



April 2, 2014

## COURT FINDS COLLECTION OF ZIP CODES IN CREDIT CARD TRANSACTION DID NOT VIOLATE STATE LAW

The United States District Court for the District of Columbia recently held that retailers did not violate District of Columbia law when they requested customers' ZIP codes in connection with credit card transactions. *Hancock v. Urban Outfitters, Inc.*, 2014 WL 988971 (D.D.C. Mar. 14, 2014).

*Hancock* involved two plaintiffs who brought class action claims against two retailers, Urban Outfitters, