

# Selling Online: How to Avoid Flattening the Curve of an Uptick in Website Traffic

July 22, 2020

Christie Thompson  
Katie Townley



# Agenda

- Promotions and Pricing
- Shipping and Delivery
- Subscription Plans and “Free” Trials
- Consumer Reviews
- Endorsers and Influencers
- Customer Service

# Promotions and Pricing

# Promotional Pricing – Requirements

- Avoid false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions
- A reference price should be the price at which the retailer:
  - Made a substantial number of sales in the recent, regular course of business, or
  - Offered the item for sale for a reasonably substantial period of time in the recent, regular course of business, in good faith.
- A few states also expressly regulate:
  - The length of time an item must be offered at
  - The length of the sale (“28/90”)



# Promotional Pricing – Settlements

ANN TAYLOR  
FACTORY STORE

LOFT  
OUTLET

- \$6.1 million
- Agreement to label new merchandise as from Ann Taylor Factory Stores, LOFT Outlet Stores, or other stores, as applicable

Neiman Marcus  
lastcall

- \$2.9 million
- Agreement to post in-store and online disclosures on “compared to” pricing and offer employee training on pricing policies

Justice™

- \$50.8 million
- Class members without proof of purchase received a cash payment of up to \$20 or a Justice voucher of up to \$30
- Class members w/proof of 6 or more purchases or a single purchase of \$105 or more received a cash payment of 14%, or a Justice voucher for 20%, of the purchases

Burlington

- \$29.6 million
- California-only settlement

JCPenney

- \$50 million
- California-only settlement

ROSS  
DRESS FOR LESS®

- \$4.85 million
- Agreement to augment primary signage, which directs customers to additional details about its comparison pricing practices, and post additional signs in stores describing those practices

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Drye

# Promotional Pricing – Disclosures



SUMMER  
**SALE**  
UP TO 75% OFF  
SALE STYLES

800+ NEW ITEMS JUST ADDED

SHOP WOMEN

SHOP MEN

“[R]eliance on the advertising informed their decision to buy, which culminated in the embarrassment and frustration they felt when, as the items were being rung up, they learned that discount did not apply.”

**SHOP TO IT: 40% OFF \$200+**  
(& NO BR MERCH EXCLUSIONS) CODE: **BRSHOP** [DETAILS](#)

BANANA REPUBLIC

**Kelley**  
Drye

# Best Practices

- ❑ Offer the item at the regular price before running the sale
- ❑ Limit the length of the sale – i.e., at the end of the sale, the offer the item again at a higher price
- ❑ Be aware of specific timing requirements
- ❑ Disclose material information

# Shipping and Delivery





# Mail Order Rule – Requirements

- Sellers must have a **reasonable basis** to expect that they will be able to ship products:
  - Within the stated time period, or
  - If no time period is stated, within 30 days
- If sellers are unable to ship within the required time period, they must send a **shipping delay notice** offering either:
  - Agreement to the delay, or
  - The opportunity to cancel in exchange for a prompt refund



# Enforcement – Fashion Nova

## Fashion Nova Will Pay \$9.3 Million for Consumer Refunds To Settle FTC Charges It Violated Rules On Shipping, Refunds

April 21, 2020

**Complaint alleges popular online fashion retailer failed to ship in timely manner for years; illegally issued gift cards in place of refunds**

FOR RELEASE

**TAGS:** [deceptive/misleading conduct](#) | [Retail](#) | [Merchandise & Clothing](#) | [Bureau of Consumer Protection](#) | [Western Region Los Angeles](#) | [Consumer Protection](#) | [Advertising and Marketing](#) | [Advertising and Marketing Basics](#)

Online fashion retailer Fashion Nova will pay \$9.3 million to settle [Federal Trade Commission charges](#) that it didn't properly notify consumers and give them the chance to cancel their orders when it failed to ship merchandise in a timely manner, and that it illegally used gift cards to compensate consumers for unshipped merchandise instead of providing refunds.



