

## FTC Sues Company Seeking to Prevent Customers' Negative Online Reviews

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Last month, the Federal Trade Commission (FTC) filed suit in the Middle District of Florida against two companies and their principals over a “gag” clause aimed at preventing negative reviews.

On September 24, 2015, the FTC filed a complaint for permanent injunction and other equitable relief against Roca Labs, Inc., Roca Labs Nutraceutical USA, Inc., Don Juravin and George C. Whiting (hereinafter referred to, collectively, as Roca Labs).

The FTC has accused Roca Labs of attempting to dissuade customers from publishing negative feedback, in addition to allegations of baseless claims about their products (powder and gel-based weight loss supplements, geared towards those seeking to lose significant weight loss as an alternative to gastric bypass surgery).

In what is reportedly the first ever lawsuit brought by the agency over a non-disparagement clause – noting that the FTC only files complaints when there is “reason to believe” a law has been violated and that it is in the public interest – the FTC is clearly attempting to warn businesses against attempting to stifle negative customer feedback.

“Not only did they make false or unsubstantiated weight-loss claims, they also attempted to intimidate their own customers from sharing truthful – and truly negative – reviews of their products,” said [Jessica Rich, Director of the FTC's Bureau of Consumer Protection](#).

#### *Roca Labs' non-disparagement clauses*

Roca Labs, keenly aware of the significance of being surrounded by positive content and publicity (including favorable online reviews), seems to have overdone it in terms of attempting to control their reputations.

Not only did they promote their products through “success videos” – including offering discounts to customers that provided such positive publicity – but Roca Labs also “post[ed], or cause to be posted”

testimonials or other favorable information from third-party websites, without disclosing any affiliations with Roca Labs, the FTC's complaint alleged.

And then, of course, there were the non-disparagement clauses – or gag clauses, as they are referred to in the complaint.

Via product package inserts, Roca Labs warned their customers that they agreed not to publish negative reviews about Roca Labs or the products; doing so resulted in what essentially amounted to a large fine.

As seen in the complaint, Roca Labs even used some language stating that the intent of the non-disparagement clause was to protect the companies and their products “from the harm of libelous or slanderous content.” Violations of that provision would result in legal remedies if, upon notice, the content was not removed within 72 hours.

According to the FTC complaint, Roca Labs has both issued threats and actually followed through with filing lawsuits against certain customers who wrote about their negative experiences. And, clearly, that is not okay with the FTC.

The FTC's position is that Roca Labs' actions and practices – barring customers from sharing actual negative commentary – harm prospective purchasers who might purchase Roca Labs products that they otherwise might not if given the opportunity to read honest negative assessments. According to the FTC, this violates Section 5 of the FTC Act, which prohibits “unfair or deceptive acts or practices.”

“We believe that it's really important for truthful information about products to be out in the information marketplace,” said [Mary Engle, associate director of the FTC's Division of Advertising Practices](#).

### *Takeaways*

In many instances, FTC punishments are simply a public reprimand (a slap on the wrist, essentially) or perhaps a fine. The fact that the FTC filed a federal lawsuit against Roca Labs, however, shows how serious the FTC is treating Roca Labs' actions and alleged violations.

Roca Labs is not alone in being worried about negative feedback. However, trying to silence potential critics through non-disparagement clauses is increasingly being frowned upon, and with greater consequences too. [California prohibits such clauses](#), while other businesses – including [hotels](#) and [apartment complexes](#) – have experienced major backlashes from similar policies. Even if not illegal, the PR risks are too great.

This will be an interesting case to track – in particular the potential consequences for Roca Labs. At the very least, the companies and their products are already receiving negative publicity greater than what Roca Labs feared from customers themselves.

In short, companies should not try to suppress negative content, as negative speech is protected as long as it is not defamatory. If anything, they should (lawfully) seek to generate more positive or neutral publicity that can drown out negative content. Besides, if a product is worthy of a significant number of bad reviews, then perhaps it is a flawed product.

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