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Abercrombie to face gift card class-action lawsuit

Wed, Mar 7 2012

* Retailer voided gift cards carrying "no expiration date"

* Nearly 200,000 cards issued in 2009 holiday promotion

By Jonathan Stempel

March 7 (Reuters) - Abercrombie & Fitch Co was ordered on Wednesday to face a class-action lawsuit by unhappy shoppers who claimed the clothing retailer voided holiday gift cards that said they had "no expiration date."

The decision by U.S. District Judge Gary Feinerman in Chicago came even as federal courts grow less willing to certify classes of plaintiffs, following last June's U.S. Supreme Court decertification of a large group of Wal-Mart Stores Inc employees in a gender bias case.

Abercrombie, which caters mainly to teens and young adults, had in a December 2009 promotion issued nearly 200,000 gift cards valued at \$25 each to shoppers who spent at least \$100 on a single purchase.

According to court papers, Abercrombie voided the cards around Jan. 30, 2010, explaining that the cards were enclosed in sleeves containing that expiration date.

In court papers, the New Albany, Ohio-based company insisted that the cardholders be forced to sue separately -- which often raises legal costs and results in lower recoveries -- because they were too different from one another to sue as a group.

It said some people got their cards in stores and others online, and some with the sleeve and others without. Abercrombie also said it would be impossible to find some plaintiffs.

But Feinerman said it was fair to certify a class of plaintiffs who still hold the cards, and plaintiffs who threw out their cards after being told they had expired or were void.

"The class in this case consists primarily of individuals holding an Abercrombie promotional gift card whose value was voided on or around January 30, 2010. That criterion is as objective as they come," Feinerman wrote.

Anyone claiming to have thrown out a card could submit an "appropriate affidavit" to that effect, he added.

According to the complaint, lead plaintiff Tiffany Boundas, a resident of Willowbrook, Illinois, tried in April 2010 to redeem \$75 of cards that she got from a friend at an Abercrombie store in nearby Oak Brook, but the store refused to accept them.

James Shedden, a lawyer for Boundas, did not immediately respond to a request for comment. Abercrombie did not immediately return a call seeking comment.

The case is Boundas et al v. Abercrombie & Fitch Stores Inc, U.S. District Court, Northern District of Illinois, No. 10-04866.

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Abercrombie & Fitch faces class action over expired gift cards

Plaintiffs say the cards had no expiration date, store claims it was printed on a sleeve around the card

BY JULIE BECK
March 8, 2012 • Reprints



Abercrombie & Fitch, the clothing company that is the very height of fashion at middle schools across the nation, is facing a class action lawsuit from customers who claim the store failed to honor holiday gift cards with "no expiration date."

The suit stems from a December 2009 promotion,

which offered \$25 gift cards for every \$100 a customer spent in a single purchase. Abercrombie claims the cards were encased in sleeves with the expiration date Jan. 30, 2010. The retailer stopped accepting them on that date, denying uncounted furious tweens the chance to walk around with the company logo emblazoned on their chests.

Courts have been wary of certifying class actions ever since the Supreme Court's decision in *Dukes v. Walmart*, which decertified a large class of employees, but a district court in Chicago was not deterred in this case.

Abercrombie claimed that the class could not be certified because some of the members had cards from stores, some from the company website and some of the cards had sleeves while others didn't. Even so, the district court decided it was fair to certify a class containing both customers who held onto their cards, and those who threw them away when they were found to be expired, as long as they submit an affidavit to that effect.

Read more at Thomson Reuters.

Judge Certifies Class-Action Status For Abercrombie & Fitch Gift Card Lawsuit

By [Chris Morran](#) March 15, 2012



(Maulleigh)

Abercrombie & Fitch could soon learn a huge lesson in bad marketing practices. A federal judge has given the go-ahead to a class-action lawsuit against the retailer that alleges it handed out gift cards with no expiration date only to later tell customers that their cards had expired.

In December 2009, A&F ran a promotion that gave away \$25 gift cards to customers who purchased at least \$100 worth of stuff at one time. Printed on the card is text that reads, "This gift card is redeemable at all Abercrombie & Fitch locations. ... No expiration date."

But the plaintiffs in the case say when they tried to redeem their cards in April 2010, they were told the cards had expired in January 2010.

Abercrombie has defended its actions by saying that the cards had originally been given to customers in sleeves that stated the 1/30/2010 expiration date.

