

Legal Alerts

BOGO & Discount Pricing: Are You at Risk of a Class Action?

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We have noticed a growing trend of class actions suing businesses over pricing practices. Brands and retailers who advertise discounts framing the discount as a bargain off the "regular price" when the business has never actually offered the product at the "regular price" (or has not done so recently) may be liable for misleading consumers. In general, these lawsuits typically allege that a business's offer, (for example, a product priced at \$150 with a strike-through of the "regular" price of \$300 or a BOGO (buy-one-get-one) offer priced at \$150 with a strike-through of the "regular" price of \$400), is misleading and illusory, as the business's products are consistently offered for sale at the \$150 promotion and never at the full "regular" price.

These suits are often brought under California Civil Code § 1770 (a)(9) and (13), which prohibits advertising goods with the intent not to sell them as advertised and making false or misleading statements of fact concerning price reductions.¹ Damages under California Code § 1780 allow for actual and punitive damages, attorneys' fees and any other relief the court deems proper.² Additionally, while California is a popular venue to bring this type of lawsuit, similar class actions have been filed in multiple other states, including New York, Illinois, Florida and Washington.

While not a new law, there has been an uptick in this type of lawsuit, and resolution can be costly (see HP Inc.'s (formerly Hewlett-Packard) recent \$4 million settlement of misleading strike-through pricing claims in *Carvalho v. HP, Inc.*, No. 5:21-cv-08015-PCP (N.D. Cal. Feb. 24, 2025)). Businesses must carefully evaluate their pricing and advertising strategies to ensure compliance and mitigate legal risks. A proactive approach, such as keeping accurate records of "regular" pricing to defend against illusory price claims, can help minimize a company's exposure.

We strongly encourage businesses to review their advertising and pricing policies in light of these class actions. If you have any questions about your business's compliance or need guidance on mitigating risk, please do not hesitate to contact [Foster Garvey](#).

¹https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1770&lawCode=CIV

²https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1780.&nodeTreePath=§

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