

Court Distinguishes Between Mandatory and Optional Fees in CA Honest Pricing Law Suit

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August 9, 2026

As we've noted in various posts—including [this one](#) and [this one](#)—California's Honest Pricing Law generally prohibits advertisers from displaying a price that doesn't include all "mandatory fees" other than taxes or "charges that will be reasonably and actually incurred to ship the physical good to the consumer." A recent decision takes a close look at what might constitute a mandatory fee.

A plaintiff purchased a dress from Abercrombie & Fitch's website and paid a bundled \$7 shipping and handling fee because her order did not qualify for free shipping. She argued that the retailer violated the Honest Pricing Law by not including the bundled fee in the price at the outset. Instead, the bundled fee was only displayed at checkout.

Abercrombie & Fitch argued that it didn't violate the law because the fee was optional—consumers were presented with an option to pick up items in store without paying any fee. (Interestingly, the retailer didn't argue that the fee fell under the law's exception.) The District Court for the Northern District of California agreed that the fee wasn't mandatory.

Since the statute doesn't define the term "mandatory," the court looked to dictionary definitions and legislative history. The opinion noted that lawmakers repeatedly described the law as targeting "unavoidable" or "required" charges that consumers cannot reasonably avoid. Optional add-ons, by contrast, were not the focus of the legislation.

The plaintiff alleged a separate "bait-and-switch" claim under California Civil Code § 1770(a)(9). That claim didn't fare any better. Because the "bait-and-switch" argument was based on the same theory that Abercrombie & Fitch should have included the shipping charge in the advertised price, the court dismissed it as well.

Because the dismissal was without prejudice, giving the plaintiff an opportunity to amend, the case may not be over yet. Nevertheless, it gives an indication of how courts may differentiate fees that are mandatory from those that are optional.