

CLIENT ALERT

FTC Settles with Fashion Retailer in \$9.3 Million Dollar Mail Order Rule Violation

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On April 20, 2020, the Federal Trade Commission (FTC) announced a consent order that imposed \$9.3 million in consumer refunds to settle allegations that Fashion Nova, Inc. violated the agency's Mail, Internet, or Telephone Order Merchandise Rule (the "Mail Order Rule"), which applies to merchandise sold to consumers, online, by mail, or by phone. 16 C.F.R. Part 435. The Mail Order Rule is a longstanding FTC rule that takes on added significance for online sellers during the COVID-19 pandemic. It requires retailers who accept orders from U.S. customers to ship each order within the time stated in their ad or on their website. If the shipping date is not clearly stated, the seller is deemed to have provided no shipment representation and must ship within 30 days. If shipping obligations cannot be met, the company must provide the customer with timely notice and the option to either agree to a delay or cancel the order and obtain a refund. Because of supply chain and shipping delays brought on by COVID-19, we are seeing an increased number of retailers unable to fulfill shipping promises in compliance with the Mail Order Rule, putting them at peril of landing in the shoes of Fashion Nova.

The FTC's Fashion Nova complaint alleged that Fashion Nova, an online fashion retailer, regularly failed to meet its shipping promises to customers, despite advertising language claiming "Fast Shipping," "2-Day Shipping," and "Expect Your Items Quick!" It also alleged that Fashion Nova failed to notify consumers of shipping delays and to give them the option to cancel; it also failed to cancel orders and provide refunds when it did not offer consumers delay option notices. Further, the complaint stated that Fashion Nova failed to refund consumers for items that didn't ship, and instead chose to issue gift cards, which are not considered refunds under the Mail Order Rule.

The settlement prohibits Fashion Nova from any further violations of the Mail Order Rule, and requires the company to ship ordered merchandise within one day of receipt of an order when the company doesn't specify a shipping date. From the \$9.3 million payout, \$7.04 million will be sent to the FTC for use in refunding consumers and Fashion Nova is required to refund \$2.26 million directly to consumers. Lastly, past customers who received gift cards instead of refunds during the relevant time period of the alleged violation will be eligible for refunds under the settlement.

What Does This Mean for Stakeholders?

Online retailers need to keep a rigorous schedule and calendar for shipping orders. If they cannot fulfill orders in the time promised on their website, and in any event within 30 days, they must comply with the Mail Order requirements for notification of cancellation rights. The ins and outs of Mail Order Rule compliance can be tricky. However, understanding the requirements of the Mail Order Rule takes on new significance for online retailers during this time of supply chain disruption, which can result in delays in fulfillment. The Fashion Nova case shows the potential significance of violating these requirements.

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