Supply Chain Issues Highlight Importance of Complying with Federal and State Fulfillment Rules

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We are all too aware of the current global supply chain delays and their impact on many aspects of our lives. Businesses that rely on timely fulfillment of products have been particularly impacted by shipment delays. These delays, while frequently out of the control of the business, require businesses to be proactive and comply with the FTC’s Mail, Internet and Telephone Order Rule, commonly known as the Mail Order Sales Rule, as well as analogous state laws, and even credit card merchant agreements requirements. Even though we are living through unprecedented times, the FTC and others have still been enforcing these requirements.

Despite being known as the Mail Order Sales Rule, the Rule applies squarely to ecommerce merchants. Updated since its promulgation in 1975, the Rule’s requirements are important to consider today when facing unexpected fulfillment delays. The Rule requires that businesses disclose in advance of completing a consumer transaction its good faith belief when it will be fulfilling the order. Fulfillment must be made within the stated time, or if no time is stated, then within 30 days from when the order is accepted. Therefore, if a business has a good faith belief it will fulfill in 6-8 weeks, it should state that time frame. If it fails to state a time frame for fulfillment, the Rule treats the non-specific time frame that it will ship within 30 days. In determining a reasonable belief of a shipment representation, the FTC will consider the whether the business had sufficient inventory on hand or ordered to meet anticipated demand as well as the support in place to meet shipping representations.

The First Delay Notice

What does a business do when it later learns that, despite its good faith belief on fulfillment timing, supply chain issues now make that date impossible to meet? Depending on the delay, it will trigger a range of notification requirements provided for under the Rule.

Once a business learns that it cannot meet its fulfillment representation, it must send out a delay option notice informing the consumer of the revised good faith belief of a shipping date. If the business does not have such a date, it must advise as such. The business must also provide a reason for the delay and inform and allow the customer to cancel without penalty and through a cost-free mechanism (postage prepaid mailer, toll free number, email, etc.). If the first delay is anticipated at 30 days or less, the customer’s non-response can be treated as an opt-out, i.e., if you don’t respond, the order will remain. If, however, the delay is anticipated at more than 30 days, or a new date is unknown, the customer must opt in, i.e., notify the business that it still wants the product or the order will be canceled.

Later Delay Notices

If the business cannot ship the merchandise by the revised shipment date included in a prior delay notice, a new notice must be sent. This notice applies the more stringent “opt-in” mechanism requiring the consumer to affirmatively contact the business to inform it that the customer consents to the delay. Otherwise, the business must cancel the order if the customer fails to opt
Takeaway: The current global supply chain disruptions are impacting ecommerce merchants’ good faith shipment representations. Not only do these unforeseen delays result in customer dissatisfaction, if not handled properly, they can result in violations of FTC regulations, state law, and credit card merchant agreements. Businesses must monitor their shipment representations and continue to evaluate whether deadlines will be impacted. If a deadline can no longer reasonably be met, it is best to be proactive and provide the notices required under the Mail Order Sales Rule.

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