



Class Action ADVISORY ■

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Retail Outlets: A Great Deal? A Steal? Or “Not for Real”?

By: Lindsay Carlson, Cari Dawson, Stephanie Jones and Dominique Shelton

The great American pastime of outlet shopping is now the “next big thing” in class action litigation. Since when did getting a great deal become the source of claims of unfair and deceptive trade practices? Since Senators Whitehouse, Blumenthal and Markey and Representative Eshoo earlier this year expressed in a letter to the Federal Trade Commission (FTC) concerns about claimed potential deceptive marketing practices at outlet malls.

Along with the increasing popularity of outlet stores has come increased scrutiny of their sales practices. The senators and representative identified an increase in merchandise specially manufactured for sale in outlets which was never offered for sale in the traditional retail stores and have called for the FTC to investigate. They claim the outlet-specific merchandise is of inferior quality and outlet retailers fail to distinguish between merchandise produced exclusively for outlets versus merchandise produced for sale in the traditional retail stores.¹ Perhaps in response to this letter, the FTC issued a consumer information release in which it echoed these concerns and encouraged consumers to “make sure you’re satisfied with the price you’re paying for what you’re getting.”² As of the date of this advisory, the FTC has not engaged in any enforcement action.

We are currently aware of four recently-filed lawsuits alleging that manufacturers and retailers violated California consumer protection laws by either falsely representing outlet merchandise as being originally sold in traditional stores at higher prices or being of the same quality as merchandise offered for sale in traditional retail outlets.³ Each plaintiff claims that had she not been misled, she would not have paid the

¹ [Blumenthal, Whitehouse, Markey, Eschoo to FTC: Outlet Stores May Be Misleading Consumers](#) (last accessed Aug. 21, 2014)

² [Outlet Shopping: Getting Your Money’s Worth](#) (last accessed Aug. 21, 2014)

³ *Gattinella v. Michael Kors*, U.S. District Court for the Southern District of New York Case No. 14 CV 5731 (filed July 25, 2014); *Rubenstein v. Neiman Marcus LLC*, Los Angeles Superior Court Case No. BC554133 (filed Aug. 7, 2014); *Rubenstein v. The Gap, Inc.*, Los Angeles Superior Court Case No. BC555010 (filed Aug. 18, 2014); and *Malik v. Saks Fifth Avenue LLC*, Los Angeles Superior Court Case No. BC555134 (filed Aug. 19, 2014).

stated price for the products or would not have purchased them at all. All four of the pending lawsuits bring claims under the trio of California consumer protection laws typically asserted in false advertising lawsuits: the Consumer Legal Remedies Act (CLRA), Unfair Competition Law (UCL) and False Advertising Law (FAL).

Additional lawsuits are on the horizon.⁴ In light of these developments, all manufacturers and retailers with a discount sales line or outlet stores should review their current practices for compliance with consumer protection laws of the various states in which they do business, particularly the laws of California, Florida and New York, which are populous, consumer-friendly jurisdictions for false advertising claims. California's CLRA, UCL and FAL, in particular, are among the favorites for plaintiffs' class action attorneys when seeking large awards against companies on behalf of a consumer class. While the specific labeling and sales practices of each manufacturer and retailer may vary, all should take note of and monitor these developments as they unfold.

⁴ [Retail Outlets Become Fertile Ground for New Lawsuits, Law360](#) (last accessed Aug. 21, 2014)

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