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Credit Card Payments Due on Sunday Must be Received by Sunday

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therefore concluded that consumer restitution was proper. Restitution would eliminate the profits Pantron had obtained through its false advertising and address the economic injury experienced by the dissatisfied consumers.

The court of appeals also found Lederman, Pantron's president and sole owner, was personally liable for the monetary award as he had been aware of the false advertising. The court held that Lederman acted with "reckless indifference to the truth or falsity"of the representations made about the Formula. It reasoned that Lederman knew or should have known about the misrepresentations as several government agencies had notified him regarding that issue. Additionally, there was overwhelming evidence that no scientific study supported the product's efficacy claim.

The Formula is a drug

The court then turned to the issue of Pantron's cross-appeal of the district's court's characterization of the Formula as a drug. It noted that the FTCA defines drugs as "articles (other than food) intended to affect the structure or function of the body of man or other animals." The circuit court noted that Pantron, in its advertisements, claimed that the Formula would cause hair growth where no hair currently existed. A reasonable consumer could construe that as a claim promising to affect the structure of the scalp, rather than a temporary and superficial change in appearance. The circuit court concluded that the district court had not erred in determining that the Formula was a drug.

The circuit court remanded the case back to the district court for modification of the injunctive order limiting the scope of Pantron's advertisements for the Formula. Additionally, the district court was instructed to order Pantron and Lederman to pay monetary equitable relief for injuries caused by their false advertising of the Formula.

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by Jennifer L. Fitzgerald

In ***Larned v. First Chicago Corp.***, 636 N.E.2d 1004 (Ill.App.Ct. 1994), the court held that a credit card agreement between the issuer and the card holder could validly exclude the Illinois Bank Holiday Act. The issuer could impose finance charges against a holder whose payment was due on Sunday, but received on Monday. Furthermore, the court held that a credit card agreement was not an unenforceable adhesion contract.

Class Action Suit Against First Chicago For Finance Charges Incurred

On October 24, 1990, William J. Larned ("Larned") filed a class action lawsuit on behalf of all holders of credit cards issued by the defendants, First Chicago Corporation ("First Chicago") and its wholly owned subsidiary FCC National Bank ("First Card"). Plaintiff alleged that: (1) the defendants' practice of assessing finance charges for payments due on Sunday, but received on Monday was contrary to the Illinois Bank Holiday Act ("Holiday Act") 205 ILCS 630/17 (West 1992); (2) the choice of law provision in the contract was unenforceable; and (3) the agreement was a contract of adhesion.

The Illinois Holiday Act provides that where indebtedness is due on Sunday, the debtor has until the following Monday to pay the debt without accruing finance charges. However, defendants claimed that they, as a national bank, could not be prohibited from collecting payments

on Sunday because the National Bank Holiday Act preempted the Illinois Bank Holiday Act. Furthermore, they claimed that the contract entered into with plaintiff specified that Delaware law would govern. Delaware does not have a comparable Holiday Act. Finally, defendants claimed the contract expressly excluded the Holiday Act.

On March 23, 1993, the circuit court granted the defendants' motion to dismiss. It held that the National Bank Act preempted the Illinois Bank Holiday Act and that the contract excluded the effect of the Holiday Act. The court also ruled that Delaware law governed the contract.

The Holiday Act - Not Fundamental Illinois Public Policy

In affirming the circuit court, the appellate court found the language of the Visa card agreement controlling. The credit card contract specifically required payments to be made in accordance with the terms of the contract. One of these terms specifically excluded the effect of the Holiday Act.

The court also found the language of the contract contrary to the Holiday Act and thus, the language of the contract superseded the Holiday Act. Additionally, Illinois courts have previously upheld similar time computation provisions and have found them consistent with public policy. The court similarly construed the Holiday Act as not embodying fundamental Illinois public policy.

Credit Card Agreement - Not a Contract of Adhesion

Because there are so few credit card companies that award United Airlines frequent flier miles, plaintiff alleged that his credit card was an unenforceable contract of adhesion. Contracts of adhesion are non-negotiable, standardized contracts given to a party for acceptance. However, the mere fact that a party has unequal bargaining power cannot alone render the contract, or a provision thereof, unenforceable.

In the immediate case, the appellate court held that the contract was not a contract of adhesion because the plaintiff was not forced to obtain this particular credit card. Instead, other credit card companies offered similar benefits. The existence of other companies offering frequent flier awards demonstrates that plaintiff did not lack meaningful choice: he freely chose to take a credit card from defendants. Finally, in view of the foregoing disposition, the court declined to decide the choice of law issue or the applicability of the National Bank Act.

Real estate broker found liabile to home buyers for failing to disclose criminal record of previous owner

by Aimée D. Latimer

In ***Sanchez v. Guerrero***, 885 S.W.2d 487 (Tex.Ct.App. 1994), the Court of Appeals of Texas held that a real estate broker was liable for failing to tell potential buyers that the previous owner of the home had conducted criminal acts in the home. The court found that the broker violated the Texas Deceptive Trade Practices—Consumer Protection Act (DTPA) because he knowingly failed to disclose this information. Furthermore, the court held that not only were the buyers entitled to actual damages for expenses paid in purchasing the home, but they were also entitled to compensation for the mental anguish they suffered as a result of the broker's deception.