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8
9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA
11

)	
FEDERAL TRADE COMMISSION,)	Case No.
)	
Plaintiff,)	COMPLAINT FOR PERMANENT
)	INJUNCTION, MONETARY
v.)	RELIEF, AND OTHER RELIEF
)	
HEY DUDE INC., a corporation,)	
)	
Defendant.)	
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25 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), for its
26 Complaint alleges:
27 1. The FTC brings this action under Sections 5(a)(1), 13(b), and 19 of the
28 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1), 53(b), and 57b,

1 and the FTC’s Trade Regulation Rule Concerning the Sale of Mail, Internet, or
2 Telephone Order Merchandise (“MITOR” or the “Rule”), 16 C.F.R. Part 435, which
3 authorize the FTC to seek, and the Court to order, permanent injunctive relief,
4 monetary relief, and other relief for Defendant’s acts or practices in violation of
5 Section 5(a) of the FTC Act, 15 U.S.C. §45(a), and in violation of MITOR, 16 C.F.R.
6 Part 435. Defendant’s violations are in connection with (i) failing to offer consumers,
7 clearly and conspicuously and without prior demand, an option to consent to a delay
8 in shipment or to cancel an order and receive a prompt refund when Defendant failed
9 to ship properly completed orders for merchandise within the timeframe required by
10 the Rule, and failing to deem an order cancelled and make a prompt refund as
11 required by the Rule, and (ii) misrepresenting that the product reviews on the Hey
12 Dude Shoes website accurately reflected the views of all purchasers who submitted
13 reviews of the products when, in fact, Defendant was suppressing negative reviews.

14 **JURISDICTION AND VENUE**

15 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
16 1337(a), and 1345.

17 3. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), (c)(2), (d),
18 and 15 U.S.C. § 53(b).

19 **PLAINTIFF**

20 4. The FTC is an independent agency of the United States Government
21 created by the FTC Act, which authorizes the FTC to commence this district court
22 civil action by its own attorneys. 15 U.S.C. §§ 41–58. The FTC enforces Section 5(a)
23 of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or
24 practices in or affecting commerce. The FTC also enforces MITOR, which requires
25 mail-, Internet-, or telephone-based sellers to offer consumers an option to consent to
26 a delay in shipping or to cancel an order and receive a prompt refund when a seller
27 cannot ship as required by the Rule, and to deem an order cancelled and make a
28 prompt refund to buyers under certain circumstances.

DEFENDANT

1
2 5. Defendant Hey Dude Inc. (“Hey Dude”), formerly known as Happy One,
3 LLC (“Happy One”), is a Delaware Corporation with its principal place of business
4 located at 6335 North Hollywood Boulevard, Suite 100, Las Vegas, Nevada 89115.
5 Hey Dude is also successor in interest to Lucky Top, Inc. (“Lucky Top”), which
6 formerly operated under the d/b/a Hey Dude Shoes USA. Hey Dude, Happy One, and
7 Lucky Top each at times conducted business under the name “Hey Dude Shoes USA”
8 and they are referred to herein, individually and collectively, as “Hey Dude Shoes.”

9 6. Defendant Hey Dude transacts or has transacted business in this District
10 and throughout the United States. At all times material to this Complaint, acting alone
11 or in concert with others, Hey Dude has advertised, marketed, or sold merchandise to
12 consumers throughout the United States.

COMMERCE

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

DEFENDANT’S BUSINESS ACTIVITIES

17 8. Hey Dude Shoes is a shoe retailer that advertises, markets, and sells
18 shoes to consumers throughout the United States and in other countries.

19 9. Hey Dude Shoes advertises, markets, solicits orders for, and sells
20 merchandise over the Internet on the website www.heydude.com, and on the
21 predecessor website www.heydudeshoesusa.com. Hey Dude Shoes also advertises,
22 markets, and solicits orders for merchandise via social media advertisements.

23 10. Hey Dude Shoes includes or has included images and descriptions of the
24 merchandise it sells on the Hey Dude Shoes website. From webpages for specific
25 products, consumers can select the quantity, size, and color of a product, and add it to
26 their bag for purchase. Hey Dude Shoes depicts or has depicted its merchandise as
27 new and free from defect.

Defendant's Shipping and Fulfillment Practices

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2 11. To purchase merchandise in their bag, consumers must select a shipping
3 option, provide a shipping address, and submit payment information. Hey Dude
4 Shoes has accepted and consumers have tendered payment for merchandise and any
5 shipping costs in the form of credit or debit cards, PayPal, Amazon Pay, and ZIP.

6 12. Hey Dude Shoes has made representations about the speed of its
7 shipping in solicitations, including on the Hey Dude Shoes website. For example,
8 Hey Dude Shoes has stated in a banner at the top of the Hey Dude Shoes website,
9 which has been visible from multiple webpages, "Free 2 Day Shipping on Select
10 Styles."

