

Federal Court Dismisses ZIP Code Class Action Under D.C. Law

April 2014

Judge Beryl Howell of the U.S. District Court for the District of Columbia has held that two District of Columbia consumer protection statutes do not prohibit a retailer's requesting a customer's ZIP code in connection with a credit card transaction. *Hancock v. Urban Outfitters*, 13-cv-00939 (D.D.C. Mar. 14, 2014).

Case Background

The two plaintiffs named in the suit both alleged that they purchased items at retailers using a credit card. When the plaintiff customers were checking out, the cashiers allegedly asked for their ZIP codes and entered them into the point-of-sale system, not into the credit card machine.

The customers filed suit on behalf of themselves and a putative class of "thousands of consumers." They alleged that asking for a consumer's ZIP code when they choose to pay by credit card "is illegal" in the District of Columbia. Specifically, the customers alleged that the retailers violated two District of Columbia statutes. First, the customers alleged a violation of the District of Columbia Use of Consumer Identification Information Act (CII Act), which prohibits requesting or recording "the address or telephone number of a credit card holder on the credit card transaction form" in connection with a credit card purchase, unless necessary for shipment, delivery, or the like. Second, the two customers alleged a violation of the District of Columbia Consumer Protection Act (DCCP Act), which broadly prohibits "deceptive representations in connection with the sale of goods." The plaintiffs claimed that the retailers engaged in a pattern or practice of this behavior, and sought statutory treble damages of up to \$1,500 for each violation of the DCCP Act and statutory

Authors

Matthew W. Beato
Partner
202.719.7518
mbeato@wiley.law

damages of \$500 for violations of the CII Act.

The retailers moved to dismiss, arguing that the plaintiffs had not made out a *prima facie* case under either statute. The district court agreed and dismissed the plaintiffs' complaint in its entirety, holding that plaintiffs had adequately pled none of the elements of either statute.

Failure to State Claims

To prove a violation of the CII Act, the Act first requires that the retailer request or record, in relevant part, "the address . . . of a credit card holder." The court defined address as "the location at which a person or organization may be found or reached," and noted that one could not locate a person with peculiarity using his or her ZIP code, as thousands of addresses are allocated to each ZIP code.

Second, the complaint also did not allege that the retailers had requested the ZIP codes as an affirmative requirement for use of a credit card as required by the statute, but rather the complaint indicated that the credit card transaction had occurred *after* the request for the ZIP code. Thus, the court found that the plaintiffs "failed adequately to plead that the defendants conditioned the use of a credit card for the plaintiffs' purchases on the provision of a ZIP code."

Third, the statute requires that the address be recorded "on the credit card transaction form." The plaintiffs did not allege that anything was written "on the credit card transaction form"—as the court noted, "it appears that the defendants took steps specially designed to adhere to the law by affirmatively separating the ZIP code information from the credit card information." The court noted that the CII Act is different from the consumer protection laws of many states, such as California, whose law has been interpreted to specifically prohibit ZIP code collection.

The district court also dismissed the DCCP Act claims. The plaintiffs pled these claims under the theory that the retailers engaged in deceptive conduct by claiming "that provision of a ZIP code is necessary to complete the transaction," when it was not. The district court held that the plaintiffs had not pled that "the transactions at issue would not have been completed had the plaintiffs not provided their ZIP codes," and thus the plaintiffs had failed to allege that the retailers had engaged in "deceptive" conduct.