repression of Fraud (DGCCRF) found suspicious consumer reviews that turned out to be written by businesses in order to promote their commercial activities. The investigations led by the DGCCRF found that business owners, and their relatives or business partners, had written fake reviews on hotel booking and educational training websites. The DGCCRF took action against these unlawful practices (DGCCRF, 2018[13]).

Some consumer authorities took action against marketing organisations, such as search engine optimisation companies, public relations and marketing agencies that write fake

reviews for their clients. For instance, in 2016, the Competition and Markets Authority of the United Kingdom (UK CMA) found that Total SEO, a search engine optimisation and online marketing company, had written over 800 fake positive reviews for 86 small businesses between 2014 and 2015. In addition to reaching settlement with Total SEO to cease the practice of posting fake reviews in order to increase their ratings on review sites, the CMA warned Total SEO's clients that they could also be responsible for breaking the consumer protection law themselves (UK CMA, 2016[14]).

In 2016, the UK CMA also reached agreement with five review sites to address concerns over fake online reviews. The commitments included measures such as implementing more rigorous scrutiny of positive reviews through automated and manual checks, and verification procedures for both positive and negative feedback (UK CMA, 2016[15]).

In 2019, the US FTC took action against a weight-loss supplement marketer, Cure Encapsulations Inc. and its owner, which allegedly paid for fake reviews posted on Amazon. According to the agency's complaint, the marketers had paid a website, amazonverifiedreviews.com, to create and post Amazon reviews of their product, asking the website's operator to help them maintain an average rating of no less than 4.3 out of 5 stars in order to promote their products sales and to "make my product … stay a five star" (see Figure 2). As a result, the fake reviews with a five-star rating on the products were posted on Amazon.com, giving a misleading impression to consumers (US FTC, 2019[16]).

Figure 2. Communications regarding purchase of fabricated reviews on Amazon

"As I told you yesterday, I need 30 reviews 3 per day.

Because of my upcoming holiday, I will not be able to watch my reviews not to get sabotaged by competition.

The goal of my competition is to bring me down to a 4.2 overall rating, and I need to be at 4.3 overall in order to have the sales.

I am sending you now another $200 and will pay you total of $1000 additional to the cost of the reviews if you stand on the product, and make sure the next 12 days if someone post a negative review you add real positive reviews from real aged accounts (no proxy vpn vps) to make it back to a 4.3 overall."

Source: US FTC (2019[17])

In 2019, the UK CMA found evidence, through internet sweeps conducted between November 2018 and June 2019, that there over 100 eBay listings contained fake reviews for sale. The agency also identified 26 Facebook groups where people offered to write fake reviews or businesses recruited people to write fake and misleading reviews on popular shopping and review sites. The UK CMA urged Facebook and eBay to conduct an urgent review of their sites to prevent fake and misleading online reviews from being offered for sale (UK CMA, 2019[18]).

Fake reviews can in some cases result in a criminal conviction. For instance, the Criminal Court of Lecce, in Italy, ruled in 2018 that the owner of PromoSalento, a marketing company, had written fake reviews using a false identity, in breach of Italian criminal law. The court concluded that the company had sold fake review packages to hospitality

businesses in the country. As a result, the owner was sentenced to jail for nine months with a fine of approximately EUR 8 000 (TripAdvisor, 2018[19]).

In addition, in 2013, the New York Attorney General reached agreement with 19 companies to stop their practice of leaving fake reviews for businesses. The decision was based on an investigation which had found that companies had posted fake consumer reviews on websites such as Yelp, Google Local, and CitySearch. Many of these companies had hidden their identities to leave fictitious reviews through, for instance, the creation of fake online profiles on consumer review websites and by paying writers from the Philippines, Bangladesh and Eastern Europe for USD 1 to USD 10 per review (New York State Attorney General, 2013[20]).

In 2019, the European Parliament reached a provisional agreement on a legislative proposal, a New Deal for Consumers, which includes measures against fake reviews. The draft text prohibits businesses from stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers. It also bans submitting or commissioning third parties to submit false consumer reviews, or misrepresenting consumer reviews to promote products (EC, 2019[21]).

