ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT
In the Matter of National Floors Direct, Inc., File No. 182 3085

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order as to National Floors Direct, Inc. ("respondent").

The proposed consent order ("order") has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondent's use of non-disparagement provisions in consumer form contracts in its sale and installation of flooring and carpeting. The complaint alleges that the respondent violated Section 2(c) of the Consumer Review Fairness Act ("CRFA") by offering to consumers form contracts that contained a non-disparagement provision made void by Section 2(b) of the CRFA. The CRFA defines a form contract as a contract with standardized terms, used in the course of selling or leasing goods or services, and imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct involving the use of contract terms that prohibit, restrict, penalize, or transfer rights in consumer reviews or evaluation of the respondent, its goods, or its services. The CRFA authorizes the Commission to seek civil penalties for knowing violations, but the complaint does not allege that the respondent's violations were knowing, and the order does not provide for monetary relief.

Part I prohibits, in the sale or leasing of any good or service, the respondent from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondent's fulfillment of its obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in a customer contract entered into before the effective date of the order. Part I would not require that the respondent publish or host the content of any person, affect any other legal duty of a party to a contract, or affect any cause of action arising from the breach of such duty.

Part II requires the respondent to notify by mail or email customers with whom it entered into form contracts with a non-disparagement provision on or after March 14, 2017 that the non-disparagement provision is void and cannot be enforced, and that those customers can publish their honest reviews about the respondent, even if their comments are negative.

Part III requires the respondent to submit signed acknowledgments that relevant personnel received the order.

Part IV requires the respondent to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations.

Part V contains recordkeeping requirements for personnel records, consumer contracts, communications with consumers threatening any legal action relating to any review; and court filings and the company's discovery responses in legal actions over consumer reviews, as well as all records necessary to demonstrate compliance or non-compliance with the order.

Part VI contains other requirements related to the Commission's monitoring of the respondent's order compliance.

Part VII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.