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## Employers and Employees

### Hiring Issues

**Named plaintiffs in class action were not harmed and therefore could not seek a remedy for otherwise improper job application question requesting marijuana-related convictions more than 2 years old.**

*Starbucks Corp. v Superior Court* (2008) 168 CA4th 1436, 86 CR3d 482

Starbucks, the coffee company, used a two-page job application nationwide for screening and hiring store level employees. On the first page, a question was posed for the prospective employee (the convictions question): "Have you been convicted of a crime in the last seven (7) years?" The question continued, "If yes, list convictions that are a matter of public record." The reverse side of the application contained various disclaimers for United States applicants as well as for three different states: Maryland, Massachusetts, and California. These disclaimers were located in a 346-word paragraph directly above the signature line. The California disclaimer provided that an "applicant may omit any convictions for the possession of marijuana . . . that are more than two (2) years old. . . ."

Erik Lords, Hon Yeung, and Donald Brown filed a class action against Starbucks on behalf of 135,000 other job applicants at some 1500 stores in California. All three named plaintiffs applied for jobs at Starbucks in early 2005 and filled out the application. None of the three had a marijuana conviction or arrest and none of the three was ultimately hired. Lords read the entire application, including the California disclaimer, and understood that he did not have to state marijuana-related convictions more than 2 years old. He answered "no" truthfully. Brown and Yeung also read and understood the entire application and the disclaimer, but refused to answer, with Brown refusing on privacy grounds. The plaintiffs alleged that the 7-year convictions question was illegal under California law, which prohibits job application questions about marijuana-related convictions more than 2 years old. They also alleged that the California disclaimer was buried in a block of type of 346 words, did not specifically refer to the convictions question, and was at the form's end and thus would be overlooked. The plaintiffs sought the greater of actual damages or \$200 each under Lab C §§432.7(c) and 432.8. The trial court denied Starbucks's motion for summary judgment, determining that the convictions question on its face violated §§432.7(c) and 432.8. The court also expressed doubt regarding the legal sufficiency of the California

disclaimer. Starbucks filed a petition for writ of mandate, arguing that mandate was necessary because, given the size of the class, Starbucks's potential exposure on the statutory minimum was some \$27 million, an amount so large that the pressure to settle might become irresistible.

The court of appeals agreed that the placement of the California disclaimer in a 346-word paragraph along with other disclaimers for other states, without clear delineations and out of context of the previous convictions question on the opposite page, in effect buried the important disclaimer. However, the court disagreed with the trial court that the plaintiffs were ultimately entitled to the remedy they sought. The court stated that even though Starbucks may have violated the spirit and form of the marijuana reform legislation embodied in Lab C §§432.7(c) and 432.8, "the question remains, on summary judgment, whether there are triable issues of fact" to bring the plaintiffs and the entire class "within the class of persons intended to be benefited" by the statutes. 168 CA4th at 1445. Thus, the court ultimately agreed with Starbucks's two primary arguments and granted the writ of mandate.

First, the court agreed that even if the California disclaimer was ambiguous, the plaintiffs understood the application in the manner that Starbucks had intended. Lords and Yeung admitted in their depositions that they understood the disclaimer and neither believed he was being asked to disclose marijuana-related convictions more than 2 years old. The court relied on precedent and analogy to reject their claims that their state of mind was irrelevant. It reasoned that, because Lords and Yeung failed to offer any extrinsic evidence to the contrary, the fact that they understood the otherwise ambiguous convictions question was dispositive of the issue.

Second, the court agreed with Starbucks that the plaintiffs were not members of a legally protected group such that they would be entitled to the remedy sought. They had no marijuana convictions and thus were not aggrieved by the statutory violations. Moreover, they were not similarly situated to those whose minor drug histories were wrongly revealed on improper job applications, or who refused to disclose such offenses in response to the convictions question, and who therefore might be entitled to either actual damages or the statutory minimum. The court stated that viewing this matter differently would not stop potential plaintiffs "from freely roaming throughout the state as knights errant amici searching for deficiencies . . . where no harm has been caused them or anyone else as a result. . . ." 168 CA4th at 1447. Thus, the writ of mandate was granted.

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