2.3.2. Business guidance

A number of consumer authorities and industry groups have published guidelines to help businesses and consumers address online fake ratings and reviews.

The International Consumer Protection and Enforcement Network (ICPEN), an organisation of consumer authorities from over 60 countries, published in 2016 a series of guidelines on online reviews that are aimed at review administrators, traders, and digital influencers. The guidance recommends that businesses should not pretend to be a consumer to write fake reviews, nor allow a third party to write reviews on their behalf (ICPEN, 2016[5]).

Other consumer authorities have also published their own business guidance, emphasising the importance of businesses having procedures to verify authentic ratings and reviews and detect, take down, and report fake ones:

- The Norway Consumer Authority suggests that businesses ensure that reviewers have actually used the product or service (Norway Consumer Authority, 2016[22]).
- The European Commission (EC)'s Key Principles for Comparison Tools recommends that businesses use mechanisms to verify reviews, including verification of the reviewer's identity through prior registration and reviewer's IP address. The EC, however, notes that such measures should not discourage online engagement from consumers in posting online reviews (EC, 2016[23]).
- The EC further recommends in its guidance on the implementation of the Unfair Commercial Practices Directive that online platforms should not mislead users as to the origin of the reviews. In particular, it clarifies that online platforms should avoid creating the impression that posted reviews originate from real users, when they cannot adequately ensure this. In such case, platform operators should clearly inform consumers about this fact (European Parliament, n.d.[24]) (EC, 2016[25]).
- The EC also suggests ways to ensure the authenticity of reviews, which include: a) having technical means to verify the reliability of the person posting a review (e.g. user registration); b) verifying the IP address used to submit the review; c)

requiring information by which the reviewer has actually used the object of the review (e.g. a booking number) (EC, 2016[25]).

- The UK CMA encourages businesses to report to consumer authorities when detecting suspicious reviews (UK CMA, 2016[26]). It also recommends that search engine optimisation or marketing companies should not write or arrange fake reviews on behalf of their clients (UK CMA, 2016[27]).
- The Australian Competition and Consumer Commission (ACCC) assures that deleting or hiding reviews which are susceptive of being fake is not misleading and actually leads to the improvement in the quality of reviews (ACCC, 2013[28]).

A number of business organisations have also published guidance:

- The Better Business Bureau of the United States (US BBB) uses a verification procedure system to ensure that online reviews posted on its website are based on actual marketplace interactions occurred between consumers and businesses (US BBB, n.d.[29]);
- The Word of Mouth Japan Marketing Association provides in its guidance that any attempt to fabricate an online consumer behaviour, including a number or content of consumer ratings and reviews, should be prohibited to ensure their trustworthiness (Word of Mouth Japan Marketing Association, 2012[30]).

3. Incentivised ratings and reviews

3.1. Business tips

- Be clear about your relationship with a brand or business, regardless of the media used (e.g. online platforms, review sites, and social media)
- Disclose any incentives you provide for consumer ratings and reviews in a clear and conspicuous manner, so that consumers can readily identify incentivised ratings and reviews.
    - Incentives can include monetary compensation, free products, store credit, or promises of future discounts.
- Do not offer incentives to consumers that are conditioned on positive feedback.
- If you aggregate scores of ratings and reviews, disclose whether the overall score includes incentivised feedback.

3.2. Overview of the issue

A key concern with consumer ratings and reviews relates to businesses' failure to disclose payments or other commercial arrangements (such as free products, store credit, or future discounts) behind incentivised reviews. This makes it challenging for consumers to recognise that the reviews are paid endorsements, and to assess the nature and source of the reviews and the reviewed products. Increasing use of social media as platforms where consumer ratings and reviews are posted can present greater risks for hidden and misleading advertising, given that the commercial elements are often mixed with social and cultural user-generated content (EC, 2016[25]).

