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CFPB Follows FTC's Lead on Consumer Online Reviews

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On March 22, 2022, the Consumer Financial Protection Bureau announced that it has issued guidance designed to dissuade financial institutions from curbing consumers' rights to post online reviews. Specifically, the CFPB put the industry on notice that it intends to rely on the Consumer Financial Protection Act's prohibition on unfair, deceptive, and abusive acts or practices, or UDAAPs, to prevent institutions from using contracts or other marketing practices to interfere with consumers' ability to post and access online reviews, increasing risks associated with how institutions manage online reviews. The announcement follows the Federal Trade Commission's warning last fall to 700+ companies that they could face fines for posting misleading online endorsements, and heavily cites to prior FTC actions as precedent for the policy statement.

Citing studies showing the importance of online reviews to increased company revenues, the CFPB's bulletin expresses concern about the incentives for "dishonest market participants" to "manipulate" the online review process, rather than compete on the value of their services, which frustrates the competitive marketplace. To that end, the CFPB identified the following practices that may be unfair or deceptive:

- Utilizing contractual "gag" clauses to create the impression that consumers are restricted in their ability to publish an honest review. The CFPB indicates that using such a provision is deceptive because it is unenforceable under the Consumer Review Fairness Act. The CFPB also notes that a qualifier indicating the restriction is "subject to applicable law" will be insufficient to cure the misrepresentation.
- Pressuring a consumer to remove an already posted negative review by invoking unenforceable contractual restrictions.
- Manipulating which reviews are displayed online (e.g., displaying only positive reviews in a context that suggests they represent a comprehensive collection of all reviews about the company or its products) or posting fake reviews (e.g., by asking employees to post reviews without adequate disclosures of their relationships to the institution, or by paying third parties to post reviews that are materially misleading or that fail to disclose that the reviewer was compensated by the institution).

What does this mean for you?

In light of the CFPB's announcement, financial services providers may want to consider:

- Reviewing consumer agreements to identify language discouraging consumers from posting honest reviews.
- Assessing the way company-owned and third-party websites display consumer reviews, along with any associated disclosures regarding those reviews.
- Reviewing and updating existing marketing or social media policies to ensure they prohibit online review manipulation, and contain clear guidelines for making adequate disclosures when engaging in any sponsorship or other paid arrangements, or in any relationship whereby the company provides an incentive or special benefit to a reviewer or endorser that would not otherwise be obvious to the audience reading the review.

Although this most recent announcement was from the CFPB, the FTC and state attorneys general have their own authority to prohibit unfair or deceptive practices – and institutions should be mindful of the increased litigation and enforcement risks created by the announcement. (For more information, refer to the FTC's principal guidance applicable to the collection and use of reviews, endorsements, and testimonials.)

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