



FAQ

CONSUMER REVIEW FAIRNESS ACT

The relevance and importance of online consumer reviews is growing in today's marketplace, and that importance is reflected in efforts by federal regulators and legislators to protect the legitimacy and availability of reviews. For example, the FTC issued its "[Endorsement Guides](#)" in an effort to crack down against false or misleading consumer endorsements. In 2017, Congress passed legislation—the Consumer Review Fairness Act¹ ("CRFA")—in response to reports that some businesses were trying to prevent consumers from giving honest reviews about products or services they received by including contract provisions that allowed them to sue or penalize consumers for posting negative reviews.

What is the Consumer Review Fairness Act (CRFA)?

The CRFA is a federal law that took effect on March 14, 2017. It voids any "Form Contract"² that seeks to impede consumer reviews, and makes it unlawful for a person to offer such a form contract to consumers. In particular, it prohibits provisions in form contracts that:

1. restrict a consumer's ability to communicate reviews or performance assessments about a seller's goods, services, or conduct;
2. impose a penalty or fee against a consumer who engages in communications of that nature, or;
3. require people to give up their intellectual property rights in the content of their reviews.³

What does this mean for dealerships?

Under the CRFA, dealerships are prohibited from including provisions in any "form" contract that seek to restrict people from posting honest reviews about the dealership, or penalize them for doing so.⁴ This includes any consumer contract or agreement entered at the dealership or in online terms and conditions. The CRFA protects a broad variety of consumer assessments including people's ability to share their honest opinions about a business's products, services, or conduct, in any forum, including social media. A business can be found to have violated the CRFA whether they actually seek to enforce such a contract provision or not.⁵

What are examples of CRFA enforcement actions?

The recently-announced FTC enforcement actions include allegations that:

- An HVAC company used a confidentiality clause in its form contracts that imposed "the actual amount of damages suffered or two times the contract price" if a consumer told anyone about the terms of the contract. In addition, the clause stated that the "Customer also agrees not to file any complaints with the Better Business Bureau."⁶
- A flooring company included a "non-disparagement" clause in its form contracts that imposed financial penalties "not to exceed three times the monetary value of this order, plus attorney's fees" if consumers "publicly disparage or defame National Floors Direct in any way or through any medium."⁷
- A horseback trail riding company in their form contract included this provision: "I agree not to call Animal Control or any governmental agency or individuals if there is a discrepancy to how the horses/

¹ Consumer Review Fairness Act, 15 U.S.C. 45b (2017).

² The term "form contract" means a contract with standardized terms— (i) used by a person in the course of selling or leasing the person's goods or services; and (ii) imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms. *Id.* at (b)(a)(3).

³ *Id.* at (b)(1).

⁴ *Id.*

⁵ *Id.* at (d)-(e).

⁶ *A Waldron HVAC, LLC*, File No. 182-3077 (F.T.C. May 8, 2019).

⁷ *National Floors Direct, Inc.*, File No. 182-3085 (F.T.C. May 8, 2019).

animals or property are taken care of.” If consumers “report anything” or contact “any persons or agency,” then the company would assess “a minimum of \$5,000 in damages” and hold them “responsible for all fines” and the cost of “our legal representation.”⁸

Why is this important and are there any penalties?

Violations of the CRFA are deemed to be violations of Section 5 of the FTC Act, which is the federal UDAP (unfair or deceptive acts or practices) provision. While there is no private right of action under the CRFA, violations can be enforced both the FTC and State Attorneys General.⁹ Section 5 violations generally are enforced by expensive consent decrees that impose extensive requirements on target companies, and repeated violations can lead to monetary penalties.

How can I protect my dealership?

The FTC has issued a guidance document for business called “[Consumer Review Fairness Act: What Businesses Need to Know](#).” Dealers should review that guidance and consult with their attorneys to review their contracts and ensure that any contract provision (including online terms and conditions) that seeks to restrict people from sharing their honest reviews, penalizes those who do, or claims copyright over peoples’ reviews are removed. Remember that the existence of a violative contract provision alone could subject a company to federal or state enforcement—even if you’ve never tried to enforce it or have no intention of enforcing it.

Does this mean I just have to live with from inappropriate or dishonest reviews?

No. Under the CRFA, a dealership may contractually prohibit certain reviews, including those that:

- Contain confidential or private information—for example, a person’s financial, medical, or personnel file information or a company’s trade secrets;
- Are libelous, harassing, abusive, obscene, vulgar, sexually explicit, or is inappropriate with respect to race, gender, sexuality, ethnicity, or another intrinsic characteristic;
- Are unrelated to the company’s products or services;
- Are clearly false or misleading. (and others)¹⁰

Dealers should consult with their attorneys before including any such provisions in their form contracts. As for the last bullet we also note that according to the FTC, “it is unlikely that a consumer’s assessment or opinion with which you disagree meets the “clearly false or misleading” standard.”¹¹

The law also does not apply to employment or independent contractor contracts.

In addition, keep in mind that the CRFA only implicates restrictions in form contracts, it does not implicate any assertion of your rights under the rules or practices of any particular review platform or website with respect to consumer reviews or statements about your dealership or your employees. You should consult with your attorney about what rights, if any, you may have outside of your contract with the consumer to address false or dishonest reviews.

⁸ LVTR LLC, File No. 182-3098 (F.T.C. May 8, 2019).

⁹ As well as “any other consumer protection officer of a State who is authorized by the State to [bring civil actions]...” 15 U.S.C. 45b(e)(6)(a).

¹⁰ 15 U.S.C. 45b(b)(2)-(3).

¹¹ See <https://www.ftc.gov/tips-advice/business-center/guidance/consumer-review-fairness-act-what-businesses-need-know>

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