

## CONSUMER REVIEWS AND RECOMMENDATIONS AS FACTORS IN E-COMMERCE: LEGAL REGULATION CHALLENGES

Khulkar Rajabova

Specialist at the International Cooperation Department of Tashkent State University of Law  
Independent Researcher in the Field of 12.00.03 – Civil Law, Business Law,  
Family Law, Private International Law

### Abstract:

This article provides an overview of the current legal regulation practices concerning consumer reviews published online in developed countries and the Republic of Uzbekistan. Online reviews play a crucial role in e-commerce, serving as a valuable source of information for both consumers and businesses. The article examines the evolution of international standards for regulating online reviews and recommendations. It also discusses the three sets of guidelines on online reviews and recommendations issued by the International Consumer Protection and Enforcement Network, targeting business owners and marketers, review administrators, and influencers. The steady growth of e-commerce in Uzbekistan raises the question of the need for legal regulation in this area. The article analyzes the current state and future prospects for regulating online consumer reviews and recommendations in Uzbekistan.

**Keywords:** E-commerce, Internet, consumers, digital economy, marketing, advertising, regulation.

### Introduction

The emergence of the Internet and subsequently e-commerce radically transformed the relationship between businesses and consumers. Previously, communication was primarily one-sided from producer or seller to consumer. However, the Internet has given consumers the ability to publish and share their opinions on goods and services, accessible to an unlimited audience. It is no surprise that online reviews and recommendations have begun to significantly influence consumer behavior, while businesses have had to focus on earning consumer trust. Today, consumer trust is a key factor in the success of both products and companies as a whole.

In foreign sources, both academic and legal, two terms are used to describe consumer opinions: "review" and "endorsement." A "review" refers to a consumer's opinion based on their experience with a product, service, or company overall. An "endorsement" is a positive comment about a product, service, or company that appears to the reader/viewer as reflecting the recommender's own opinion and/or experience.

The publication of fake reviews, deletion (or refusal to publish) of negative reviews, monetary compensation to influencers (celebrities, bloggers), and the use of "likes" to create the appearance of popularity for products or services—these are all tactics widely employed to promote goods and services through electronic marketing. However, these practices should undoubtedly be classified as illegal and unethical, as they distort perceptions of the actual quality of products or services and, in some cases, cause direct harm to competitors. While businesses may be interested in creating a positive impression of their products and services, consumers are



primarily interested in obtaining accurate information that will allow them to make informed choices.

With the rise of the so-called sharing economy, the significance of online reviews and recommendations has grown even further. In sharing economy business models, the potential parties to a transaction are often individuals who, in most cases, have not previously known each other and thus must rely solely on the opinions of other users of the service.

All of these factors explain why consumer online reviews and recommendations attract the close attention of both market participants and regulators.

## **I. International Standards for the Legal Regulation of Online Reviews and Recommendations**

The issue of balancing the interests of e-commerce entities and consumers has not gone unnoticed by regulatory authorities in developed countries. In mature markets, significant attention is given to ensuring the integrity of contractual parties and establishing fair conditions for all market participants. Naturally, the emergence of new channels for disseminating commercial information could not go unnoticed. Two organizations have been most active in advancing legal regulations to enhance consumer protection on electronic trading platforms: the Organization for Economic Cooperation and Development (OECD) and the International Consumer Protection and Enforcement Network (ICPEN).

As early as the end of 1999, the OECD Council approved the *Guidelines for Consumer Protection in the Context of Electronic Commerce*. The primary goal of this document was to ensure that consumers making online purchases receive the same level of protection as if they were shopping in a local store or via a catalog. Among other provisions, the guidelines stipulated that businesses engaged in e-commerce should not engage in practices deemed deceptive, misleading, fraudulent, or unfair, and that advertising and marketing must be clearly identifiable as such.

In March 2016, the OECD adopted new *Council Recommendations on Consumer Protection in E-Commerce*, updated to address emerging challenges. Part B of Section 2, dedicated to fair business, advertising, and marketing practices, was significantly expanded and refined. Specific provisions were made regarding consumer reviews and recommendations.

