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ANALYSIS

FTC Bags First Settlement in Probe of 'Review Hijacking' in E-Commerce

Review hijacking occurs when a marketer makes reviews for a highly rated product appear to apply to another. An FTC official said the tactic is "plain old false advertising."

February 28, 2023 at 07:22 PM

3 minute read

Consumer Protection

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What You Need to Know

- The Federal Trade Commission has struck a $600,000 settlement with supplements marketer The Bountiful Co.
- The agency alleged Bountiful grouped lower-rated products on Amazon with dissimilar products carrying higher ratings.
- Bountiful said it settled to avoid a lengthy and costly legal fight.

A Federal Trade Commission settlement this month with the Bountiful Co., a marketer of vitamins and supplements, was less significant for its monetary amount than for signaling the agency's push into a new enforcement realm known as "review hijacking."

The $600,000 settlement with the Bohemia, New York-based Nestle subsidiary is the FTC's first case alleging review hijacking—a tactic in which online sellers "hijack" an existing product page populated with positive reviews and add into it a different product.

The push is part of broader effort by the FTC to combat deceptive online sales tactics, such as using fake reviews, suppressing negative reviews, and paying for positive reviews. The agency in October announced it was exploring creating new rules giving it more enforcement muscle in that realm.

"Not only is the FTC currently seeking to promulgate rules that come with big civil penalties for such conduct, it has also recently blanketed the digital advertising industry with warning letters," said Richard Newman, an FTC defense lawyer and partner at Hinch Newman in New York City.

Alexandra Roberts, a professor of law and media at Northeastern University, added: "One strategy the FTC employs is to make an example of one of several bad actors in the hopes that others will fall in line and adjust approaches."

In the press release announcing the settlement with Bountiful, Samuel Levine, director of the FTC's Bureau of Consumer Protection, said hijacking reviews is a relatively new tactic "but is still plain old false advertising."

The FTC alleged Bountiful, which sells its products on Amazon.com under brands such as Nature's Bounty and Sundown, took advantage of an Amazon feature that allows retailers to group substantially similar products under the same category.

To follow Amazon's rules, they may only differ in quantity or flavor, for example. Thus, a group of substantially similar products can carry the same ratings based on consumer reviews, or such coveted badges as "#1 Best Seller" or "Amazon Choice."

In March 2020, Bountiful launched two new products—Nature's Bounty Stress Comfort Mood Booster and Nature's Bounty Stress Comfort Peace of Mind Stress Relief Gummies. Bountiful asked Amazon to combine the new products with three established products that had dissimilar formulations but more favorable reviews and ratings, according to the FTC.

"Unfortunately, people did not love the (new products)," but sales "spiked the second we variated the pages and they continue to grow," said an internal company email cited by FTC.

A Bountiful spokesperson said the company settled with the FTC "to avoid a lengthy and costly legal challenge."

"We stand behind our products and business practices and are convinced that consumers were neither deceived nor harmed by the variation practices implemented to assist consumers in finding similar products. Bountiful is already complying with the terms of the order and will continue to do so."

Penalties for deceptive reviews and endorsements can be expensive. In January 2022, the FTC required online retailer Fashion Nova to pay $4.2

million to settle allegations it suppressed negative customer reviews on its website.

The FTC has continued to probe allegations of misleading advertising despite suffering a big setback in 2021, when the U.S. Supreme Court in *AMG Capital Management v. FTC* ruled that the agency only has the authority to obtain injunctions in court, not restitution or disgorgement. The decision undercut the FTC's effort to collect on a $1.27 billion judgment against payday lender AMG for deceptive marketing practices.

The agency has been using more ponderous approaches under the FTC Act while seeking legislation allowing it to impose civil penalties.