



Online Sellers Need to Beware of State Attorneys General

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The Pennsylvania Attorney General filed a consumer protection lawsuit last month against Zoommania, LLC, a Philadelphia-based Internet electronics store, for a bait-and-switch scheme the company allegedly employed in online sales and for its creation of new websites to avoid negative customer feedback resulting from the scheme.

The complaint, which seeks restitution for consumers, alleges that the company's websites would list inventory as being in stock, but when a consumer placed an order, he or she would receive a subsequent call or e-mail that the item requested was not in stock. A company representative would inform the consumer that he or she could receive the item in a timely manner by upgrading to a "kit" – i.e. a more costly bundled purchase of the requested item and other items. Without the upgrade, the company could not promise timely delivery. Not surprisingly, this tactic was not well received by customers who proceeded to fire off complaints on online forums, including on Yahoo and CNET. In response to all the negative feedback, the company merely set up new websites under which to operate, using the same bait-and-switch scheme.

Zoomania is just one of many online merchants under fire by various states' attorneys general for employing such tactics. For instance, New York-based Starlight Camera & Video Inc. and Broadway Photo both recently entered settlement agreements with the Texas AG, agreeing to pay restitution to Texas customers. One of those companies also agreed to stop doing business in the state.



The Texas settlements show how one state's laws and its law enforcers can reach businesses in other states. This may be a comfort to consumers who have been burned by online merchants. It also may be an important cost factor for merchants operating on the fringes of consumer protection laws: online merchants should be aware that they may be subject to government action in any state from which a customer made a purchase. Broadway Photo, for instance, signed an earlier settlement agreement with New York in 2009. That settlement did not prevent Texas, or any other state, from initiating an enforcement action. And, judging from the abundance of negative comments on online forums about these companies, other states may also pursue actions against them.

Indeed, online merchants employing envelope-pushing sales and marketing tactics should take a cue from online forums and consumer feedback. If lots of consumers are complaining, the government may not be far behind, as the volume of consumer complaints drives government enforcement action. Given the jurisdictional reach of state attorneys general across states, the threat of action can come from many directions. Instead of changing names, it may be better to start changing practices.

FTC Beat is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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