First, businesses "should not attempt to restrict consumers' ability to leave negative reviews, dispute charges, or seek advice or file complaints with government authorities or other complaint-handling organizations" (Paragraph 12).

Second, "endorsements used in advertising and marketing must be truthful, substantiated, and reflect the opinion and actual experience of the endorser" (Paragraph 17).

Third, it is required to disclose any economic relationship between the endorser and the business. According to the OECD Recommendations, "any material connection between the business and the online endorser that might affect the credibility and persuasiveness of the endorsement for consumers must be clearly and conspicuously disclosed" (Paragraph 17).

The significance of the OECD Recommendations is underscored by the fact that the updated version of the *United Nations Guidelines for Consumer Protection* explicitly references these recommendations and encourages member states to adapt them to their economic, social, and environmental realities (Paragraph 65).



**The International Consumer Protection and Enforcement Network (ICPEN)** was established in 1992 in London to address consumer disputes, especially cross-border disputes. It currently brings together consumer protection authorities from over 60 countries. From 2015 to 2016, ICPEN was chaired by the UK's Competition and Markets Authority (CMA), which focused on the issue of online reviews and endorsements. In June 2016, ICPEN published **guidelines on online reviews and endorsements** targeted at review administrators, traders and marketers, and digital influencers.

**Review administrators** are defined as organizations or individuals responsible for processing consumer reviews. These administrators may include: a) businesses that produce, distribute, or supply goods or services and receive reviews about them; b) third parties collecting reviews on behalf of such businesses; or c) fully independent third parties involved in collecting, moderating, and displaying reviews. Review administrators should follow these key principles:

- Fairness and equity when collecting reviews.
- Vigilance and diligence when moderating reviews.
- Transparency when publishing reviews.

*Review administrators must inform consumers about the terms of collecting, processing, and publishing reviews before receiving them, and should, where possible, verify the authenticity of the reviews.* The guidelines emphasize the need to combat fake reviews and prevent the "phoenixing" of disreputable market participants. The publication of reviews must be objective and neutral, ensuring that both positive and negative reviews are treated equally. Any commercial interest in the review's publication must be clearly disclosed to potential consumers.

**Traders and service providers**, as well as marketers who support the promotion of goods and services, are most invested in ensuring that the "right" reviews are shared. These actors must not prevent consumers from seeing a full, accurate picture of genuine and relevant reviews, and must refrain from posting or paying for the publication of fake reviews. Along with traditional internet advertising methods, e-commerce businesses can promote their goods and services through covert advertising (advertorials), sponsored articles, collaborations with bloggers, the use of brand ambassadors on social media, and incentives for customers to write reviews (such as contests or discounts on future purchases). ICPEN guidelines specify that blog posts, vlogs, tweets, or other online publications must clearly disclose when their content has been paid for or influenced by commercial relationships.

The rapid growth of social media, where most of the content is user-generated, has led to the rise of **native advertising**, a form of advertising that seamlessly blends into the platform's content and often looks like part of the editorial material. Examples include search engine ads that appear as search results, news pages that look like part of a publication's editorial content, social media posts, and blog articles sponsored by advertisers. While native advertising is considered a legitimate business practice, ICPEN warns that such content must not mislead consumers, and requires that **digital influencers** adhere to these key principles:

- Label all paid material as advertising.
- Disclose any other commercial relationships related to the content.
- Provide authentic opinions on markets, businesses, products, and services.

These guidelines are an example of so-called "**soft law**." While they are not legally binding, they are followed due to the authority of the organization that issued them. Most ICPEN



members actively promote these guidelines to businesses. According to ICPEN's website, in 2016, many member countries focused on educating businesses about the new "rules of the game," with Australia, the UK, and the US taking the lead in curbing unfair marketing and advertising practices.