Consumers generally give less weight and credibility to ratings and reviews if they know that the reviewers have been compensated. Such practices also make it more difficult for consumers to decide whether to interact with the presented material, make decisions about the weight to give to the information conveyed about a product or service, and make well-informed purchasing decisions (OECD, forthcoming[4]; OECD, 2019[3]; OECD, 2019[2]). Lack of disclosures about the nature and source of such promotional reviews can mislead consumers into believing that contents they are seeing are independent, impartial, or not from the sponsoring advertiser itself, when in fact the contents are paid advertisements.

Although offering rewards for writing ratings and reviews may increase the volume of user feedback or provide a broader range of ratings and reviews, there is a concern that incentivised feedback may push consumer ratings and reviews in a certain direction (i.e., towards more favourable reviews), distorting the overall picture of a product (OECD, 2019[31]; OECD, forthcoming[4]).

3.3. Examples of initiatives and guidance

The 2019 OECD's Good Practice Guide on Online Advertising illustrates a number of initiatives undertaken by consumer authorities and industry groups to address issues concerning endorsements in the context of advertising. The guide mainly focuses on challenges in paid endorsements in blogs, online videos and social media platforms. It

provides that paid endorsements should be easily understandable as promotional content, and disclosures should clearly state any connection between an advertiser and an endorser that could affect the credibility of the endorsement (OECD, 2019[3]).

The guide also suggests a way to improve consumer recognition of paid-for-content by paying attention to the design of disclosures, including position, wording, text size and colour of the labels and other qualifying information. Use of other visual cues such as background colour and border, and the presence of a logo or image is also encouraged. The guide also recommends that disclosures should be maintained when advertising or marketing is republished in different platforms or media (OECD, 2019[3]).

3.3.1. Enforcement and policy initiatives

The Authority for Consumers and Markets of the Netherlands (ACM) reached agreement in 2017 with four large review sites to undertake measures to improve the trustworthiness of online reviews. Bearing in mind that businesses are increasingly providing reviews to consumers to write reviews about their products, the companies agreed to be transparent when reviews were left in return for rewards. Recommended disclosures on such reviews by the ACM include (ACM, 2017[32]):

- "reviewers were allowed to test this product for free";
- "reviewers received a remuneration for writing this review";
- "this review was edited after deliberation with the company".

The Competition Bureau Canada reached a settlement in 2015 with Bell Canada which encouraged its employees to post positive reviews and ratings of its mobile apps on the iTunes App Store and the Google Play Store. The reviews had no disclosure on the relationships between the reviewers and the company. The Bureau found that these reviews and ratings conveyed the general impression that they were made by independent and impartial consumers and temporarily affected the overall star rating for the apps (Competition Bureau Canada, 2015[33]).

In 2019, the US FTC reached a settlement with Urth Box, a snack delivery service, which ran an incentive program to encourage consumers to post positive reviews about its snack boxes on the US BBB's website and other review websites. The FTC's complaint alleged that Urth Box failed to adequately disclose that some customers received compensation, including free snack boxes, to post reviews and falsely represented that positive customer reviews on the US BBB site reflected the independent opinions of ordinary impartial customers. The settlement prohibits Urth Box from misrepresenting that an endorser of any good or service is an independent user or ordinary consumer of that good or service and requires them to clearly and conspicuously disclose any material connection with a consumer, reviewer, or endorser in close proximity to that representation. It also requires the company to take all reasonable steps to remove any review or endorsement by any endorser with which it has a material connection from online review websites, including the US BBB's website, unless the disclosure requirements are met, and to monitor any endorsers they engage (US FTC, 2019[34]).

The United Kingdom's advertising self-regulatory body, the Advertising Standards Authority (ASA), found in 2018 that a website for cellunlocker.co.uk, and www.cellunlocker.co.uk, which provided a mobile phone fixing service, offered a price discount in an email sent after purchase, stating "Please click here to Review our Service! As a thankyou we will refund £3 back to your card if you leave a nice review!" According

to the ASA, there was no indication on the websites that consumers were paid for writing favourable reviews. The ASA concluded that the reviews were misleading since consumers would believe these reviews were genuine expressions of consumer satisfaction with their services without such disclosures (ASA, 2018[35]).

