

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

STAPLES SETTLES CONSUMER CLASS ACTION OVER DECEPTIVE REWARDS PROGRAM PRACTICES

Staples has agreed to pay \$2 million to end a class action filed in California federal court alleging that the company engaged in deceptive rewards program practices.

In particular, the class action alleged that Staples misled consumers with respect to how (and how many) rewards points will be accrued when consumers apply coupons to their transactions. The high value settlement for the retailer illustrates the importance of having clear and transparent terms and conditions in place for rewards programs, and the need to align actual rewards redemption practices with both the terms as well as general advertising for the program.

REWARDS PROGRAMS

Rewards programs – generally, programs that reward consumers with incentives or other benefits for remaining a consumer and continuing to make purchases or bookings – are an increasingly popular mechanism to earn and retain consumer loyalty. The most “traditional” types of loyalty programs, such as recurring discount or point programs whereby consumers can earn credit toward future purchases, are not expressly regulated by state or federal laws.

Instead, these types of programs are largely governed by contract law (the terms and conditions of the program

THE BOTTOM LINE

This action and settlement serve as a good reminder to companies and retailers 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 advertising claims and representations align with such terms, so that consumers can make informed purchasing decisions.

typically serve as the contract between the participant and the brand or sponsor) and truth-in-advertising law (whereby the laws would require what is being said about the program be fair and non-deceptive). As such, the best practices for such programs typically include taking steps to make it clear and transparent to the consumer as to how the rewards will be earned and further, how they can be redeemed. The terms and conditions of such programs should generally outline the terms of the program and the rights and obligations of the company and consumer.

THE STAPLES SETTLEMENT

The program at issue in this class action, Staples Rewards, is a customer incentive program that allows customers to build credit towards future purchases by buying

certain qualifying items. Credit is calculated as a percentage of the dollar amount of qualifying purchases. However, plaintiff Neil Torczyner alleged on behalf of the class that when consumers used coupons for purchases, Staples spread out the value of the coupon over the entire transaction on a pro rata basis, rather than applying the coupon only to the item the coupon was intended for. This therefore limited the number of points the consumer could collect in Staples Rewards credit for qualifying items not impacted by the coupon. For example, when Torczyner 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, Torczyner alleged, should have been eligible for future purchases at Staples stores, as

>> continues on next page

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implied by the company's advertising 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

The case and ensuing settlement are a key illustration of the importance of establishing clear, comprehensive and consistent terms for rewards programs

that effectively communicate to the consumer any limits on how the rewards can be redeemed. 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, and that the terms themselves must be clearly and conspicuously disclosed prior to consumer enrollment. It is also important to have clear consumer-facing terms and conditions in place, and to abide by those terms and conditions, to avoid claims arising out of federal and state false advertising and consumer protection laws.

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