## II. Legal Regulation of Online Reviews and Recommendations in the USA

As a pioneer in e-commerce, the United States has been at the forefront not only of electronic marketing but also of creating new legal frameworks through which entrepreneurs hoped to protect themselves from risks associated with the publication of negative reviews. Recognizing the critical importance of online reviews and recommendations for their business success, many entrepreneurs began including clauses in their agreements with consumers that prohibited negative reviews under threat of fines or legal action.

One of the earliest agreements restricting consumer rights to share their opinions about goods and services was a license agreement by Network Associates, Inc. Under this agreement, licensees were prohibited from disclosing the results of software tests or publishing reviews of the product without the licensor's prior consent. In July 1999, the online publication **Network World Fusion**, after seeking and being denied permission from Network Associates, published a comparative review of several software programs, including one from Network Associates that performed poorly. In response, Network Associates protested, citing the relevant provision in the agreement. This situation caught the attention of the New York Attorney General, who launched an investigation. In 2001, the New York Supreme Court ruled that confidentiality clauses preventing consumers from sharing their opinions amounted to "deceptive trade practices" and were therefore illegal.

However, the most common use of clauses prohibiting consumers from publishing reviews was in the healthcare sector. In the 2000s, the company Medical Justice developed and offered doctors form contracts that included clauses limiting consumers' rights to post reviews. The wording and approaches varied over time but consistently infringed on consumer rights. In some agreements, patients agreed to "refrain from directly or indirectly commenting on or discussing the physician, their practice, competence, and/or treatment." Other contracts stipulated that if a patient prepared a review for publication on a website, blog, or mass correspondence, all intellectual property rights, including copyright, over that review would be transferred to the physician under an exclusive license. In other words, patients preemptively agreed that any reviews they posted—under their own name, a pseudonym, or anonymously—would become the property of the physician, who could then delete or manage them as they saw fit. Some contracts even contained both types of clauses.

American researchers point out that the primary danger of clauses restricting consumers' right to post reviews is that they can become an industry standard. Companies, fearing that competitors who include such clauses in their agreements may gain an advantage, begin to copy this behavior. As a result, clauses that infringe on consumer rights spread quickly and remain largely unnoticed because most consumers, making online purchases, prefer not to spend time reading the fine print and simply click "I agree."

Despite courts generally siding with consumers, government intervention was required to stop this unfair practice. In December 2016, the U.S. Congress passed the **Consumer Review**





**Fairness Act.** The law covers reviews of goods, services, and companies as a whole, encompassing written, oral, and visual assessments (including photographs and videos). The Act stipulates that clauses in consumer contracts that:

- Prohibit or limit consumers' right to publish reviews,
- Impose fines for publishing reviews, or

• Transfer intellectual property rights over consumer reviews to the business, are invalid. The law applies to form contracts, meaning agreements where individuals have little or no opportunity to negotiate standardized terms. It does not apply to employment contracts, agreements with independent contractors, or agreements between review websites and consumers.

Reviews can be refused for publication or removed if they:

- Contain confidential information,
- Are defamatory, abusive, or obscene,
- Are irrelevant to the company's goods or services, or
- Are blatantly false or misleading.

The **Consumer Review Fairness Act** established a uniform set of rules for all e-commerce participants in the U.S., defining fair and unfair practices and eliminating the possibility of gaining a competitive advantage through the abuse of contractual freedom. It is believed that this law could have a positive impact on e-commerce as a whole, given that many of the largest internet trading companies are based in the U.S. and are subject to American law.

### III. Online Reviews and Recommendations in Uzbekistan: Current State and Development Prospects

Online commerce in Uzbekistan has experienced significant growth over the past decade, driven by increased internet access and digital technologies. Online reviews and recommendations have become crucial tools for consumer decision-making in this expanding market. However, the legal and regulatory framework specific to online reviews is still developing.

Currently, the primary legal framework for consumer protection in Uzbekistan is the Law on Consumer Protection. This law addresses consumer rights and the need for accurate information about products and services but does not specifically cover online reviews or the responsibilities of businesses regarding such reviews.

