

Consumer Protection

Marketing At A Glance: The Gift Card Trap

Gift cards, gift certificates, and gift redemption codes are used by virtually every brick-and-mortar and online retailer. Most retailers are aware that the federal CARD Act prohibits many open loop prepaid cards (those where the card is redeemable from multiple retailers) and closed loop prepaid cards (those where the card is redeemable from a single retailer) from having an expiration date shorter than five years. Many are unaware, however, that some state laws are more strict than the federal standard. For example, some state laws prohibit gift cards from ever expiring. Other states have cash-back requirements obliging retailers to provide consumers cash in exchange for gift cards whose balance falls below a certain threshold (e.g., \$10). A further complication exists insofar as the CARD Act and many state laws provide exemptions for “promotional cards,” but differ in how they define a promotional card.

Following the enactment of the CARD Act there was a wave of class actions alleging that retailers inappropriately attached expiration dates to gift cards. While that wave has largely died down, new cases are being filed under state laws alleging the failure by retailers to provide “cashback” for gift card balances. To help you better understand the litigation landscape the following provides a snapshot of gift card related filings in just one state — California:

For more information on state gift card laws or to subscribe to Bryan Cave’s Survey of Laws Relating to Gift Cards, Prepaid Cards and Other Forms of Prepaid Access contact:

David A. Zetoony

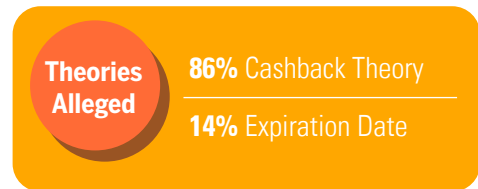
Partner
david.zetoony@bryancave.com
1155 F Street, N.W.
Washington, D.C. 20004
phone: 202 508 6000

Judith E. Rinearson

Partner
judith.rinearson@bryancave.com
1290 Avenue of the Americas
New York, NY 10104-3300
phone: 212 541 1135

Margo Hirsch Strahlberg

Associate
mhstrahlberg@bryancave.com
161 North Clark Street, Suite 4300
Chicago, IL 60601-3315
phone: 312 602 5000



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