



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

August 14, 2007

Mike Clark

State of California

**Re: *In the Matter of Kmart Corporation, Kmart Services Corporation, and Kmart Promotions, LLC, corporations***  
**FTC File No. 062 3088**

Dear Mr. Clark:

Thank you for the comments you submitted regarding the above-referenced matter. Your comments were placed on the public record pursuant to Section 2.34 of the Commission's Rules of Practice, 16 C.F.R. § 2.34, and were given serious consideration by the Commission.

The Commission anticipates that this proposed consent order will send a strong message that retailers<sup>1</sup> must adequately disclose these material conditions when selling gift cards. Indeed, over the last few years, the Commission staff has observed that many retailers have already changed their marketing practices. While many retailers eliminated expiration dates or fees altogether, staff has found generally that disclosures by retailers still imposing fees have improved. After considering all of the factors that must be weighed in evaluating any settlement, including the specific facts, consumer injury, and the need to ensure that the remedies deter similar behavior by other retailers, the Commission concluded that the strong injunctive provisions and mandatory refund provision provide a positive result for consumers and an appropriate resolution of this case.

After considering your comments, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without modification. Respondents will be required to comply with the Order's injunctive and reimbursement provisions, and will be subject to potentially large civil penalties if they violate the Order.

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<sup>1</sup> Gift cards offered by retailers (such as stores and restaurants) fall under the Federal Trade Commission's jurisdiction, while those offered by depository institutions do not. The Office of Comptroller of the Currency has issued a guidance on disclosures and marketing issues for gift cards issued by national banks. *See* OCC Bulletin 2006-34 (Aug. 14, 2006).

Please remember that you may access the Commission's Consumer Hotline at **(202) 326-3569** for updated information about how to receive a refund if your Kmart gift card was charged dormancy fees.

Thank you again for your comments. The Commission is aided in its analysis by hearing from a variety of sources in its work, and it appreciates your interest in this matter.

By direction of the Commission, Commissioners Harbour and Leibowitz concurring in part and dissenting in part.

Donald S. Clark  
Secretary