Several challenges exist in the current system. There is a lack of specific regulation concerning online reviews, leading to no clear guidelines for managing fake reviews, moderating user-generated content, or ensuring review authenticity. Consumer awareness is also a concern; many individuals lack the knowledge to critically assess the credibility of online feedback. Additionally, some businesses may engage in practices like paying for positive reviews, which undermines the reliability of online reviews.

Looking ahead, there are several prospects for improving the situation. Developing specific regulations to address online reviews could help protect consumers and ensure fair competition. Enhancing consumer protection laws to explicitly cover online reviews might involve updating existing laws or creating new ones that address the digital landscape. Encouraging businesses to adopt best practices for managing online reviews can also improve the quality and reliability of feedback. This includes setting clear policies for review collection, moderation, and response.



Increasing public awareness about the significance of online reviews and how to evaluate them critically could empower consumers to make more informed decisions. Public education campaigns can help consumers recognize credible reviews and understand their role in the e-commerce ecosystem. Additionally, leveraging technology to develop tools for verifying the authenticity of reviews and detecting fake or biased feedback is a promising direction. Utilizing artificial intelligence and machine learning could enhance the detection of fraudulent reviews. Overall, while online reviews and recommendations in Uzbekistan are becoming increasingly important, there is a need for more targeted regulations and increased consumer awareness. Addressing these issues and exploring future opportunities will be essential for ensuring a transparent and trustworthy e-commerce environment in the country.

Alongside the Advertising Law, the Federal Law No. 135-FZ "On Competition Protection" (hereinafter referred to as the Competition Law) is a significant source of legal regulation for market participants in Russia, particularly Chapter 2.1, which addresses unfair competition. According to Article 14.1 of the Competition Law, unfair competition through discrediting—i.e., the dissemination of false, inaccurate, or distorted information that may cause harm to a business entity or damage its business reputation—is prohibited. The Federal Antimonopoly Service (FAS) defines discrediting as an act aimed at undermining consumer trust in a competitor or its products, thereby attracting consumers to one's own products through the dissemination of improper information, including incomplete information about a competitor's products or services.

FAS identifies three criteria for qualifying an act as discrediting: the dissemination of information, its inaccuracy (falsehood, inaccuracy, distortion), and harm (damage to business reputation). Such actions are considered unfair competition if the dissemination of this information is carried out by one business entity against another competing entity. Therefore, the spreading of negative reviews that discredit a competitor could be recognized as an act of unfair competition if all three criteria are met and it is proven that the discrediting information was disseminated by a competitor. This conclusion is supported by judicial practice.

From the above, several conclusions can be drawn. Firstly, under the current Russian legislation, online consumer reviews cannot be classified as advertising. Secondly, the dissemination of negative reviews may be considered an act of unfair competition if sufficient qualifying criteria are met and the connection between the distributor of the defamatory information and the competitor who suffered harm is established. Thirdly, the publication and dissemination of positive reviews (whether true or false) are governed by the rules and conditions established by the websites where these reviews are posted. The lack of clear and understandable "rules of the game" undoubtedly leads to information distortion, undermining trust in the industry. For instance, reviews are often perceived by the public as a means of earning money, and online stores frequently offer rewards for writing reviews.

Such unethical behavior is likely caused by gaps in the legal regulation of e-commerce and related areas (electronic marketing and online advertising). Scholars and practitioners have repeatedly pointed out the need for specific legal regulation of internet relationships. Recognizing the importance of such regulation for the development of the modern economy, the Russian Government approved the "Digital Economy of the Russian Federation" state program in July 2017. This program includes, among other tasks, the "improvement of legal regulation in



the field of consumer protection in the context of the digital economy."

In August 2017, the Government of the Russian Federation approved Order No. 1837-r, which outlines the State Policy Strategy for Consumer Protection until 2030. This Strategy cites updated UN Guidelines for Consumer Protection as its legal foundation. Regarding e-commerce, the Strategy aims to:

- Ensure consumer protection in electronic commerce at least at the same level as other forms of trade.
- Monitor compliance by business entities with Russian consumer protection laws, preventing illegal, unethical, discriminatory, or misleading practices.
- Ensure that business entities provide clear, readable, accurate, and non-deceptive information about goods, services, and works.
- Define unacceptable, unfair, and rights-violating contractual terms to uphold the principle of protecting the weaker party in consumer protection laws.
- Take measures to strengthen consumer trust in e-commerce.

