

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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**THE PEOPLE OF THE STATE OF
NEW YORK, by ELIOT SPITZER,
Attorney General of the State of New York,**

Petitioners,

VERIFIED PETITION

-against-

Index No.:

**SIMON PROPERTY GROUP, INC., and
SIMON PROPERTY GROUP, LP,**

Respondents.

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The People of the State of New York, by their attorney, Eliot Spitzer, Attorney General of the State of New York, allege upon information and belief:

Parties and Jurisdiction

1. Petitioners are the People of the State of New York, by their attorney Eliot Spitzer, Attorney General of the State of New York.
2. Respondent Simon Property Group, Inc. is a foreign corporation, incorporated in the State of Delaware, with its principal place of business at 115 West Washington Street, Indianapolis, Indiana 46204.
3. Respondent Simon Property Group, LP, a subsidiary of Simon Property Group, Inc., is a foreign limited partnership authorized to do business in New York. Respondents Simon Property Group, Inc. and Simon Property Group, LP are hereafter collectively referred to as “Simon.”
4. The Attorney General is empowered to bring this special proceeding pursuant to

(i) GBL § 396-i(4), which authorizes the Attorney General to commence a special proceeding seeking injunctive relief and civil penalties against any business that is violating any of the provisions of GBL § 396-i (New York’s Gift Certificate Law); and (ii) Executive Law § 63(12), which authorizes the Attorney General to commence a special proceeding seeking injunctive relief, restitution, and damages against any person or business engaged in repeated fraudulent or illegal acts or who otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transacting of business.

Facts

5. Simon owns and operates ten shopping malls or outlets in New York: (1) Woodbury Common Premium Outlets in Central Valley; (2) Roosevelt Field in Garden City; (3) Walt Whitman Mall in Huntington Station; (4) Smith Haven Mall in Lake Grove; (5) Chautauqua Mall in Lakewood; (6) Nanuet Mall in Nanuet; (7) Waterloo Premium Outlets in Waterloo; (8) Mall at The Source in Westbury; (9) The Westchester Mall in White Plains; and (10) Jefferson Valley Mall in Yorktown Heights.

6. At its shopping malls and outlets, Simon promotes and sells a pre-paid gift card known as the “Simon Giftcard.” The Simon Giftcard is a plastic card similar in appearance to a credit card and has a “Visa” logo and the word “debit” on the face of the card. (A copy of the front and back of a Simon Giftcard is annexed as Exhibit A to the affidavit of Attorney General Investigator Jerold Nichols, dated February 1, 2005 (“Nichols Affidavit”). The Nichols Affidavit is annexed hereto as Exhibit A.)

7. Despite its appearance, the Simon Giftcard is not a credit card or a debit card that is linked to a deposit account. The card is accepted by merchants that accept “Visa” debit

cards, but only for purchases up to the prepaid amount loaded onto the card. Additional amounts may not be added to the card after the card is purchased. (A copy of a booklet provided to purchasers of the Simon Giftcard is annexed to the Nichols Affidavit as Exhibit B.)

8. The Simon Giftcard is a gift certificate as defined in GBL § 396-i(1) because it is an electronic payment device that (i) is usable at multiple, unaffiliated merchants or service providers, (ii) is issued in a specific amount, (iii) may not be increased in value or reloaded, (iv) is purchased and loaded on a prepaid basis for the future purchase or delivery of goods or services and (v) is honored upon presentation.

9. The Simon Giftcard is available for purchase at any Simon Mall or by visiting Simon's website at www.simongiftcard.com. The cost of a Simon Giftcard is \$1.50 per card if purchased at a Simon Mall. For purchases over the Internet, Simon charges a fee of \$5.95 per card for shipping and handling via First Class Mail, or \$16.95 per card for Express Shipping.

10. The amount available on a Simon Giftcard is determined by the consumer at the time of purchase. The purchaser may choose any whole dollar amount, ranging from \$20 to \$500.

11. When the Simon Giftcard is used for any purchase or service, the dollar value of the purchase or service is deducted from the card. The card may only be used for purchases or as payment for services; it may not be redeemed or exchanged for cash or credit.

12. The Simon Giftcard expires when either the value of the card reaches zero, or upon the date of expiration shown on the card, whichever occurs first. Generally, the card has an expiration date of approximately one year from the date of purchase.