In some cases, a third party online platform, such as a social media platform, has been used to entice consumers into providing reviews as return for rewards. In 2019, the UK CMA secured formal commitments from 16 social media influencers and celebrities to ensure they would clearly disclose the fact that they have been paid or received any gifts or loans of products which they endorse. The CMA noted that incentivised endorsements should be recognisable as soon as consumers look at a post if there is some form of payment or reward involved (UK CMA, 2019[36]).

Likewise in 2018, the ASA found that Vindicta Digital, a marketing company, had posted a promotion to win a hostel stay on Facebook and further provided text to explain how to win the competition, saying "LIKE THE VINDICTA DIGITAL PAGE", "TAG 3 + FRIENDS IN THE COMMENTS", "SHARE THIS POST TO YOUR PAGE". The company allegedly placed additional text on to the comments sections of the original Facebook post, indicating a way to increase chances of winning the competition by "LEAVE us a 5 STAR REVIEW on Facebook". In its ruling, the ASA stated that the company should not encourage campaign participants to write positive reviews as a condition for enhancing their chances of winning (ASA, 2018[37]).

3.3.2. Business guidance

The ICPEN guidance on online reviews states that businesses should not offer rewards in return for leaving positive reviews, and incentives should not be used to amend or remove reviews (ICPEN, 2016[5]).

Other consumer authorities have also issued guidance on incentivised reviews:

- The ACCC recommends that when any incentives offered by businesses should be provided without requiring the recipients to leave either positive or negative reviews. It also encourages businesses to inform reviewers of such conditions (ACCC, 2013[28]).
- The EC indicates that a connection between a provider of a user review tool presenting a user review about a product (i.e. online platforms) and a supplier of the good must be fully disclosed if the connection cannot reasonably be expected by the average consumer (EC, 2016[25]).
- The Norway Consumer Authority states that it is misleading to present incentivised reviews as genuine consumer reviews and consumers should be able to distinguish paid reviews from genuine reviews. The Authority further requires businesses to present review results to consumers without creating confusion between incentivised reviews and organic reviews (Norway Consumer Authority, 2016[22]).
- The UK CMA recommends that businesses should disclose how sponsorship relationships might affect businesses' rankings in online review sites (UK CMA, 2015[38]).
- In its 2009 Guides Concerning the Use of Endorsements and Testimonials in Advertising (the "Endorsement Guides"), the US FTC provides that endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. The agency also indicates that advertisers are subject to liability for false or

unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers. It recommends that any material connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement should be fully disclosed (US FTC, 2009[39]).

- The US FTC further published in 2017 supplementary staff business guidance for the Endorsement Guides. The guidance makes it clear that consumer ratings and reviews that are written in return for free products and services are considered as advertising and hence subject to FTC enforcement. It warns that, when providing free products in return for leaving a rating, such reviewers might give higher ratings of the product on a scale than reviewers who bought the product. The guidance then recommends that businesses should not publish aggregated ratings that include the incentivised ratings without disclosing next to any summary rating that it contains such incentivised ratings (US FTC, 2017[40]).
- In relation to social media endorsements, in 2019, the UK CMA clarified that any form of reward, including money, gifts of services or products, or the loan of a product, is payment. The agency further recommends making it clear in case influencers have not purchased a product or service by themselves, but received it free (UK CMA, 2019[41]).
- With respect to the presentation of aggregated review scores, the EC recommends that sponsored reviews should not be calculated into the overall ratings (EC, 2016[23]).

4. Negative ratings and reviews

4.1. Business tips

- Do not discourage consumers from posting honest negative ratings and reviews.
  - Do not use contract provisions to prevent negative ratings and reviews, or persuade consumers to submit complaints instead of posting feedback.
- Process negative ratings and reviews in a fair manner.
  - Do not edit negative feedback, or delay or prevent the publishing of negative ratings and reviews.
  - Do not suppress negative ratings and reviews based on a commercial relationship you have with a reviewed business.
- Publish all ratings and reviews, whether positive or negative, or inform consumers that not all relevant feedback are posted.
- Use negative ratings and reviews as a chance to interact with your customers, learn about problems, and respond with helpful information and service.

