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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 FEDERAL TRADE COMMISSION,
16 Plaintiff,
17 v.
18 FASHION NOVA, INC, Defendant.

Case No. 2:20-cv-3641

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

19 Plaintiff, the Federal Trade Commission (“FTC”) for its Complaint alleges:

20 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
21 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the FTC’s
22 Trade Regulation Rule Concerning the Sale of Mail, Internet, or Telephone Order
23 Merchandise (“MITOR” or the “Rule”), 16 C.F.R. Part 435, to obtain permanent
24 injunctive relief, rescission or reformation of contracts, restitution, the refund of
25 monies paid, disgorgement of ill-gotten monies, and other equitable relief for
26 Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
27 §45 (a), and in violation of MITOR, 16 C.F.R. Part 435.
28

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
3 1331, 1337(a) and 1345.

4 3. Venue is proper in this District under 28 U.S.C. § 1391(b)–(d) and 15
5 U.S.C. § 53(b).

6 **PLAINTIFF**

7 4. The FTC is an independent agency of the United States Government
8 created by statute. 15 U.S.C. §§ 41–58. The FTC enforces Section 5(a) of the FTC
9 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
10 affecting commerce. The FTC also enforces MITOR, which requires mail-,
11 Internet-, or telephone-based sellers to offer consumers an option to consent to a
12 delay in shipping or to cancel an order and receive a prompt refund when a seller
13 cannot ship as required by the Rule, and to deem an order cancelled and make a
14 prompt refund to buyers under certain circumstances.

15 5. The FTC is authorized to initiate federal district court proceedings, by
16 its own attorneys, to enjoin violations of the FTC Act and the Rule, and to secure
17 such equitable relief as may be appropriate in each case, including rescission or
18 reformation of contracts, restitution, the refund of monies paid, and the
19 disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 57b, and 16 C.F.R. part
20 435.

21 **DEFENDANT**

22 6. Defendant Fashion Nova, Inc. (“Fashion Nova”) is a California
23 corporation with its principal place of business located at 2801 E. 46th Street,
24 Vernon, California. Fashion Nova transacts or has transacted business in this
25 District and throughout the United States. At all times material to this Complaint,
26 acting alone or in concert with others, Fashion Nova has advertised, marketed, or
27 sold merchandise to consumers throughout the United States.
28

1 **COMMERCE**

2 7. At all times material to this Complaint, Defendant has maintained a
3 substantial course of trade in or affecting commerce, as “commerce” is defined in
4 Section 4 of the FTC Act, 15 U.S.C. § 44.

5 **DEFENDANT’S BUSINESS ACTIVITIES**

6 8. Fashion Nova is a fashion retailer that advertises, markets, and sells
7 clothing and related accessories to consumers throughout the United States and in
8 other countries.

9 9. Defendant advertises, markets, solicits orders for, and sells
10 merchandise over the Internet on the website www.fashionnova.com. Defendant
11 also advertises, markets, and solicits orders for merchandise via social media
12 advertisements and email solicitations.

13 10. Defendant includes images and descriptions of the merchandise it
14 sells on the Fashion Nova website. From webpages for specific products,
15 consumers can select the quantity and, if applicable, the size and color of a
16 product, and add it to their bag for purchase. Defendant depicts its merchandise as
17 new and free from defect.

18 11. To purchase merchandise in their bag, consumers must select a
19 shipping option, provide a shipping address, and submit payment information.
20 Defendant has accepted and consumers have tendered payment for merchandise
21 and any shipping costs in the form of credit or debit cards, PayPal, Amazon Pay,
22 and Apple Pay.

23 12. Defendant has made representations about the speed of its shipping in
24 its solicitations, including on the Fashion Nova website. For example, Defendant
25 has stated on the home page of the Fashion Nova website, “Free 2 Day Shipping
26 on all U.S. Orders \$75 and Up,” “Fast Canada Shipping Only \$10,” and “Fast
27 International 6-10 Shipping Only \$15.” On a banner at the top of the website,
28 which has been visible from multiple webpages, Defendant has also stated “Fast

1 Shipping.” Images from the home page of the Fashion Nova website with these
2 statements are included as Exhibit 1.

3 13. Defendant has also stated “Back at Top Speed – Expect Your Items
4 Quick!” along with an image of a plane and the statement “Fast Shipping” on
5 multiple webpages of the Fashion Nova website, including on the home page,
6 product pages and checkout pages. An image of a product page from the Fashion
7 Nova website with these statements is included as Exhibit 2.

