

New York Passes Rebate and Mail Order Legislation

EXECUTIVE SUMMARY

The New York State Assembly recently passed rebate and mail order legislation in an effort to hold companies responsible for clarifying rebate and mailing procedures for consumers. The legislation will affect sales to consumers in New York.

New rebate legislation requires companies offering rebates to provide their rebate redemption form directly with the product, to allow a minimum of 14 days for submission of request forms and to issue rebate amounts in at least 60 days. The mail order legislation requires companies offering expedited shipping for a charge to notify buyers if their merchandise will not be mailed the day after the order is placed.

THE REBATE LEGISLATION (S04888)

Senate Bill S04888 adds a new section (391-p) to New York's General Business Law. It includes provisions governing distribution of the rebate redemption form, timing for submission of the redemption form, and timing for distribution of the rebate check. This provision became effective September 1, 2005.

Distribution of the Rebate Redemption Form

The new section requires a company to provide the rebate redemption form directly with the product or at the point of purchase. For online and telephone sales, the company may satisfy the requirement by directing consumers to the form

on a generally accessible website. For telephone sales, upon the consumer's request, the company also must send the form via the consumer's choice of regular or electronic mail or fax.

Timing for Submission of Redemption Form

The company must allow a minimum of 14 days from the date the consumer purchases the product or satisfies the terms and conditions to become eligible for the rebate for the consumer to submit a redemption request.

Timing for Distribution of the Rebate Check

Upon receipt of a request for redemption that meets the terms and conditions of the rebate offer, the company must mail the rebate check or transmit the funds to the consumer within 60 days.

THE MAIL ORDER LEGISLATION (S02223)

Senate Bill S02223, effective July 1, 2006, adds a new paragraph to section 396-m(3) of New York's General Business Law. It includes consumer notification requirements for merchandise orders placed with a "mail-order business" by telephone or electronic means.

Under the new provision for telephone or electronic sales by a mail-order business, if the company accepts an additional fee for expedited mailing or shipping and does not reasonably expect the merchandise

to be mailed or shipped on the next business day after the order was placed, the company must:

- (1) Notify the buyer, before payment is accepted, that the seller anticipates that the merchandise will not actually be mailed or shipped on the next business day after the order was placed; or
- (2) Contact the buyer by telephone or e-mail the day after the order was placed to:
 - (a) Inform the buyer that the mailing or shipping is not reasonably anticipated to occur on the next business day after the order was placed;
 - (b) Inform the buyer of the date the company reasonably anticipates the merchandise ordered to be mailed or shipped; and
 - (c) Offer the buyer the opportunity to accept the delay, cancel the order, or ship the merchandise in the regular course of business, but refund the additional fee for expedited shipping within 30 days. The company must inform the buyer that, if the seller does not receive a response on the next business day, the seller will mail or ship the merchandise in the manner originally requested by the buyer.

A statement or notice contained in the advertising material for the merchandise, in a description of the merchandise, or in a description of the available mailing and shipping options that advises the buyer of the approximate time the seller

reasonably anticipates the merchandise to be mailed or shipped satisfies the notification requirements.

ABOUT KELLEY DRYE COLLIER SHANNON'S ADVERTISING AND MARKETING PRACTICE

Kelley Drye Collier Shannon's Advertising and Marketing practice comprises attorneys with proven success in advertising litigation and NAD proceedings; expertise in the areas of advertising, promotion marketing, privacy, data security, and food and drug law; and experience at the FTC, FDA, and the Offices of State Attorneys General. Whether your issue involves advertising substantiation, preventative marketing strategies, or legal challenges to your competitor's claims, our lawyers know where to begin and how to finish. We pride ourselves in knowing your business and help leading companies identify risks, respond effectively to inquiries, and prevail in contested proceedings.

FOR MORE INFORMATION

Kelley Drye Collier Shannon is on the forefront of developing marketing and advertising industry guidelines and regulations.

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