4.2. Overview of the issue

With the increasing impact of online reputational information on consumer purchasing decisions, businesses may try to suppress negative reviews that could damage their reputation. Such practice distorts the information that is material to consumers as negative feedback can be an important source of information for purchasing decisions (OECD, forthcoming[4]). Businesses' suppression of negative feedback may inflate the overall impression of the product and influence subsequent consumer reviews, providing a misleading picture to consumers.

The provisions under the E-commerce Recommendation on negative reviews cover a wide range of business conduct. In essence, consumers should have access to online ratings and reviews irrespective of assessments of a product or service. Therefore, any attempt to edit, delete, block or punish negative reviews, provided that they are genuine consumer opinions, is against the principle (see Annex. A).

Unfair treatment of negative reviews in comparison with positive ones can be problematic. For instance, some consumer authorities may view as a misleading practice a business attempt to delay or discourage the publication of negative reviews by applying a more rigorous procedure. Likewise, businesses classifying negative reviews as complaints may be regarded as misleading practice (OECD, 2019[31]).

In addition, some businesses have tried to suppress negative reviews by prohibiting them through standardised contractual terms and conditions. Some consumer authorities have found that this practice violates consumer protection laws.

4.3. Examples of initiatives and guidance

4.3.1. Enforcement and policy initiatives

The United States Congress enacted the Consumer Review Fairness Act (CRFA) in 2016 to protect consumers' ability to share their honest opinions about a business's products, services, or itself. Under the Act, it is illegal to include the following provisions in the terms and conditions of contracts between businesses and consumers:

- Prohibiting or restricting individuals from reviewing sellers' goods, services, or conduct;
- Imposing penalties or fees on individuals for such reviews; or
- Requiring individuals to transfer intellectual property rights in such reviews.

Specifically, businesses would breach the law if they provide a provision in its terms and conditions that prevents or punishes negative reviews by users. The US FTC noted that businesses should not treat negative reviews as complaints or false claims (US FTC, 2017[42]). Since the CRFA went into effect, the US FTC has brought five administrative enforcement actions exclusively enforcing the Act against companies that illegally used non-disparagement provisions in consumer form contracts in the course of selling their respective services (US FTC, 2019[43]; US FTC, 2019[44]). One of them was against a vacation property company, Shore to Please Vacations, which allegedly mandated in its contract that any vacationer who posted a review giving the property less than a "5 star or absolute best rating" immediately owed the company at least USD 25 000 (US FTC, 2019[45]).

Several consumer authorities have brought enforcement actions against business conduct that suppressed negative reviews. For instance, in 2018, the Federal Court of Australia found that an accommodation provider, Meriton, stopped potentially negative reviews from appearing on TripAdvisor. The company prevented guests who it suspected would give a negative review from receiving TripAdvisor's 'Review Express' email, where participating businesses provide TripAdvisor with email addresses of customers so that TripAdvisor can send emails prompting feedback on their stay. Meriton blocked this process by inserting additional letters into the email addresses it provided to TripAdvisor so that the email never reached the guest, or by not sending guest email addresses to TripAdvisor at all (ACCC, 2018[46]).

In addition, the Federal Court of Australia concluded that a home building company, Aveling, had misled consumers in connection with two online review sites, which the company operated but misrepresented as being independent from the company. The company did not publish negative reviews on the review websites to give a more favourable impression to consumers. The court found that if all the reviews received by Aveling were published, the aggregated rating and reviews on the review websites would have been less favourable to the company (ACCC, 2017[47]).