8 14. Defendant has also made statements about the speed of its shipping on
9 other pages of the Fashion Nova website. For example, at times, Defendant has
10 represented on the Shipping and FAQ pages of the Fashion Nova website that it
11 could take up to 24 hours (excluding weekends and holidays) to process an order.
12 At other times, for example, Defendant has represented that it could take 24 to 48
13 hours (excluding weekends and holidays) to process an order.

14 15. Defendant has also made representations about the speed of its
15 shipping in email solicitations to consumers. For example, in email solicitations to
16 consumers, Defendant has stated, “Shipping Faster than Ever.”

17 16. Numerous consumers throughout the United States and in other
18 countries have visited and purchased merchandise from Defendant’s website. In
19 addition to what consumers pay for merchandise, many consumers have also paid
20 shipping costs, including for one- or two-day shipping.

21 17. In numerous instances after consumers submitted orders for
22 merchandise on Defendant’s website, Defendant has not shipped one or more items
23 of ordered merchandise to consumers. In numerous instances, such items were out
24 of stock or Defendant shipped merchandise that was materially different from what
25 consumers ordered, such as merchandise that was a different size, damaged, or
26 used.

27 18. In numerous instances when Defendant did not ship one or more items
28 of ordered merchandise, Defendant did not cancel the order and provide consumers

1 a prompt refund. In numerous instances, Defendant, per company policy, instead
2 issued consumers a gift card that could only be used on the Fashion Nova website
3 in the amount charged for the unshipped merchandise.

4 19. In numerous instances after consumers submitted orders for
5 merchandise on Defendant's website, Defendant has not physically placed ordered
6 merchandise in the possession of a carrier in the time represented.

7 20. In numerous instances when Defendant has not physically placed
8 ordered merchandise in the possession of a carrier in the time represented,
9 Defendant has not offered the buyer, without prior demand, an option either to
10 consent to a delay in the shipment or to cancel the order and receive a prompt
11 refund.

12 21. In numerous instances when Defendant has not offered the buyer the
13 option to cancel the order or consent to a delay in shipment, Defendant has not
14 canceled the order and has not provided consumers with a prompt refund.

15 22. Numerous consumers have complained directly to Defendant,
16 including by phone and email, as well as through Defendant's social media
17 accounts. Many consumers have reported that it was difficult to reach Defendant
18 and obtain information about the status of their orders. Many consumers have filed
19 complaints against Fashion Nova, including with the Better Business Bureau.

20 23. Based on the facts and violations of law alleged in this Complaint, the
21 FTC has reason to believe that Defendant is violating or is about to violate laws
22 enforced by the Commission.

23 **VIOLATIONS OF THE MAIL, INTERNET, OR TELEPHONE ORDER**

24 **MERCHANDISE RULE**

25 24. The Rule prohibits sellers from soliciting any order for the sale of
26 merchandise ordered through the mail, via the Internet, or by telephone or
27 facsimile transmission "unless, at the time of the solicitation, the seller has a
28 reasonable basis to expect that it will be able to ship any ordered merchandise to

1 the buyer” either “[w]ithin that time clearly and conspicuously stated in any such
2 solicitation; or [i]f no time is clearly and conspicuously stated, within thirty (30)
3 days after receipt of a properly completed order from the buyer.” 16 C.F.R. §
4 435.2(a)(1).

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

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

12 27. Where a seller is unable to ship merchandise within the time stated in
13 the solicitation or within 30 days, if no time is given, the seller must offer to the
14 buyer “clearly and conspicuously and without prior demand, an option either to
15 consent to a delay in shipping or to cancel the buyer’s order and receive a prompt
16 refund.” 16 C.F.R. § 435.2(b)(1).

17 a. Any such offer “shall be made within a reasonable time after the seller
18 first becomes aware of its inability to ship,” but in no event later than
19 the time stated or within 30 days if no time is stated. 16 C.F.R. §
20 435.2(b)(1).

21 b. The offer must “fully inform the buyer regarding the buyer’s right to
22 cancel the order and to obtain a prompt refund” and provide either a
23 definite revised shipping date or, “where the seller lacks a reasonable
24 basis for providing a definite revised shipping date[,] . . . inform the
25 buyer that the seller is unable to make any representation regarding
26 the length of delay.” 16 C.F.R. § 435.2(b)(1)(i).

