

Duff on Hospitality Law

U.S. Hospitality Industry Should Heed CMA's Warning for Online Reviews and Recommendations

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The Competition & Markets Authority (CMA), which investigates business practices and enforces anti-competition and consumer protection legislation in the UK, just released a [report](#) and call for information that signals more scrutiny for online reviews and endorsements. Though the report does not identify companies or sites that will be the subject of investigation, it expresses a general concern that a number of businesses are breaking the law. The report does not point fingers, but it's worth noting that the hospitality industry is mentioned several times as an area of particular interest, based in part on a survey conducted by the British Hospitality Association in March of this year. Consumer reliance on reviews for vacation travel, the relatively higher cost for hospitality related services, and the sensitivity of the hospitality related services to negative reviews were cited by the CMA as reasons why the industry is an area of particular concern.

UK regulations are, of course, aimed at protecting UK consumers, but U.S. companies are well advised to take heed of the report's warnings and recommendations because, as the report notes, the CMA plans to assume the Presidency of the International Consumer Protection and Enforcement Network (ICPEN), of which the U.S. is an active member. And, the practices flagged by the CMA, as well as the steps businesses can take to address the CMA's concerns, closely parallel those identified by the Federal Trade Commission (FTC).

So, whether your customers are here in the States or abroad, the following practices may result in an investigation by the CMA (or FTC):

- **Writing or commissioning fake negative or positive reviews.** (Your marketing firm could also be on the hook for setting up fake Twitter or Facebook accounts to submit reviews).
- **Cherry-picking positive reviews or suppressing negative reviews.** (Your website user agreement or comments policy may well allow you to edit or delete user content containing expletives or other inappropriate material, but if those expletives all happen to be in negative reviews of your product or service, you need to consider what disclosures may be necessary to ensure the reviews as a whole are a fair and accurate representation of the actual comments received).

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- **Failing to disclose paid reviews or endorsements.** (Whether its cash, a free dessert, or award points, you need to disclose compensation or incentives given to individuals submitting reviews or endorsements).

The best practices recommended by the CMA similarly echo the FTC's guidelines:

- Be clear with your marketing department or outside marketing firm that they may not write or solicit reviews. Documenting that parameter in a letter or agreement will provide a paper trail that could prove handy down the road.
- If you do provide compensation or incentives for reviews or endorsements, be sure that that fact is clearly disclosed, e.g., by using a hash tag like “#paid ad.”
- Promptly publish all reviews, even negative ones. If reviews have been edited or deleted (e.g., to remove expletives), clearly disclose your policy or basis for doing so.
- Establish a procedure (whether in house or with your marketing firm) for detecting and removing fake reviews.

In conjunction with the report, the CMA published [summaries](#) on how to comply with UK consumer protection law on online reviews and endorsements.

Ultimately, the CMA and FTC share a common purpose: to protect consumers from unfair or deceptive business practices by protecting the consumer's ability to make meaningful choices. Disclosure of the connection between a review or endorsement and its source (i.e., an independent individual or a sponsoring company) is essential to meaningful consumer choice. So, in devising your marketing strategy, especially if it includes a forum for consumer reviews, ask whether you've given your customer the information necessary to make a meaningful decision about your product or service. Doing so not only helps build brand loyalty, it could help avoid an investigation by the CMA (or FTC).