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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. 46<sup>th</sup> 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](http://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

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

Respectfully submitted,

Alden F. Abbott  
General Counsel



Dated: April 20, 2020

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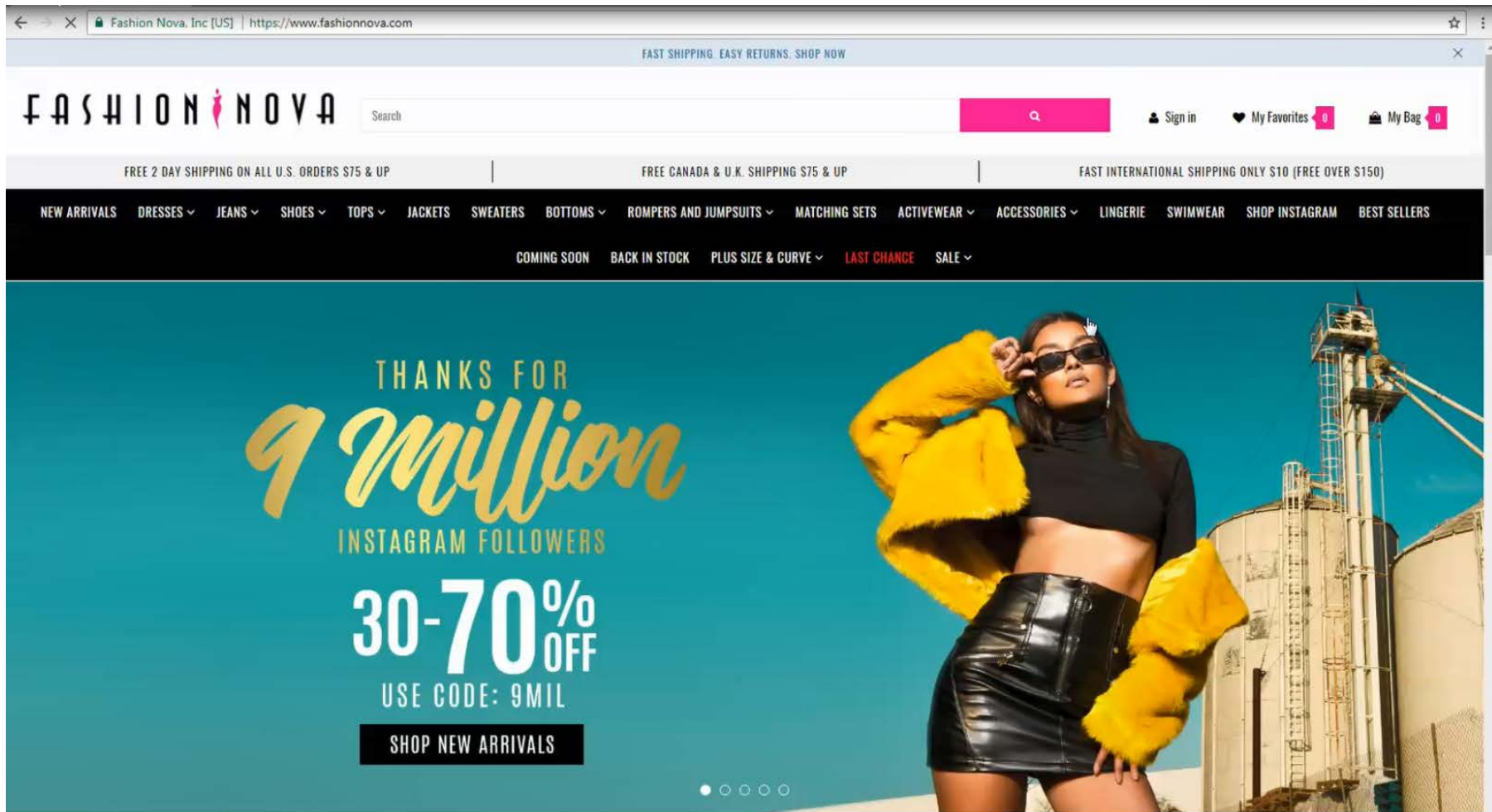
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