

# Zero Stars: FTC and NAD Will Not Permit Consumer Review Suppression

---

## The Bottom Line

- The FTC's guidance for marketers, online retailers and review platforms emphasizes the need for truthfulness in the collection, moderation and publication of consumer reviews.
- "Suppression" of negative reviews may qualify as a deceptive practice and alleged "suppressors" could face potentially hefty penalties.
- Marketers should take care to devise and enforce policies regarding the evaluation of reviews for publication solely on the basis of neutral characteristics.
- Marketers should also refrain from making unsubstantiated or inaccurate claims about the authenticity or content of reviews.

The Federal Trade Commission (FTC) is encouraging marketers to evaluate their policies regarding consumer reviews. The Commission's recent efforts — publishing guidelines for marketers, issuing warning letters to review-management platforms, and reaching a \$4.2 million settlement with retailer Fashion Nova LLC (Fashion Nova) — target review suppression and promote neutral review selection criteria and increased transparency. The National Advertising Division's (NAD) recent inquiry of review moderator BestCompany.com LLC (Best Company) also demonstrates a self-regulatory focus on ensuring consumer reviews are authentic and substantiated.

---

## FTC Guidance Encourages Increased Transparency, Equal Treatment for Good and Bad Reviews

Recently, the FTC published two sets of online consumer review guidelines (the Guidelines) targeted at marketers and platform operators that moderate, publish or host consumer reviews. According to these Guidelines, marketers should implement policies or processes to ensure that all consumer reviews featured on their website are:

- verified to confirm that they came from real people;
- not altered in a way that affects their original meaning;
- transparent about not originating from an independent source when that's the case, and;
- "representative."

---

## Representative Reviews

To keep its featured reviews representative, a marketer must refrain from filtering out the authentic, negative reviews it receives (a practice called "review suppression"). The marketer must also refrain from giving

positive reviews a more prominent placement than negative reviews. The FTC encourages the creation of content-based restrictions that will allow marketers to moderate and place reviews based on neutral characteristics, such as the use of offensive language or defamatory statements, but will not allow for moderation or placement based on the reviewer's positive or negative impression of the marketer.

If the marketer actively solicits reviews, it must not cherry-pick reviewers, incentivize positive reviews or discourage negative reviews. Furthermore, if the marketer relies on services or platforms that aggregate reviews on the marketer's behalf, the marketer must adequately investigate those services with the FTC's policies in mind.

When it comes to reviews, the FTC champions transparency. Accordingly, a marketer should "clearly and conspicuously disclose" how it collects, processes and displays reviews and how "overall ratings are determined."

---

## **FTC Settles for \$4.2 Million in *Fashion Nova* Case and Issues Additional Warnings to Review Moderators**

In its first action involving suppressed consumer reviews, the FTC claimed that the online clothing retailer Fashion Nova "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](#), Fashion Nova used a third-party online product review management interface to automatically post all four and five star reviews to Fashion Nova's website while putting all reviews with less than four stars on hold, pending Fashion Nova's approval, which never materialized.

Under the proposed settlement, Fashion Nova will:

- make a payment of \$4.2 million;
- refrain from misrepresenting any consumer reviews or other endorsements, and
- post on its website all consumer reviews of products that are currently being sold and are relevant, verified and do not contain offensive content.

The FTC also issued warning letters to 10 companies offering review management services, thereby putting those companies on notice that suppression of negative reviews violates the FTC Act.

---

## **NAD Brings Inquiry Against Best Company for Misleading Consumer Reviews**

Echoing the FTC's guidance, in January, the NAD published its findings on Best Company, a platform that aggregated, analyzed and verified consumer reviews of aligner vendors including Smile Direct Club LLC (Smile Direct):

- Smile Direct could claim, generally, that its featured reviews, as collected by Best Company, were "moderated through a tech-enabled, proprietary, seven-point moderation process to ensure they are real and authentic."
- Best Company, however, could only claim that any individual review was 100% verified if the review was submitted not just by a real person, but by a real, bona fide customer of the aligner company;
- Best Company could not claim that its ranking system was "honest and unbiased," "independent and impartial," or based solely on Best Company's "expert opinion" because Best Company's ranking criteria ranked Best Company partners higher than other marketers;

- Disclosures explaining Best Company's ranking methodology could not cure the misrepresentative effect of Best Company's claims.

The NAD's findings demonstrate that, as with all advertising claims, claims regarding consumer reviews (alone and in the aggregate) must be authentic and adequately substantiated.

---

---

## **Related People**

### **Allison Fitzpatrick**

Partner

212 468 4866

[afitzpatrick@dglaw.com](mailto:afitzpatrick@dglaw.com)

### **Paavana L. Kumar**

Partner

212 468 4988

[pkumar@dglaw.com](mailto:pkumar@dglaw.com)