

UNFAIR COMMERCIAL PRACTICES AND ONLINE CONSUMER REVIEWS: THE ITALIAN TRIPADVISOR CASE

Luca Biffaro¹

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1. INTRODUCTION

In December 2014 the Italian Competition Authority (ICA) adopted a prohibition decision against two undertakings of the TripAdvisor Media Group, namely TripAdvisor LLC and TripAdvisor Italy S.r.l. (TripAdvisor) for unfair commercial practice. The ICA found that the commercial practice concerned, i.e. the publication of misleading claims and statements regarding the sources of user reviews posted on the TripAdvisor website, was unfair as it infringed articles 20, 21 and 22 of the Italian Consumer Code. For the first time, the ICA's decision judged a commercial practice relating to online consumer reviews to be unfair.

The ICA prioritised its review of the online travel services sector, as the development of e-commerce made online reviews a powerful determinant of consumers' purchase decisions, mainly because of their perceived neutrality. In a recent study on online consumer reviews in the hotel sector,² the European Commission pointed out that consumers still trust user-generated content more than any other travel information received from companies. Therefore, if the assumption of the impartiality of online feedback is false, consumers seeking an independent opinion may be harmed, as the practice of providing false and/or fake reviews distorts the market by providing consumers with imperfect information about travel services.

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² European Commission, Study on Online Consumer Reviews in the Hotel Sector – Final Report, Submitted on 9 June 2014.

2. THE ICA'S CONCERNS

In May 2014 the ICA initiated a proceeding against two undertakings of the TripAdvisor Media Group, namely TripAdvisor LLC, which manages the group's websites, and TripAdvisor Italy S.r.l.

In particular, the ICA expressed its concern that TripAdvisor would disseminate misleading claims on its Italian website, in order to promote its business to Italian consumers. These claims, such as “[...] *TripAdvisor offers trusted advice from real travelers [...]*” and “[...] *you'll find a lot of real and authentic reviews you can trust at TripAdvisor [...]*”, stressed the truthfulness of sources of online feedback. Moreover, the ICA expressed its concern that these claims could be misleading due to the inadequacy of tools and procedures adopted by said undertakings to verify user reviews.

2.1 TripAdvisor's Business and Revenue Model

The TripAdvisor platform is a travel review website on which consumers can gather travel information via user-generated content. The implementation of such a business model has brought about a radical change in the role played by consumers participating in an Internet community, as it has shifted their role from that of a passive audience to that of an interactive one.³ Thus the TripAdvisor platform is not governed by the 90-9-1 principle, according to which only 1% of users actively participate in an Internet community.

It is suggested that such a change of scenario results from two specific business choices made by TripAdvisor, both aimed at increasing both user-generated content and its Internet audience. First, the undertakings placed lower barriers of entry to the platform, by making the sign-up process very simple and quick. The aim of this business choice is to increase the number of user reviews.⁴ Moreover, the undertakings required no effort on the part of users in contributing to the online activities of the TripAdvisor community. Secondly, TripAdvisor published a wide range of claims and statements on its website which stressed the truthfulness of user feedback.

It has been of crucial economic importance for TripAdvisor to attain such a result, since it has led to exponential growth in its audience, as the more reviews that are posted on the database, the more likely it is that traffic to the website will increase. The resulting growth increased TripAdvisor's revenues from its business activities. Indeed, the entire platform has been developed to exploit user-generated content, by offering a wide range of travel options, as well as travel planning features with seamless links to partners' booking websites. TripAdvisor declared that it adopted a revenue model substantially

³ TripAdvisor states on its website that it is “the largest travel community in the world, reaching 315 million unique monthly visitors, and more than 200 million reviews and opinions” (source: www.tripadvisor.com).

⁴ TripAdvisor does not use an account verification system (e.g. CAPTCHA) or send verification e-mails on completion of registration.

based on the sale of advertising “primarily through click-based advertising and, to a lesser extent, display-based advertising”.⁵

2.2 How the TripAdvisor Platform works

TripAdvisor adopts an online reputation model based on content rating and ranking in which businesses are rated and ranked based on information collected from user reviews. The main working tools of its database are: *i*) the “Popularity Index Ranking”; *ii*) the “Overall Bubble Rating”.

The “Popularity Index Ranking” indicates the position achieved by each individual business within a given geographical area,⁶ regardless of sorting criteria chosen by consumers. Since the business ranking is calculated on the basis of data gathered from user reviews, this tool is closely related to the Overall Bubble Rating,⁷ which expresses the average of the total Overall Bubble Rating obtained by businesses.