# Enforcement - SuperGoodDeals

## FTC Takes Action against Marketer That Falsely Promised Consumers Next Day Shipping of Facemasks and Other Personal Protective Equipment

July 8, 2020

**SuperGoodDeals capitalized on soaring demand for protective equipment from consumers worried about being exposed to COVID-19, agency alleges**

FOR RELEASE

**TAGS:** [Coronavirus \(COVID-19\)](#) | [Retail](#) | [Bureau of Consumer Protection](#) | [Consumer Protection](#) | [Advertising and Marketing](#) | [Advertising and Marketing Basics](#) | [Online Advertising and Marketing](#)

The Federal Trade Commission charged an online marketer with falsely promising consumers next-day shipping of facemasks and other personal protective equipment (PPE) to deal with the coronavirus pandemic.

In a federal court complaint against SuperGoodDeals.com, Inc. and its owner, Kevin J. Lipsitz, the FTC alleged the company sought to capitalize on the soaring demand for PPE from consumers worried about being exposed to the coronavirus. Beginning in March, SuperGoodDeals' website said PPE was "in stock," and touted "Pay Today, Ships Tomorrow."



**3M Model 8000 Respirator Mask  
(Easier Breathing) In Stock - Pay  
Today, Ships Tomorrow! Going Fast!**

\$19.95

★★★★★ (No reviews yet) [Write a Review](#)

SKU:  
112239

Quantity:

▼ 1 ▲

Add to Cart

Add to Wish list



# Best Practices

- ❑ Monitor your shipping timelines
- ❑ Have processes in place to reach out to customers if it looks like you will not meet the stated shipping timeline

From: [REDACTED]  
Date: Thu, Apr 23, 2020 at 10:47 PM  
Subject: Order Status Update for Order #TWKP9P2  
To: [REDACTED]

To Our Valued Customer:

Due to new safety & cleaning procedures at our fulfillment centers, we are experiencing delays in processing and shipping your order. We're unable to ship your order TWKP9P2 within the time frame promised. We apologize for the delay. Your satisfaction is important to us, and we're making every effort to ship your package as soon as possible.

As soon as your order is ready, we'll ship it out and email your tracking information. Please note your package may already have shipped by the time you receive this message. The maximum anticipated delay is 30 days from your order date.

If you have questions or prefer to cancel your order, we're available 24/7 at [REDACTED] You can also refuse delivery or return your order for a full refund with free shipping.

Sincerely,

[REDACTED] Customer Service

Replies to this email will be sent to an unmonitored email account. If you have any questions, please contact [REDACTED]

# Subscription Plans and “Free” Trials

# General Requirements

- Laws vary – in application and in requirements – across the U.S.
- Most require clear and conspicuous notice of the material terms and conditions of the automatic renewal
  - Date(s) of subsequent charges
  - Price of subsequent charges
  - How to cancel
- Some require affirmative consent (a best practice)
- Some require notice after a free trial before charges are assessed
- Recent updates in some jurisdictions: DC, North Dakota, and Vermont

# California – Online Cancellation Requirement

- Businesses must allow consumers the ability to cancel online any automatic renewal purchased online
- Available cancellation methods include the following:
  - Pre-formatted termination email that the consumer can complete and send to without any additional information
  - Fillable form on the website



# Lawsuits

## Bumble's \$22.5M Auto-Renewal Deal Gets Initial OK

By Dorothy Atkins

Law360 (July 15, 2020, 9:33 PM EDT) -- A California magistrate judge on Wednesday preliminarily approved a \$22.5 million deal by the maker of the Bumble dating app to resolve allegations it violated New York and California consumer protection laws by auto-renewing subscriptions without users' consent.