11 13. Hey Dude Shoes has also made statements about the speed of its
12 shipping on other pages of the Hey Dude Shoes website. For example, at times, Hey
13 Dude Shoes has represented on the Shipping & Delivery page that the "Hey Dude
14 Shoes Shipping & Delivery Policies" are that: "All orders placed Monday-Thursday
15 are processed and shipped within 1 business day. Orders placed Friday afternoon –
16 Sunday will be processed the following Monday." At times, Hey Dude Shoes has
17 represented that "[a]ll orders placed Monday-Thursday are processed in 1-2 business
18 days."

19 14. Numerous consumers throughout the United States have visited and
20 purchased merchandise from the Hey Dude Shoes website.

21 15. In numerous instances after consumers have submitted orders for
22 merchandise on Hey Dude Shoes's website, Hey Dude Shoes has not shipped one or
23 more items of ordered merchandise to consumers. In numerous instances, such items
24 were out of stock or Hey Dude Shoes shipped merchandise that was materially
25 different from what consumers ordered.

26 16. In numerous instances when Hey Dude Shoes has not shipped one or
27 more items of ordered merchandise, Hey Dude Shoes has not cancelled the order and
28 provided consumers a prompt refund. In numerous instances when a refund has been

1 provided for unshipped merchandise, Hey Dude Shoes has not refunded the full price
2 paid for the merchandise.

3 17. In numerous instances, when Hey Dude Shoes has not shipped one or
4 more items of ordered merchandise, per company policy, Hey Dude Shoes has
5 cancelled the order and instead of a refund to the consumers' form of payment, Hey
6 Dude Shoes has issued consumers a gift card that could only be used on Hey Dude
7 Shoes's website in the amount charged for the unshipped merchandise.

8 18. In numerous instances after consumers submitted orders for merchandise
9 on Hey Dude Shoes's website, Hey Dude Shoes has not physically placed ordered
10 merchandise in the possession of a carrier in the time represented.

11 19. In numerous instances when Hey Dude Shoes has not physically placed
12 ordered merchandise in the possession of a carrier in the time represented, Hey Dude
13 Shoes has not offered the buyer, without prior demand, an option either to consent to
14 a delay in the shipment or to cancel the order and receive a prompt refund.

15 20. In numerous instances when Hey Dude Shoes has not offered the buyer
16 the option to cancel the order or consent to a delay in shipment, Hey Dude Shoes has
17 not canceled the order and have not provided consumers with a prompt refund.

18 21. Numerous consumers have complained directly to Hey Dude Shoes
19 about late shipping, undelivered, or incomplete orders, including by phone, email,
20 and Hey Dude Shoes's social media accounts. Many consumers have reported that it
21 was difficult to reach Hey Dude Shoes and obtain information about the status of
22 their orders. Many consumers have filed complaints against Hey Dude Shoes,
23 including with the Better Business Bureau.

24 22. Hey Dude Shoes has not maintained records or documentary proof
25 establishing its use of systems and procedures which assure compliance with the Rule
26 in the ordinary course of business, including such systems and procedures to provide
27 buyers offers and prompt refunds referenced in Paragraphs 19 and 20 above.
28

Defendant's Review Suppression Practices

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2 23. Each product on Hey Dude Shoes's website provides consumers with the
3 opportunity to review the product and rate it on a five-star scale. At the bottom of
4 each product page is a section entitled "Real, unedited reviews from HEYDUDE
5 fans." The section contains buttons labeled "Write A Review" and "Ask a Question."
6 Consumers who click the button are invited to give the product a star rating from one
7 to five, write a review, rate the comfort, size and width of the shoe, and click a button
8 to "POST" it. If there are no customer reviews for a particular product, consumers are
9 encouraged to "BE THE FIRST TO WRITE A REVIEW."

10 24. The average star rating for each product with existing reviews is featured
11 multiple times on Hey Dude Shoes's website. The average star rating and number of
12 reviews are displayed with the photo, product name, and price in the gallery of
13 products that link to each product's page.

14 25. Each product page with existing reviews displays the product's average
15 star rating at the top right of the page together with the product name and price, and
16 buttons to select a size and "ADD TO CART."

17 26. The section on each product page entitled "Real, unedited reviews from
18 HEYDUDE fans" displays the average star rating depicted as a number and shaded
19 stars, a summary bar graph of the number of reviews with each star rating, and
20 images to reflect the spectrum of how customers viewed the size ("Runs Small" to
21 "Runs Large"), width ("Feels too narrow" to "Feels too wide"), and comfort ("Poor"
22 to "Great") of the product.

23 27. The review section also displays the individual ratings and the text of the
24 reviews. The page offers the option for consumers to search reviews through a query
25 box and the option to select from a variety of search buttons such as "look," "fit,"
26 "size," "weight," "color," etc.

27 28. Hey Dude Shoes uses a third-party online product review management
28 interface. The interface allows website operators to choose to have certain reviews

1 automatically post based upon their star ratings and hold lower-starred reviews for
2 approval prior to posting.

3 29. From at least January 2020 through June 2022, Hey Dude Shoes chose to
4 have five-star reviews post to the website with little scrutiny, and held lower-starred
5 reviews for more individualized review. Hey Dude Shoes held, rejected, and did not
6 publish more than 80% of their one-, two-, and three- star reviews.

