July 16, 2003

Picture Your Company on the Receiving End of One of these More Recent Examples of Private Lawyer 17200 Lawsuits

Retailers/Restaurants/Entertainment

Office Depot, Mervyn's, Krispy Kreme Doughnut Corp., Disney Worldwide Services, Fry's Electronics, Lenscrafters, Cost Plus, Macy's, the Pottery Barn, Tony Roma's, Liz Claiborne, Brookstone Company, and Universal Studios are but a few of the 100-plus companies listed as defendants in a single lawsuit claiming an unfair business practice violation in using an employment questionnaire that asks job applicants if they've ever been convicted of a crime. The plaintiffs' attorneys (three lawyers with Arias, Ozzello & Gignac in Los Angeles, two more in the firm's Santa Barbara office, and Richard V. Mowery of Laguna Beach) claim the 17200 violation results because the question "seeks information concerning a marijuana-related conviction that is more than two years old," which violates the state Labor Code. Plaintiffs Donald Brown, Thomas Lamore, and Sau Yeung claim to be unemployed Southern California residents who between during 2002 them hit every store sued, filled out a job application, and was not offered a job. The plaintiffs' lawyers are attempting to establish a class action lawsuit which includes everyone applying for work at any of the defendant firms during the prior year.

Donald Brown, Thomas Lamore, and Sau Yeung v. Albertsons, et al.

Hardware Manufacturer/Major Retailers

Black & Decker, Ace Hardware, Kmart, Lowe's Home Centers, Target Corporation, Sears Roebuck and Company, and Wal-Mart were sued under 17200 for selling Kwikset locks advertised as "Made in U.S.A" when the lock included six screws made in Taiwan. The plaintiff and two witnesses testified they were personally deceived, but offered no evidence that the labeling was "likely to mislead consumers acting reasonably under the circumstances." The plaintiff is represented by The Cuneo Law Group of Washington, D.C.; William S. Lerach of Milberg Weiss Bershad Hynes & Lerach of San Diego; Venus Soltan of Soltan & Associations of Costa Mesa; and Joel D. Joseph of Bethesda, Maryland. The case is before the Fourth District Court of Appeal in Orange County.

James Benson v. Kwikset Corporation and The Black and Decker Corporation

Insurers

A California appeals court allowed a class action suit based on 17200 to proceed on behalf of 33,000 insurance customers, even though there was no showing that any customer was deceived by the alleged unfair business practice, relied on it in buying insurance, or suffered any loss. Plaintiffs' attorneys alleged that Massachusetts Mutual Life Insurance Co. did not sufficiently disclose information about a discretionary dividend it was paying to defray a life insurance policy's premium cost.

Massachusetts Mutual Life Insurance Co. v. Superior Court

Financial Services

Visa and MasterCard have been found in violation of 17200 for not giving their customers prominent enough notice of the percentage fee charged when a card is used to make purchases in a foreign currency. The violation was found despite the fact that no law was broken in the disclosure practice and the judge admitted that the credit card exchange rate is among the best available. The court order calls for refunds to card users that could total $800 million. MasterCard, based in New York, will have to refund money only to card users in California. Visa, based in California, will have to make refunds to all cardholders, no matter where they live.

Schwartz v . Visa International Corp...and MasterCard International, Inc.

Internet

E*Trade was sued by a San Diego law firm seeking restitution under 17200 for commissions paid to all persons using the online brokerage firm between 1996 and the present whose trades were not executed or confirmed within 60 seconds. No evidence was presented of trading losses resulting from alleged delays. The firm's client Elie Wurtman bases the 17200 violation on E*Trade's advertising stating that it had "leading edge technology," that online trading was "a better way to invest," and that trades would be executed in "less than a minute." The trial court denied the plaintiff's attempt to base a class action on the 17200 allegation, and the case is before the 6th District Court of Appeal.

*Wurtman v. E*Trade Group, Inc.*

Pharmaceuticals

Proctor & Gamble was sued by attorney Dennis Stewart, a partner in Milberg Weiss Bershad Hynes & Lerach of San Diego, on behalf of a Bay Area resident who took exception with the company's television ads stating that the Aleve is "gentler on the stomach lining than aspirin." The plaintiff sought restitution for everyone in California who had bought the over-the-counter pain medicine – an estimated $100 million. The case went to trial – an unusual development – and a San Francisco superior court judge said the plaintiff failed to show the ad was likely to deceive the public. "Gentler," she noted, is not the same as "gentle."

Lavie v. Proctor & Gamble

Employers: Manufacturer and Entertainment Industry

Nestle, USA, was by private attorneys claiming that alleged age discrimination in its employment practices was a 17200 violation. A trial court judge ruled against Nestle and applied the private attorney general fee statute usually linked with 17200 claims to award the attorneys $1,788,000 in attorney fees. An appellate court upheld the judgement, agreeing that 17200 can be used in this situation. The ruling was relied upon in mid-July in a new lawsuit being prepared by lawyers representing screen writers challenging major film studios, television networks, and talent agencies. The 163 writers – age 40 and above – encountered dismissal of an earlier class action claim based on the state Fair Employment and Housing Act.

