

Could Web Site Terms of Use be Interpreted to Include FAQs?

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Most organizations with a website offer products, services or information subject to terms of use intended as a legally enforceable contract between the site owner and each user. A site may also include frequently asked questions, or FAQs, containing relevant information on the use of the site. Site owners would not expect information offered in an FAQ to temper or override a term in the site's terms of use, however, a recent federal court decision out of California suggests that could be the case.

Safeway, Inc. has a website offering consumers home delivery of groceries. User Michael Rodman filed a lawsuit against Safeway for alleged breach of contract and violation of various California consumer protection laws. Rodman claims that, while Safeway states on its site that the price of delivered groceries will be the same as the price of the items in its stores, Safeway secretly adds 10% to the in-store price for those items offered for home delivery. Safeway filed a motion to dismiss the breach of contract claim because Rodman failed to demonstrate that the Safeway site's terms of use promised price parity between online and in-store products. In fact, the terms of use read as follows: "prices quoted on the Web site are likely to vary either above or below the prices in the store on the date your order is filled and delivered." In responding to the motion, Rodman argued that Safeway's FAQ that "[y]ou will be charged the prices charged in the store on the day your order is picked and delivered" clarified the statement about pricing in the terms of use. The court denied Safeway's motion to dismiss, finding that the terms of use were "susceptible to Plaintiff [Rodman]'s reasonable construction."

What steps should a cautious web site owner take away from this decision? A review of your FAQs for any inconsistencies with your terms of use would be a good first step. You may also choose to add appropriate disclaimers to both the terms of use and the FAQs indicating that FAQs offer only general information and may not be relied upon by users.

For more information about legislation or litigation involving technology, intellectual property protection of information technology assets or any other Information Technology law issue, contact your Miller Canfield attorney.