



New FTC Guidance on Posting Customer Reviews Online Includes Surprising Dos and Don'ts

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On January 25, 2022, the Federal Trade Commission released a proposed settlement in an advertising enforcement action and related business education materials that should be required reading for any company that operates a consumer-facing retail website. This information concerns how businesses post consumer reviews, and companies might be surprised to learn that the FTC expects them to give equal exposure to positive and negative reviews.

The FTC's proposed settlement is with Fashion Nova, LLC, a "fast fashion" company that sells clothing online. What caught the FTC's attention was that each product page on Fashion Nova's website allowed consumers to provide reviews and rate the product on a five-star scale. The product pages posted consumer reviews and ratings; however, the FTC alleged that the company improperly filtered out reviews with a star rating of less than four or five stars, creating a misleading impression of how satisfied its customers were. Based on the FTC's complaint, it appears that the site's average star ratings and number of reviews with each star rating accurately incorporated all reviews, but the individual reviews posted on the site were only the positive ones. The FTC alleged that this constituted an unlawfully unfair or deceptive act or practice because Fashion Nova stated or implied that the posted reviews reflected the views of all customers when, in fact, it suppressed negative reviews by not posting them on the product pages.

In addition to requiring Fashion Nova to pay over \$4 million in monetary relief, the proposed settlement, which the FTC must approve following a public comment period, prohibits Fashion Nova from making express or implied misrepresentations about product reviews and endorsements. The settlement identifies four categories of specifically prohibited misrepresentations: (1) That product reviews on the website accurately reflect the views of all reviewers; (2) That product reviews are unedited; (3) That product reviews are presented regardless of opinion or rating; and (4) About how product reviews factor into any overall product rating.

Further, for Fashion Nova websites that display any product reviews, the settlement would require the company to display all reviews submitted by consumers for products currently offered for sale, including all reviews that the company previously suppressed from display. The settlement would allow the company to filter out reviews unrelated to its products or its customer service and inappropriate content. This provision also clarifies that Fashion Nova is not required to offer consumers the opportunity to review its products.

Companies might be surprised to learn that, if the company allows or encourages consumers to submit reviews, the FTC expects the company to post even negative reviews on its website. Companies might see this as the FTC insisting that companies tell consumers why they should

spend their money elsewhere. From the FTC's perspective, however, the terms of the Fashion Nova settlement are simply what is necessary to give the public an accurate understanding of a product's pros and cons, as opposed to a misleadingly rosy sense of customers' satisfaction.

In a new companion business education piece on posting online reviews, the FTC offers additional guidance for staying on the right side of the FTC Act. These tips include: (1) Not soliciting reviews only from customers who are likely to tell positive stories; (2) Not incentivizing customers to submit positive reviews; (3) Disclosing any incentives offered in connection with a review process; and (4) Not discouraging negative reviews.

The FTC also offers suggestions for companies that moderate reviews: (1) Have reasonable processes in place to screen out fake or deceptive reviews; (2) Do not edit reviews to alter their message; and (3) Treat positive and negative reviews equally. With respect to review publication, the FTC advises the following: (1) Publish all genuine reviews without excluding negative ones; (2) Do not display reviews in a misleading way, such as by highlighting positive reviews and burying negative ones; (3) Disclose any compensation or other connection between the company and the reviewer, so that the audience can decide how that could impact their use of the review; (4) Clearly and conspicuously disclose how reviews are collected, processed, and displayed and how overall ratings are calculated, to avoid misleading consumers; and (5) Have reasonable procedures in place to identify and address fake or suspicious reviews after they have been published.

The FTC's messaging on properly posting online reviews also offers guidance for companies that work with consumer review service providers, such as search engine optimization and reputation management firms. The FTC cautions companies about working with "comparison websites" that purport to offer unbiased assessments while "running pay-to-play operations" behind the scenes, allowing compensation to impact ratings, reviews, and placement. The FTC warns that companies can be held responsible for what these service providers do on their behalf, so companies should understand how vendors generate the results they offer.

The FTC does not require companies to solicit consumer reviews or to post reviews on their websites. However, with this new information, the FTC is communicating that it expects companies that publish consumer reviews to do so in a way that gives the public a well-rounded perspective of customers' experiences. Even when companies see consumer reviews as a way to promote their business, companies should not pick and choose among reviews to present a one-sided impression of how satisfied their customers are.

The FTC's settlement and guidance can be found [here](#).