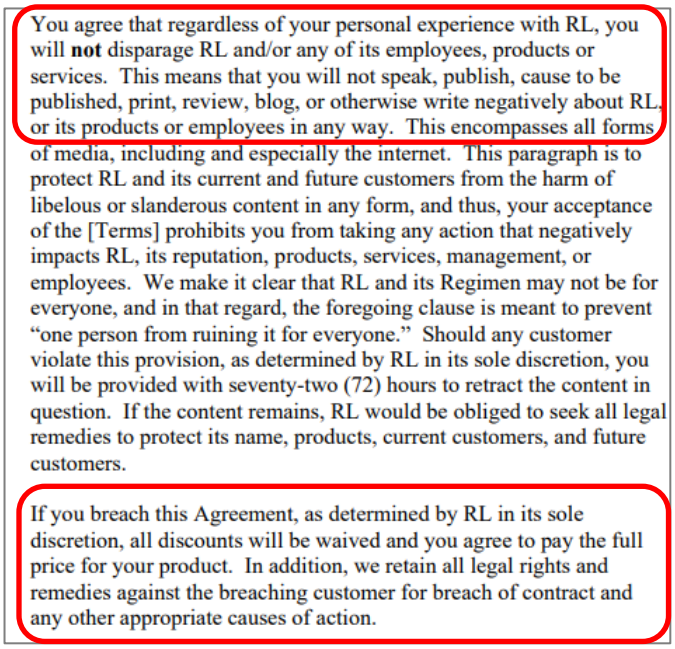
The UK CMA secured undertakings in 2016 from Woolovers Limited, a knitwear retailer, to ensure that it will publish all genuine, relevant and lawful customer reviews on its website, and will not suppress unfavourable reviews. It found that, over the period from December 2014 to November 2015, the company "cherry-picked" more favourable consumer reviews for publication on its website. Woolovers staff were instructed to approve only selected reviews that did not receive less than four stars. This resulted in

almost half of the reviews it received during the period going unpublished. (UK CMA, 2016[48]).

Similarly, the Hungarian Competition Authority (GVH) launched an investigation against a real estate agency, Hermina Center Ingatlanforgalmazó Kft, which allegedly deleted negative reviews on its service posted on a social networking site. The company instead only enabled consumers to post favourable reviews on the site. The case is still ongoing (GVH, 2018[49]).

In one of the first cases on negative review suppression brought by the US FTC in 2015, before the entry into force of the CRFA, a US district court in Florida found that a weight-loss supplement marketer, Roca Labs, violated consumer protection law. Roca Labs both threatened to sue and sued consumers who posted negative reviews about the company and their products in violation of a "gag clause" contained in its terms and conditions. The US FTC had alleged that these gag clause provisions, and the defendants' related warnings, threats, and lawsuits, harmed consumers by unfairly barring purchasers from sharing truthful, negative comments about the defendants and their products (see Figure 3) (US FTC, 2018[50]; US FTC, 2019[51]).

Figure 3. Terms and conditions used to suppress negative reviews



You agree that regardless of your personal experience with RL, you will **not** disparage RL and/or any of its employees, products or services. This means that you will not speak, publish, cause to be published, print, review, blog, or otherwise write negatively about RL, or its products or employees in any way. This encompasses all forms of media, including and especially the internet. This paragraph is to protect RL and its current and future customers from the harm of libelous or slanderous content in any form, and thus, your acceptance of the [Terms] prohibits you from taking any action that negatively impacts RL, its reputation, products, services, management, or employees. We make it clear that RL and its Regimen may not be for everyone, and in that regard, the foregoing clause is meant to prevent "one person from ruining it for everyone." Should any customer violate this provision, as determined by RL in its sole discretion, you will be provided with seventy-two (72) hours to retract the content in question. If the content remains, RL would be obliged to seek all legal remedies to protect its name, products, current customers, and future customers.

If you breach this Agreement, as determined by RL in its sole discretion, all discounts will be waived and you agree to pay the full price for your product. In addition, we retain all legal rights and remedies against the breaching customer for breach of contract and any other appropriate causes of action.

Source: US FTC (2018[52])

In the United Kingdom in 2017, the ASA ruled against a website for a mobile phone unlocking service, www.officialiphoneunlock.co.uk, showing on the webpage a number of testimonials headed "Customer Reviews of Official iPhone Unlock", which said "We don't write our own reviews, instead we let our customers do the talking… All of the testimonials gave a rating of either four or five stars out of five". According to the complaints, the reviews on the website did not reflect the experiences of actual customers since submitted negative reviews had not been published on the website. The ASA also found that the website terms and conditions set out a defamation charge clause amounting to GBP 3 000, which could prevent customers from leaving negative reviews. In the ruling, the company

was prohibited to unreasonably remove negative reviews from their website (ASA, 2017[53]).

