



May 23, 2015

The Honorable Michael C. Burgess, Chairman
The Honorable Janice D. Schakowsky, Ranking Member
Subcommittee on Commerce, Manufacturing, and Trade
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Chairman Burgess and Ranking Member Schakowsky:

Consumers Union, the policy and advocacy arm of Consumer Reports, is pleased that your Subcommittee is holding hearings on the troubling use of non-disparagement clauses, or “consumer gag clauses,” in standard-form consumer contracts. H.R. 5111, the Consumer Review Fairness Act, introduced by Representatives Leonard Lance and Joseph Kennedy, would help protect consumers’ right to freedom of speech in the marketplace, by making it illegal for businesses to stop their customers from sharing negative reviews, or to punish their customers for doing so.

Today, consumers regularly offer their personal reviews about hotels, restaurants, and other products and services online. Unfortunately, some businesses have sought to block consumers from communicating this information to each other – by taking them to court, or by threatening to. Some businesses have inserted “non-disparagement clauses” into the lengthy boilerplate in their standard-form consumer purchase contracts or terms of service. These paragraphs purport to indicate that the consumer has supposedly agreed to waive the right to say anything negative about the product or service or business. Or that the consumer has supposedly turned over to the business an advance copyright ownership for any review the consumer might write, so that the business can stop the review from being published or can threaten suit for copyright infringement if it is published. At least one business reportedly tried to use a consumer’s supposed liability under a non-disparagement clause to ruin the consumer’s personal credit rating.

These same tactics could also potentially be used against professional product and service testers and raters. At Consumer Reports, for example, we buy the products and services we test and rate in the marketplace, anonymously. Indeed, it is a hallmark of the integrity and credibility

of our ratings that sellers do not know they are selling their product or service to Consumer Reports – that by outward appearances to the seller, we are an individual buying for personal use.

Consumer Reports is also a forum for the views of individual consumers. We survey consumers regarding their experiences in various product and service sectors, and publish the results. Sometimes we report an individual consumer's experience. We might even use a consumer's story in our advocacy work. A consumer's participation in these activities could also be attacked as an alleged violation of a non-disparagement clause.

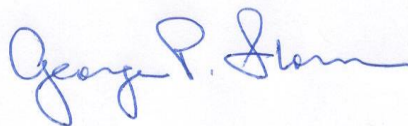
It is no exaggeration to say that non-disparagement clauses in consumer purchase agreements could be exploited to interfere with our ability at Consumer Reports to bring objective, unbiased, reliable information to the consuming public about the safety and performance of products and services – and more broadly, could be exploited in an attempt to silence the consumer voice.

H.R. 5111 would help stop these outrageous anti-consumer tactics, by making such non-disparagement clauses in consumer contracts null and void. And it would give the Federal Trade Commission and state attorneys general authority to turn the tables and take enforcement action against businesses that attempt to use these clauses against consumers.

Consumers Union looks forward to working with you to enact this legislation to protect the rights of consumers to speak their honest opinions about the products and services they purchase, and about how they are treated by the businesses they deal with.

Thank you for your leadership on this important consumer rights issue.

Sincerely,



George P. Slover
Senior Policy Counsel
Consumers Union

cc: Members, Subcommittee on Commerce, Manufacturing, and Trade