

Pushing the Limits: Preliminary Settlement Entered in Case Against Banana Republic and The Gap after California Court of Appeals Failed to Find Limits on Injury

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On January 14, Plaintiffs in the consolidated case of *Veera v. Banana Republic, LLC, et al.*, filed for approval of a preliminary class action settlement after Plaintiffs Veera and Etman successfully argued that “frustration” and “embarrassment” over unclear discounts is sufficient to meet the requirements for injury.

According to separate lawsuits filed against Banana Republic and The Gap, the companies displayed in-store signs promoting a class of merchandise for sale at a stated price (*e.g.*, 40% off sweaters) or subject to a stated discount (*e.g.*, “40% off your purchase”) without clearly and conspicuously identifying the items that were excluded from the offer. The lawsuits alleged that these signs were either not accompanied by any disclosure of limitations, or were accompanied by a disclosure so small and closely colored to the sign background as to not be noticeable.

In an action under California's Unfair Competition Law (UCL), False Advertising Law (FAL), and Consumers Legal Remedies Act (CLRA), Plaintiffs claimed that, in reliance on the signs, they selected various items for purchase at the advertised discount, and out of frustration and embarrassment, ultimately bought some of the items, even after learning that the discount did not apply.



Although a lower court granted summary judgment in favor of the retailers, the California Court of

Appeals concluded that Plaintiffs met the requirements to allege injury. "Injury in fact is not a substantial or insurmountable hurdle," the Court noted, "Rather, it suffices to allege some specific, identifiable trifle of injury." The Court agreed with the Plaintiffs claim that, but for the allegedly misleading signs, Plaintiffs would not have made the clothing purchases (even after hearing of the non-discounted price at the register).

The parties agreed upon the proposed settlement hours before the class certification hearings. The key terms of the settlement provide that The Gap will provide a one-time coupon for the purchase of up to 4 items in a Banana Republic or The Gap store at 30% off regular price to certain customers who purchased items from The Gap or Banana Republic stores in California, for use on a future purchase. The Plaintiffs in the action will also receive \$8,000 each under the proposed settlement. The Gap will also pay \$1 million in fees and costs, and all costs of administering the proposed settlement.

A hearing is set for March 1st on the motion for preliminary approval of the settlement.

This proposed settlement serves as a reminder about the importance of clearly and conspicuously disclosing the limitations of any offer, including the terms of a sale. We will watch the California Court of Appeals for further willingness to allow cases to go forward even when Plaintiffs claim little to no injury beyond "embarrassment."