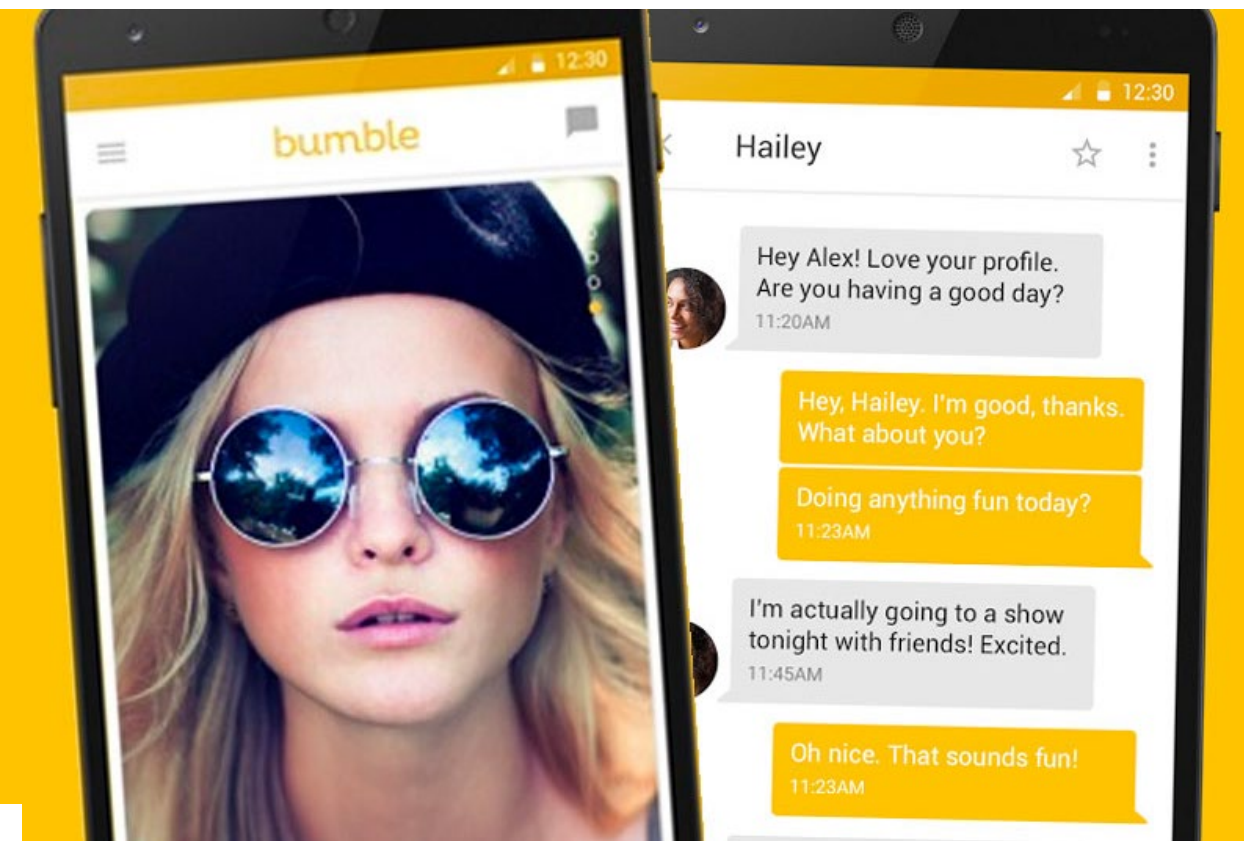
During a hearing held via Zoom, U.S. Magistrate Judge Nathanael M. Cousins greenlighted Bumble Trading Inc. and Bumble Holding Ltd.'s settlement, which proposed to resolve claims by two different classes — a California class of Bumble Boost users who were charged auto-renewal fees and a nationwide class of users whose subscriptions were automatically renewed.

## ButcherBox Customer Has Beef With Auto Service Renewals

By Hailey Konnath

Law360 (May 16, 2019, 7:14 PM EDT) -- Meat-delivery service ButcherBox illegally automatically renews subscriptions without providing required notice, a California customer alleged Wednesday, taking a hatchet to the e-beef business' practice in a 16-page complaint.

ButcherBox doesn't adequately notify customers of its service renewal, violating California's Unfair Competition Law and Automatic Renewal Law, according to a class action filed by consumer Kyle Johnson in California federal court.



