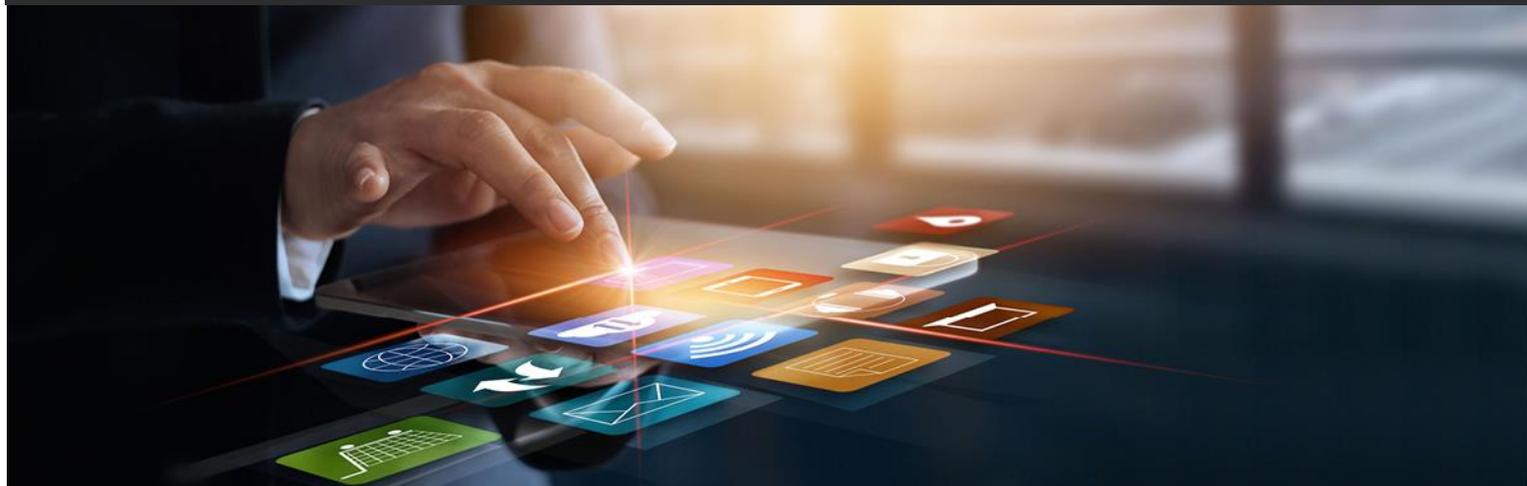


**Alert | Marketing, Advertising, Sweepstakes & Promotions Law**



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## **FTC Gives Online Retailer 0 Stars, Makes It Pay \$4.2 Million for Suppressing Negative Reviews on Its Website**

Many of us have been to a website where every product has four or five stars and nothing but positive reviews. While it's possible the products really are fantastic, it also is possible the website operator is hiding negative reviews. Most advertising lawyers know intuitively that hiding negative reviews is deceptive but had no court or Federal Trade Commission (FTC) decision to rely on for this prospect – until now.

The FTC recently alleged in a complaint that an online retailer misrepresented that the product reviews on its website reflected the views of all purchasers who submitted reviews, when in fact it suppressed reviews with ratings lower than four stars out of five. According to the complaint, the retailer used a third-party online product-review management interface to automatically post four- and five-star reviews to its website and hold lower-starred reviews for the company's approval. But for four years the retailer never approved or posted the hundreds of thousands of lower-starred, more negative reviews.

Under the proposed settlement, the retailer will pay \$4.2 million for harm consumers incurred and will also be prohibited from making misrepresentations about any customer reviews or other endorsements. In addition, it must post on its website all customer reviews of products currently being sold – with the exception of reviews that contain obscene, sexually explicit, racist, or unlawful content and reviews unrelated to the product or customer services like shipping or returns.

The complaint is notable not just for the size of the penalty but also as a reflection of overall increased interest by the FTC in deceptive practices relating to online reviews. A statement from the director of the FTC's Bureau of Consumer Protection that the retailer "is being held accountable for these practices, and other firms should take note" emphasizes this point.

In January 2022 the FTC also published [new guidance for online platforms](#) regarding how to moderate and display customer reviews in ways that do not mislead consumers. Below are some of the key provisions.

### **Moderation of Reviews**

With respect to moderation of reviews of products, the FTC recognizes there is no one right way for a company to process or moderate reviews and what is appropriate will depend on a variety of factors such as the company's business model, size, and resources. However, regardless of the moderation method used the FTC staff advises that a few basic principles apply:

1. Have reasonable processes in place to verify that reviews are genuine and not fake, deceptive, or otherwise manipulated. As technology and threats change, be proactive in modifying and upgrading your processes.
2. Don't edit reviews to alter the message. For example, don't change words to make a negative review sound more positive.
3. Treat positive and negative reviews equally. Don't subject negative reviews to greater scrutiny.

### **Publication of Reviews**

With respect to publication of reviews, the FTC recognizes that companies may make choices about what feedback to display and what to tell consumers about that feedback, and that there is no one right way to display reviews. For example, some online retailers may only allow reviews consisting of a star or numerical rating while others may permit narrative reviews which are limited or unlimited in length. However, regardless of the moderation method used the FTC staff advises that a few basic principles apply:

1. Publish all genuine reviews, and don't exclude negative ones.
2. Don't display reviews in a misleading way. For example, it could be deceptive to feature the positive ones more prominently.
3. If you display reviews when the reviewer has a material connection to the company offering the product or service — for example, when the reviewer has received compensation or a free product in exchange for their review — that relationship should be clearly and conspicuously disclosed.
4. Clearly and conspicuously disclose how you collect, process, and display reviews, and how you determine overall ratings, to the extent necessary to avoid misleading consumers.
5. Have reasonable procedures to identify fake or suspicious reviews after publication. If a consumer or business tells you a review may be fake, investigate and take appropriate action. That may include taking down suspicious or phony reviews, leaving them up with appropriate labels, issuing an alert about them, and addressing the issue with those responsible for it.

Additional cautions and guidelines also apply, particularly regarding offering incentives for reviews. Any company relying on consumer reviews as part of its marketing should study the FTC guidelines carefully to help reduce the risk of substantial penalties.

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