

Complaint

IN THE MATTER OF

NATIONAL FLOORS DIRECT, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND THE CONSUMER REVIEW FAIRNESS ACT

Docket No. C-4686; File No. 182 3085
Complaint, August 14, 2019 – Decision, August 14, 2019

This consent order addresses National Floors Direct, Inc.’s use of non-disparagement provisions in consumer form contracts in its sale and installation of flooring and carpeting. The complaint alleges that the respondent violated Section 2(c) of the Consumer Review Fairness Act (“CRFA”) by offering to consumers form contracts that contained a non-disparagement provision made void by Section 2(b) of the CRFA. The consent order prohibits, in the sale or leasing of any good or service, the respondent from offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondent’s fulfillment of its obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in a customer contract entered into before the effective date of the order.

Participants

For the *Commission*: *Carl H. Settlemyer*.

For the *Respondents*: *David Rich, Todd & Weld LLP*.

COMPLAINT

The Federal Trade Commission, having reason to believe that National Floors Direct, Inc. (“Respondent”) has violated the Consumer Review Fairness Act of 2016, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent National Floors Direct, Inc. (“NFD”) is a Massachusetts corporation with its principal office or place of business at 100 Messina Drive, Braintree, Massachusetts 02184. NFD sells and installs carpeting and flooring in the northeastern United States.

2. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Course of Conduct

3. Between approximately July 2016 and April 2018, NFD used, in its form contracts offered to thousands of customers in the course of selling its goods and services in the states of Massachusetts, Rhode Island, and New Hampshire, the following provision:

Non-Disparagement: National Floors Direct takes customer service very seriously. We want all of our customers to be 100% satisfied. We also

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take our reputation very seriously. By signing this purchase order you are agreeing, under penalty of civil suit, for an amount not to exceed three times the monetary value of this order, plus attorney's fees for National Floors Direct, not to publicly disparage or defame National Floors Direct in any way or through any medium.

A copy of NFD's flooring purchase order "Additional Terms and Conditions" that includes this paragraph is attached as Exhibit A hereto. NFD's form contracts were in effect on or after December 14, 2017.

VIOLATION OF THE CONSUMER REVIEW FAIRNESS ACT

4. The Consumer Review Fairness Act of 2016 ("CRFA"), Pub. L. No. 114-258, 15 U.S.C. § 45b, was enacted on December 14, 2016. As of March 14, 2017, Section 2(b) of the CRFA renders void, and Section 2(c) of the CRFA prohibits the offering of, provisions in form contracts that: prohibit or restrict individual consumers' ability to communicate reviews, performance assessments, and similar analyses about a seller's goods, services, or conduct; or that impose a penalty or fee against individual consumers who engage in such communications. 15 U.S.C. §§ 45b(a)(2), 45b(b)(1), and 45b(c).

5. The Commission is authorized to enforce Section 2(c) of the CRFA in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, were incorporated into and made a part of the CRFA. 15 U.S.C. § 45b(d)(2)(A). The Commission's enforcement authority under the CRFA applies to contracts in effect on or after December 14, 2017. 15 U.S.C. § 45b(i)(2).

6. Pursuant to 15 U.S.C. § 45b(d)(1), a violation of 15 U.S.C. § 45b(c) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under Section 18(a)(1)(B) of the FTC Act, 15 U.S.C. § 57a(a)(1)(B).

Count I

7. As described in Paragraph 3 of this Complaint, Respondent has offered, in the course of selling its goods and services, form contracts, as that term is defined in 15 U.S.C. § 45b(a)(3), that contained a provision made void by 15 U.S.C. § 45b(b)(1).

8. Therefore, the acts and practices set forth in Paragraph 3 of this Complaint occurring on or after March 14, 2017 violated Section 2(c) of the CRFA, 15 U.S.C. § 45b(c).

THEREFORE, the Federal Trade Commission this fourteenth day of August 14, 2019, has issued this Complaint against Respondent.

By the Commission.

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Exhibit A

COMPLAINT EXHIBIT A
FTC 182-3085ADDITIONAL TERMS AND CONDITIONS

Buyer's Responsibilities: If customer is removing existing carpeting, it must be removed at least one day prior to installation of the new carpet. Buyer is responsible for removing all breakable items from installation areas inside the home prior to installation and for inspecting all areas prior to installation. The rooms are to be empty of furniture. Buyer must arrange for the moving of furniture or extra-heavy furniture such as pianos, stoves, pool tables, etc. and must disconnect any electrical appliances in the installation area or which must be moved prior to time of installation. Any unused carpet should be saved by the customer in the event of future unforeseen damage – such as cigarette burns. All other waste will be left in area designated by the customer. Any furniture moved by NFD is at customer's sole risk and NFD is not responsible for any damages incurred.