**Kelley  
Drye**



# Best Practices

- ❑ Obtain clear, express agreement to the recurring charges prior to sign-up
- ❑ Provide clear instructions on how to cancel – e.g., in an FAQ and the confirmation email
- ❑ Make the cancellation process straightforward
- ❑ Train customer service representatives on cancellation

The screenshot displays the Amazon Prime membership management interface. At the top, a navigation bar includes a profile icon, the Prime logo, the plan type (Prime Plan BEST VALUE), the annual cost (\$119), the renewal date (September 29, 2020), and a dropdown menu for 'Manage Membership' with the option 'Update, cancel and more'. Below this, the 'Your Account' section features several cards: 'Your Orders', 'Gift cards', 'Login & security', 'All things Alexa', 'Your devices and content', and 'Prime' (highlighted with a red box). The 'Prime' card provides a link to 'View benefits and payment settings'. On the right, a sidebar titled 'Manage Membership' offers options to 'Update, cancel and more', 'Membership Sharing', and 'Remind me before renewing'. The 'End Membership' section is also highlighted with a red box, indicating the process of terminating the membership.

# Consumer Reviews

# Consumer Review Fairness Act

## CONSUMER REVIEW FAIRNESS ACT: WHAT BUSINESSES NEED TO KNOW

TAGS: [Advertising and Marketing](#) | [Advertising and Marketing Basics](#) | [Endorsements, Influencers, and Reviews](#) | [Online Advertising and Marketing](#)

The Consumer Review Fairness Act protects consumers' ability to share their honest opinions about a business's products, services, or conduct in any forum – and that includes social media. The FTC has tips to help your company comply with the law.

The Consumer Review Fairness Act (CRFA) protects people's ability to share their honest opinions about a business's products, services, or conduct, in any forum, including social media. Is your company complying?

Contracts that prohibit honest reviews, or threaten legal action over them, harm people who rely on reviews when making their purchase decisions. But another group is also harmed when others try to squelch honest negative reviews: businesses that work hard to earn positive reviews.

The [Consumer Review Fairness Act](#) was passed in response to reports that some businesses try to prevent people from giving honest reviews about products or services they received. Some companies put contract provisions in place, including in their online terms and conditions, that allowed them to sue or penalize consumers for posting negative reviews.

### REVIEWS

★★★★☆ 34 Reviews  
9 Questions \ 9 Answers



WRITE A REVIEW

ASK A QUESTION



# Consumer Reviews at the FTC

## Operators of Comparison Shopping Website Agree to Settle FTC Charges Alleging Deceptive Rankings of Financial Products and Fake Reviews

February 3, 2020

FOR RELEASE

TAGS: [deceptive/misleading conduct](#) | [Finance](#) | [Bureau of Consumer Protection](#) | [Consumer Protection](#) | [Online Advertising and Marketing](#) | [Debt](#) | [Education](#)

The operators of a website that compares student loans and other financial products have agreed to settle Federal Trade Commission allegations that they misled consumers to believe their website provided objective product information, when in fact they offered higher rankings and ratings to companies that paid for placement.



### Save Time and Money by Comparing Your Options

1

#### Complete One Simple Form

🕒 90 Seconds

Just answer a few quick questions about your current situation.

2

#### Get Personalized Quotes

🕒 Instantly

Instantly compare actual quotes from our vetted partners

3

#### Choose What Works Best For You

🕒 Take As Long As You'd Like

Review your options and choose the one that fits your lifestyle

### See What Our Customers Have to Say



TRUSTSCORE 4.8 | 125 REVIEWS

See some of the reviews here:

March 12

**.Lenedu**

I would recommend this company for sure.

## Devumi, Owner and CEO Settle FTC Charges They Sold Fake Indicators of Social Media Influence; Cosmetics Firm Sunday Riley, CEO Settle FTC Charges That Employees Posted Fake Online Reviews at CEO's Direction

October 21, 2019

FOR RELEASE

TAGS: [Retail](#) | [Merchandise & Clothing](#) | [Bureau of Consumer Protection](#) | [Consumer Protection](#) | [Advertising and Marketing](#) | [Endorsements, Influencers, and Reviews](#) | [Online Advertising and Marketing](#)

The Federal Trade Commission has halted the deceptive online marketing tactics of two companies and their principals, the first of which allegedly sold fake indicators of social media influence, and the second of which allegedly used fake product reviews posted by its employees on a well-known retail website.