The retailer also tried to argue against granting class-action status to the suit by point out that some customers were aware of the proper expiration date.

But the judge wasn't having any of that.

"Abercrombie's reference to individuals who 'knew the Promotion Cards expired on January 30' does not advance its cause," he explains. "Because the question whether the cards expired has yet to be decided, no cardholder could know that the cards expired in January 2010. The category of individuals Abercrombie means to describe are those who believed the cards expired on January 30, 2010. Even if that category includes more than a handful of persons — and there is no evidence of record that anybody held that belief — their inclusion in the class does not pose an individual issue, let alone one that predominates over the common issues."

The judge also shot down Abercrombie's argument that the class would be too difficult to ascertain.

"The class in this case consists primarily of individuals holding an Abercrombie promotional gift card whose value was voided on or around January 30, 2010," he writes. "That criterion is as objective as they come. The class also includes individuals who threw away their cards because they were told that the balances had been voided. That criterion is not as objective as actually holding a physical card, but anybody claiming class membership on that basis will be required to submit an appropriate affidavit."

He pointed out that, should it lose the case, Abercrombie could post notices about the settlement at its retail locations or online.

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Class certified in Abercrombie & Fitch gift card case

Manatt Phelps & Phillips LLP

USA

May 10 2012

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On March 7, 2012, the United States District Court for the Northern District of Illinois certified a class action lawsuit against popular clothing retailer, Abercrombie & Fitch, alleging that it engaged in deceptive marketing tactics with respect to a promotional holiday gift card.

Named plaintiffs Tiffany Boundas and Dorothy Stojka filed the action seeking certification of the following class: "All people who received Abercrombie & Fitch Stores, Inc. promotional gift cards in hard copy stating 'no expiration date' issued as part of a 2009 winter holiday in-store promotion and voided by Abercrombie & Fitch Stores, Inc. on or after January 30, 2010 despite having credit remaining on the gift cards."

Upon examination of whether or not the gift card represented a "contract" between the parties, District Court Judge Gary Feinerman certified a modified class.

In December 2009 Abercrombie & Fitch offered \$25 promotional gift cards to customers who spent \$100 or more in one transaction. On the back of the cards was the following disclosure: "This gift card is redeemable at all Abercrombie & Fitch locations ... No expiration date." Nonetheless, in April 2010, when Plaintiff Boundas attempted to redeem \$75 worth of promotional gift cards, she was told the cards had expired January 30, 2010. According to Abercrombie & Fitch, the "no expiration date" clause on the back of the cards was preempted by a contrary note that appeared on the sleeve the cards were enclosed in when they were given to qualifying consumers. Abercrombie relied on the note, which read "\$25 gift card expires 1/30/10," when it chose to void close to 200,000 outstanding gift cards.

The District Court granted class certification, notwithstanding Abercrombie's objection to certification on the grounds of "commonality." The court concluded that "The commonality requirement is easily

satisfied here.” The contract claim for putative class members presented at least two common questions, including whether the gift cards were contracts between Abercrombie and customers receiving the card, and whether the terms of those contracts were the disclosures on the card, or on the sleeve, or both. If both disclosures were terms of a contract, then a third common question was “whether the card trumps the sleeve or vice versa.”

In its opposition to class certification, Abercrombie argued that no common questions exist since each customer would have entered into a different contract based on his or her varying transactions. Specifically, Abercrombie argued that many customers learned about the gift card through in-store or online advertising that mentioned the January 30, 2010, expiration date; other customers entered their original purchase transaction without knowing about the promotional gift card; and yet a third group of customers discovered the promotional gift cards from other customers or Abercrombie’s sales people. Thus, Abercrombie claimed classwide relief was not appropriate, even assuming the cards represent contracts, as the terms of each particular contract would vary based on these different factual circumstances.

The court disagreed, holding that “Where there are objective indicia of the contract’s terms—here, the text on the cards, the text on the sleeves, or both—the manner in which parties become aware of a contractual opportunity and their subjective perceptions of the resulting contract are not relevant.... Accordingly, when Abercrombie customers made qualifying purchases and received promotional gift cards, contracts—identical contracts—were formed.” The court even held that a person receiving a promotional gift card from a customer who obtained one during a sales transaction was an assignee, and took the card subject to all of the rights and obligations of the assignor.

The court also rejected Abercrombie’s commonality argument that not all customers may have received their promotional gift card in a sleeve. Abercrombie’s own evidence contradicted this assertion since it was clear that all employees were required to place the cards into the sleeves with the January 30, 2010, expiration date. And Abercrombie did not present any evidence that employees disobeyed this requirement.