National's Responsibilities: National will perform all work in a professional manner and in keeping with industry standards. If National is removing your carpet it will be done at the time your new flooring is installed. If carpeting is being removed, it will be rolled and discarded where you direct the installers to do so. Installers cannot dispose of carpet and pad by hauling it away in their truck. National is not responsible for structural defects, conditions beyond its control or for leaks caused by connecting or disconnecting refrigerators, icemakers, gas or water lines, toilets or plumbing. National is not responsible for resizing doors before or after installation or for any inadvertent damage to moldings, wiring, baseboards, walls or damage caused by the moving of heavy furniture. National is not responsible for the effects of disturbing asbestos materials. If the customer elects to have NFD remove and reinstall their existing wall base, on a hard surface installation, in lieu of purchasing new wall base, NFD is not responsible for breakage or any damage to old wall base, which will likely occur.

Warranties/ Intended Use: Your carpet and/or hard surface flooring are covered by a limited manufacturer's warranty. National Floors Direct Inc. also provides you with a limited installation warranty which will cover all labor and installation for the carpet or hard surface flooring for one hundred and twenty days. Both the limited manufacturer's warranty and the limited installation warranty will be provided to you upon installation of your carpet and/or hard surface flooring and apply to owner occupied residences only. National does not provide any further express or implied warranties other than those specifically set forth in writing and as referenced above.

Delay/Unknown Conditions: Events beyond the control of National, such as Acts of God, labor strikes, inclement weather, material shortages, Buyer's inability to qualify for or obtain financing, or other events resulting in delays in performance of this Agreement do not constitute abandonment and are not included in calculating time frames for performance by National. In the event National determines that this Agreement can not be performed as intended by the parties due, for example, to incorrect pricing, unforeseen structural defects or pre-existing conditions to the Buyer's property, National may cancel this Agreement within 60 days of its execution, notify the buyer of such cancellation in writing and return all monies paid by the buyer. National and the Buyer(s) have determined that a definite completion date is not of the essence to this Agreement.

Restocking Fee: All orders which change the installation date from the date on the front of the contract with less than 72 hours notice given to NFD shall be subject to a restocking fee to be no less than 15% of the entire dollar value of the purchase order. Installations that have been scheduled for installation greater than two times are also subject to the same restocking fee. The restocking fee must be paid in full prior to the installation. If you must change your date from the contract date we require greater than 72 hours notice to do so in order to avoid a restocking fee.

Late Cancellation, Late Payment/Default: If Buyer attempts to cancel this Agreement at any time subsequent to midnight of the third business day after the date of the Agreement as more fully described on the Notice of Right to cancel form, and National accepts such late cancellation, then Buyer agrees that any deposit paid shall be forfeited and the Buyer shall only be entitled to a company credit to be used toward a future purchase which will be good for 180 days. Buyer agrees to pay a late fee of 1% per month on all amounts due and owing from the Buyer to National accruing from the date due and running to the date the payment is made. If at any time the buyer is in default of this Agreement, buyer agrees to pay all of National's attorney fees and costs incurred in enforcing its rights under this agreement. Buyer also agrees to pay any other costs or expenses of repossession, collection, or realization on its security.

Deposit Refunds: All refunds of refundable deposits shall be processed within 30 business days from date of receipt of deposit. Deposits of cash, check or money order shall be refunded by company check. All other deposits shall be refunded through the same medium that the deposit was tendered to National.

No Set-Offs or Retentions: Buyer shall pay all amounts due under this Agreement in accordance with its terms without any right of set-off or retention. If after making full payment, the buyer alleges that the work is defective in any respect National, without waiving any of its rights, shall cause an inspection of the premises and perform any remedial work to the extent the Buyer is entitled thereto under this Agreement or National's warranty.

Performance by Seller during Cancellation Period: If Seller commences performance during the three-day cancellation period, and if Buyer provides timely and valid notice of cancellation, Seller shall be required to refund any amounts paid under this agreement to Buyer. In such event, the Seller shall have the right to reclaim and the Buyer shall return or make available to the Seller any goods received by the Buyer under this agreement. All carpets must be uncut and all hard surface boxes must be unopened and inspected upon return otherwise this clause is void.

