



## What You Should Know about Online Reviews

**Q: If I get bad service from a business, can I go online and trash the company?**

**A:** It is your right to criticize poor service publicly, but it's best not to "trash" a business. An honest and thoughtful critique is the most effective one. People tend to disregard over-the-top negative reviews, especially on consumer review sites. If your review is sufficiently outrageous, and the business owners have evidence that your review included false statements of fact (and not merely your opinions), they may choose to fight back by contacting the review site and having your review removed for abuse—or even by filing a lawsuit against you.

review site and having your review removed for abuse, or even by filing a lawsuit against you for defamation, claiming that the lies damaged their business.

**Q: Will my online review stay anonymous?**

**A:** Probably. Most online review sites jealously guard their reviewers' identities. Your review will likely appear under whatever pseudonym you supply. If the review site requires you to use your real name when you sign up, check the privacy policy as well as other reviews to see whether any identifying information is revealed. If your criticism is quite specific and you post it shortly after your experience, the business will probably know who you are anyway. If a business is determined to find out who you are, it could issue a subpoena requiring the review site to reveal whatever information it has about you. Many review sites will challenge subpoenas in an effort to protect the identity of their users, but if the subpoena is not challenged, or if a court upholds its validity, the site will have to reveal your identity.

Even if you didn't disclose your identity, a subpoena can force the site to reveal the server log information for your review. This information includes the date, time and IP address from which you sent the review, as well as computer and browser information. Even anonymous reviewers often can be identified on the basis of such data, although it's an expensive and time-consuming process that is generally only used when a reviewer's defamation has genuinely damaged the business.

You should be especially careful not to post a "trash" review of your own employer or your job. Employees are much easier to identify than members of the general public, especially where the business is local. Many companies have policies against making disparaging remarks about the company or disclosing internal company information to the public, so an employee who does so online risks being fired for violating company policy. (First Amendment free speech rights apply only when a governmental authority tries to restrict speech.) If litigation ensues—if the company sues you for defamation or revealing trade secrets and wins, or if you sue the company for discrimination or breach of contract and lose)—it would be a matter of public record, making you virtually unemployable.

**Q: What can I do if I suspect that my competitors are writing fake positive reviews about their businesses, and fake negative reviews about my business?**

**A:** Some businesses do try to manipulate their reviews. Such techniques include posting fake positive reviews, posting fake negative reviews of competitors, and "sockpuppeting" (running purportedly neutral forums that in reality are there only to cast the business in a favorable light). Businesses that engage in such tactics may get away with it for a while, but they are taking big risks. Using any of these tactics almost certainly violates federal law and consumer regulations, as well as state-level deceptive trade practices acts.

The Federal Trade Commission, as well as state attorneys-general, regularly investigate and fine such businesses, often based on complaints from other businesses. State law also allows businesses that are harmed by such unfair tactics to sue for “treble damages” (three times the amount of money that the court would award to compensate the business for actual economic losses) plus an award of attorney fees.

**Q: My customers sometimes expect the impossible. Is there anything I can do to prevent unjustified negative reviews?**

**A:** As a legal matter, no. As a practical matter, yes. Unless a customer out-and-out lies (which would be defamation if it damages the business), the First Amendment protects expressions of opinion, even those that are completely unjustified. A few businesses have tried to get their customers to sign contracts promising not to post any negative reviews. Others have asked customers to assign to the business all copyright rights to any reviews so that the business can threaten infringement suits for any site that doesn’t take down negative reviews. Such attempts have backfired badly, generating both negative press and lawsuits. California recently became the first state to ban such practices, and other states will probably follow suit.

The best way to prevent unjustified negative reviews is to give great service, and ask for feedback quickly after the transaction is complete, *before* the customer has the opportunity to post a review. If the customer’s feedback is negative, take immediate action to set things right so as to motivate the customer to post a positive review. If prevention doesn’t work, respond to any negative comments by posting a thoughtful, sincere reply. If the customer’s review is unfair, gently explain why without disparaging the customer and without sounding negative yourself.

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*This “Law You Can Use” legal information column was provided by the Ohio State Bar Association. It was prepared by Robert L. Ellis, partner in the law firm Hennis, Rothstein & Ellis LLP.*

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