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Beware of lawsuits arising from deceptive rewards programs

Staples recently agreed to pay \$2 million to settle a class action suit filed in California federal court alleging the company engaged in deceptive rewards program practices. In particular, the class action alleged Staples misled consumers regarding how, and how many, rewards points consumers would accrue when they applied coupons to their purchases at Staples.

The substantial amount of the settlement illustrates the importance of having clear terms and conditions for rewards programs, and the need to align actual rewards-redemption practices with both those terms, as well as accompanying marketing materials. This settlement is also a reminder to PR firms that publicize and market their clients' rewards programs to make sure their client contracts properly place on the client, as the marketer, the responsibility for ensuring the terms and conditions of the rewards program are accurate, truthful, and implemented in a manner that is not deceptive.

REWARDS PROGRAMS

Rewards programs give consumers incentives for remaining a customer and continuing to make purchases or bookings and they are an increasingly popular mechanism to earn and retain consumer loyalty. The most "traditional" types of loyalty programs are recurring discount or point programs whereby consumers can earn credit toward future purchases. These types of programs, although not expressly regulated by state or federal laws, are largely regulated by contract law.

In other words, the terms and conditions of the program typically serve as "the contract" between the participant and the marketer. They are also governed by the laws that require marketing and promotional materials to be fair and non-deceptive. This means that the terms and conditions of the programs should clearly set forth how rewards are earned, how rewards are redeemed, and the rights and obligations of the marketer and consumer.

THE STAPLES SETTLEMENT

"Staples Rewards" was the program at issue in the lawsuit. It was a customer incentive program that allowed them to build credit towards future purchases by buying certain qualifying items. Credits under the program were calculated as a percentage of the dollar amount of qualifying purchases. However, the plaintiff who brought the lawsuit alleged, on behalf of himself and all similarly situated consumers, that when consumers used coupons for purchases, Staples failed to apply the coupon solely to the items for which the coupon was intended, but instead spread out the value of the coupon over

the entire transaction on a pro rata basis. This limited the number of points the consumer could collect in Staples Rewards credit for qualifying items not affected by the coupon.

For example, when the plaintiff used a coupon for a package of water bottles, the coupon took \$1.50 off the cost of the water itself, making it a non-qualifying purchase for rewards points purposes. Those points, the plaintiff alleged, should have been eligible for future purchases at Staples stores, as implied by both the company's marketing materials for the rewards program and the terms of the program.

As a result of the action, Staples has agreed to change its terms and conditions for product-specific coupons to make it clear how they impact the rewards program. Further, under the terms of the proposed preliminary settlement, Staples will make a payment of \$10 to each affected class member who filed a valid claim, a high value per claimant, with actual damages estimated at \$2 per class member.

BEST PRACTICES

This action and associated settlement serves as a good reminder to companies and marketers to establish robust terms that clearly describe the manner in which members will receive rewards in return for specific actions, and to ensure that all marketing claims and representations align with such terms.

Regulatory guidance, such as guidance from the National Association of Attorneys General on frequent flyer programs, which is often cited as the reasonable model for rewards programs, emphasizes that the terms for any such program must include conspicuous disclosures for restrictions on use and redemption. This will allow consumers to make informed purchasing decisions and minimize liability for both the marketer and its communication firms.

PR firms working with clients to publicize their rewards or loyalty programs also need to make certain that the indemnification provisions in their client contracts are not overbroad and do not unwittingly make the PR firm liable for ensuring that the terms and conditions of the loyalty programs, in of themselves, are accurate and non-deceptive. ●

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