

LAW REVIEW

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TURNING STARBUCKS INTO A DADDY WARBUCKS

Can you ask an applicant for employment in California whether they have ever been arrested for a crime or convicted of possession of marijuana? Starbucks knows.

STARBUCK'S JOB APPLICATION

Three young men, whom we will cleverly call Plaintiffs, filed a class action on behalf of 135,000 unsuccessful job applicants at Starbucks. They alleged that Starbucks' employment application contains an "illegal question" about prior marijuana convictions more than two years old. They sought damages of \$200 per applicant.

Starbucks uses the same two-page job application form nationwide for store level employees. The first page includes this question: "Have you been convicted of a crime in the past seven (7) years?" On the second page of the application is a 346-word disclaimer. Under the heading, "CALIFORNIA APPLICANTS ONLY" it recites that applicants may omit convictions for the possession of marijuana that are more than two years old.

NO CAN ASK

California law prohibits employers from asking job applicants about arrests that did not result in a conviction. Additionally, under a code enacted during the

1970's as part of comprehensive reform legislation to differentiate pot possession offenses from more serious felony drug offenses, employers may not ask job applicants if they have been convicted of marijuana possession more than two years ago. For violations of the code, the applicant may sue for \$200.

CLASS ACTION

Our three young Plaintiffs saw a potential gold mine. If every single person who applied for a job at a California Starbucks was asked that question, which they were, they would each be entitled to \$200, in Starbuck's case, totaling \$26 million. "One double espresso coming right up, that'll be \$12.00."

The trial court agreed with the Plaintiffs and certified the class action, setting Starbucks up for a major financial hit.

NO CLASS

Starbucks filed a writ with the Court of Appeal who scared the pants off of the coffee giant by concluding that the disclaimer on the second page of the job application was not "conspicuous, plain and clear" and "placed and printed so that it will attract the reader's attention." It was not effective. The door was open for class certification. "Make that a triple shot."

However, the Court noted the three Plaintiffs had never been convicted of possession of marijuana, besides they had read the disclaimer. They were not harmed.

(COFFEE) POT

"Plaintiffs' strained efforts to use the marijuana reform legislation to recover millions of dollars from Starbucks gives a bizarre new dimension to the

everyday expression “coffee joint” and “coffee pot”...there are better ways to filter out impermissible questions on job applications than allowing “lawyer bounty hunter” lawsuits brought on behalf of tens of thousands of unaffected job applicants...the civil justice system is not well-served by turning Starbucks into a Daddy Warbucks.”

The Court of Appeal found for Starbucks.

This case recognizes the importance of class certification in big-dollar litigation. As the Court wrote, “...a grant of class status can compel the stakes of a case into the stratosphere.” If the Starbucks litigation achieved class status Starbucks would have essentially been forced to settle for huge dollars. That didn't happen.

You can be assured a revised Starbucks' job application form in California omits any question about older convictions of possession of marijuana or has the disclaimer immediately after the question.

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