

UPS v Mail Boxes Etc. and The UPS Store

Notices have been sent out to approximately 3,000 franchisees of Mail Boxes Etc. and The UPS Store, giving them the option to be a part of a national class action lawsuit against the franchisor or to opt out. They have until December 9, 2009 to send in their election form requesting to be excluded from the class. Otherwise, they will be listed as a class member.

The court certified a national class consisting of all franchisees in the US, who operated a Mail Boxes Etc. store and converted to The UPS Store through the Gold Shield Amendment on or before March, 2003, regardless if they are still operating their stores. It also certified a subclass (the California Sub-class) consisting of all franchisees who meet the above-described criteria and whose centers are or were located in California. Every franchisee who is a member of the California Sub-class is also a member of the Class.

The complaint alleges three claims against defendants: negligent misrepresentations; intentional misrepresentations; and misrepresentations based upon disclosures required by the California Franchise Investment Law (CFIL). Plaintiff alleges that the members of the class were misled by false statements and concealment of material facts contained in five documents provided to franchisees during an organized presentation to franchisees by UPS and MBE, known as the Gold Shield Program.

Gold Shield began as a test marketing program after United Parcel Service acquired the Mail Boxes Etc. franchise system, but it soon became the companies approved method of converting MBE stores to UPSs new model. When the franchisor amended its franchise agreements to reflect the changes, franchisee groups responded with lawsuits stating they should have been issued new franchise disclosure documents as a result of the major revisions to the brand and model. The Platinum Shield Association filed its lawsuit in April 2003, representing approximately 150 MBE franchisees, claiming UPS/MBE was in violation of a California franchise statute and common law fraud.

Other lawsuits are pending.

Plaintiffs are seeking the recovery of damages from the MBE defendants. In addition, for the alleged violations of the California Investment Law, they are seeking the option to rescind the Gold Shield amendment of their franchise agreements.

Amy Darby of Gordon & Rees LLP, representing franchisees, said their firm drafted the Notice of Pendency of Class Action with MBE/UPS defendants counsel. The court approved the notice and approved their claims administrator, Tilghman & Company, who sent the notices out to everyone via first class mail and by email to current UPS Store franchisees.

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