# Consumer Reviews at NAD



# Best Practices for Solicited Consumer Reviews

- ❑ Treat solicited product reviews the same as endorsements
- ❑ Disclose material connections
  - ❑ Compensation
  - ❑ Ownership in a business
  - ❑ Family or friend relationship
- ❑ Not limited to Amazon
  - ❑ Product webpage
  - ❑ App stores
  - ❑ Yelp or similar

The screenshot shows two Amazon product reviews. The first review is a 5-star review titled "This case is really good, it looks very nice and doesn't add bulk ...". The reviewer's name is redacted. The review text describes the phone case as lightweight and slick. A red box highlights the disclosure: "I receive this product to give honest review." Below the review, there are buttons for "Yes" and "No" to indicate if the review was helpful, and a "Report abuse" link.

The second review is also a 5-star review titled "It protects well and feels good on my phone". The reviewer's name is redacted. The review text describes the phone case as fitting well and being durable. A red box highlights the disclosure: "I received this for free for doing this review."

# Endorsers and Influencers

# Definition – Endorsements and Testimonials

- Any advertising message that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser
- Common endorsers and testimonialists
  - Consumers
  - Experts
  - Celebrities
  - Employees





# Requirements – Endorsements and Testimonials

- Use simple and clear language
- If the business cannot say it, an influencer cannot say it
- Disclose material connections with a brand:
  - Financial
  - Employment
  - Personal
  - Family relationship
- Reviews must be truthful

# Celebrity and Influencer Endorsements

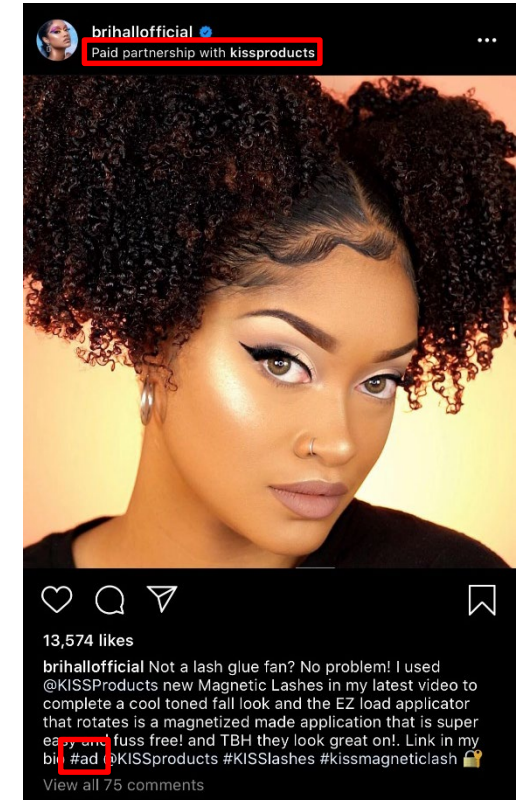
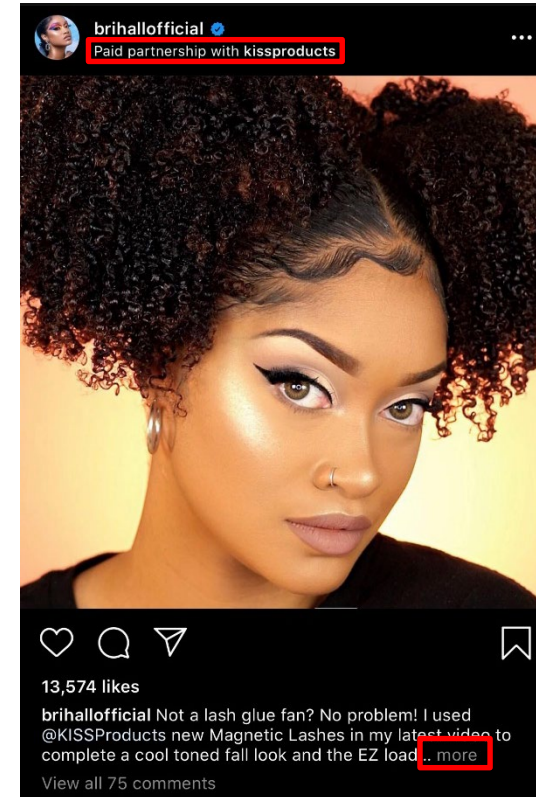
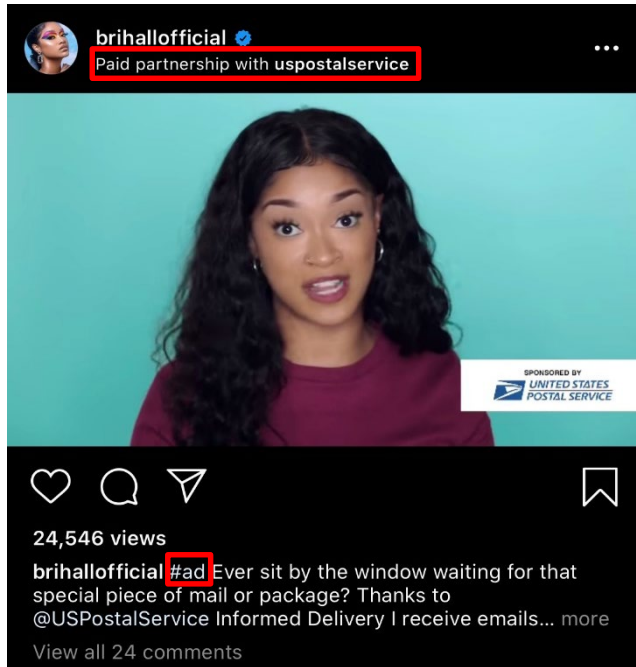
[Home](#) » [News & Events](#) » [Press Releases](#) » [FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship](#)

## FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship

Commission aims to improve disclosures in social media endorsements



# Influencer Disclosure Examples



# Enforcement – Not Just the FTC



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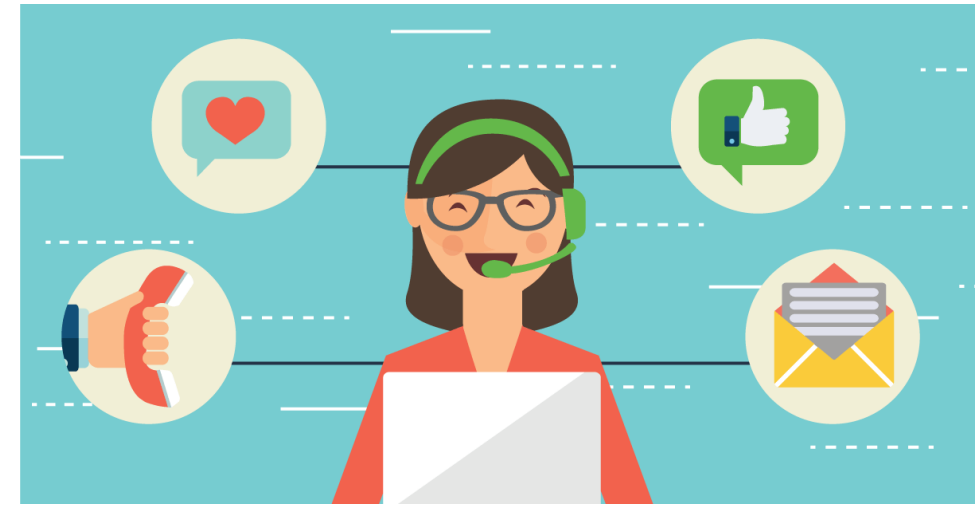
# Best Practices

- ❑ Require disclosures when the connection will not be clear to the consumer
- ❑ Do not assume that using a platform's disclosure tool is sufficient
- ❑ Material connections requiring disclosure do not have to be significant
- ❑ Disclosures must be clear and conspicuous
  - ❑ Avoid ambiguous terms like #thanks, #collab, or #sp
- ❑ Do not rely on a disclosure placed after a CLICK MORE link or a DISCLOSURE link

# Customer Service

# Best Practices

- ❑ Conduct adequate and periodic training
- ❑ Have a process for escalations
  - ❑ Irate customers
  - ❑ Safety concerns
- ❑ Periodically review complaints for patterns
- ❑ Remember that complaints can come via many channels – phone, email, social media



# Questions?