

SCHWARTZ & BALLEN LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465
(202) 776-0700

FACSIMILE
(202) 776-0720

www.schwartzandballen.com

M E M O R A N D U M

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To Our Clients and Friends

Re: Federal District Court Gift Card Preemption Ruling

A federal district court in New Hampshire has held that state consumer protection laws do not apply to prepaid cards issued by national banks and federal savings associations, even where the cards are promoted and sold by non-bank third parties. SPGGC, LLC v. Ayotte, No. 04-cv-420-SM (D. N.H. Aug. 1, 2006).

The New Hampshire attorney general alleged that an affiliate of Simon malls (“Simon”), which promotes and sells Simon Visa gift cards issued by a national bank and a federal savings association, violated New Hampshire law, which prohibits the imposition of fees that diminish the value for which the card can be redeemed and expiration dates on gift certificates. In granting summary judgment to Simon on the basis that the state law provisions were preempted by the National Bank Act and the Home Owners’ Loan Act, the court relied heavily on the features of the card program, including that the card is issued by a federal banking institution, fees imposed on cardholders are retained by the bank and Simon’s role is merely to promote and sell the bank-issued cards.

A copy of the decision can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.