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Groupon News

If you have thought about offering "groupon" or similar group coupons, please take notice. Recently, several class action lawsuits have been filed against Groupon, Inc. by and on behalf of consumers who allegedly purchased "groupon." These lawsuits assert that "groupon" are actually gift certificates or gift cards under federal law (specifically, the Credit Card Accountability Responsibility and Disclosure Act and the Electronic Funds Act) and under various state consumer fraud statutes. As such, the complaints allege, they are subject to certain consumer-oriented restrictions such as the requirement to have an expiration date of not less than 5 years (the lawsuits allege that "groupon" typically have an expiration date within weeks or months of purchase). The lawsuits, which are attempting to set aside mandatory arbitration and class waiver provisions allegedly contained in Groupon's user agreements, seek to certify both national and state classes and look to recover both compensatory and punitive damages as well as equitable relief and fees/costs.

We want you to be aware of these cases for two reasons: First, in addition to naming Groupon, the suits also typically name at least one merchant that has allegedly "partnered" with Groupon in the offer. Second, in light of the allegations made in the lawsuits, you will want to be aware of any provision in any agreement that places the responsibility on you to ensure that your coupons comply with any law, statute, rule, regulation or order (particularly with respect to vouchers, gift cards, coupons, and/or gift certificates) or that require you to defend, indemnify and hold the seller harmless from and against any such claims. If, for example, the agreements between Groupon and the merchants named in these lawsuits contain such provisions, and while it wouldn't necessarily be good for business (and there's no indication that it has yet taken this step), Groupon could try to use those provisions to ultimately hold the merchant responsible for the costs of defending these lawsuits and for any damages that might ultimately be awarded.

These lawsuits illustrate the importance in any context of representations and warranties contained in an agreement as well as indemnification and similar provisions used to enforce them.

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