

# Holiday Advertisements Can Lead to Liability for New York and New Jersey Businesses

by Michael Cifelli on December 7, 2012

The competition to attract holiday shoppers can be fierce, particularly as the economy continues to struggle. As a result, many New York and New Jersey businesses are offering “free gifts” and other promotions.

However, as demonstrated by a recent lawsuit against Toys “R” Us, retailers unable fulfill promises made through promotional advertising could face significant liability. The class-action lawsuit accuses the toy retailer of engaging in a “modern bait and switch scheme,” by making promises regarding “free gifts” that it never intended to keep.

William Probert alleges that he was induced into making online purchases of four Lego building sets, valued at \$62 and \$112 each, based on a Black Friday advertisement promising that he would receive a related item worth 15 percent to 25 percent of the items purchased. He expected to receive two \$15 Lego building sets as his “free gifts,” but claims he was offered a \$5 Christmas tree figurine and a \$5 magnet.

Probert’s complaint contends that Toys “R” Us only stocked an “exceedingly limited” number of the advertised gifts, or none at all. The complaint states, “Under this business model, consumers almost always receive a ‘free gift’ of substantially lesser value than what was advertised and which served as the basis of the bargain, or no ‘free gift’ whatsoever.”

The lawsuit seeks to represent a proposed class of all Toys “R” Us online shoppers that were not provided “free gifts” as promised. The complaint contains claims for breach of contract and violations of New Jersey’s Consumer Fraud Act; it seeks restitution, unspecified damages, and an injunction barring the company from engaging in the alleged illegal advertising practices.

Given the risks, retailers should consult with an experienced attorney to determine if a specific promotion that they intend to run complies with federal and local advertising laws.

*If you have any questions about this case or would like to discuss any legal concerns regarding your advertisements, please contact me, Michael Cifelli, or the Scarinci Hollenbeck attorney with whom you work.*