Miscellaneous: In construing this Agreement, the gender and number of words used may be changed to meet the context. Any part of this agreement contrary to the law of this State shall not invalidate other parts of this Agreement. This Agreement is to be governed by the laws of the State in which it is performed, except as may be preempted by federal law. The section headings contained in this Agreement are inserted for convenience only and shall not effect in any way the meaning or interpretation of this Agreement. Any modification of this Agreement shall not be effective unless in writing, signed by the Buyer(s) and a President or Vice President of National.

Non Disparagement: National Floors Direct takes customer service very seriously. We want all of our customers to be 100% satisfied. We also take our reputation very seriously. By signing this purchase order you are agreeing, under penalty of civil suit, for an amount not to exceed three times the monetary value of this order, plus attorney's fees for National Floors Direct, not to publicly disparage or defame National Floors Direct in any way or through any medium.

Arbitration of Disputes: National and Buyer(s) agree that any and all disputes, claims or controversies (hereafter referred to as a "Claim") arising under or relating to this Agreement and any related documents, loans, security instruments accounts or notes, including by way of example and not as a limitation: (i) the relationships resulting from this Agreement and the transactions arising as a result thereof, (ii) the terms of this Agreement; or (iii) the validity of this Agreement or the validity or enforceability of this arbitration agreement, shall be subject to binding Arbitration to be determined by one arbitrator, in accordance with and pursuant to the prevailing rules and procedures of the Commercial Rules of the American Arbitration Association, to be held and arbitrated in the state of Massachusetts. The Buyer(s) agree that they will not assert a Claim on behalf of, or as a member of, any group or class.

The findings of the Arbitrator shall be final and binding on all parties to this Agreement, and may include an award of costs and legal fees to National. Such fees and costs shall be awarded on any decision rendered in favor of National. This agreement to arbitrate, and any award, finding or verdict of or from the arbitration, will be specifically enforceable under the prevailing law of any court having jurisdiction. Notice of the demand for arbitration will be filed by the party asserting the claim with the other party to this Agreement and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the Claim in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. Any arbitration proceeding brought under this Agreement, and any award finding or verdict of or from such proceeding shall remain confidential between the parties and shall not be made public. Both Buyer(s) and National are hereby agreeing to choose arbitration, rather than litigation or some other means of dispute resolution to address their grievances or alleged grievances. The parties believe this will allow a faster and more cost-effective method of addressing a Claim. By entering into this Agreement and this arbitration provision, the Buyers are giving up their constitutional right to have any dispute decided in a court of law before a jury, and instead are accepting the use of arbitration, other than as set forth immediately below.

Notwithstanding anything herein to the contrary, National retains the option to use judicial or non-judicial relief to enforce any and all monetary obligations arising out of or in connection with this Agreement including legal fees and costs. Such judicial relief may take the form of a lawsuit. The institution and maintenance of such an action for judicial relief in a court to foreclose upon any collateral or to enforce or collect upon a monetary debt or judgment shall not constitute a waiver of the right of National to compel arbitration of any Claim subject to Arbitration in this Agreement, including the filing of a counterclaim by Buyer(s) in a suit brought by National.

Moisture: Moisture in a home will damage any floor covering. During and prior to the installation NFD checks every home for signs of moisture. If, at the time of installation, moisture is found, we do not install the flooring until the issue has been resolved. After your installation, if there are problems with the flooring or installation thereof and the moisture level in the area of the home where installation took place is greater than seven percent, the customer's installation warranty is void for that area.

On Berber carpets or carpets with a loop pile: You cannot drag furniture or equipment or a pull will result. Such pulls are not manufacturing defects and should be trimmed with scissors so that the raised loop is snipped even with the rest of the carpet.

Any pulled or raised loop or any raised yard must be trimmed before vacuuming. Vacuuming a carpet with a high loop ("pulled") will result in the full row being pulled out. Such a row pull is not a manufacturing defect.

On all carpets: Moving chairs with wheels or casters require the use of a plastic chair mat or severe matting and pile breakdown will occur.

Protect Your Investments: Carpets require vacuuming with a vacuum cleaner that has a revolving brush and beater bar. A good recommendation is to vacuum the rug per week a number that is equal to the number of people in the household. I.e. if there are 3 people, vacuum 3 times a week.

On wood and laminate floors: NEVER USE WATER, soap and water, or detergent and water to clean your floor. You must use wood or laminate cleaner only. Use of water to clean or wipe down your wood or laminate floor will void your manufacturer and installation warranty and may cause the floors to buckle.

