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## COURT CONSIDERS COLLECTION OF ZIP CODES IN CREDIT CARD TRANSACTIONS UNDER MASSACHUSETTS LAW

The United States District Court for the District of Massachusetts recently held that ZIP code numbers are "personal identification information" under a Massachusetts law that regulates the collection of information in connection with credit card transactions. *Tyler v. Michaels Stores, Inc.*, 2012 WL 32208 (D. Mass. Jan. 6, 2012).

The case involved a class action by Tyler against Michaels claiming that Michaels illegally requested customers' ZIP codes when processing their credit card transactions in violation of Section 105(a) of Massachusetts General Laws, Chapter 93A. Section 105(a) prohibits a person that accepts a credit card for a business transaction from writing, causing to be written or requiring that a credit cardholder write, personal identification information that is not required by the credit card issuer on the credit card transaction form. It also states that "personal identification information" includes, but is not limited to, a cardholder's address or telephone number.

Tyler claimed that Michaels used her ZIP code to find her address and telephone number and, as a result, she received unwanted marketing materials from Michaels. The court found that the main concern of the Massachusetts legislature was to prevent fraud. The court determined that ZIP code numbers are "personal identification information" under Section 105(a) because a ZIP code number may be necessary to the credit card issuer to identify the cardholder in order to complete the transaction. The court went on to determine that Michaels' electronic credit card terminal created a "credit card transaction form" because the plain meaning refers equally to electronic or paper transaction forms. Thus, the court concluded that Tyler sufficiently alleged facts in support of her claim under Section 105(a).

Despite its conclusion, the court granted Michaels' motion to dismiss based on Tyler's failure to allege a causal connection between Michaels' actions and a cognizable injury under Massachusetts law. The court found that Tyler's claim of receiving unwanted advertising simply was not a cognizable injury.

While California has seen the bulk of actions based on the collection of ZIP codes in connection with credit card transactions

(see, e.g., *Pineda v. Williams-Sonoma Stores, Inc.*, 246 P.3d 612 (Cal. Feb. 10, 2011) discussed in DTS Alert dated March 18, 2011), the *Tyler* case shows the litigation spreading. We also are aware of recent cases considering New Jersey law. A number of states have prohibitions similar to these states' laws and, depending upon the available remedies, also may see ZIP code litigation. □

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## COURT FINDS CALIFORNIA SECTION 1747.08 INAPPLICABLE TO ONLINE CREDIT CARD TRANSACTIONS

The United States District Court for the Central District of California recently held in two separate cases that claims under Section 1747.08 of California's Song Beverly Credit Card Act could not be supported in the context of online credit card transactions.

In *Mehrens v. Redbox Automated Retail LLC*, 2012 WL 77220 (C.D. Calif. Jan. 6, 2012), the plaintiff rented DVDs from the defendant's self-service kiosks using his credit card. During each transaction, Redbox requested and/or required the plaintiff to provide his ZIP code and email address. The plaintiff claimed that Redbox used this information to decide where to place future kiosks. In *Salmonson v. Microsoft Corp.*, 2012 WL 77217 (C.D. Calif. Jan. 6, 2012), the plaintiff made an online transaction on Microsoft's website to download a copy of software over the Internet. While using his credit card to pay for the transaction, Microsoft required the plaintiff to provide, among other information, his address and telephone number. In each case, the plaintiff brought a class action alleging violations of the Act and the court granted the defendant's motion to dismiss on the same reasoning.

Section 1747.08 provides, in relevant part, that no person accepting a credit card for the transaction of business may request the cardholder to write any personal identification information on the credit card transaction form. Nor may the person use in any credit card transaction a credit card form that contains preprinted spaces specifically designated for filling in any personal identification information of the cardholder. The Act defines "personal identification information" to include the cardholder's address and

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telephone number. The Supreme Court of California in 2011 had held that a cardholder's ZIP code constitutes "personal identification information" within the meaning of Section 1747.08. See *Pineda v. Williams-Sonoma Stores, Inc.*, 246 P.3d 612 (Cal. Feb. 10, 2011) discussed in DTS Alert dated March 18, 2011.

The federal court found that the use of the words "write" and "preprinted" and the absence of any reference to online or kiosk transactions in Section 1747.08 suggest that "pen and paper" transactions were contemplated by the statute, rather than electronic entry of numbers on a keypad or touch-screen. The court also found that the purpose of the Act supports limiting its applicability to brick-and-mortar transactions. Relying on the case of *Saulic v. Symantec Corp.*, 596 F. Supp. 2d 1323 (C.D. Cal. 2009), which earlier had held Section 1747.08 inapplicable to online transactions, the court stated that the Act was intended to combat the practice of collecting customer information that would ultimately be used for the sole benefit of the merchant corporation. Because the Act focuses on preventing unnecessary use of personal information, the court found that it cannot reasonably be read to include online transactions where recording the information is necessary for a legitimate purpose.

These decisions may give online and unmanned kiosk retailers doing business in California some comfort in the practice of collecting personal information, including ZIP codes. Still, we are not aware of any California state court that has considered this issue, so a cautious approach may be warranted. □

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