27 28. A seller must “deem an order cancelled and . . . make a prompt
28 refund to the buyer whenever [t]he seller has notified the buyer of its inability to

1 make shipment and has indicated its decision not to ship the merchandise” or “[t]he
2 seller fails to offer the option [to consent to a delay in shipping or cancel the order]
3 and has not shipped the merchandise” within the time stated or within 30 days, if
4 no time is given. 16 C.F.R. § 435.2(c)(4), (5).

5 29. Where there is a third-party credit sale, a “refund” requires a seller to
6 send either (a) a credit memorandum to the creditor to remove the charge from the
7 buyer’s account and a copy of the memorandum to the buyer with the date it sent
8 the memorandum to the creditor and the charge amount to be removed; or (b) a
9 statement to the buyer acknowledging cancellation of the order and representing
10 that the seller has not taken any action which will result in a charge to the buyer’s
11 account. 16 C.F.R. § 435.1(d)(2).

12 30. Where the buyer tenders payment by means other than cash, check,
13 money order, or a credit sale, the seller must either (a) send instructions to the
14 entity that transferred payment to the seller instructing the entity to return to the
15 buyer the amount tendered in the form tendered, along with a statement to the
16 buyer setting forth the instructions, the date of the instructions, and the amount to
17 be returned; (b) return the amount tendered in the form of cash, check, or money
18 order to the buyer; or (c) send the buyer a statement acknowledging the order was
19 cancelled and representing that the seller has not taken any action regarding the
20 order which will access any of the buyer’s funds. 16 C.F.R. § 435.1(d)(3).

21 31. The Rule requires that a refund be sent by any means as fast and
22 reliable as first class mail within seven working days of the date on which the
23 buyer’s right to a refund vests under the Rule. 16 C.F.R. § 435.1(b)(1).

24 32. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3),
25 and 16 C.F.R. Part 435.2, a violation of the Rule constitutes an unfair or deceptive
26 act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

1 **Count I**

2 33. In numerous instances, in connection with mail, Internet, or telephone
3 order sales, Defendant failed to ship properly completed orders for merchandise
4 within the timeframe required by the Rule, and failed to clearly and conspicuously
5 offer buyers, without prior demand, an option either to consent to a delay in
6 shipping or to cancel an order and receive a prompt refund.

7 34. Therefore, Defendant's acts and practices, as set forth in Paragraph
8 33, violate Section 435.2(b) of the Rule, 16 C.F.R. § 435.2(b), and therefore are
9 unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15
10 U.S.C. § 45(a).

11 **Count II**

12 35. In numerous instances, in connection with mail, Internet, or telephone
13 order sales, when Defendant failed to ship properly completed orders for
14 merchandise within the timeframe required by the Rule and failed to offer buyers
15 the opportunity to consent to a delay in shipping or to cancel their order, Defendant
16 did not cancel those orders and make prompt refunds to buyers. In addition, when
17 Defendant notified buyers that it was unable to make shipment and indicated its
18 decision not to ship merchandise, Defendant did not cancel those orders and make
19 prompt refunds to buyers.

20 36. Therefore, Defendant's acts or practices, as set forth in Paragraph 35,
21 violate Section 435.2(c) of the Rule, 16 C.F.R. § 435.2(c), and therefore are unfair
22 or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
23 § 45(a).

24 **CONSUMER INJURY**

25 37. Consumers are suffering, have suffered, and will continue to suffer
26 substantial injury as a result of Defendant's violations of the FTC Act and MITOR.
27 In addition, Defendant has been unjustly enriched as a result of its unlawful acts or
28

1 practices. Absent injunctive relief by this Court, Defendant is likely to continue to
2 injure consumers, reap unjust enrichment, and harm the public interest.

3 **THIS COURT'S POWER TO GRANT RELIEF**

4 38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
5 to grant injunctive and such other relief as the Court may deem appropriate to halt
6 and redress violations of any provision of law enforced by the FTC. The Court, in
7 the exercise of its equitable jurisdiction, may award ancillary relief, including
8 rescission or reformation of contracts, restitution, the refund of monies paid, and
9 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any
10 provision of law enforced by the FTC.