In addition, the court noted that “Abercrombie made no effort to show that variations in state contract law would require that the claims of card holders in different States be resolved differently, the same result holds here. Abercrombie will not be foreclosed from again pressing this issue before trial, but only if it can actually show a material variation in how different States would resolve the contract issues posed by this case.”

The court certified the class as “primarily of individuals holding an Abercrombie promotional gift card whose value was voided on or around January 30, 2010. That criterion is as objective as they come. The class also includes individuals who threw away their cards because they were told that the balances had been voided. That criterion is not as objective as actually holding a physical card, but anybody claiming class membership on that basis will be required to submit an appropriate affidavit, which can be evaluated during the claims administration process if [plaintiff] prevails at trial.”

To view plaintiffs’ first amended class action complaint, click [here](#).

To view the court’s Memorandum Opinion and Order, click [here](#).

Why it matters: The court held that “a class action would be superior to other methods of resolving [the] controversy between Abercrombie and those allegedly injured when promotional gift cards

saying 'No expiration date' were voided on January 30, 2010." Although it is generally acceptable for companies to hand out gift cards with short expiration dates to consumers as an incentive, retailers must be very careful to clearly include the expiration date of any promotional gift card on the face of the card. Printing contradictory expiration dates on sleeves or other documents associated with the card is a surefire way to create confusion among consumers. Such a practice provides no benefits to the retailer, and only leads to unnecessary and costly class action litigation.

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Abercrombie Shoppers Certify Gift Card Dispute

By JACK BOUBOUSHIAN

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CHICAGO (CN) - A federal judge certified a nationwide class action that claims Abercrombie & Fitch stopped honoring promotional gift cards that were never supposed to expire.

Abercrombie ran a promotion in December 2009 offering a \$25 gift card to customers who bought at least \$100 worth of merchandise in a single transaction. The gift cards stated: "This gift card is redeemable at all Abercrombie & Fitch locations. ... No expiration date."

Dorothy Stojka received three promotional gift cards worth a total of \$75 and gave them to Tiffany Boundas, who attempted to redeem them in April 2010 at Abercrombie store in Oak Brook, Ill.

But the store demurred, explaining that Abercrombie had voided the cards on Jan. 30, 2010. According to Abercrombie, each card was enclosed in a sleeve that said, "\$25 gift card expires 1/30/10."

Stojka and Boundas filed a class action against Abercrombie in the Northern District of Illinois, alleging that it committed breach of contract when it voided the gift cards.

U.S. District Judge Gary Feinerman certified the class last week and appointed Boundas as the class representative.

"If contracts were formed, they were identical, with the only open question being whether the cards expired on January 30, 2010, in which case Abercrombie did not breach, or never expired, in which case it did," Feinerman said.

"Abercrombie's reference to individuals who 'knew the Promotion Cards expired on January 30' does not advance its cause," he added. "Because the question whether the cards expired has yet to be decided, no cardholder could know that the cards expired in January 2010. The category of individuals Abercrombie means to describe are those who believed the cards expired on January 30, 2010. Even if that category includes more than a handful of persons-and there is no evidence of record that anybody held that belief-their inclusion in the class does not pose an individual issue, let alone one that predominates over the common issues."

Feinerman also said Abercrombie exaggerated the difficulty of ascertaining who actually received the promotional gift cards. Although class members' actual identities are not presently known, "it is enough that the class be ascertainable." (emphasis in original)

"The class in this case consists primarily of individuals holding an Abercrombie promotional gift card whose value was voided on or around January 30, 2010," Feinerman said. "That criterion is as objective as they come. The class also includes individuals who threw away their cards because they were told that the balances had been voided. That criterion is not as objective as actually holding a physical card, but anybody claiming class membership on that basis will be required to submit an appropriate affidavit."

Abercrombie could also give notice at its 300 nationwide locations or on its website, the decision states.

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Posted at 6:37 AM on March 13, 2012 by Kirk Hartley

Gift Card Class Action Certified Against Abercrombie

Some say that expiring gift cards are one of the best scams created by [financial engineers](#). But, a judge here in Chicago just certified a class action against Abercrombie because of expiring gift cards. And, various states have legislated to ban or limit the expiration - [see collected statutes here](#). The [opinion is here](#). Hat tip to LAW360 for covering the case.

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