7 30. Prior to June 2022, Hey Dude Shoes had written policies and procedures
8 instructing its staff to publish certain types of reviews only if they were positive in
9 nature.

10 31. Based on the facts and violations of law alleged in this Complaint, the
11 FTC has reason to believe that Defendant is violating or is about to violate laws
12 enforced by the Commission, because, among other things, Defendant continued its
13 unlawful acts or practices despite knowledge of numerous complaints, and Defendant
14 altered its unlawful policies or practices only after receiving a Civil Investigative
15 Demand from the FTC.

16 **VIOLATIONS OF THE FTC ACT**

17 32. Section 5 of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
18 deceptive acts or practices in or affecting commerce.”

19 33. Misrepresentations or deceptive omissions of material fact constitute
20 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

21 **Count I – Deceptive Customer Review Practices**

22 34. In connection with the advertising, promotion, offering for sale, or sale
23 of Hey Dude Shoes products, Hey Dude Shoes has, through means described in
24 Paragraphs 23–30, represented, directly or indirectly, expressly or by implication, that
25 the product reviews on the Hey Dude Shoes website accurately reflect the views of all
26 purchasers who submitted reviews of Hey Dude Shoes products to the website.

27 35. In truth and in fact, the product reviews on the Hey Dude Shoes website
28 did not accurately reflect the views of all purchasers who submitted reviews of the

1 products because in numerous instances Hey Dude Shoes suppressed product reviews
2 with ratings lower than four stars.

3 36. Therefore, Hey Dude Shoes’s representations as set forth in Paragraph
4 34 are false or misleading and constitutes a deceptive act or practice in violation of
5 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

6 **VIOLATIONS OF THE MAIL, INTERNET,**
7 **OR TELEPHONE ORDER MERCHANDISE RULE**

8 37. The Rule prohibits sellers from soliciting any order for the sale of
9 merchandise ordered through the mail, via the Internet, or by telephone or facsimile
10 transmission “unless, at the time of the solicitation, the seller has a reasonable basis to
11 expect that it will be able to ship any ordered merchandise to the buyer” either
12 “[w]ithin that time clearly and conspicuously stated in any such solicitation; or [i]f no
13 time is clearly and conspicuously stated, within thirty (30) days after receipt of a
14 properly completed order from the buyer.” 16 C.F.R. § 435.2(a)(1).

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

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

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

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

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

7 41. A seller must “deem an order cancelled and . . . make a prompt refund
8 to the buyer whenever [t]he seller has notified the buyer of its inability to make
9 shipment and has indicated its decision not to ship the merchandise” or “[t]he seller
10 fails to offer the option [to consent to a delay in shipping or cancel the order] and has
11 not shipped the merchandise” within the time stated or within 30 days, if no time is
12 given. 16 C.F.R. § 435.2(c)(4), (5).

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

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

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

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

7 **Count II – Failure to Offer Buyer Options**

8 46. As described in paragraphs 11–22 above, in numerous instances, in
9 connection with mail, Internet, or telephone order sales, Hey Dude Shoes failed to
10 ship properly completed orders for merchandise within the timeframe required by the
11 Rule, and failed to clearly and conspicuously offer buyers, without prior demand, an
12 option either to consent to a delay in shipping or to cancel an order and receive a
13 prompt refund.

14 47. Therefore, Hey Dude Shoes's acts and practices, as set forth in
15 Paragraph 46, violate Section 435.2(b) of the Rule, 16 C.F.R. § 435.2(b), and
16 therefore are unfair or deceptive acts or practices in violation of Section 5(a) of the
17 FTC Act, 15 U.S.C. § 45(a).

18 **Count III – Failure to Make Prompt Refunds**

19 48. As described in paragraphs 11–22 above, in numerous instances, in
20 connection with mail, Internet, or telephone order sales, when Hey Dude Shoes failed
21 to ship properly completed orders for merchandise within the timeframe required by
22 the Rule and failed to offer buyers the opportunity to consent to a delay in shipping or
23 to cancel their order, Hey Dude Shoes did not cancel those orders and make prompt
24 refunds to buyers. In addition, when Hey Dude Shoes notified buyers that it was
25 unable to make shipment and indicated its decision not to ship merchandise, Hey
26 Dude Shoes did not cancel those orders and make prompt refunds to buyers.

27 49. Therefore, Hey Dude Shoes's acts or practices, as set forth in Paragraph
28 48, violate Section 435.2(c) of the Rule, 16 C.F.R. § 435.2(c), and therefore are unfair

1 or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
2 § 45(a).

3 **CONSUMER INJURY**

4 50. Consumers are suffering, have suffered, and will continue to suffer
5 substantial injury as a result of Hey Dude Shoes's violations of the FTC Act and
6 MITOR. Absent injunctive relief by this Court, Defendant is likely to continue to
7 injure consumers and harm the public interest.

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiff requests that this Court:

- 10 A. Enter a permanent injunction to prevent future violations of the FTC Act
11 and the Rule by Defendant;
12 B. Award monetary and other relief within the Court's power to grant; and
13 C. Award any additional relief as the Court determines to be just and
14 proper.

15 Respectfully submitted,

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18 Dated: 09/11/2023



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