

Shipping to Non-Foreign Areas
Federal Trade Commission Report to Congress

I. Report Overview.

The U.S. House of Representatives Committee on Appropriations Report (“House Report”) raised concerns that some companies engaged in interstate commerce are unwilling to ship products to consumers in “Alaska, Hawaii, Puerto Rico, and other territories through the [United States] Postal Service and private shipping companies serve these areas.” The House Report requested that the Federal Trade Commission (“FTC” or “Commission”) “work with the Postal Service on recommendations and outreach materials to address” such issues and provide a report to the Committee within 120 days of enactment of the Appropriation’s Act. In response to the Committee’s request, the Commission submits this report. In March 2020, Commission staff issued outreach materials.

II. The FTC’s Interest and Authority in Protecting Consumers Online.

The FTC protects consumers and competition by preventing anticompetitive, deceptive, and unfair business practices in the marketplace, including the digital marketplace, through law enforcement, advocacy, and education, without unduly burdening legitimate business activity. Although technology and business models continue to change, the principles that underlie FTC enforcement priorities remain constant. One such principle is that consumers should have access to goods and services in all U.S. Territories, and supports online commerce; (ii) the Surface Transportation Board (“STB”) (

<https://prod.stb.gov/about/stb>)

competing products and services. When consumers do not receive accurate and material information, the marketplace can be distorted, which can harm both legitimate competitors and consumers. If marketers state or imply something that is not true, or fail to disclose relevant information necessary to prevent a claim from being misleading, then a claim can be deceptive. Therefore, the FTC promotes the dissemination of accurate information.

In general, FTC statutes and rules apply equally regardless of the commercial venue. A company violates the FTC Act by materially misstating the terms and conditions of a purchase or omitting material information prior to a consumer's purchase of a product regardless of whether the transaction is in a brick and mortar store or online. If a company failed to timely and adequately disclose the cost of shipping a product to a consumer prior to payment information from that consumer, then that disclosure could be deceptive. Similarly, if a company billed a consumer but failed to deliver that product, such conduct could violate Section 5 of the FTC Act. The FTC's Mail, Internet, Telephone Order Merchandise Rule ("Mail Order Rule") requires, among other things, that retail orders be shipped within a specified time regardless of the medium of sale.

the same with respect to shipping to all states and U.S. Territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands). As noted in the House Report, “some companies . . . are unwilling to ship products to Alaska, Hawaii, Puerto Rico, and the other territories.” Moreover, such policies may be disclosed inconsistently or at a time that not optimal for consumers making online purchase decisions. In view of diverse and changing shipping and delivery policies, merchants may wish to examine their disclosure practice particularly when common and widely promoted options are not available at certain locations.

B. Shipping and Delivery to Alaska, Hawaii, Puerto Rico, and Other U.S. Territories.

Many popular online retailers disclose that they ship to Alaska, Hawaii, Puerto Rico, or the other U.S. Territories. However, the shipping options available to these locations may cost more, take more time, or be unavailable for certain products. Other online retailers may not ship any goods to certain areas. For instance, some retailers will ship to Alaska, Hawaii, and Puerto Rico but not the other U.S. Territories, while others limit shipping only to Alaska and Hawaii or

Islands, but does not list Puerto Rico.¹⁵ Some consumers have complained about this retailer's lack of shipping to Puerto Rico and have stated that they were disappointed due to this policy.¹⁶ Despite offering very similar products, some competitors may have different shipping policies for those products.

The shipping pages of retailers that disclose they do not ship goods to Alaska, Hawaii, Puerto Rico, or other U.S. Territories typically do not explain why they do not ship to those locations. Explaining why a particular retailer does not ship to a particular state or U.S. Territory might lead to less consumer frustration or confusion. For example, the Postal Service is unable to ship to Puerto Rico, it issues alerts to consumers to let them know that it cannot ship to them, why it cannot ship to them, and when shipments are likely to resume.

Comparing products online can help consumers reduce costs that may be less useful if, after spending time researching a product, the consumer finds that it is unavailable for shipment to a particular location or that shipping would be prohibitively expensive. Retailers may need to examine their websites to ensure shipping policies are easily found and limitations are clearly and prominently disclosed. At the same time, consumers may want to start their searches by first evaluating shipping policies to lessen such frustration. A consumer is shopping on a platform that features individual sellers or small retailers, then the consumer may want to inquire directly with the seller about shipping options if the consumer is considering a purchase from the seller.¹⁷ Moreover, prior to communicating with individual sellers, consumers may wish to review various shipping options to Alaska, Hawaii, Puerto Rico, and the other U.S. Territories offered by the Postal Service and private shipping companies on their respective websites. (See section IV below.)

¹⁵ International Orders, Best Buy, <https://www.bestbuy.com/site/help/tips/international-orders/pcmcat204400050019.c?id=pcmcat204400050019>. This retailer has stores in Bayamon, San Juan, and Carolina, Puerto Rico. These stores were temporarily closed after Hurricane Maria and it was reported that the retailer offered to evacuate employees to Florida and spent \$750,000 helping these employees. Shreyasita Kumar, Best Buy Reopens Store in Puerto Rico After Months of Helping Employees Return, Star Tribune (Dec. 17, 2017), <http://www.startribune.com/best-buy-spends-750-000-helping-puertorico>

C. Additional Potential Shipping Issues for Puerto Rico.

In addition to potential issues related to cost, distance, and delivery logistics, there may be additional issues with regard to shipping to Puerto Rico. Consumers, individual sellers, and others have pointed out the following issues, which may be addressed through educational measures, as described below: (a) having to use an additional line in the address for an urbanization name may be confusing to some sellers²⁰; (b) inconsistencies in how addresses are filled out may be confusing²¹; and (c) individual sellers might not understand (d), (n)7 (c)1 ((co th (a)6

whether the destination is in the contiguous states, Alaska, Hawaii, Puerto Rico, or the other U.S. Territories.²⁴

However, when distance-based pricing is used, shipping may cost more due to a greater distance between the origin and the destination. Indeed, the pricing for several of the delivery options offered by the Postal Service depends in part on “how far the mailpiece travels to get to its destination: the farther it travels the more you pay in postage. The actual distance is measured by ‘zones.’”²⁵ Because the contiguous states are often closer to each other, zoned delivery options for shipments between the contiguous states frequently cost less than deliveries to Alaska, Hawaii, Puerto Rico, and the other U.S. Territories. Importantly, certain locations within the contiguous states are farther from each other than from Alaska, Hawaii, Puerto Rico, or the other U.S. Territories. For example, Washington, D.C. (ZIP Code 20580) is closer to San Juan (ZIP Code 00901) than to Seattle (ZIP Code 98174), which is reflected in the Postal Service’s Domestic Zone Chart.²⁶ Accordingly, any delivery option offered by the Postal Service that depends on zoned pricing would cost more to ship to Seattle than to San Juan from Washington, D.C. The FTC is not aware

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its Priority Overnight service³⁵. Thus, not only do delivery options from private shipping companies frequently cost more for destinations in Alaska, Hawaii, Puerto Rico, and the other U.S. Territories, the companies' most expedient options may not be available.

V. Consumer and Business Education.

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restrictions up front and consumers should check shipping restrictions early in the shopping process and communicate with sellers about all delivery options.