CLIENT ALERTS & INSIGHTS

Protecting Your Company from the Silliest Lawsuit Not on Your Radar

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Key Takeaways

- A growing wave of lawsuits is targeting companies under a California statute originally intended to protect consumer reviews but now being used to challenge standard contract terms-even when no actual harm or review suppression has occurred.
- This trend exposes businesses to costly, no-injury class actions and the threat of significant penalties, even if they have never enforced or threatened to enforce the challenged contract terms.
- To minimize litigation risk, companies can proactively review and revise their online terms of service to remove or clarify any language that could be interpreted as restricting consumer reviews.

Do you sell goods or services online? Do you have customers in California? If so, you may be a target of claims under the "Yelp Law," a statute residing at the intersection of good intentions and bad drafting.

We've seen a growing wave of lawsuits filed under California Civil Code 1670.8, commonly called the "Yelp Law," a consumer-protection statute designed to prevent companies from barring or punishing consumer reviews. This client alert addresses the statute, the types of claims we're seeing, and how you can protect yourself from this wave of (often silly) lawsuits.

The Noble Origins of Civil Code 1670.8

The Yelp Law, California Civil Code Section 1670.8, emerged from consumer horror stories that begged for legislative intervention. The California Legislature drafted, debated, and passed the statute in 2014 in direct response to cases like that of two Utah residents who tried to buy Christmas gifts from KlearGear.com in 2008 and canceled the transaction when their items never arrived. When they posted a negative review on RipoffReport.com, KlearGear.com waited four years before demanding a $3,500 penalty, citing a non-disparagement clause buried in their terms of use. The couple reasonably refused to pay, and the company responded by reporting the "debt" to credit agencies, leaving the couple unable to secure loans for nearly two years. As a result, they were denied credit to finance a new furnace, leaving them without heat for three weeks.

The California Legislature wanted to prevent companies from using adhesion contracts to "muzzle cherished constitutional values" and create "consumer horror stories" like the Utah couple's. The legislature found that consumers had "naturally become accustomed to ignoring the mass of boilerplate text" in online contracts and would "reasonably skip ahead to 'check the box'" without realizing that posting an honest review could subject them to harsh financial penalties.[1] Thus, the Yelp Law was designed to ensure that such nondisparagement clauses were unenforceable and to disincentivize attempts to enforce them-a civil penalty of up to $10,000 per violation.[2]

That's how it started.

How the Plaintiffs' Bar Has Weaponized Good Intentions

Here's how it's going: The legislature unintentionally encouraged fishing expeditions by plaintiffs' attorneys hunting for provisions in online terms of service that might, theoretically inhibit a theoretical customer's theoretical review. Despite the Yelp Law's noble origins, plaintiffs' attorneys have transformed Section 1670.8 into something its drafters never envisioned: a tool for manufacturing no-harm class actions that threaten massive civil penalties.

The modern litigation playbook follows a predictable pattern that bears no resemblance to the KlearGear.com abuses that motivated the law's passage. That gambit proceeds in two acts.

First, attorneys systematically trawl through companies' online Terms of Service, searching not for evidence of actual consumer harm, but for any provision or phrase that could conceivably be twisted to apply to consumer reviews. Common targets include standard trademark restrictions, intellectual-property protections, and boilerplate content guidelines that have existed in terms of service for decades without controversy.

Second, these attorneys deliberately ignore whether the target company has ever interpreted or applied these provisions to inhibit consumer speech. Unlike the KlearGear.com case-where the company actually demanded payment and damaged the consumers' credit reports-today's plaintiffs file lawsuits against companies that have never silenced a single review, never sent a cease-and-desist letter to a consumer, and never threatened anyone for posting criticism. The focus has shifted entirely from actual harm to theoretical possibility, transforming a consumer-protection statute into a corporate-shakedown scheme.

The "Any Statement" Gambit and Hypothetical Injuries

The linchpin of this litigation strategy is an overly broad interpretation of the statute's "any statement" language. Section 1670.8 prohibits contracts from waiving consumers' rights to make "any statement regarding the consumer's experience with the seller or lessor or its employees or agents, or concerning the goods or services." Plaintiffs' attorneys seize on this expansive phrase to argue that virtually any contractual limitation-from trademark restrictions to content-moderation policies-violates the statute if it could conceivably apply to theoretical consumer speech. This interpretation stretches the law far beyond its intended scope of preventing actual retaliation for actual negative reviews.

For example, some plaintiffs have complained about companies' trademark policies, because the policies (a) state that no one can use the company's trademarks without express permission and (b) note that the company holds a trademark in the company's name. The plaintiffs claim that this

provision prohibits consumers from using the company's name in an online review and thus runs afoul of the Yelp Law-never mind that the defendant company has never applied or threatened to apply its trademark policy that way, and never mind that the consumer plaintiff never alleged that she intended to make a statement about the company.

In nearly every instance, these lawsuits are filed on behalf of consumers who represent the antithesis of the statute's intended beneficiaries. Rather than consumers like the Utah couple who were actually penalized for posting reviews, today's class actions typically involve consumers who were never dissuaded from speaking due to a threat by the company, never read the terms of service containing the allegedly offending provisions, and often never intended to leave a review in the first place.

