

United States Senate

May 28, 2020

Apoorva Mehta
Founder and CEO, Instacart
50 Beale Street, Suite 600
San Francisco, CA 94105

Dear Mr. Mehta:

We are writing to share a letter that we sent to the Federal Trade Commission regarding recent reports of potentially unfair and misleading tipping practices on Instacart and other online delivery services. Specifically, we are troubled by reports that online delivery services allow customers to “tip bait”—to offer a high tip to induce a shopper to accept an order and then unfairly reduce or zero-out the tip after the order has been completed, sometimes days later.¹ People are facing unprecedented economic hardship because of the COVID-19 pandemic and so we hope online delivery companies like yours are taking the necessary steps to protect shoppers and prevent unfair and deceptive practices.

Shoppers risk their health and safety in order to deliver groceries and other goods to people who are sheltering in place—they should be able to count on reasonable compensation for that risk. However, according to news reports, some customers are deceiving shoppers by promising a large tip, only to unfairly reduce it or zero it out completely after the order is complete. Shoppers choose which orders to take based on the expected compensation, which is largely driven by the estimated tip. By permitting customers to “bait” shoppers with high tips that are then revoked, your company’s compensation policy enables this deception.

Section 5(a) of the Federal Trade Commission Act (FTC Act) prohibits “unfair or deceptive acts or practices in or affecting commerce,” and we believe that the tipping policies and practices of online delivery companies deserve scrutiny under Section 5(a). As we note in our letter to the FTC, this is not the first time that online delivery companies have faced public backlash over their methods of compensating workers on their platforms. Instacart is one of several online delivery service companies that rely exclusively on workers who the company classifies as independent contractors—a classification that these workers have disagreed with and is being challenged in court.² Instacart also limits its workers’ legal rights through mandatory arbitration requirements in its terms of service.³

¹ Sara Ashley O’Brien, Kaya Yurieff, “People are luring Instacart shoppers with big tips – and then changing them to zero,” CNN Business, April 9, 2020, available at: <https://www.cnn.com/2020/04/09/tech/instacart-shoppers-tip-baiting/index.html>

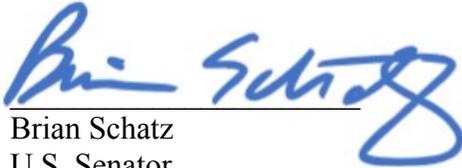
² Brittany Meiling, “Instacart shoppers probably aren’t independent contractors, San Diego judge rules,” Los Angeles Times, February 25, 2020, available at: <https://www.latimes.com/business/story/2020-02-25/instacart-ab5-shoppers-independent-contractors-san-diego>

³ Instacart, Terms of Service, available at: <https://www.instacart.com/terms>

We note that in February 2019, Instacart announced several changes to how it compensates its workers in response to public outrage that the company (and other delivery companies) used customer tips to offset the company's contribution to its workers' compensation.⁴ In making these changes, you said the company was "putting [Instacart's] shoppers more at the forefront of [the company's] decision making." Yet, at a time when Instacart shoppers are most vulnerable, Instacart's service is allowing customers to deceive and shortchange shoppers.

We wanted to bring our concerns to your attention and share our letter to the FTC on this issue. We welcome hearing from you about how Instacart is responding to these reports of "tip baiting," and what steps the company is taking to protect shoppers during this challenging time.

Sincerely,



Brian Schatz
U.S. Senator

/s/ Chris Van Hollen

Chris Van Hollen
U.S. Senator



Sherrod Brown
U.S. Senator



Elizabeth Warren
U.S. Senator

⁴ Apoorva Mehta, Founder & CEO of Instacart, "State of Pay – Doing Right By Our Shoppers," February 6, 2019, available at: <https://medium.com/shopper-news/state-of-pay-doing-right-by-our-shoppers-81de4b66580>