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8
9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA
11

12	_____)	
13	FEDERAL TRADE COMMISSION,)	Case No.
14)	
15	Plaintiff,)	COMPLAINT FOR PERMANENT
16	v.)	INJUNCTION, MONETARY
17	HEY DUDE INC., a corporation,)	RELIEF, AND OTHER RELIEF
18)	
19	Defendant.)	
20)	
21)	
22)	
23	_____)	

24
25 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), for its
26 Complaint alleges:

- 27 1. The FTC brings this action under Sections 5(a)(1), 13(b), and
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Defendant's Shipping and Fulfillment Practices

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- 11. To purchase merchandise 1

1 provided for unshipped merchandise, Hey Dude Shoes has not refunded the full price
2 paid for the merchandise.

3 17. In numerous instances, when Hey Dude Shoes has not shipped one or
4 more items of ordered merchandise, per company policy, Hey Dude Shoes has
5 cancelled the order and instead of a refund to the consumers' form of payment, Hey
6 Dude Shoes has issued consumers a gift card that could only be used on Hey Dude
7 Shoes's website in the amount charged for the unshipped merchandise.

8 18. In numerous instances after consumers submitted orders for merchandise
9 on Hey Dude Shoes's website, Hey Dude Shoes has not physically placed ordered
10 merchandise in the possession of a carrier in the time represented.

11 19. In numerous instances when Hey Dude Shoes has not physically placed
12 ordered merchandise in the possession of a carrier in the time represented, Hey Dude
13 Shoes has not offered the buyer, without prior demand, an option either to consent to
14 a delay in the shipment or to cancel the order and receive a prompt refund.

15 20. In numerous instances when Hey Dude Shoes has not offered the buyer
16 the option to cancel the order or consent to a delay in shipment, Hey Dude Shoes has
17 not canceled the order and have not provided consumers with a prompt refund.

18 21. Numerous consumers have complained directly to Hey Dude Shoes
19 about late shipping, undelivered, or incomplete orders, including by phone, email,
20 and Hey Dude Shoes's social media accounts. Many consumers have reported that it
21 was difficult to reach Hey Dude Shoes and obtain information about the status of
22 their orders. Many consumers have filed complaints against Hey Dude Shoes,
23 including with the Better Business Bureau.

24 22. Hey Dude Shoes has not maintained records or documentary proof
25 establishing its use of systems and procedures which assure compliance with the Rule
26 in the ordinary course of business, including such systems and procedures to provide
27 buyers offers and prompt refunds referenced in Paragraphs 19 and 20 above.
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1 automatically post based upon their star ratings and hold lower-starred reviews for
2 approval prior to posting.

3 29. From at least January 2020 through June 2022, Hey Dude Shoes chose to
4 have five-star reviews post to the website with little scrutiny, and held lower-starred
5 reviews for more individualized review. Hey Dude Shoes held, rejected, and did not
6 publish more than 80% of their one-, two-, and three- star reviews.

7 30. Prior to June 2022, Hey Dude Shoes had written policies and procedures
8 instructing its staff to publish certain types of reviews only if they were positive in
9 nature.

10 31. Based on the facts and violations of law alleged in this Complaint, the
11 FTC has reason to believe that Defendant is violating or is about to violate laws
12 enforced by the Commission, because, among other things, Defendant continued its
13 unlawful acts or practices despite knowledge of numerous complaints, and Defendant
14 altered its unlawful policies or practices only after receiving a Civil Investigative
15 Demand from the FTC.

16 **VIOLATIONS OF THE FTC ACT**

17 32. Section 5 of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
18 deceptive acts or practices in or affecting commerce.”

19 33. Misrepresentations or deceptive omissions of material fact constitute
20 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

21 **Count I – Deceptive Customer Review Practices**

22 34. In connection with the advertising, promotion, offering for sale, or sale
23 of Hey Dude Shoes products, Hey Dude Shoes has

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1 products because in numerous instances Hey Dude Shoes suppressed product reviews
2 with ratings lower than four stars.

3 36. Therefore, Hey Dude Shoes’s representations as set forth in Paragraph
4 34 are false or misleading and constitutes a deceptive act or practice in violation of
5 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

6 **VIOLATIONS OF THE MAIL, INTERNET,**
7 **OR TELEPHONE ORDER MERCHANDISE RULE**

8 37. The Rule prohibits sellers from soliciting any order for the sale of
9 merchandise ordered through the mail, via the Internet, or by telephone or facsimile
10 transmission “unless, at the time of the solicitation, the seller has a reasonable basis to
11 expect that it will be able to ship any ordered merchandise to the buyer” either
12 “[w]ithin that time clearly and conspicuously stated in any such solicitation; or [i]f no
13 time is clearly and conspicuously stated, within thirty (30) days after receipt of a
14 properly completed order from the buyer.” 16 C.F.R. § 435.2(a)(1).

15 38. “Receipt of a properly completed order” means the time at which a seller
16 receives full or partial payment tendered in the proper amount and form, including
17 authorization to charge an existing charge account, and an order “containing all of the
18 information needed . . . to process and ship the order.” 16 C.F.R. § 435.1(c).

19 39. “Shipment” means the act of physically placing the merchandise in the
20 possession of a carrier. 16 C.F.R. § 435.1(e).

21 40. Where a seller is unable to ship merchandise within the time stated in the
22 solicitation or within 30 days, if no time is given, the seller must offer to the buyer
23 “clearly and conspicuously and without prior demand, an option either to consent to a
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