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FTC Takes Action Against Marketer for Violating the Mail Order Rule and Engaging in Deceptive Commercial Practices

The Federal Trade Commission (FTC) filed a complaint against SuperGoodDeals.com, Inc. (SuperGoodDeals) and the company's owner, Kevin Lipsitz, alleging that the defendants falsely promised next-day shipping of face masks and other personal protective equipment (PPE) during the COVID-19 pandemic. These alleged actions violate Section 5 of the Federal Trade Commission Act (FTC Act) and the Mail, Internet or Telephone Order Merchandise Rule (Mail Order Rule).

The Mail Order Rule

In particular, the Mail Order Rule, requires mail, internet and telephonic sellers to have a reasonable basis for advertised shipping times. If sellers cannot meet their promised shipping times, if there is no promised shipping time, or if they cannot ship within 30 days, they must offer consumers the option to consent to a delay or cancel their orders and receive a prompt refund.

SuperGoodDeals.com's Promises

At the start of the COVID-19 pandemic, PPE was in especially high demand and short supply. The FTC alleges in its complaint that SuperGoodDeals exploited this desperate need for PPE by making false promises of expedited deliveries.

SuperGoodDeals told their consumers that if they "pay today," their order will "ship tomorrow." The website stated, "We pride ourselves on fast order processing." SuperGoodDeals also promised to respond to consumer inquiries "within one business day or less."

The Bottom Line

Retailers should ensure that they are transparent about the availability of their inventory and shipping timeframes. Failing to communicate with consumers (or worse, communicating deceptive promises) can result in significant liability under the FTC Act and the Mail Order Rule.

Retailers should closely monitor pricing practices and increases, especially if their merchandise is potentially life-saving or otherwise essential. The FTC and the Justice Department will continue to keep a very close eye on "opportunistic" retailer business practices during COVID-19.

However, the FTC claims that SuperGoodDeals failed to deliver these promises to the detriment of their consumers, many of whom desperately needed PPE during the pandemic. One customer spent \$135 for four 50-packs of disposable masks for child welfare workers making in-home visits. Another customer purchased masks for their immune-compromised family members.

The FTC's Claims

The FTC claims that while consumers relied on promises for next-day shipping, SuperGoodDeals delayed PPE shipments for weeks, failed to inform consumers of shipping delays and ignored consumer inquiries and refund demands. The FTC also alleges that SuperGoodDeals falsely advertised merchandise as "authentic" or "certified."

In a separate but related pending action, the United States Attorney's Office for the Eastern District of New York filed a criminal complaint against the company's owner, Kipsitz, for price-gouging practices and mail and wire fraud. The FTC has also taken a strong stance against manipulative business practices and price-gouging.

Andrew Smith, the Director of the FTC's Bureau of Consumer Protection, vowed to take action against "unscrupulous merchants" who have taken "advantage of consumers in their hour of need by not delivering goods — including masks and other personal protective equipment — as promised, and failing to provide required refunds." Smith also stated that the FTC is working closely with criminal authorities to regulate the type of opportunistic behavior SuperGoodDeals allegedly engaged in.

Current Status and Potential Outcome

The FTC is requesting:

1. Permanent injunctive relief;
2. Restitution;
3. Rescission or reformation of purchase order agreements;
4. The refund of money or return of property;
5. The payment of damages; and
6. Other equitable relief for SuperGoodDeals' actions.



For More Information

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