

Readick v Staples, Inc.
2013 NY Slip Op 33134(U)
December 12, 2013
Supreme Court, New York County
Docket Number: 650174/13
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

PRESENT: _____

PART 61

Justice

Index Number : 650174/2013
READICK, JODD
vs
STAPLES, INC.
Sequence Number : 002
DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1

Answering Affidavits — Exhibits _____ | No(s). 2

Replying Affidavits _____ | No(s). 3

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed memorandum opinion.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 12/12/13

ACS
HON. ANIL C. SINGH, J.S.C.
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X

JODD READICK on behalf of himself and all others
similarly situated,

Plaintiff,

-against-

STAPLES, INC.,

Defendant.

-----X

DECISION AND
ORDER

Index No.
650174/13

HON. ANIL C. SINGH, J.:

Defendant moves to dismiss the instant putative class action lawsuit pursuant to CPLR 3211(a)(1) and (7), contending that the phrase “easy rebate” in defendant’s online and print advertisements is not materially misleading or deceptive, and that it collects the correct amount of sales tax from customers. Plaintiff opposes the motion.

Defendant Staples, Inc., is an office products company and internet retailer. The complaint asserts that defendant misleads consumers by the deceptive practice of falsely advertising discount rebate pricing. Specifically, it is alleged that defendant inappropriately charges sales tax based on the full amount, rather than the actual, advertised price of the item; fails to clearly and conspicuously state that the discounted prices require a mail-in rebate; and deliberately deceives consumers by using the confusing term “easy rebate” instead of the term “mail in” rebate in its advertisements.

The complaint asserts causes of action for violations of General Business Law (“GBL”) sections 349 and 350 and for unjust enrichment.

Discussion

At the outset, the Court notes the dictionary definition of the word “rebate,” which is “a deduction from an amount to be paid or a return of part of an amount given in payment” (American Heritage Dictionary of the English Language, 3d ed., p. 1506).

GBL 349(a) prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.” GBL 350 declares unlawful “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

“The elements of a claim under [GBL 349] include consumer-oriented conduct that is materially deceptive and causes injury to the plaintiff” (Shou Fong Tam v. Metropolitan Life Ins. Co., 79 A.D.3d 484 [1st Dept., 2010] (internal citations omitted)). “[T]he most basic requirement which must be met before an act or practice may be considered to violate the statute is that the act or practice must in fact be deceptive according to an objective definition of deceptive acts and practices, whether representations or omissions, that is limited to those likely to mislead a reasonable consumer acting reasonably under the circumstances” (21 N.Y.Jur. 2d Consumer and

Borrower Protection section 7).

Plaintiff contends that consumers were damaged by a “deceptive practice” in that they had to: 1) go to the store and complete the checkout process prior to learning of the “burdensome” mail-in rebate structure and higher tax; 2) pay the higher tax; and 3) wait months “in hopes to receive the promised rebate.”

Contrary to plaintiff’s contention, consumers clearly have an opportunity to learn about the rebate structure before going to a store. The defendant’s weekly ads are posted on the company’s website under the URL <http://weeklyad.staples.com>.

Likewise, defendant’s “easy rebate” is explained in clearly legible typeface in printed advertisements. The following language appears at the bottom of every page of the ad:

For more information on Staples Rewards®, rebates or price match guarantee please see our main disclaimer.

The main disclaimer states as follows:

Easy Rebate: Customers submit Easy Rebates® online. To learn more, go to StaplesEasyRebates.com. Most easy rebates will be delivered in the form of a Visa® prepaid debit card, which can be used everywhere Visa® prepaid debit cards are accepted. Offer excludes HP. Cards are mailed within 4-6 weeks and not redeemable for cash or usable at any cash-dispensing location. Your card is issued by J.P. Morgan Chase Bank, N.A. or MetaBank pursuant to a license from Visa U.S.A. Inc. Terms and conditions apply to the card. Subject to applicable law, a monthly maintenance fee of \$3 (USD) applies but is waived for the first six months after the card is issued.

For example, the weekly ad appearing on defendant's website for the week beginning November 17, 2013, and ending on November 23, 2013, listed a Toshiba laptop with Intel Pentium 2020M Processor. The ad stated, "\$349.99 after easy rebate." Directly below a photograph of the laptop computer, the ad stated "\$499.99 - \$100 instant savings - \$50 easy rebate = \$349.99".

Plaintiff contends that the "fine print" in the paper advertisements is "tiny" and "difficult to read." However, the advertising – including the disclaimer – is clearly legible to the naked eye. The average consumer would not need a magnifying glass to read the text. It is important to note, too, that the disclaimer does not change the offer made in the ads. Rather, the fine print simply explains how to apply for the rebate on defendant's website. Nothing whatsoever about the disclaimer is misleading or deceptive.

It is important to note, too, that the complaint does not allege that plaintiff has tried to apply for a rebate. Nor has plaintiff alleged that defendant failed to issue a rebate, which would establish the element of a financial injury to consumers.

In Sims v. First Consumers Natl. Bank, 303 A.D.2d 288 (1st Dept., 2003), plaintiffs alleged that high-pressure sales tactics lured them into accepting credit cards with hidden fees. The First Department held that such allegations were sufficient to state a cause of action under GBL 349.

By contrast, nothing is hidden from consumers by defendant's advertisements in the instant action. Defendant's disclaimer is in a font that is easy to read with the naked eye. In short, the Court finds that the compliant fails to allege an act or practice that is deceptive or misleading in a material way. Viewed in context, the description of the rebate as being "easy" is mere puffery.

In addition, documentary evidence establishes conclusively that defendant collects the correct amount of sales tax. On its face, the Sales and Use Tax Bulletin (TB-ST-860) expressly states that rebates are not deductible from the amount of the taxable receipt. Likewise, it is clear to the Court that 20 NYCRR 526.5(c)(4) and the Sales and Use Tax Bulletin (TB-ST-140) apply to coupons, not to rebates.

Accordingly, it is

ORDERED, that the motion to dismiss is granted, and the complaint is dismissed with prejudice.

The foregoing constitutes the decision and order of the court.

Date: 12/12/13
New York, New York


Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**