Herr v. Nestle U.S.A., Inc.

Home Builders

Home builders Barratt Homes and Hallmark Communities, Inc., were sued by attorneys in the Tustin law firm of Callahan, McCune & Willis for using "APR" instead of "Annual Percentage Rate" in their new homes advertisements. The lawsuit states that plaintiff Margaret Bergman is a "citizen of the State of California" bringing the action "on behalf of the general public," but provides no information on how or whether she or any other person was deceived by or suffered a loss due to the abbreviation. The lawsuit demanded that the homebuilders contact each of its customers over the past four years and offer them "restitution."

Margaret Bergman v. Optima Financial... Hallmark Communities, Inc., Barratt Homes

Health Club

Salutary Sportsclubs, Inc., was sued by San Francisco attorney Abraham Camhy over the notice on its contracts stating that consumers have a three-day right to cancellation after signing. The alleged 17200 violation was failure to include a statement that the three days does not include Sundays and holidays. The lawsuit claimed 17200 was also violated because the contract did not list on page one the name and address of the health studio operator to whom the cancellation notice should be mailed. Named plaintiff Cynthia Baxter, suing "on behalf of the General Public," did not allege that she nor anyone else was refused a request to cancel a contract with the Sportsclubs or in any way lost money because of the contract's language.

Cynthia Baxter v. Salutary Sportsclubs, Inc.

Entertainment and Media

A Los Angeles resident sued Twentieth Century Fox after he was photographed by a "Cops" film crew when police responded to his 911 call reporting an assault. The plaintiff, who admitted being in the area to buy drugs, was not recognizable when the program aired – his face was obscured and he was not identified by name. Nevertheless, using a private attorney, he sued under 17200 claiming that the program's repeated showing without displaying the date the incident occurred was "likely to deceive" the public. The case went to the 2nd District Court of Appeal before the court, in an unpublished opinion, told him that and his lawyer "no."

Paul Ingerson v. Twentieth Century Fox Film Corp.

Retail

Circuit City Stores was sued by San Francisco attorney Michael A. Wall on behalf of himself over its merchandise cards distributed in conjunction with cell phone equipment and service purchases. The 17200 allegation was based on the plaintiffs' view that limitations on the cards' use were not adequately disclosed. The trial court found no unfair competition law violation. The attorney has appealed to the 1st District Court of Appeal.

Waul. v. Circuit City Stores, Inc.

Apartment Owner

A San Luis Obispo apartment complex is being sued by a lawyer claiming it committed an unfair business practice by allowing tenants, visitors, and third parties to violate state laws and local ordinances. The lawyer represents a family whose son died after hitting his head on a curb in a fight at an outdoor party at the complex. A superior court judge refused to grant a defense demurrer, stating the 17200 claim was "cutting edge."

Young v. Kris Kar Townhomes

Retail and Manufacturing

Amazon.com, Inc., Toys "R" Us, Kmart, J.C. Penny , Sears, Wal-Mart, were among dozens of firms (and "DOES 1 through 5,000... and ROES 1 through 50,000..") sued by Nevada City lawyer Frank D. Bloksberg on behalf of "Fair Business America, LLC." Bloksberg found a 17200 violation in the companies' display of toys on their website without a child choking warning.

Fair Business America v. Amazon.com, Inc., et al.

Home Builders

Unsuccessful in using environmental challenges to stop a 2,350 home development in Thousand Oaks, opponents sued under 17200. The claim was that the builders' statement that an arterial road was safe was an act of unfair competition. The protestor's expert provided the only opinion that the road was unsafe, but the 17200 lawsuit enabled the protestors to circumvent the local government administrative process of comment and approval for components of the project. The litigation held up the project for four years.

Custodio v. Miller Brothers, Operating Engineers Pension Trust, Operating Engineers Fund

Media

The copyright owner of a home video revealing how well-known magic and tricks and illusions are performed sued Fox Broadcasting over a series of TV magic specials on which the program host made statements such as: "Tonight, *for the first time on television*, we will reveal the incredible secret of sawing a woman in half." The case went to the Ninth Circuit U.S. Court of Appeals before the 17200 claim was dismissed.

Robert Rice v. Fox Broadcasting

Health Care

Scripps Health was sued under 17200 by a private attorney representing an emergency room patient who had filed a suit against the person who caused her injuries. It was argued that the hospital's placing a lien on the patient's negligence lawsuit recovery was an unfair business practice. The California Supreme Court upheld lower court's determination that doing something that is expressly authorized by state law does not violate the Unfair Competition Law.

Olszewski v. Scripps Health