

# 'Meet or beat' a bait and switch?

Lawsuits claim two retailers wouldn't honor price policies

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Consumers trying to take advantage of store offers to "meet or beat" competitors' prices might find that the fine print gives merchants enough wiggle room to shimmy all night long — and send the customer home empty-handed.

But a Syosset man and a Manhattan resident have fought back, taking two major retailers to court. In March, a federal judge granted class-action status to the Manhattanite's suit against Best Buy.

Terms like "local" and "competitor" are rarely defined clearly in writing and are subject to wide interpretation, often by individual store managers, according to watchdog groups such as the Consumer Federation of America and the Better Business Bureau.

"While in theory this is a great concept, consumers rarely benefit," Jack Gillis, a spokesman for the consumer federation, said in a recent interview. "As a practical matter, we suspect that many of these retail establishments are banking on consumers' not testing out the claims."

At the Better Business Bureau, Brian Rauer, executive director for Long Island and the Mid-Hudson region, said consumers need to read the fine print of such offers, including



PHOTO BY HOWARD SCHNAPP

**Warren Dank of Syosset is suing Sears, claiming that personnel at two of its stores refused to honor Sears' guarantee to match competitor's prices on a television.**

the proof required for competitor prices and items excluded.

"The 'mice type' is going to tell you what the real offer is," he said.

The men who are suing the retailers are both lawyers, and both claim in separate lawsuits that they were rebuffed on technicalities.

Thomas Jermyn, 46, of Manhattan, a real estate lawyer, is suing Best Buy in federal court in Manhattan claiming that, in May 2006, staff at the

electronics retailer's West 23rd Street store refused to refund him the difference between a camera he purchased there for \$1,999 and one he later found at \$959.99 at TriState Camera Video & Computers on Sixth Avenue. He said Best Buy claimed TriState wasn't a local competitor.

In March, federal judge Colleen McMahon granted his suit class-action status to include other consumers with similar

allegations. Best Buy's media relations department declined to comment last week.

Another consumer, lawyer Warren Dank, 41, of Syosset, also is seeking class status in State Supreme Court in Mineola. He contends that in February 2007 personnel at Sears' Hicksville and Garden City stores refused to match lower prices advertised for a television by two retailers in Manhattan — J&R Music World and Price Mad. Dank says

Sears listed the set for \$3,600, J&R had it for \$2,800 and Price Mad was offering it for \$2,400.

He claims he first was told that they matched only Circuit City and Best Buy prices, then was told they matched only stores in Nassau County. At the Rego Park Sears store officials agreed to match J&R's price, but Dank says he was told he'd have to call Sears corporate headquarters — after purchasing the TV — to find out if Price Mad, then at 417 Fifth Ave., according to Dank, was considered a local store. Dank says he made the call and was told it wouldn't match Price Mad.

Dank's suit seeks \$100 million in damages for everyone similarly affected. He said he wants to go to trial, not to settle for cash. "I've got them hands down right now," he said.

Jermyn's complaint does not specify a damage amount.

Best Buy's Web site says its guarantee is limited to "local retail" competitors. That's "defined" elsewhere on the Web site as "a retail store located in the same market area" but the term "market area" is not defined.

Sears' Web site says its price match guarantee is limited to a "local competitor's retail store." A spokeswoman at corporate headquarters in Illinois declined to comment on the suit last week.

Some other retailers' written policies offer similar language. Wal-Mart's, on its Web site, says its offer excludes competitors "outside of the store's or club's local trade territory."