PAYMENT IN FULL MUST BE MADE PRIOR TO INSTALLATION. NO PERSONAL CHECKS CAN BE ACCEPTED ON DELIVERY. WE RECOMMEND CASH, CERTIFIED CHECK OR MONEY ORDER. IT IS THE RESPONSIBILITY OF THE CUSTOMER TO OBTAIN A RECEIPT FOR CASH PAYMENTS. QUALIFYING FOR THIRD PARTY FINANCING IS THE SOLE RESPONSIBILITY OF THE CUSTOMER AND NO GUARANTEE OF QUALIFICATION FOR SUCH FINANCING IS MADE BY NATIONAL.

NFD00001

Decision and Order

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.

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- 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

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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:

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- 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.

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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.

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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 date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), 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.

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

Analysis to Aid Public Comment

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]

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order as to National Floors Direct, Inc. ("respondent").

The proposed consent order ("order") has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondent's use of non-disparagement provisions in consumer form contracts in its sale and installation of flooring and carpeting. The complaint alleges that the respondent violated Section 2(c) of the Consumer Review Fairness Act ("CRFA") by offering to consumers form contracts that contained a non-disparagement provision made void by Section 2(b) of the CRFA. The CRFA defines a form contract as a contract with standardized terms, used in the course of selling or leasing goods or services, and imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct involving the use of contract terms that prohibit, restrict,

Analysis to Aid Public Comment

penalize, or transfer rights in consumer reviews or evaluation of the respondent, its goods, or its services. The CRFA authorizes the Commission to seek civil penalties for knowing violations, but the complaint does not allege that the respondent's violations were knowing, and the order does not provide for monetary relief.

Part I prohibits, in the sale or leasing of any good or service, the respondent from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondent's fulfillment of its obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in a customer contract entered into before the effective date of the order. Part I would not require that the respondent 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.

Part II requires the respondent to notify by mail or email customers with whom it entered into form contracts with a non-disparagement provision on or after March 14, 2017 that the non-disparagement provision is void and cannot be enforced, and that those customers can publish their honest reviews about the respondent, even if their comments are negative.

Part III requires the respondent to submit signed acknowledgments that relevant personnel received the order.

Part IV requires the respondent to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations.

Part V contains recordkeeping requirements for personnel records, consumer contracts, communications with consumers threatening any legal action relating to any review; and court filings and the company's discovery responses in legal actions over consumer reviews, as well as all records necessary to demonstrate compliance or non-compliance with the order.

Part VI contains other requirements related to the Commission's monitoring of the respondent's order compliance.

Part VII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

LIGHTYEAR DEALER TECHNOLOGIES, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND THE STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION
RULE

Docket No. C-4687; File No. 172 3051
Complaint, September 3, 2019 – Decision, September 3, 2019

This consent order addresses LightYear Dealer Technologies, LLC's storage of personal information about more than 14 million consumers. The complaint alleges that Respondent has violated Section 5(a) of the Federal Trade Commission Act and the Standards for Safeguarding Customer Information Rule issued pursuant to Title I of the Gramm-Leach-Bliley Act by engaging in a number of unreasonable security practices that led to a hacker's unauthorized access of personal information about 12.5 million consumers. The consent order prohibits Respondent, and any business that Respondent controls directly, or indirectly, from transferring, selling, sharing, collecting, maintaining, or storing personal information unless it establishes and implements, and thereafter maintains, a comprehensive information security program that protects the security, confidentiality, and integrity of such personal information.

Participants

For the *Commission*: *Jamie Hine* and *Elisa Jillson*.

For the *Respondents*: *Andrew Berg, Greenberg Traurig, LLP* and *Craig A. Harris, Munsch Hardt Kopf & Harr, P.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that LightYear Dealer Technologies, LLC, a limited liability company ("Respondent"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), and the Standards for Safeguarding Customer Information Rule ("Safeguards Rule"), 16 C.F.R. Part 314, issued pursuant to Title I of the Gramm-Leach-Bliley ("GLB") Act, 15 U.S.C. § 6801 *et seq.*; and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent LightYear Dealer Technologies, LLC, also doing business as DealerBuilt ("DealerBuilt"), is a Missouri limited liability company with its principal office or place of business at 2570 4th Street, SW, Suite A, Mason City, Iowa 50401.

2. The acts and practices of Respondent as alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.