

CALIFORNIA DISTRICT ATTORNEYS ENFORCE GIFT CARD LAW AGAINST MAJOR RETAILER, HIGHLIGHTING INCREASING GOVERNMENT ENFORCEMENT TREND

Earlier this month, a California judge approved a settlement between the district attorneys of three California counties and Starbucks Corporation resolving allegations that the coffee retailer did not comply with California's unique gift card statute. Among other things, the statute requires businesses to redeem gift cards for cash if the remaining balance on the card is under US\$10.00. Cal. Civ. Code § 1749.5.

Under the settlement, the company will pay US\$225,000 in civil penalties, investigative costs, and restitution. Additionally, to ensure that the policy is implemented across all Starbucks locations in California, the settlement also requires that Starbucks include a button on its point of sale devices to allow employees to redeem gift cards for cash, implement employee training programs about redemption of gift cards, prepare and post detailed procedures to inform employees how to redeem gift cards, and post signs to inform customers of their right to redeem gift cards for cash if the balance is less than US\$10.00.

This enforcement action is worth noting as part of a broader trend. California's gift card statute has traditionally been enforced almost exclusively by private plaintiff's lawyers under the state's Unfair Competition Law (UCL). Indeed, many businesses, some quite large and sophisticated, have been the target of such suits. But recently, California's district attorneys and city attorneys have become increasingly active in enforcing this statute and other "only in California" requirements.

A 2004 ballot proposition known as Proposition 64 restricts private plaintiffs' rights to sue under the UCL and at the same time requires that any civil penalties received in government enforcement actions under the UCL be dedicated for use exclusively in subsequent government enforcement actions. Cal. Bus & Prof. Code § 17206(c). As a result, the consumer protection divisions of many district attorneys' offices now have a dedicated source of funds. They also regularly work across county lines to increase the impact of these new-found resources; for example, this action was brought by the District Attorneys of Sonoma, Monterey, and Shasta counties.

Because a company's violation of any law—local, state, or federal—is a violation of California's Unfair Competition Law, it provides for catchall enforcement regardless of the enforcement policies or priorities of regulatory agencies. Areas of special focus

Brussels
+32 (0)2 290 7800

Denver
+1 303.863.1000

London
+44 (0)20 7786 6100

Los Angeles
+1 213.243.4000

New York
+1 212.715.1000

Northern Virginia
+1 703.720.7000

San Francisco
+1 415.356.3000

Washington, DC
+1 202.942.5000

This advisory is intended to be a general summary of the law and does not constitute legal advice. You should consult with competent counsel to determine applicable legal requirements in a specific fact situation. © 2009 Arnold & Porter LLP

arnoldporter.com

include false advertising, slack fill prohibitions, financial disclosures, and chemical labeling requirements. With more than 60 government prosecutors' office authorized to bring suit under Unfair Competition Law and keep the penalties they collect, those doing business in California are likely to see more such suits in the future.

If you would like more information about any of the matters discussed in this advisory, please contact your Arnold & Porter attorney or:

Trenton H. Norris

+1 415.356.3040
Trent.Norris@aporter.com

James F. Speyer

+1 213.243.4141
James.Speyer@aporter.com

Mark P. Pifko

+1 213.243.4168
Mark.Pifko@aporter.com

Angel A. Garganta

+1 415.356.3041
Angel.Garganta@aporter.com