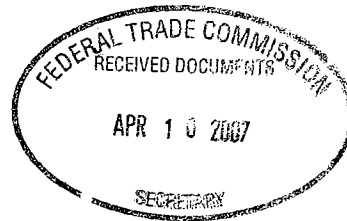


VISA



April 10, 2007

Russell W. Schrader
Senior Vice President
Assistant General Counsel

By Electronic Delivery

Federal Trade Commission
Office of the Secretary
Room 135-H
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Kmart Corporation, File No. 062 3088

Ladies and Gentlemen:

This comment letter is submitted on behalf of Visa U.S.A. Inc. in response to the Federal Trade Commission's ("FTC") request for comment regarding the proposed consent agreement between the FTC and Kmart Corporation, Kmart Services Corporation and Kmart Promotions ("Kmart").

Providing clear disclosures in connection with gift card products is essential. The gift card industry has grown rapidly and is projected to continue this growth in years to come. To sustain such growth, Visa believes it is essential for customers to receive clear and conspicuous disclosures in a manner that is meaningful. Adequate disclosures will enable consumers to make informed decisions about whether a particular product suits their needs, how to use the product, and the cost and limitations associated with a particular product.

While Visa supports clear and conspicuous disclosures of the important terms of gift cards, Visa is concerned that details of the proposed consent agreement with Kmart regarding the format and manner in which disclosures are provided to consumers are overly restrictive. More specifically, in its complaint, the FTC alleged, among other things, that Kmart failed to disclose, or failed to adequately disclose, material terms and conditions of the Kmart gift card. In particular, the FTC stated that disclosing the dormancy fee in small print (*i.e.*, 5-point type size) on the back of the gift card was inadequate. The proposed consent agreement expressly prohibits advertising or selling Kmart gift cards without disclosing the existence of any automatic fee or expiration date on the front of the cards.

Visa believes that specifying the location of this disclosure on the front of future Kmart gift cards is likely to be interpreted by other gift card issuers as a requirement going forward. This view is likely to be reinforced by the proposed consent agreement with Darden Restaurants. This requirement would be more limiting than the recent federal banking agency guidance on gift card disclosures. In particular, the Office of the Comptroller of the Currency and the Office of Thrift and Supervision have issued gift card guidance emphasizing the importance of providing disclosures in a format that is readily available to both the purchaser and the recipient. The banking agency

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guidance, however, did not specify whether disclosures should be on the front or back of the card and permitted the use of stickers on the card. We believe that the gift card guidance issued by the banking agencies is an appropriate disclosure model for gift cards, and this guidance is already being used by a number of gift card issuers.

Furthermore, there is limited space on the actual gift card. It is essential that gift card issuers be afforded flexibility in the format and manner of disclosures. For example, a removable sticker on the front or back of a gift card may be a more effective disclosure vehicle for conveying information to the gift card recipient than printing information on the card itself. Gift cards themselves are relatively small and, therefore, type size and the amount of information that can be conveyed are limited. In addition, it is not clear that consumers are more likely to actually read information on the front of a gift card as opposed to the back of the card.

Providing flexibility on the format and manner of disclosures will enable gift card issuers to provide key disclosures in a meaningful way that will facilitate the transfer of such information with the transfer of the card from the purchaser to the recipient. For these reasons, Visa recommends that the FTC clarify that the terms of the consent order are not meant to establish an industry standard and that: (1) disclosures on the back of gift cards are not necessarily inadequate solely because the disclosures are on the back of the card; (2) disclosures may appear on the back of the card so long as such disclosures are clear and conspicuous; and (3) no particular font style or size is required.

* * * *

Once again, we appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel