



THE CHAIRMAN

FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

November 17, 2017

The Honorable Tammy Baldwin  
United States Senate  
Washington, D.C. 20510

Dear Senator Baldwin:

Thank you for your November 2, 2017, letter requesting that the Federal Trade Commission review certain practices in the online hotel booking industry, specifically whether TripAdvisor's practices of screening and removing traveler reviews violate Section 5 of the FTC Act, 15 U.S.C. § 45. You cite an investigative report by the Milwaukee Journal-Sentinel that revealed that TripAdvisor took down reviews by travelers about sexual assault or other criminal activity they experienced when traveling to Mexico because TripAdvisor determined the reviews to be "inappropriate," "off-topic," or not "family-friendly."<sup>1</sup> You express concern that TripAdvisor's practices may hinder American consumers' abilities to access accurate and unbiased information about the safety and quality of foreign hotels and resorts.

As you know, the Commission acts in the interest of consumers to prevent unfair or deceptive acts or practices, pursuant to the Section 5 of the FTC Act. An act or practice is unfair if it causes or is likely to cause substantial consumer injury that consumers cannot reasonably avoid, and is not outweighed by benefits to consumers or competition.<sup>2</sup> An act or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and if it is material – that is, likely to affect a consumer's purchase or use decision.<sup>3</sup> In determining whether to take enforcement action in any particular situation, the Commission may consider a number of factors, including the type of violation alleged; the nature and amount of consumer injury at issue and the number of consumers affected; and the likelihood of preventing future unlawful conduct and securing redress or other relief.

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<sup>1</sup> Raquel Rutledge & Andrew Mollica, *TripAdvisor Removed Warnings About Rapes and Injuries at Mexico Resorts, Tourists Say*, Journal Sentinel (Nov. 1, 2017), <http://www.jsonline.com/story/news/investigations/2017/11/01/tripadvisor-removed-warnings-rapes-and-injuries-mexico-resorts-tourists-say/817172001/>.

<sup>2</sup> 15 U.S.C. § 45(n); *see also* Federal Trade Commission Policy Statement on Unfairness, appended to *Int'l Harvester Co.*, 104 F.T.C. 949, 1070-76 (1984).

<sup>3</sup> *See, e.g., FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009); *Telebrands Corp.*, 140 F.T.C. 278, 290 (2005), *aff'd*, 457 F.3d 354 (4th Cir. 2006); *see also* Federal Trade Commission Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-83 (1984).

The Commission has a strong interest in protecting consumer confidence in the online marketplace, including the robust online market for hotel and travel. We understand that protecting consumers' ability to share honest opinions about products, services, and conduct in all forums, including online reviews, is important to maintaining this consumer confidence. When consumers are unable to post honest reviews about a business, it can harm other consumers whose abilities to make well-informed purchase decisions are hindered and harm businesses that work hard to earn positive reviews. As you know, upon becoming aware that companies were using contractual provisions to threaten to sue or penalize consumers for posting negative online reviews, last year, Congress unanimously passed the Consumer Review Fairness Act of 2016 (CFRA), 15 U.S.C. § 45b. The CFRA protects consumers' ability to share honest opinions about a business's products, services, or conduct. Similarly, prior to the CFRA's enactment, the Commission sued companies, alleging the use of non-disparagement clauses and other threats and intimidation to suppress negative consumer reviews or complaints was unfair under Section 5 of the FTC Act.<sup>4</sup>

I assure you that the Commission will consider the information you have provided carefully to determine whether enforcement or other action, such as additional business guidance, is appropriate.

Thank you again for sharing your concerns with us, and we appreciate your interest in protecting consumers in the online marketplace for travel. If you have any additional questions or comments, please do not hesitate to contact me or have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely yours,



Maureen K. Ohlhausen  
Acting Chairman

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<sup>4</sup> See *FTC v. Roca Labs, Inc.*, No. 8:15-cv-02231-MSS-TBM (M.D. Fla. filed Sept. 24, 2015); *FTC v. NutriMost LLC*, No. 2:17-cv-00509-NBF (W.D. Pa. complaint and stipulated final judgment and order filed Apr. 20, 2017); *FTC v. World Patent Marketing*, No. 1:17-cv-20848 (S.D. Fla. complaint filed Mar. 6, 2017, preliminary injunction granted Aug. 16, 2017).