

In A Culture Of Instant Gratification, Court Tosses Class Action Regarding Availability of Certain Product Features

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February 3, 2014

On January 29, a California federal judge [tossed a putative class action](#) claiming the makers of video game blockbuster "Grand Theft Auto V" misled gamers by marketing online features that weren't immediately ready, ruling the packaging never promised the features would be available at launch. In a complaint filed in May 2013, the plaintiffs alleged that Take-Two Interactive Software, Inc., and Rockstar Games, Inc., violated California's Unfair Competition Law and False Advertising Law (Sections 17200 and 17500 of the California Business and Professions Code) by advertising the game as including an online multiplayer component and beginning to sell the game on September, but not making the multiplayer component available until two weeks later.

Mike Lynch, head of our litigation practice, represented Take-Two and Rockstar and argued that consumers could not be deceived due to statements on the product packaging that the special feature may not be available to all users or at all times. The court granted defendants' motion to dismiss and denied leave for the plaintiffs to amend the complaint, stating that such efforts would be "futile." For more information, check out Law360's article, "[Take-Two Beats 'Grand Theft Auto' Online Delay Gripe.](#)"

This case demonstrates that, even in a culture of instant gratification, particularly for online services, reasonable expectations and actual representations to consumers still matter. So companies should carefully review all representations about availability, including shipping (don't forget the FTC's Mail Order Rule) when launching a new product or delivering an existing one. It also demonstrates that aggressive defenses and strategy can shorten the timeline and minimize the business disruption associated with class actions.