

# Be Careful How You Advertise

By D. Carlos Kaslow, SSA General Counsel

Companies advertising their goods and services often make enticing offers to prospective customers. Self storage businesses are no different. The new customer is offered rent discounts, free rent and even “one dollar moves you in” offers. While it is clear that consumers respond to special offers, it is important that any company making a special offer be very clear in stating the exact nature of that offer. Capital One Bank discovered just how dangerous an unclear direct mail offer can be in a decision by the Ninth Circuit Court of Appeals in *Rubio v. Capital One Bank*, 2010 U.S. App. LEXIS 14968.

The bank sent Rubio a direct mail credit card solicitation offering a fixed 6.99% interest rate on purchases and balance transfers. The solicitation stated that the interest could increase if there was a failure to make payments, if the customer charged over the card’s limit or if payment was returned. When Rubio received the card the cardholder agreement stated the bank could change the agreement, including interest rates, by providing the customer with advance notice. Rubio complied with all the conditions of the card’s use but was given notice that the interest rate was being increased to 15.9%. Rubio filed suit alleging that the increase violated the Truth in Lending Act (TILA) and the California Unfair Competition Act (UCA). The trial court dismissed the suit and Rubio appealed.

The Court of Appeals reversed. The court concluded that Rubio may be able to prove that the direct mail advertisement that she received was misleading because it stated that the interest rate was “fixed” at 6.99% and that a consumer could reasonably believe that it could not be changed except for the three reasons for increasing the rate stated in the offering. The court even suggested that except for use of the phrase “fixed rate of 6.99%” there would be no violation of the TILA or UCA. So it seems that the bank could be involved in months and even years of litigation for a somewhat unclear use of a phrase in a direct mail advertisement. Storage operators should take heed of the court’s ruling.

Special offers must be stated clearly and any conditions on that offer spelled out. It is always good practice to run ads by someone not involved in the business so that a poor choice of words is not viewed as deceptive by a court. In this instance the bank may have thought that “fixed rate of 6.99%” simply meant that the rate was not variable. While this may be an accepted interpretation within the banking industry, consumers may view it differently. ❖

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SSA members should have received their 2011 dues renewal invoices last month.

This year, members can pay online by logging into their membership account on the SSA website ([www.selfstorage.org](http://www.selfstorage.org)).

In addition to our networking, conferences, education, research and data, the SSA’s legislative efforts are creating a friendlier environment for you to do business. Over the past two years alone, the national SSA has pursued 30 legislative initiatives in 20 different states, working closely with our affiliated state associations. The SSA has had a positive outcome in the vast majority of these efforts and during 2011 we already have a full agenda planned.

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