Specifically, consumers assign an “Overall Bubble Rating” to businesses on a scale of 0 to 5, via user reviews. The businesses’ position within the Popularity Index Ranking is calculated according to a complex algorithm using the quantity, quality, and age of user reviews as primary factors. In particular, the ICA found evidence that such an algorithm works through data such as the average of the total Overall Bubble Rating obtained by a specific business, and the score achieved by any other business within the same geographical area.⁸

3. THE ICA’S ASSESSMENT

The ICA found that the first of TripAdvisor’s commercial practices described above was unfair according to the Italian Consumer Code. In particular, the ICA linked the misleading feature of TripAdvisor’s commercial claims to the inadequacy of the tools and procedures that it has adopted for verifying user reviews.

The ICA expressed its concern that these claims significantly influenced consumers’ decisions, leading consumers to place greater trust in both user reviews and the measures adopted by TripAdvisor to ensure the identification of fake reviews. The deceptive nature of such claims led consumers to believe

⁵ TripAdvisor, according to its click-based advertising scheme, sells advertising space on its website to advertising clients, mainly online travel agencies and direct suppliers in the hotel, airline and cruise product categories. Moreover, TripAdvisor prices this advertising space on a cost-per-click basis, and receives payments based on the number of users who click on the links allocated within its online platform.

⁶ When consumers look for travel information on TripAdvisor, they have to choose their search criteria, namely the geographical area and type of establishment (accommodation, restaurant, etc.).

⁷ The Overall Bubble Rating is a measure of how consumers have rated a property.

⁸ The Popularity Index Ranking and the Overall Bubble Rating are recalculated every day.

that user reviews posted on TripAdvisor's Italian website were genuine opinions from actual travellers, as they accurately reflected their real travel experience, and therefore could be relied upon when planning their trips.

The ICA deemed that TripAdvisor could not substantiate these claims, since it does not verify the information contained in the user reviews. Indeed, the way in which the review verification system works leads consumers to presume that the content posted on the website is authentic, and not merely the result of fraudulent activities. Moreover, the number of employees checking user reviews is inadequate, given the total number of reviews posted on the website. Therefore, third-party manipulation of TripAdvisor's online reputation model, for instance by using "boosting" and "optimisation" strategies,⁹ could not be detected, ultimately influencing consumers' travel decisions through distorted ranking results.

Firstly, the ICA highlighted the high likelihood of fake reviews being submitted, given the ease with which users can register with TripAdvisor due to the low barriers of entry to the Internet community in question. Secondly, it pointed out that the practical impact of fake reviews – regardless of their number – is not negligible, as every single user review counts towards the Overall Bubble Rating. The publication of a fake review, therefore, may affect businesses' rankings and thus distort consumers' economic behaviour. Indeed, the misleading nature of the aforementioned claims would ultimately affect the main factors driving consumers' choices from within the database – i.e. the Popularity Index Ranking and the Overall Bubble Rating – it being very likely that the higher-ranked business will get more visits. Finally, such a result would affect consumer choice, as TripAdvisor provides seamless links to online travel agencies' websites.

The ICA also found that the right of reply accorded to businesses had only a limited information value in several respects. Firstly, business owners usually exercise such a right when negative reviews are received. Secondly, the exercise of the right of reply may not affect the positions within the Popularity Index Ranking, because it does not lead to user reviews being deleted from the TripAdvisor database. Finally, such a right may be exercised only by management representatives who verify their identities on the TripAdvisor website.¹⁰

⁹ "Boosting" is the practice of submitting a certain amount of fake positive reviews in order to boost the ranking of a business within an online database, while "optimisation" is the systematic submission of fake positive reviews, usually by third-party companies upon payment, in order to improve the ranking of the paying business within an online database. These terms are also used by TripAdvisor (source: <http://www.tripadvisor.com/TripAdvisorInsights/n622/taking-stand-against-organized-boosting>).

¹⁰ Management representatives, TripAdvisor employees and consumers can create a business account. The management representatives are required to verify their identity only if they wish to manage an account.

4. CONCLUSIONS

The ICA found that the publication of misleading claims concerning the sources of user reviews was unfair and infringed Articles 20, 21 and 22 of the Italian Consumer Code.

Firstly, the ICA, pursuant to Article 20 of the Italian Consumer Code, deemed such commercial practice to be contrary to the requirements of professional diligence, as TripAdvisor did not make truthful, clear, complete and intelligible information available to consumers. Secondly, the ICA, found that the claims posted on the TripAdvisor website were misleading under Articles 21 and 22 of the Italian Consumer Code. In particular, TripAdvisor was not able to substantiate such claims on the basis of its business model and the review verification system for detecting and deleting fake reviews.

The ICA adopted a prohibition decision, according to which the unfair commercial practice was banned and its continuation was prohibited. The ICA also imposed a fine of €500,000 on TripAdvisor LLC and TripAdvisor Italy S.r.l. under a joint and several liability regime.