



Consumer Protection/FTC ADVISORY ■

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Online Retailer Settles with FTC over Allegations of Hiding Negative Reviews

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On March 21, 2022, the Federal Trade Commission (FTC) announced a final administrative complaint and decision and order that finalizes a settlement with a California online fashion retailer to settle allegations that the retailer's website suppressed reviews with ratings lower than four stars out of five despite its website purporting to represent that all reviews would be posted. The final order includes \$4.2 million in monetary damages and a prohibition on misrepresenting reviews submitted by its customers. At the time the settlement was first announced, the FTC also issued letters to 10 companies that provide review management services, warning them of potential liability if their service is used to create a misleading impression of customer feedback about a product or service, as well as specific guidance to online retailers and consumer review platforms on solicitation, handling, and display of consumer reviews.

The FTC's Complaint

The FTC's [administrative complaint](#) alleges that Fashion Nova deceived consumers by posting favorable reviews of the company's products to its website, while intentionally withholding reviews that were lower than four stars out of five. According to the complaint, Fashion Nova's website gave consumers the misimpression that the product reviews posted to the website accurately reflected the views of all purchasers that submitted reviews of Fashion Nova products, which was deceptive under the FTC Act.

According to the FTC, Fashion Nova, a retailer that specialized in "fast fashion," used a third-party product review management interface that allowed the company to select the types of reviews that would be automatically published to its site, versus those that the company would need to review before posting. Fashion Nova automatically posted all reviews that were rated either four or five stars. However, the complaint alleges that between 2015 and 2019, Fashion Nova declined to publish hundreds of thousands of reviews that were three stars or below.

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The alleged misrepresentations made by Fashion Nova appeared on each product webpage that contained a display showing the product's average star rating, a summary graph of the number of reviews displayed by star rating, and a listing of individual purchasers' reviews and ratings. According to the FTC, the inclusion of this display on the product page, which excluded any reviews of less than four stars, would influence consumers' purchasing decisions. Prompts on the website to "Write a Review" and in emails sent to purchasers soliciting reviews of recent purchases contributed to the impression that the product webpage display of reviews included all reviews submitted by purchasers.

Relief

The [decision and order](#) requires that Fashion Nova pay \$4.2 million in monetary damages. Fashion Nova is further barred from misrepresenting product ratings or omitting any purchaser reviews and agrees to display all product reviews for products currently offered for sale submitted to its website (with exceptions for unrelated or profane reviews). Fashion Nova is also prohibited from misrepresenting how any one review may factor into any composite or overall rating of a product. In addition, the company is required to display all previously suppressed reviews on its website. The terms of the decision and order are effective for 20 years from the date of issuance.

Warning Letters

At the time the FTC announced its settlement with Fashion Nova, it also announced the issuance of [warning letters](#) to 10 companies that offer review and reputation management services. The warning letters put the recipient companies and the marketplace on notice of the FTC's position that avoiding the collection or publication of negative reviews violates the FTC Act. The warning letters identified specific services that could be used by an online retailer to create "a misleading impression about what consumers think about a product or service." These included, for example, asking for reviews only from those likely to leave a positive review, preventing or discouraging submission of negative reviews, or otherwise not treating positive and negative reviews equally, including by using filtering tools. The letter indicates that providing such a service could result in liability if a review management company has provided an online retailer with the means to deceive consumers.

The FTC released a generic version of the warning letters to avoid publicly identifying any of the recipients.

New Guidance to Businesses

In addition, the FTC released [guidance for online retailers](#) and [guidance for review platforms](#) on how to collect and publish customer reviews in ways that do not mislead consumers. This guidance reminds companies that they should know where and how the reviews of its products appear, know of any solicitation and incentivizing of reviews, and be aware of its relationship with platforms that might be engaged in unfair or deceptive conduct. A company posting fake reviews and paying purportedly independent websites for good rankings or failing to disclose any material connection to the company (e.g., family, friends, or receiving free products) also violates the FTC Act.

The FTC also provided specific guidance about consumer reviews, including that companies should not solicit reviews only from customers expected to provide a positive review or offer incentives only for positive reviews. The guidance describes how companies should have procedures in place to verify whether reviews are real and abstain from editing reviews. Positive and negative reviews should receive the same treatment, and the reviews should not be displayed in a misleading fashion. Lastly, companies should also disclose how they collect, process, and display reviews and determine overall ratings.

Takeaways

The FTC has signaled that it will aggressively take action against businesses involved in posting false or misleading reviews. Companies that solicit and post customer reviews should strongly consider the following advice:

- Businesses should treat all customer reviews equally, whether positive or negative. This principle applies not only in the display of reviews, but also in the solicitation, collection, and tabulation of an aggregate rating.
- Businesses should not attempt to alter or remove customer reviews except by directly engaging with the submitter in a positive manner, and any monetary or in-kind compensation provided to reviewers should be disclosed.
- Companies that offer review management services should establish policies and procedures that ensure their customers are not misusing those services to create a misleading impression of the reviews submitted. And likewise, businesses that engage review management companies need to understand what those companies are doing on their behalf because they can be held responsible.

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