

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

NATIONAL FLOORS DIRECT, INC., a corporation.

DECISION AND ORDER

DOCKET NO. C-4686

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge Respondent with violations of the Consumer Review Fairness Act of 2016.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Consumer Review Fairness Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent is National Floor Direct, Inc., a Massachusetts corporation with its principal office or place of business at 100 Messina Drive, Braintree, Massachusetts 02184.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. "Covered Communication" means a written, oral, or Pictorial review, performance assessment, or other similar analysis of goods or services, including conduct related to the goods or services.
- B. "Review-Limiting Contract Term" means a standardized contract term that:
 1. prohibits or restricts the ability of a person who is a party to the contract to engage in a Covered Communication;
 2. imposes a penalty or fee against a person who is a party to the contract for engaging in a Covered Communication; or
 3. transfers, or requires a person who is a party to the contract to transfer, to any other person any intellectual property rights in a Covered Communication, with the exception of a non-exclusive license to lawfully use a Covered Communication about Respondent's goods or services.
- C. "Pictorial" includes pictures, photographs, video, illustrations, and symbols.
- D. "Respondent" means National Floors Direct, Inc., a corporation, and its successors and assigns.

Provisions

I. Prohibited Use of Review-Limiting Contract Terms

IT IS ORDERED that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale or leasing of any good or service, must not:

- A. offer to any prospective customer a contract, or offer to any customer a renewal contract, that includes a Review-Limiting Contract Term;

- B. require that a customer accept a Review-Limiting Contract Term as a condition of Respondent's fulfillment of its obligations under a customer contract that Respondent entered into before the effective date of this Order; or
- C. attempt to enforce or assert the validity of any Review-Limiting Contract Term in any customer contract that Respondent entered into before the effective date of this Order.

Nothing in this Provision shall require Respondent to publish or host the content of any person, affect any other legal duty of a party to a contract, or affect any cause of action arising from the breach of such duty.

II. Notice to Consumers

IT IS FURTHER ORDERED that Respondent must, within 45 days after the effective date of this Order, notify all customers who entered into a contract with Respondent that included any term concerning a Covered Communication, such as Respondent's purchase orders or releases, used on or after March 14, 2017 through the effective date of this Order, by mailing or emailing each a notice as shown in Attachment A:

- A. The heading of the notice, and the subject line for any email, must read "Your Right to Post Honest Reviews."
- B. Respondent's name and return address, for any mailing, must appear on the front of the envelope, the customer's name and address must be printed on the front of the envelope or be visible through a window in the envelope, and the words "Your Right to Post Honest Reviews" must be printed in easily noticed text near the customer's name and address.
- C. The notice must not include any other materials or message about Respondent, or otherwise concern its goods or services.

III. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 3 years after the issuance date of this Order, Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for drafting, approving, or enforcing customer contracts, or for responding to Covered Communications, and all agents and representatives who participate in conduct related to drafting, approving, or enforcing customer contracts, or responding to Covered Communications; and (3) any business entity resulting from any change in structure as set forth in the Provision titled

Compliance Report and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IV. Compliance Report and Notices

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

- A. 180 days after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (1) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (2) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (3) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and any conduct toward consumers who have engaged in Covered Communications; (4) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with this Order; and (5) provide a copy of each Acknowledgment of this Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 3 years after the issuance date of this Order, Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) any designated point of contact; or (b) the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by

overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In re National Floors Direct, Inc.*, C-4686.

V. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records for 3 years after the issuance date of this Order, and retain each such records for 5 years, unless otherwise specified below. Specifically, Respondent, for any business of which Respondent is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Personnel records showing, for each person providing services in relation to any aspect of this Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- B. A copy of each unique contract relating to a Covered Communication; each unique contract used in connection with selling or leasing Respondent's goods or services; all communications with consumers threatening any legal action relating to any Covered Communication; and all parties' court filings and Respondent's discovery responses in any legal action relating to any Covered Communication; and
- C. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VI. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on August 14, 2039, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after this Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of this Order, and the dismissal or ruling is either not appealed or upheld on appeal, then this Order will terminate according to this Provision as though the complaint had never been filed, except that this Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

April J. Tabor
Acting Secretary

SEAL:

ISSUED: August 14, 2019

ATTACHMENT A to the Order – Letter and Email Notice Template:

The notice must be in the following form, appearing on Respondent’s letterhead and email, with the underlined text completed as directed:

Your Right to Post Honest Reviews

Dear <Name of customer>:

Our records show that our company installed carpeting or flooring for you. I am writing to tell you that the Federal Trade Commission (FTC), the nation’s consumer protection agency, has alleged that we used contract provisions that violated the Consumer Review Fairness Act (CRFA). The CRFA protects your ability to share your honest opinions about a business’s products, services, or conduct, in any forum, including social media. According to the FTC, we used a provision in our customer contracts that unlawfully restricted our customers (including you) from sharing truthful information and opinions about their experiences with us.

We are contacting our customers to tell you that this contract provision is void and we cannot enforce the provision against you. You can publish your honest review about National Floors Direct, even if you say something negative about us or our products or services.

If you have questions about the FTC’s case, visit [add case page alias URL provided by FTC staff with embedded hyperlink].

Sincerely,

<signature>

[identify Respondent’s officer responsible for signing the notification letter]