



## **Business Law**

### **BLAW**

2008-2009 Event

#### **CASE STUDY SITUATION**

You are an outside legal advisor for FAIR PLAY RECORDS. FAIR PLAY RECORDS is a company specializing in parts and accessories for all current and past music playing equipment. Their motto is “From Edison to Blue Ray, if it is broken you can fix it here.”

FAIR PLAY RECORDS has parts and accessories in stock or in the warehouse for all music playing equipment made from 1875 to the present. They specialize in “carry in” repairs where the consumer can work at the bench with the technician fixing the equipment. Since online auctions have become such an economic force, business has exploded and new stores are opening at a rate of two a month down the east coast in large metropolitan areas.

FAIR PLAY has the most liberal parts return policy know in retailing: “if it does not make the machine work, just bring the part back for full refund or exchange, no questions asked.” Each store manager has a refund cash account, which is kept separate from the daily sales receipts. This way accounting can reconcile parts used and return the parts to inventory for resale. The manager must have a technician test the part before restocking it. It is estimated that fully 13% of all parts sold make it back into inventory, especially for machines repaired with manufacturing dates previous to 1960 when transistors started appearing on the market.

Steve, a long time store manager, ran into a bit of difficulty in his personal life. He wasn’t good at managing his money, and kept drifting further into debt. His financial problems resulted in him drinking and using illegal street drugs—not only bad for him but bad for his finances.

As Steve has parts returned for exchange in his store, he exchanges the part, marks the original customer sales receipt as exchanged, but does not mark the inventory in the computer. He keeps a box in his office marked “for technician review” where the exchanged parts are kept. Once a week he empties the box, sending half of the parts to the technicians and placing the other half in his car; hidden under a blanket. On his day off he drives to other FAIR PLAY stores, as well as to Radio Deck, Plum, and independent audio retailers and exchanges the parts for cash. By doing so, he supports his addictive behaviors and is able to keep the home he purchased before his life started on a downturn.

At the same time, Steve is considered by his district manager to be one of the best and brightest rising stars in the FAIR PLAY CORPORATION. Extremely intelligent with a great gift of communication, Steve is known to management and staff as the “go to” guy for answers and situations involving bad customer relations. Steve’s store is one of the very few where consistent top customer service ratings are sent in by very happy customers. Consequently, Steve was

awarded the first manager of the year award during a dinner banquet at the national manager's meeting.

After dinner, a district manager and a store manager approached Steve's district manager and asked for a minute of her time in a private setting. The store manager has had Steve in her store at least once a month for the past year returning parts, just playing the role of a regular customer. His explanation for all of the parts was that he was fixing equipment and selling the items in online auctions. He always praised FAIR PLAY for their generous return policy and promised her to return the customer service cards with top ratings. Steve gave the manager no reason to doubt him, until tonight when she saw him get the manager of the year award.

The district manager informed her regional manager, and up the ladder it went to the CEO and the senior vice president of operations, who were in attendance at the dinner. The CEO demanded answers and all parties moved to a private room to bring the facts together. Once the facts were established, the CEO now has to consider how management should handle the situation with Steve.

## **YOUR CHALLENGE**

If you were an executive with the company, how would you recommend that the CEO handle this situation from the following standpoints:

1. What should the company do with Steve? There is no proof of what he has been doing—just the word of the store manager (and probably some of her staff, if necessary).
2. From this point forward how do you recommend that the company handle thefts by deception?
3. As far as you know, this is an isolated incident. Should the company change its return policy to lessen the impact of unscrupulous managers and customers?
4. If the company does change its return policy, can they apply it to purchases already made or just to purchases made after the new policy was announced?
5. The company currently does not do any drug screening. Obviously alcohol and drug use played a factor in Steve's actions as a manager. From a legal standpoint, what are the positive and negatives associated with adopting some type of drug testing policy? Would the policy need to cover all corporate and store-level employees, or could the policy only involve store managers?

**NOTE 1:** You are not employees of the company, but simply observing this situation and providing an opinion. The judge(s) are also NOT involved as employees in the situation.

**NOTE 2:** Cases related to this issue have been provided on the following pages.

# **Business Law Case Study Reference Information**

## **USE FOR:**

Business Law 2008-2009 Event

The information in **THIS** section is the result of research done specifically for this case situation, and has been given to you **to help you prepare** your recommendations within the allotted time.

The judges will also receive this information, in addition to the Case Study Situation and Your Challenge as presented.