In some cases, plaintiffs find themselves in the bizarre position of arguing to federal courts that they lack Article III standing because their complaints allege no injury in fact. Through this tactical maneuver-essentially arguing that their claims are too weak to meet constitutional requirements for federal jurisdiction-the plaintiffs forum-shop their way into more favorable state courts. As law professor Eric Goldman has observed in his analysis of the "bogus Yelp Law litigation campaign,"[3] these cases exemplify how attorneys exploit consumer-protection statutes not to remedy actual harm, but to generate settlement pressure through the mere threat of costly litigation. The *Tao v. Uniqlo* case, which Goldman critiques as emblematic of this abuse, involved plaintiffs challenging Uniqlo's standard trademark restrictions despite lacking evidence that these provisions were ever used to silence consumer reviews or cause any concrete harm to the plaintiffs. And in other cases, plaintiffs' lawyers magnify that settlement pressure by threatening collective arbitrations with too few claimants to trigger the rules for mass arbitrations, but enough to threaten significant filing fees.

When plaintiffs must argue that they didn't suffer an injury sufficient to trigger a federal "case or controversy," it exposes the fundamental emptiness of their claims and their preference for state venues that might be more receptive to legally dubious theories of liability. Courts have increasingly recognized this pattern, with multiple judges rejecting Section 1670.8 claims where plaintiffs fail to allege concrete harm or any enforcement of the challenged provisions.[4] This transformation of Section 1670.8 from a shield protecting actual consumer speech into a sword threatening routine business practices upends the legislature's consumer-protection goals, turning what should be the "silliest legal claim" into one that allows enterprising plaintiffs' attorneys to threaten companies with massive liability.

Proactive Strategies for Companies to Reduce Section 1670.8 Risk

Courts are currently wrestling with the question of what a plaintiff needs to allege to state a claim for a violation of the Yelp Law. Most courts have held that a plaintiff must allege that the company took, or threatened to take, action against the plaintiff. But a notable minority has held that the plaintiff need only allege that the company's terms of service contained an offending term-that is, one that waives the customer's right to make "any statement," even an imagined one.

To avoid the risk of lawsuits or enforcement actions under California Civil Code 1670.8, companies should take a close look at the language used in their customer-facing contracts, especially their website Terms of Service and consumer agreements. Here are four key tips to proactively protect your business:

1. **Remove or Revise Non-Disparagement Clauses:** Carefully review and eliminate any provisions that could be interpreted as restricting, waiving, or penalizing consumers' rights to make statements about your company, personnel, products, or services-including language that prohibits "disparaging" remarks or negative reviews. Even passive or boilerplate language can trigger liability under Section 1670.8.
2. **Narrow Trademark and IP Restrictions:** Ensure that trademark, logo, and intellectual-property clauses are not so broad that they could be read as restricting consumers from mentioning your business or brand in a review or critical commentary. Explicitly carve out an exception for lawful, non-commercial consumer speech, such as honest reviews or complaints.
3. **Add Disclaimers:** Include language in your terms explicitly stating that nothing in the agreement waives or limits any consumer rights under California Civil Code 1670.8, and that consumers retain their right to make public statements-both positive and negative-about their experiences with the company.
4. **Audit for Overbroad Enforcement Clauses:** Regularly audit your terms for any provisions-like broad "limitations on use," content moderation policies, or termination rights-that could, intentionally or unintentionally, be used to silence consumer reviews. Make sure review moderation focuses only on removing unlawful or inappropriate content, not on controlling customer opinion or suppressing criticism.

These practical steps can help companies demonstrate good-faith compliance, foster consumer trust, and significantly reduce exposure to costly litigation or regulatory fines under a well-intentioned, but often-abused statute.

[1] Assembly Comm'n on Judiciary & Appropriations, Analysis of A.B. 2365, 2013-2014 Reg. Sess. (Cal. May 9, 2014), *available at*: http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2351-2400/ab_2365_cfa_20140509_113305_asm_floor.ht

[2] Defendants are subject to a $2,500 penalty for the first violation, $5,000 for the second and any subsequent violations, and $10,000 for willful, intentional, or reckless violations of this Section. Cal. Civ. Code § 1670.8(c)-(d).

[3] Eric Goldman, *Catching Up on the Bogus "Yelp Law" Litigation Campaign-Tao v. Uniqlo*, Tech. & Mktg. L. Blog (July 12, 2025), available at: https://blog.ericgoldman.org/archives/2025/07/catching-up-on-the-bogus-yelp-law-litigation-campaign-tao

[4] *See, e.g.*, *Masry v. Lowe's Cos., Inc.*, No. 25-cv-02959, 2025 WL 2021879, *1-*3 (N.D. Cal. July 18, 2025); *Sweeney v. Paramount Global*, No. 2:24-00708, 2025 WL 586586, *2-*3 (C.D. Cal. Feb. 21, 2025); *Shofet v. Zillow, Inc.*, No. 2:24-cv-00092, 2024 WL 5275512, *2-*5 (C.D. Cal. Oct. 3, 2024); *Khosrovian v. Home Depot, Inc.*, No. 23STCV30007 (L.A. Super. Ct. July 9, 2025); *Pulbrook v. Nationwide Mut. Ins. Co.*, No. 23CV27954 (Santa Clara Super. Ct., Apr. 7, 2025); *Moss v. GoDaddy.com, LLC*, No. 23STCV31166 (LA Super. Ct., Mar. 14, 2025); *Scott v. Ulta Beauty Inc.*, No. 23STCV28662 (LA Super. Ct., Feb. 14, 2025); *Arterberry v. Peet's Coffee, Inc.*, No. 23STCV31145 (LA Super. Ct., Dec. 5, 2024). Disclosure: Our firm handled the *Sweeney*, *Scott*, and *Arterberry* cases.