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## Is suppressing negative reviews on retail site a fashion faux pas?

Welcome to today's Intellectual Property Challenge, where we pose a question and you guess the answer.

**Question:** Can a company suppress online negative customer reviews?

**Discussion:** Online fashion retailer Fashion Nova, Inc. touts designing and manufacturing clothing so fast that it can match fashion trends at low prices. Fashion Nova offers its products on its website.

Each product webpage invited customers to rate the product on a five-star scale and to email comments. The webpage displayed the product's average star rating, a summary graph showing the number of reviews with each star rating, and the individual customer's comments.

The Federal Trade Commission (FTC) filed suit in California alleging that Fashion Nova violated FTC advertising rules. According to the complaint, Fashion Nova hired a third-party online product review management company.

The company selected types of reviews that would be automatically published



### IP NEWS CHALLENGE

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and which reviews would not be posted. Fashion Nova only allowed ratings that were four stars or higher to be posted.

As a result, hundreds, if not thousands, of lower-starred, negative reviews were not posted. The FTC argued that by suppressing negative reviews, Fashion Nova "deprives consumers of potentially useful information and artificially in-

flates the product's average star rating."

This activity violates Section 5(a) of the FTC by misrepresenting that the product reviews are accurate.

On Jan. 28, the FTC published the proposed consent agreement with Fashion Nova in the Federal Register inviting public comment. The consent agreement requires Fashion Nova to report and display reviews accurately and without edits.

Fashion Nova had to pay \$4.2 million in penalties.

**Answer:** A company has to accurately post all product reviews regardless of the reviewer's opinion or rating.

**Case Cite:** *FTC v. Fashion Nova, Inc.* 2:30-cv-03641 (U.S. District Court, Central District, California).

**Sur-Reply:** The FTC publishes guidelines that give acceptable practices for collecting and publishing online reviews. So there is no reason to run afoul of online advertising rules.

On another note, out of curiosity, I checked Fashion Nova's website. Products now appear to include low star ratings.