4.3.2. Business guidance

A number of consumer authorities have issued business guidance stressing the importance of fair treatment for both positive and negative reviews:

- The EC recommends that businesses should either post both positive and negative reviews, or clearly inform consumers that all relevant reviews are not posted. In addition, the practice of forcing consumers and review sites to prevent negative reviews about them from being published, or screening negative reviews, can also be misleading or contrary to professional diligence (EC, 2016[25]).
- The Danish Consumer Ombudsman recommends that all reviews should be processed and published in an equal manner irrespective of whether the assessments are positive or negative, as long as they are in accordance with the terms of use of the intermediary. Specifically, the guide indicates that businesses should apply the same time limit for a publication of a positive or negative review. It also states that the moderation should not be selective depending on the content of reviews (Danish Consumer Ombudsman, 2015[54]).
- The Norway Consumer authority suggests that use of a feedback template inducing a positive review is problematic (Norway Consumer Authority, 2016[22]).
- The UK CMA guide suggests that review sites should not provide reviewed businesses the right to block reviews they do not like. The guide also recommends that review sites should not persuade consumers to write a complaint instead of a review for publishing (UK CMA, 2016[26]).
- The ACCC recommends that reviewed businesses should be given an opportunity to post a public response to unfavourable feedback (ACCC, 2013[28]).

From the business side, the US BBB encourages businesses to be responsive to reviews whether positive or negative, and transparent even if they receive unfavourable feedback (US BBB, 2015[55]).

5. Misleading moderation practices

5.1. Business tips

- Present a clear and conspicuous explanation of how you handle ratings and reviews.
- Treat all ratings and reviews you receive in accordance with your explanation, which may include the following information:
  - publication timing;
  - ranking and aggregated rating criteria;
  - reasons for refusing to accept or publish certain reviews.
- Publish all ratings and reviews as quickly as possible.
- Display ratings and reviews in a fair and transparent manner.
  - Do not remove consumer feedback only because a business complains about them.
  - Use only verified ratings and reviews in your advertising.
  - Disclose the total number of ratings and reviews clearly and conspicuously, especially for aggregated scores.
  - An aggregated rating score should not distort the overall picture of individual assessments.
- When creating an aggregated score from ratings and reviews from multiple platforms, ensure the same feedback is not counted more than twice.

5.2. Overview of the issue

In some cases, the way a business processes online consumer ratings and reviews, including its collection, moderation and publication of reviews, may distort the information that consumers obtain from online ratings and reviews. Some businesses manipulate the ranking or presentation of consumer reviews to favour certain businesses, or unreasonably delay the publication of reviews (ICPEN, 2016[56]).

In addition, a business's failure to disclose information about the way an aggregated rating score is produced or presented could also lead to giving a false impression to consumers. For instance, an aggregated rating may be calculated based only on favourable feedback to inflate the overall impression of the product. Consumers may have a misconception about the reliability of an aggregated score if it does not provide a total number of reviews used for the score. The CCP's roundtable on online reviews held in November 2018 discussed a "grade inflation" effect where an aggregated rating tends to be inflated since it does not count in those who do not leave feedback, which results in a relatively small range of ratings. This makes it challenging for consumers to assess products or businesses through the information (OECD, 2019[31]; OECD, 2019[31]).

5.3. Examples of initiatives and guidance

5.3.1. Enforcement and policy initiatives

Some jurisdictions have adopted laws and regulations to ensure authentic and trustful consumer ratings and reviews. For instance, the revised French Consumer Code, which was adopted in September 2017, includes new provisions setting requirements for review moderation and publication procedures of online platforms (Légifrance, 2017[57]). Specifically, the code requires businesses to inform consumers about the:

- Existence of a procedure allowing for a control over a review;
- Date of publication of each review, as well as the date when consumers experience consuming the reviewed product;
- Criteria for ranking, such as the chronological order;
- Maximum period of publication and retention of a review;
- Possibility to contact the author of a review;
- Possibility to modify a review, and its criteria;
- Reasons justifying a refusal to publish a notice.

