

New Court Decision Address Manipulation of Reviews

Gonzalo E. Mon

December 2, 2020

Because consumer reviews are so important in today's marketplace, many companies go to great lengths to increase their number of favorable reviews. Sometimes, they go too far. We've written about FTC and NAD cases in which companies incentivized reviews without proper disclosures and even about cases in which companies solicited fake reviews. (Click [here](#), for an example.) Recently, a federal court considered similar issues in the context of a Lanham Act case.

NatureWise sells supplements on Amazon. Vitamins Online, a competitor, found that many of the reviews for the NatureWise supplements appeared to be suspicious. For example, several early five-star reviews were posted by unverified purchasers within minutes of each other and had similar patterns in their text, suggesting a common author. And a number of reviews – some of which spoke about great results after weeks of product use – were posted before the product even launched.

The problems didn't stop there. Even though NatureWise denied doing so, the court found that the company offered



people free products in exchange for writing reviews, in violation of Amazon's policies. (Undisclosed incentives also violate the FTC's Endorsement Guides). And to make matters worse, NatureWise directed its employees to "up vote" good reviews and "down vote" bad reviews. This directly affected which reviews appeared at the top of the products' pages and those that did not.

The court held that "as a result of NatureWise's practice of block voting, the number of helpfulness votes on certain NatureWise reviews were artificially inflated and literally false" and that "NatureWise's representations that it did not offer free products in exchange for reviews were literally false" under the Lanham Act. Further, the court noted that Vitamins Online had demonstrated that the manipulated reviews were material to customers, who rely on them when making purchasing decisions.

After concluding that NatureWise's conduct violated the Lanham Act, the court turned its attention to remedies. The court ordered NatureWise to disgorge \$9.5 million of its profits from the two-year period during which NatureWise and Vitamins Online were the sole competitors in their segment. (The case also involved allegations that NatureWise made false claims about its ingredients, which may have affected the remedy, but that's beyond the focus of this post.)

Readers of this blog already know that they shouldn't manipulate reviews or engage in the other types of problematic behavior alleged in the complaint, so we won't highlight those lessons. Instead,

we're focusing on this case because it provides good news for companies who think their competitors are engaging in these types of problematic behaviors. This decision will provide a good precedent for companies that want to consider a Lanham Act claim.