

Legal Alert

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QUESTION: WHAT DO YOU GET WHEN YOU SELL A MOVIE, A SODA, SOME CANDY AND GIVE AWAY FREE MAGAZINES?

ANSWER: A MULTI-MILLION DOLLAR CLASS ACTION SUIT IF YOUR ELECTRONIC CONTRACT IS NOT WELL-PREPARED!

Movie night with a bonus?

On October 29, 2004, Christina Labajo bought the movie "White Chicks-Unrated," along with a Dr. Pepper and peanut M&Ms at Best Buy. Labajo v. Best Buy Stores, L.P., 478 F. Supp. 2d 523 (U.S. S.D.N.Y., 2007). She went to pay for the purchase with her debit card and was told by the sales clerk that she could get a free subscription to Sports Illustrated. All she had to do was sign the computer pad at the cash register to buy the movie, the soda and the candy and sign up for the free subscription to Sports Illustrated. Christina did that.

Don't fast-forward past the fine print on the screen!

The sales clerk did not tell Christina that she would be charged for the Sports Illustrated subscription after the first eight issues. The sales clerk did not tell Christina that she would need to cancel the subscription in order to avoid having her debit card charged for additional issues after the first eight. The computer pad did not clearly tell Christina that she would be charged for later issues of Sports Illustrated.

After she had paid, the clerk put a brochure explaining the magazine promotion in the shopping bag. Christina also received a receipt that said:

I authorize Best Buy to give my credit or debit card to SI and SI to charge my card for the initial and six month renewal terms

...NO RISK: if within 8 issues you do not want the magazine simply call Sports Illustrated at 1-800-284-8800 or go online to: www.sicustomerservice.com and you will NOT be charged.

Best Buy sent Christina's debit card information to Time Inc. which opened a Sports Illustrated subscription for her. Christina was charged \$23.50 on two different occasions. She telephoned Sports Illustrated about the charges and the representative agreed to credit Christina for the charges. Unfortunately the credits were never given by Time Inc. on Christina's account. Time Inc. eventually charged an additional \$23.50 for a total of \$70.50 in charges. Although Christina called many times for a refund, no refund was provided.

From movie nights to class action?

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Realizing that she could buy a lot of movies, Dr. Pepper and M&Ms for \$70.50, Christina sued Best Buy and Time. As any outraged movie-night consumer would do, she brought a class action lawsuit against Best Buy and Time. She sued on behalf of all customers of Best Buy stores since February 2003 who were "improperly charged" for subscriptions to Sports Illustrated, Entertainment Weekly, and Time. She said Best Buy and Time were liable for unjust enrichment, breach of contract and negligence.

Proving the electronic deal terms...

Christina alleged she had a contract to buy the movie, soda and candy and that she performed by paying for it. She said the defendants breached the contract by placing undisclosed charges on her debit card after having told her the magazines were free. She said they did this to a lot of customers and charged their debit and credit cards a lot of money for magazines that were supposed to be free.

Best Buy and Time claimed they had not breached the contract with Christina because she was notified that she would be charged after the eighth issue of Sports Illustrated if she did not cancel. They said she was advised of the terms of the subscription in at least four places. They said the terms of the contract were plainly stated in: (1) the electronic signature pad signed by Christina, (2) the receipt she was given, (3) the brochure the clerk put in the shopping bag, and (4) the notice of confirmation.

The court didn't think that Best Buy and Time had proved the disclosures because the exhibit showing the display of the electronic signature pad did not include Christina's signature. Her signature was shown on a separate exhibit that did not have any disclosures. Moreover, the receipt, the brochure, and the confirmation notice which was mailed to Christina, were only given to her after she had entered into the subscription agreement.

The judge thought Christina could prove a contract for a free subscription but the defendants could not prove an agreement as to her responsibility to cancel after the first eight issues of Sports Illustrated in order to avoid more charges. The court also thought that Christina might be able to prove her unjust enrichment claim. She alleged that Best Buy and Time received millions of dollars from the magazine promotion. Christina argued that Time and Best Buy shouldn't keep those millions of dollars because they received them by withholding information from the customers about the real terms of the magazine promotion.

That electronic transaction might shock you if you are not careful!

If you are a business relying on electronic signatures and electronic transactions, make sure you have taken the steps to prove that the parties intended the electronic symbol, sound or process to be a signature. Also, make sure that you can prove the existence of the electronic signature and the terms to which the parties agreed. On the other hand, if you are entering into an electronic transaction, make sure that you have found and understood all of the terms to which you are agreeing. Those terms may be lengthy and may be several mouse clicks away, but can still be binding.

Those who use eTransactions without well-designed procedures, careful contracts and sound legal advice would be better off going back to stone tablets and chisels.