International legal practices demonstrate effectiveness and could be used to reform Russian legislation with consideration of national specifics. International standards and recommendations can provide valuable insights into the current state and future prospects of the advertising industry, which is rapidly incorporating advanced technological achievements. Many concepts and practices that have emerged in developed countries and are quickly penetrating Russia have already been studied and regulated. Without adequate legal regulation and mechanisms to curb and address unfair behavior, there is a high likelihood of market abuses, which will undoubtedly infringe upon the rights and legitimate interests of Russian consumers.

## V. Conclusion

Consumer reviews and recommendations published online play a crucial role in both online and offline commerce. Firstly, they are a significant source of information for consumers. Secondly, they provide feedback for entrepreneurs, allowing them to gauge consumer satisfaction with their products or services. Thirdly, reviews can increase or, conversely, decrease the likelihood of securing new deals. Therefore, it is essential that consumer reviews and recommendations are honest, objective, and authentic.

An analysis of the current state of legal regulation of consumer reviews and recommendations in developed countries reveals that Russian legislation lags significantly behind in the field of electronic commerce in general and in the area of communication between producers (sellers, service providers) in particular. It appears that the commitment outlined in the "Digital Economy of the Russian Federation" program to improve legal regulation in this area will address the interests of consumers—who are the most numerous yet vulnerable participants in e-commerce.

## REFERENCES

1. Saveliev, A.I. E-Commerce in Russia and Abroad: Legal Regulation. 2nd ed. Moscow: Statut, 2016 (ConsultantPlus).
2. Talimonchik, V.P. International Networks for Consumer Protection // Information Law. 2009. No. 1 (ConsultantPlus).



3. Entin, V.L. Copyright in Virtual Reality (New Opportunities and Challenges of the Digital Age). Moscow: Statut, 2017.
4. Balleste, Roy. Internet Governance: Origins, Current Issues, and Future Possibilities. 2015.
5. European B2C E-commerce Report 2016. Ecommerce Foundation Link.
6. Goldman, Eric. Understanding the Consumer Review Fairness Act of 2016. 2017. February 1 // Michigan Telecommunications and Technology Law Review, Forthcoming; Santa Clara Univ. Legal Studies Research Paper N 4-17 Link.
7. Hoofnagle, Chris Jay and Meleshinsky, Eduard. Native Advertising and Endorsement: Schema, Source-Based Misleadingness, and Omission of Material Facts // Technology Science. 2015. December 15 Link.
8. Murray, Andrew. Information Technology Law: the Law and Society. 3rd ed. Oxford University Press, 2016.
9. Ponte, Lucille M. Protecting Brand Image or Gaming the System? Consumer 'Gag' Contracts in an Age of Crowdsourced Ratings and Reviews. 2015. March 16. 7. Wm. & Mary Bus. L. Rev (2015, Forthcoming) Link.
10. Prins, J.E.J., Ribbers, P.M.A., van Tilborg, H.C.A., Veth, A.F.L., van der Wees, J.G.L. Trust in Electronic Commerce. The Role of Trust from a Legal, an Organisational and a Technical Point of View. Kluwer Law International, 2002.
11. Russia B2C E-commerce Report 2016. Ecommerce Foundation Link.
12. Shelton, Dinah (ed.). Commitment and Compliance: The Role of Non-binding Norms in the International Legal System. Oxford: Oxford University Press, 2000.
13. Sundararajan, Arun. The Sharing Economy: The End of Employment and the Rise of Crowd-Based Capitalism. MIT Press, Cambridge (Mass.), 2016.
14. Turban, E., Whiteside, R., King, D., Outland, J. Introduction to Electronic Commerce and Social Commerce. 4th ed. Springer International Publishing AG 2017. DOI 10.1007/978-3-319-50091-1.

