



Hearing on

Zero Stars: How Gagging Honest Reviews Harms Consumers and the Economy

Before the

**Committee on Commerce, Science, and Transportation
United States Senate**

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Testimony of

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Good morning Chairman Thune, Ranking Member Nelson, and members of the Commerce Committee. Thank you for inviting me to testify in today's hearing on what we believe is a very important topic. I am encouraged by the Committee's attention on this issue, and very much appreciate your recent introduction of the *Consumer Review Freedom Act*.

I. INTRODUCTION

My name is Adam Medros, and I am the Head of Global Product for TripAdvisor, the world's largest travel website. I lead the team within TripAdvisor that is responsible for all customer-facing aspects of the TripAdvisor site, including the collection, moderation and display of travelers' reviews.

For those who don't recall what it was like to plan and book travel prior to the advent of the Internet, let's pause and rewind fifteen years. Making travel purchases – because of their significant cost, the infrequent nature of travel and the importance that we place on vacations – was a risky proposition. You either had to research and plan the trip on your own, calling multiple hotels and airlines to check availability and pricing, or rely on a travel agent discussing destinations they chose to promote and looking at brochures filled with marketing language and staged photographs. If you were really lucky, maybe a friend or family member had visited that



city or country before, and could give you an opinion based on their limited experiences. But to put it simply, you were “buying blind.”

The Internet – and platforms like TripAdvisor – drastically improved that experience for consumers. With access to millions of consumer reviews in seconds, our ability to make informed purchasing decisions is no longer constrained to what products our friends and family previously purchased, or where one’s local travel agent thinks you should stay on vacation. As a result, American consumers can make significantly more informed decisions about how to spend their hard-earned money. Platforms like ours democratized purchasing and access to information by crowdsourcing the experiences of others.

However, although most businesses have come to accept – and even embrace – this shift in consumers’ knowledge, a minority of hold-outs refuse to let consumers share their experiences. A popular tactic among such businesses is to try and use their contractual leverage to silence their critics. This underhanded practice harms those writing reviews, those seeking transparency through other consumers’ experiences, and those businesses that are playing by the rules, and, ultimately, the American economy suffers.

II. TRIPADVISOR & THE IMPORTANCE OF CONSUMER REVIEWS

TripAdvisor is visited by more than 375 million travelers a month in order to help them research, plan and book the perfect trip. We host more than 250 million reviews and opinions from our community covering more than 5 million businesses all over the world. TripAdvisor encourages our members to share their reviews and opinions, good or bad, of their experiences at hotels, restaurants, and attractions – and we strongly believe in their right to do so. We also give all businesses the right to respond to those reviews, in order to ensure that consumers are presented with both sides of the story.

As you know, TripAdvisor is far from the only source of consumer reviews. Americans are ever-increasingly turning to websites like Yelp, Amazon, ZocDoc and Angie’s List to educate themselves and their purchasing decisions on everything from what doctor to visit, to what book

or baby stroller to purchase, or even to whom they should hire to remodel their kitchens. In fact, a recent study revealed that approximately 70% of all American shoppers rely on online reviews before making a purchase.¹ Just this year, the United Kingdom's Competition and Markets Authority found that 54% of UK adults rely upon online reviews, and that nearly 70% of hotel shoppers consider online reviews to be more important than other sources of information. Further, in research commissioned by TripAdvisor in 2015, PhoCusWright determined that 96% of TripAdvisor users consider it important to read consumer reviews when planning a vacation, and 82% agreed that reading those reviews helped them plan better trips than they could without reviews. No matter what population is being researched, it is clear that consumer reviews have become a critical part of today's marketplace.

III. BUSINESSES' USE OF CONTRACTS TO SILENCE CRITICS

While consumer reviews have become so ubiquitous that many Americans won't make a significant buying decision without first researching those opinions, we know that some businesses don't like the transparency that online reviews have brought to the world. Some bully or intimidate consumers as a means to get critical reviews removed or to stop them from even being submitted. Others seek the same result by hiding small print in contracts stipulating that any negative reviews will incur a hefty fine, or assigning the intellectual property in any review to the business.

Consumers usually have no idea that they are signing-up for such agreements, which are usually only provided in small print at the moment of check-in or purchase, and even those who actually read these types of clauses lack the leverage to have the non-negotiable clauses removed while standing at the check-in desk with their family in tow and their well-earned vacation hanging in the balance. While the intent behind such clauses is always the same

¹ The Consumerist (Jun. 3, 2015), <http://consumerist.com/2015/06/03/nearly-70-of-consumers-rely-on-online-reviews-before-making-a-purchase/>; Ashlee Kieler, *Nearly 70% Of Consumers Rely On Online Reviews Before Making A Purchase*.

(namely, to gag any negative opinions), the exact language can vary. Examples of language that TripAdvisor has received from travelers include:

“Guest agrees that no negative comment will ever be initiated ... on any site on the Internet ... that damages the reputation of the hotel and staff...”

“Since bad reviews are detrimental to our business, we place a fine for unwarranted reviews under the terms of property... [I]f the hotel receives a poor review and is out of context and or control of the hotel management, then a fine of \$300 will be charged on the credit card on file.”

“[I] any actual opinions and / or publications are created which, at the sole opinion of [business owner], tends directly to injure him in respect to his trade or business . . . then those remarks will entitle [business owner] . . . damages from me in the amount of \$5,000,000 (five million dollars) plus a \$50,000 (fifty-thousand dollar) daily penalty for each day for each posting of the derogatory publication appears or is available in any format.”

Dealing with companies and individuals that try to include these types of clauses in their customer agreements can be tricky for a platform like TripAdvisor. While the easiest solution would be to simply remove the business’s listing from our website, that is often exactly what that company *wants* – to eliminate the ability for consumers to comment on them. Doing so would chill speech and be a disservice to all travelers, so TripAdvisor has instead taken the approach of posting a red text box on the business’s listing warning travelers of this unscrupulous practice. This is an imperfect solution – and one which would be improved upon by passage of Chairman Thune’s *Consumer Review Freedom Act*.

IV. THE EFFECTS CHILLED SPEECH HAS ON INDUSTRY AND CONSUMERS

Placing a muzzle on one’s customers with contractual boilerplate goes against everything we stand for at TripAdvisor. Just as a consumer can tell her friends and family about her experience with a business in the “offline world,” she also has a right to share that



experience and opinion online, allowing businesses and other customers to learn and benefit therefrom.

When a business includes a “gag order” in its agreements with its customers, everyone is harmed. The consumer is improperly censored. The consuming public at-large is less informed than it otherwise would be about the quality of service – or lack thereof – at a given business. Even the business doing the silencing is harmed, as it loses the opportunity to learn from the experiences of its customers. These types of clauses serve no positive role in the American marketplace and stand in the way of consumer transparency.

V. CONCLUSION

In conclusion, Mr. Chairman, TripAdvisor looks forward to working with you and the entire Committee to ensure that American consumers are not prevented from openly sharing their opinions and experiences with other potential customers, whether it is done in-person or via the Internet.

I welcome your questions on this important topic.