To address misleading moderation practices, some consumer authorities have worked with businesses to improve consumer rating and review systems. For instance, the UK CMA agreed with Airbnb in 2017 on changes to its online review system to enable users who had arrived at a property but decided not to stay there when they saw it to write reviews. Such reviews could be made only with the assistance of the company's customer services. Airbnb changed the system so that users can write feedback, regardless of whether they cancelled on the day of check-in or during their visit, on important information, such as the suitability of the host or the accommodation, or the reason they chose not to stay and cut short their stay (UK CMA, 2017[58]).

5.3.2. Business guidance

A number of consumer authorities have produced guidelines to ensure the authenticity and impartiality of ratings and reviews, indicating how businesses should collect, moderate, and publish consumer feedbacks. The ICPEN guidance, for instance, recommends that businesses ensure the integrity of an overall rating by not being selective in editing, rejecting, or deleting reviews. Once published, reviews should not be removed simply because a business complains about the reviews (ICPEN, 2016[56]).

Other consumer authorities have issued similar guidance:

- The EC's guidance provides that all reviews should be published and displayed in a fair and transparent manner (EC, 2016[23]).
- The Danish Consumer Ombudsman recommends that all reviews should be treated equally, and potential reasons for rejecting a consumer review should be explained in the terms and conditions of review websites, Reviews should be presented as quickly as possible once received, and displayed in chronological order or in objective manner (Danish Consumer Ombudsman, 2015[54]).

- The Norway Consumer Authority suggests that publication of the total number of ratings and reviews may help consumers understand the degree to which the information is reliable (Norway Consumer Authority, 2016[22]).
- The ACCC recommends businesses disclose the total number of reviews used, which should be displayed in proximity to the aggregated scoring (ACCC, 2013[28]).

A number of business organisations and other stakeholders have also published guidance:

- The International Organization for Standardization (ISO) has developed an international standard on online consumer reviews (ISO 20488) that provides requirements and recommendations for the principles and methods for review administrators to apply in their collection, moderation, and publication of online consumer reviews (International Organization for Standardization, 2018[59]).
- The National Advertising Division of the Better Business Bureau of the United States (NAD) recommends that when using positive consumer reviews in advertising, only reviews with verified purchases should be used to represent the actual views of consumers. It further advises that reviews gathered across multiple platforms should be vetted to ensure that the same review is not counted multiple times (NAD, 2019[60]).

Annex A. Selected key provisions of the E-commerce Recommendation

The principles in the E-commerce Recommendation apply to any type of online commercial practices, including consumer ratings and reviews. They aim to ensure that consumers are not deceived or misled by businesses in the online environment.

At a high level, the E-commerce Recommendation provides that businesses should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices. (para.3). It also states that businesses should not:

- Make any representation or omission or engage in any practice that is likely to be deceptive, misleading, fraudulent or unfair. (para. 4)
- Misrepresent or hide terms and conditions that are likely to affect a consumer's decision regarding a transaction. (para.5)
- Permit others acting on their behalf to engage in deceptive, misleading, fraudulent or unfair practices and should take steps to prevent such conduct. (para.9)

With respect to online advertising, the E-commerce Recommendation states that:

- Advertising and marketing should be clearly identifiable as such. (para.13)
- Advertising and marketing should identify the business on whose behalf the marketing or advertising is being conducted where failure to do so would be deceptive. (para. 14)

It also contains specific principles on endorsements (or testimonials) for marketing a particular product, service, or brand itself stating that:

- Endorsements should be truthful, substantiated, and reflect the true opinion or honest view of the endorsers. (para.17)
- Any material connection between businesses and endorsers, which might affect the weight or credibility that consumers give to an endorsement, should be clearly and accurately disclosed. (Ibid.)

The E-commerce Recommendation principles apply to all endorsements, regardless of whether the endorsement is made by ordinary consumers (in the form or ratings and reviews), celebrities, social media influencers, or experts.

Finally, with regards to negative reviews, the E-commerce Recommendation provides that:

- Businesses should not attempt to restrict a consumer's ability to make negative reviews. (para.12)

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