

# NOT-SO-FREE SHIPPING: YEEZY BRAND TO PAY US\$950,000 OVER LATE SHIPPING UNDER CALIFORNIA CONSUMER PROTECTION LAWS

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## Complex Commercial Litigation and Disputes Alert

By: Melissa J. Tea, Kelsi E. Robinson

Supply chain disruptions, coupled with a surge in online shopping, have led to overstretched companies and impatient customers. The supply chain crisis<sup>1</sup> continues to cause shipping delays across the nation as companies struggle to work around pandemic-related constraints. A recent case in the Los Angeles County Superior Court has put companies and individuals who advertise or conduct business, online or otherwise, in California on notice that failure to adequately communicate with customers regarding accurate shipping times could result in consumer protection law liability for missed shipment deadlines.

On 8 November 2021, the Los Angeles County District Attorney's Office announced that the high-end sneaker and retail clothing companies, Yeezy Apparel LLC and Yeezy LLC (collectively, Yeezy), will pay US\$950,000 to settle a civil consumer protection lawsuit. The lawsuit, filed by district attorneys in Los Angeles, Alameda, Sonoma, and Napa counties, alleged that Yeezy engaged in unlawful business conduct under the California Business and Professions Code (BPC) for failing to ship items in a timely manner and false advertising.<sup>2</sup>

## THE LAWSUIT – CALIFORNIA V. YEEZY APPAREL LLC

In its complaint, filed on 22 October 2021, the state of California alleged that sneaker and apparel brand Yeezy, owned by entertainer Ye (previously known as Kanye West), advertised on its website that customers could expect two to three business days for order processing and an additional three to five days for shipping, but in fact failed to send products within 30 days after certain orders were placed, in violation of California BPC Sections 17538 and 17500.<sup>3</sup>

Under Section 17538, companies must ship goods within 30 days<sup>4</sup> of the customer placing an order unless otherwise conspicuously stated in the advertisement or on the website. Upon determining that a shipment may be untimely, a company may (1) provide a full refund,<sup>5</sup> (2) send a written notice to the buyer that offers a full refund and either details the expected duration of the delay or proposes product substitution,<sup>6</sup> or (3) ship a substitute product of equivalent or superior quality to the buyer with an option for the buyer to return the product.<sup>7</sup>

Section 17500 governs untrue or misleading statements, including a prohibition against the advertisement of goods or services with the intent to not sell them as advertised. The statute bars "any advertising . . . which is untrue or misleading."<sup>8</sup> Further, the statute prohibits advertisements that the company either knew or *should have known* would be misleading.<sup>9</sup> Violation of Section 17500 can result in a fine of up to US\$2,500, up to six months of imprisonment, or both.<sup>10</sup>

The state of California's claims against Yeezy ultimately were resolved by a settlement agreement in which Yeezy agreed to refund future customers whose items are not timely shipped, refrain from making any false or misleading statements regarding shipping times, and pay US\$950,000 in civil penalties.

## KEY TAKEAWAYS

- If you are expecting significant shipping delays, promptly send written notices to customers explaining the expected duration of the delay (expressed using a specific number of days or weeks) and offering to provide a refund upon request.
- If proposing to substitute goods or services, adequately describe the substitute goods or services, fully indicating how the substitution differs from the original order.
- Provide a toll-free telephone number or other free method for the buyer to request a refund.
- Include a *clear* and *conspicuous* disclosure statement in your advertisements or on your website that notifies customers that shipping times may be delayed due to COVID-19 or other supply chain-related factors.<sup>11</sup>

With a thorough and proactive response to potentially delayed shipments, retailers can avoid costly litigation and financial penalties and continue to build transparent and reliable relationships with customers.

## FOOTNOTES

<sup>1</sup> For more information on supply chain disruptions, see Melissa J. Tea and Sarah A. Decker, *No Supplies in the Chain*, K&L GATES (Oct. 20, 2021), <https://www.klgates.com/No-Supplies-in-the-Chain-10-20-2021>.

<sup>2</sup> Complaint, California v. Yeezy Apparel LLC, No. 21STCV38971 (Cal. Super. Ct. Oct. 22, 2021).

<sup>3</sup> *Id.* at \*3–4. According to the complaint, Yeezy's alleged untimely shipments had been occurring for at least four years.

<sup>4</sup> If the customer applies for an open-end credit plan at the same time as placing an order for products that are to be purchased on credit, the company will have 50 days to comply with § 17538, rather than 30.

<sup>5</sup> Cal. Bus. & Prof. Code § 17538(a)(2).

<sup>6</sup> *Id.* § 17538(a)(3).

<sup>7</sup> *Id.* § 17538(a)(4).

<sup>8</sup> Cal. Bus. & Prof. Code § 17500.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> Notably, although Ye partnered with sportswear brand Adidas to sell Yeezy products, Adidas was not included as a defendant in the lawsuit. Adidas displayed a disclaimer on its website that informed customers that shipping times would be delayed due to COVID-19's impact and related federal, state, and local mandates.

## KEY CONTACTS



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