## **RELATED CASE PRECEDENTS INFORMATION**

The following information is designed to provide samples of cases that may influence decisions made related to the case situation. The participants must decide what, if any, relevance these Related Case Precedents have on this case study situation. The following cases have been divided into two categories, in relation to the circumstances of this case: (1) theft by deception, and (2) ADA Substance Abuse.

### **Theft by Deception**

The following cases related to the issue of *theft by deception*.

#### ***People v. Wurster, 83 Ill App.3d 399 (1980)***

The term “deception” within meaning of statute proscribing theft by deception is defined as knowingly to create or confirm impression which is false and which offender does not believe to be true; false workmen’s compensation claim comes within that definition and is therefore just as much a “theft by deception” as any other scheme to obtain money by false pretenses.

#### ***Harwei, Inc. v. State of Indiana, 459 N.E.2d 52 (Ind.App. 2 Dist. 1984)***

It is not necessary to show that intended victim actually was defrauded in order to sustain charge of attempting to obtain property by false pretenses; offense of attempting to obtain money or property by false pretenses may be committed even though the intended victim knew the pretenses were false and did not rely on them.

#### ***State v. Krueger, 574 A.2d 1006 (N.J.Super.A.D. 1990)***

“Theft by deception” occurs where one obtains property of another by purposely creating false impression.

Evidence that defendant induced casino to give him gambling chips by asserting that he was different person, whose bank account he incorrectly assumed to be sufficient to cover gambling debt, was sufficient factual basis to support guilty pleas to charge of theft by deception; defendant’s false representation as to his identity was part of scheme to use funds stolen from person whom he claimed to be, and his belief that casino would ultimately be paid could not exonerate him.

Where it is anticipated that restitution might be ordered for crimes encompassed in indictments or counts which, under plea agreement, are later to be dismissed, defendant should be alerted to that fact and should be required to provide factual basis supported of restitution at time of plea.

#### ***State v. Mann, 583 A2d 372 (N.J.Super. A.D. 1990)***

Defendant’s purchase of VCR from sales clerk who was aware of defendant’s deceptive use of another’s credit card was not “theft by deception.” If victim did not turn over property in reliance on any deception then defendant did not obtain property by deception.

## **ADA Substance Abuse**

The following cases related to the issue of *ADA Substance Abuse*.

### ***McKay v. Town & Country Cadillac Inc.*** ***(DC NIII, 4/23/02) 13 AD Cases 521***

Alcoholic former employee can maintain retaliation action under ADA, despite finding that he was not disabled under ADA, where he need only have reasonable belief that he was disabled and that he opposed unlawful discrimination.

Former employee's disclosure of his alcoholism to company president and his objections to president's negative response did not constitute opposition to unlawful discrimination for purposes of retaliation claim, where no discriminatory act is alleged to have occurred, president did not know that he was alcoholic before disclosure, and fact that president's reaction upset former employee is irrelevant.

Alcoholic former employee can maintain retaliation action under ADA, despite finding that he was not disabled under ADA, where he need only have reasonable belief that he was disabled and that he opposed unlawful discrimination.

### ***Hoffman v. MCI Worldcom Communications Inc.*** ***(DC Conn. 12/28/01) 12 AD Cases 1467***

Former employee's cocaine use disqualifies him as individual with disability under ADA, even though he was in drug rehabilitation program when he was discharged, where ADA does not cover employees "currently engaging in illegal drug use," he admitted to regular and heavy drug use for six months before entering drug treatment, and his discharge was result of employer's decision during this six month period not to reassign him after corporate reorganization.

Former employee who was discharged while in drug rehabilitation program is not entitled to ADA protections, even though he was not currently using illegal drugs, where his employer did not have notice of his disability and may have known only about his drug use, drug use is not equivalent to addiction and is not necessarily disabling, and employer did not know about his addiction and participation in drug treatment program.

### ***Raytheon Co. v. Hernandez*** ***(US SupCt. 12/2/03) 14 AD Cases 1825***

Employer's neutral policy against rehiring any employee who had violated workplace conduct rules should not have been rejected as legitimate nondiscriminatory reason for not rehiring ex-employee who was forced to resign after positive drug test, even if policy has disparate impact on recovering drug addicts where ex-employee's claim was limited to disparate-treatment theory, and by improperly focusing on factors pertaining to disparate-impact claims but not disparate-treatment claims, court of appeals ignored fact that policy is quintessential legitimate nondiscriminatory reason for refusing to rehire him inasmuch as decision could in no way be motivated by disability if policy was applied in rejecting his application.