

Civil Procedure > Pleading & Practice > Pleadings > Heightened Pleading Requirements > Fraud Claims

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Criminal Law & Procedure > Criminal Offenses > Fraud > Wire Fraud > Elements
Antitrust & Trade Law > Private Actions > Racketeer Influenced & Corrupt Organizations > Claims > Fraud**

[HN10] A valid claim that does not rest on specific misrepresentations in the use of the mails or wires always identifies fraud with particularity at some level of the enterprise.

Antitrust & Trade Law > Consumer Protection > Deceptive Acts & Practices > State Regulation

[HN11] The Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110, prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce. Conn. Gen. Stat. § 42-110b(a).

COUNSEL: For Plaintiffs-Appellants: JEFFREY A. LEON (with Jamie E. Weiss, Grant Lee, on the brief), Quantum Legal LLC, Highland Park, Illinois; Laurie Rubinow, Shepherd, Finkelman, Miller & Shah, LLP, Chester, Connecticut; Nathan C. Zipperian, Shepherd, Finkelman, Miller & Shah, LLP, Ft. Lauderdale, Florida.

For Defendants-Appellees: KENNETH M. KLIEBARD [****2**] (with Gregory T. Fouts, on the brief), Morgan Lewis & Bockius LLP, Chicago, Illinois.

JUDGES: Before: JACOBS and LYNCH, Circuit Judges, CROTTY, District Judge.¹

¹ Judge Paul A. Crotty, United States District Court for the Southern District of New York, sitting by designation.

OPINION BY: DENNIS JACOBS

OPINION

[*119] DENNIS JACOBS, *Circuit Judge*:

Seven former participants in online discount membership programs allege violation of federal privacy statutes and a racketeering conspiracy between online retailers and loyalty club businesses to defraud customers of "membership fees" for rewards programs they unwittingly joined. They allege that Trilegiant Corporation ("Trilegiant") conspired with e-merchant retailers such as Buy.com, Orbitz, and Priceline to enroll the retailers' customers in the membership programs via deceptive post-transaction marketing and datapass techniques. We conclude that, because the appellants fail to raise a material issue of fact as to whether they consented to enrollment in the membership programs, the prohibitions of the Electronic Communications Privacy Act do not apply; and because the appellants identify no actionable fraud, they cannot proceed on a theory of racketeering.

The judgment of the district court is affirmed.

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