11 39. Section 19 of the FTC Act, 15 U.S.C. § 57b, and MITOR, 16 C.F.R.
12 Part 435, authorize this Court to grant such relief as the Court finds necessary to
13 redress injury to consumers resulting from Defendant's violations of the Rule,
14 including the rescission or reformation of contracts, and the refund of money.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act,
17 15 U.S.C. §§ 53(b) and 57b, MITOR, 16 C.F.R. Part 435, and the Court's own
18 equitable powers, requests that the Court:

19 A. Enter a permanent injunction to prevent future violations of the FTC
20 Act and the Rule by Defendant;

21 B. Award such relief as the Court finds necessary to redress injury to
22 consumers resulting from Defendant's violations of the FTC Act and the Rule,
23 including rescission or reformation of contracts, restitution, the refund of monies
24 paid, and the disgorgement of ill-gotten monies; and

1 C. Award Plaintiff the costs of bringing this action, as well as such other
2 and additional relief as the Court may determine to be just and proper.
3

4 Respectfully submitted,

5 Alden F. Abbott
6 General Counsel
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9 Dated: April 20, 2020

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FASHION NOV A

- NEW ARRIVALS
- DRESSES
- BEST SELLERS
- JEANS
- SHOP-INSTAGRAM
- TOPS
- BODYSUITS
- SKIRTS
- ROMPERS AND JUMPSUITS
- SWEATERS
- LEGGINGS
- JACKETS
- SHORTS
- PANTS
- MATCHING SETS
- ACCESSORIES
- UNDER \$15
- SHOES
- SALE
- BLOWOUT
-

FREE 2 DAY SHIPPING ON ALL U.S. ORDERS \$75 & UP

FAST CANADA SHIPPING ONLY \$10

FAST INTERNATIONAL 6-10 SHIPPING ONLY \$15



- ABOUT
- PRIVACY POLICY
- SIZE GUIDE
- SHIPPING
- EASY RETURNS
- FAQ
- BLOG
- CAREERS
- COLLABS
- WHOLESALE
- GIFT CARDS
- LOCATIONS
- CONTACT
- ORDER STATUS



The screenshot shows the Fashion Nova website homepage. At the top, the navigation bar includes the brand name 'FASHION NOVA' in a stylized font, a search bar, and icons for 'Sign in', 'My Favorites' (with a '0' count), and 'My Bag' (with a '0' count). Below the navigation bar, there are several promotional banners: 'FREE 2 DAY SHIPPING ON ALL U.S. ORDERS \$75 & UP', 'FREE CANADA & U.K. SHIPPING \$75 & UP', and 'FAST INTERNATIONAL SHIPPING ONLY \$10 (FREE OVER \$150)'. A central navigation menu lists various clothing categories: 'NEW ARRIVALS', 'DRESSES', 'JEANS', 'SHOES', 'TOPS', 'JACKETS', 'SWEATERS', 'BOTTOMS', 'ROMPERS AND JUMPSUITS', 'MATCHING SETS', 'ACTIVewear', 'ACCESSORIES', 'LINGERIE', 'SWIMWEAR', 'SHOP INSTAGRAM', and 'BEST SELLERS'. Below this menu, there are links for 'COMING SOON', 'BACK IN STOCK', 'PLUS SIZE & CURVE', and 'LAST CHANCE SALE'. The main promotional banner features a teal background with the text 'THANKS FOR 9 million INSTAGRAM FOLLOWERS' in a mix of bold, sans-serif and script fonts. Below this, it states '30-70% OFF' and 'USE CODE: 9MILL'. A black button with white text says 'SHOP NEW ARRIVALS'. The banner also includes a row of five small white circles, with the first one filled. On the right side of the banner, there is a photograph of a woman wearing a bright yellow fur-trimmed jacket, a black leather skirt, and sunglasses, posing against a teal background with industrial structures.



STYLED ON INSTAGRAM

Classic High Waist Skinny Jeans - Dark

\$34.99 USD

★★★★★ 7854 Reviews

PRODUCT DETAILS

- Now Available in Plus Sizes!
- High Waist
- Skinny Jeans
- 2 Back Pockets
- Faux Front Pockets
- Great Stretch
- 31 Inch Inseam
- Made in USA
- 49% Strorayon 32% Cotton 17% Polyester 2% Spandex

SHIPPING INFORMATION



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See Size Chart

ADD TO BAG



BACK AT TOP SPEED - EXPECT YOUR ITEMS QUICK!