13. In addition to the \$1.50 charge for the Giftcard, Simon imposes the following fees

for each card:

- a \$2.50 monthly “administrative fee” commencing in the seventh month after purchase of the card;
- commencing with the second call, a fee of \$.50 every time a consumer telephones to ascertain the balance remaining on the card (merchants accepting the card cannot advise the consumer of the balance remaining on the card);
- a \$5.00 fee to reissue a lost or stolen card;
- a \$7.50 fee to reissue a card that expires (cards generally expire in one year).

14. Simon’s assessment of a monthly administrative fee in the seventh month after purchase violates GBL § 369-i(5)(b), which provides: “No monthly service fees may be assessed against the balance of a gift certificate prior to the thirteenth month of dormancy.” GBL § 396-i(5)(c) defines “dormancy” as the “non-use of a gift certificate.” GBL § 396-i(5) was effective as of October 18, 2004, and applies to all gift certificates sold or issued on or after that date.

L. 2004, c. 170, § 3.

15. GBL § 396-i(3) requires that the terms and conditions of a gift certificate or card, including whether a fee will be charged for the replacement of a gift certificate that is lost, stolen or destroyed, be clearly and conspicuously stated on the certificate or card. The \$5.00 fee imposed by Simon for replacement of a lost or stolen card is not disclosed on the Simon Giftcard, in violation of GBL § 396-i(3).

_____ 16. By this proceeding, petitioners seek an injunction permanently enjoining respondents from violating GBL § 396-i(5)(b) and GBL § 396-i(3), together with an assessment of civil penalties for each violation, pursuant to GBL § 396-i(4).

**FIRST CAUSE OF ACTION
VIOLATIONS OF GBL §396-i**

17. GBL § 396-i(5)(b) prohibits the assessment of monthly service fees “against the balance of a gift certificate prior to the thirteenth month of dormancy.”

18. By promoting and selling the Simon Giftcard subject to a monthly administrative fee against the balance of the card beginning in the seventh month after purchase, Simon is violating GBL § 396-i(5)(b).

19. GBL § 396-i(3) requires that the terms and conditions of a gift certificate, including “whether a fee will be charged for the replacement of a gift certificate that is lost, stolen or destroyed,” be clearly and conspicuously stated on the gift certificate or card.

20. By selling the Simon Giftcard without stating on the card that there is a \$5.00 replacement fee for lost or stolen cards, Simon is violating GBL § 396-i(3).

**SECOND CAUSE OF ACTION
VIOLATION OF EXECUTIVE LAW §63(12)**

21. Simon’s repeated and persistent violations of GBL § 396-i(5)(b) and GBL § 396-i(3) constitute repeated and persistent illegal conduct in violation of Executive Law § 63(12).

WHEREFORE, petitioners request the Court grant relief pursuant to GBL § 396-i(4) and Executive Law §63(12) by issuing an order and judgment as follows:

1. Permanently enjoining respondents, their employees, agents, successors and assigns from engaging in illegal practices by:
 - a. Selling, promoting and/or offering for sale, the Simon Giftcard subject to a monthly administrative fee prior to the thirteenth month of non-use of the card, in violation of GBL § 396-i(5)(b);

- b. Assessing, charging and/or collecting a monthly administrative fee in connection with any Simon Giftcard sold on or after October 18, 2004, at any time prior to the thirteenth month of non-use of the card, in violation of GBL § 396-i(5); and
- c. Failing to disclose on the Simon Giftcard that there is a \$5.00 fee to reissue a lost or stolen card, in violation of GBL § 396-i(3);
2. Directing respondents to pay a civil penalty in the amount of \$1,000 for each violation of GBL § 396-i;
3. Awarding petitioners costs, plus an additional allowance of \$2,000 against each respondent, pursuant to CPLR §8303(a)(6); and
4. Granting petitioners such other and further relief as this Court deems just and proper.

Dated: New York, New York
February 2, 2005

Yours, etc.,
ELIOT SPITZER
Attorney General of the State
of New York,
Attorney for Petitioners
By:

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VERIFICATION

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

GENEVA M. JOHNSON, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of Eliot Spitzer, Attorney General of the State of New York, and am duly authorized to make this verification.

2. I have read the foregoing petition and know the contents thereof. The same is true to my knowledge, except as to matters stated to be alleged on information and belief, and as to those matters I believed them to be true.

3. The reason this verification is not made by petitioners is that petitioners are a body politic. The Attorney General is statutory representative.

GENEVA M. JOHNSON

Sworn to before me this
____ day of February, 2005

Shirley Stark
Assistant Attorney General