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Shipping Delays Can Cost Your Business More Than Just A Bad Review

Legal Update

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Consumers have increasingly turned to online shopping during the COVID-19 pandemic and industry experts expect these purchasing habits will continue, even after the crisis subsides. As retailers seek to capitalize on this growing market, they must be mindful of the rules and regulations regarding fulfillment of online orders. Delays caused by workforce shortages, supply chain disruptions and bad business practices may give rise to unanticipated (and costly) liability.

The Federal Trade Commission's (FTC) Mail, Internet or Telephone Order Merchandise Rule (the Mail Order Rule) requires merchants who accept orders from U.S. customers to ship each order within the time advertised or, if no time is advertised, within 30 days. The rule also requires that merchants have a reasonable basis for stating or implying that they can ship the order within the prescribed time. If shipping deadlines cannot be met, the seller must send the buyer a shipping delay notice that offers the buyer "an option either to consent to a delay in shipping or to cancel the buyer's order and receive a prompt refund." The rule applies to traditional merchants as well as fulfillment houses (also known as drop-shippers). Failing to comply with the Mail Order Rule can result in civil penalties of up to \$43,280 per violation, restitution and/or injunctive relief.

In April 2020, an online retailer paid \$9.3 million to settle FTC charges that it didn't properly notify consumers and give them the chance to cancel delayed orders, and that it illegally used gift cards to compensate consumers for unshipped merchandise in violation of the Mail Order Rule. This unprecedented fine suggests that the FTC may zealously enforce the Mail Order Rule against online retailers going forward.

For more information, contact a member of the Advertising, Marketing & Trademark Group.