



# Advanced Media and Technology Law

Advertising and Promotions Law



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## FTC Updates Its Mail Order Rule

The FTC's "Mail Order Rule" is now the "[Mail, Internet, or Telephone Order Merchandise Rule](#)" (16 CFR Part 435).

The Rule prohibits sellers from soliciting mail, Internet, or telephone order sales unless they reasonably expect that they can ship the ordered merchandise within the time stated on the solicitation or, if no time is stated, within 30 days. The Rule also requires a seller to seek the buyer's consent to the delayed shipment when the seller learns that it cannot ship within the time stated or, if no time is stated, within 30 days. If the buyer does not consent, the seller must promptly refund all money paid for the unshipped merchandise. The Rule includes specific requirements regarding how refunds must be provided and when.

The FTC recently amended the Rule in four ways:

1. The FTC changed the name of the rule to clarify that the Rule applies to merchandise ordered over the Internet, including merchandise ordered using shopping apps, as well as merchandise ordered by phone or by mail. The Rule does not cover face-to-face transactions in which a seller's representative merely receives product or inventory information through the Internet; in such instances, buyers do not order merchandise via the Internet. The Rule does cover merchandise orders placed via the Internet even when the buyer is in the seller's store at the time the buyer places the order. For example, the Rule covers a purchase where a buyer orders merchandise using a smartphone while in the seller's store.
2. The amended Rule allows sellers the flexibility to use methods other than first class mail to deliver refunds and refund notices as long as those methods are at least as fast and reliable as first class mail. The Rule does not identify specific permissible methods, but the [Notice of Proposed Rulemaking](#) mentioned electronic transfers and private couriers (such as Fed Ex) as delivery methods that are typically as fast and reliable as first class mail.
3. The old Rule described sellers' refund obligations when buyers paid by cash, check, money order, or credit (the enumerated payment methods); it did not provide similar obligations when buyers paid with any other method, such as debit cards, payroll cards or gift cards (the non-enumerated payment methods). The amended Rule clarifies sellers' obligations for orders using non-enumerated payment methods: (1) sellers can provide refunds in the form of cash, check or money order, or (2) sellers can provide refunds using the same method that the buyer used. When a buyer uses a non-enumerated payment method, sellers must provide refunds within 7 working days after a buyer's right to a refund vests.

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4. The amended Rule also addresses the timing of refunds for third-party credit transactions (for example, Visa or MasterCard). The old Rule allowed sellers one billing cycle in which to provide a refund for third-party credit transactions; the amended Rule requires such refunds to be provided within 7 working days. For credit sales where the seller is the creditor (such as merchants using their own store charge cards) the refund deadline is still one billing cycle.

The Rule's many requirements relating to a seller's obligation to ship promptly, notify customers of expected delays, and obtain consent for delayed shipping remain unchanged.

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### *Advanced Media and Technology Practice*

KENNETH A. ADLER	KADLER@LOEB.COM	212.407.4284
AMIR AZARAN	AAZARAN@LOEB.COM	312.464.3330
IVY KAGAN BIERMAN	IBIERMAN@LOEB.COM	310.282.2327
CHRISTIAN D. CARBONE	CCARBONE@LOEB.COM	212.407.4852
TAMARA CARMICHAEL	TCARMICHAEL@LOEB.COM	212.407.4225
JOSEPH F. DANIELS	JDANIELS@LOEB.COM	212.407.4044
PATRICK N. DOWNES	PDOWNES@LOEB.COM	310.282.2352
CRAIG A. EMANUEL	CEMANUEL@LOEB.COM	310.282.2262
KENNETH R. FLORIN	KFLORIN@LOEB.COM	212.407.4966
DANIEL D. FROHLING	DFROHLING@LOEB.COM	312.464.3122
KEVIN GARLITZ	KGARLITZ@LOEB.COM	310.282.2392
DAVID W. GRACE	DGRACE@LOEB.COM	310.282.2108
NATHAN J. HOLE	NHOLE@LOEB.COM	312.464.3110
MELANIE J. HOWARD	MHOWARD@LOEB.COM	310.282.2143
JENNIFER A. JASON	JJASON@LOEB.COM	310.282.2195
THOMAS P. JIRGAL	TJIRGAL@LOEB.COM	312.464.3150
IEUAN JOLLY	IJOLLY@LOEB.COM	212.407.4810
ELIZABETH H. KIM	EKIM@LOEB.COM	212.407.4928
LIVIA M. KISER	LKISER@LOEB.COM	312.464.3170
JANICE D. KUBOW	JKUBOW@LOEB.COM	212.407.4191
JULIE E. LAND	JLAND@LOEB.COM	312.464.3161
JESSICA B. LEE	JBLEE@LOEB.COM	212.407.4073
SCOTT S. LIEBMAN	SLIEBMAN@LOEB.COM	212.407.4838

DAVID G. MALLEN	DMALLEN@LOEB.COM	212.407.4286
MICHAEL MALLOW	MMALLOW@LOEB.COM	310.282.2287
DOUGLAS N. MASTERS	DMASTERS@LOEB.COM	312.464.3144
NERISSA COYLE MCGINN	NMCGINN@LOEB.COM	312.464.3130
ANNE KENNEDY MCGUIRE	AMCGUIRE@LOEB.COM	212.407.4143
DANIEL G. MURPHY	DMURPHY@LOEB.COM	310.282.2215
BRIAN NIXON	BNIXON@LOEB.COM	202.618.5013
SUE K. PAIK	SPAIK@LOEB.COM	312.464.3119
CHRISTINE M. REILLY	CREILLY@LOEB.COM	310.282.2361
SETH A. ROSE	SROSE@LOEB.COM	312.464.3177
T.J. SAUNDERS	TSAUNDERS@LOEB.COM	312.464.3174
STEFAN SCHICK	SSCHICK@LOEB.COM	212.407.4926
ALISON SCHWARTZ	ASCHWARTZ@LOEB.COM	312.464.3169
BARRY I. SLOTNICK	BSLOTNICK@LOEB.COM	212.407.4162
REGAN A. SMITH	RSMITH@LOEB.COM	312.464.3137
BRIAN R. SOCOLOW	BSOCOLOW@LOEB.COM	212.407.4872
WALTER STEIMEL, JR.	WSTEIMEL@LOEB.COM	202.618.5015
AKIBA STERN	ASTERN@LOEB.COM	212.407.4235
RACHEL STRAUS	RSTRAUS@LOEB.COM	310.282.2367
JAMES D. TAYLOR	JTAYLOR@LOEB.COM	212.407.4895
DEBRA A. WHITE	DWHITE@LOEB.COM	212.407.4216
MICHAEL P. ZWEIG	MZWEIG@LOEB.COM	212.407.4960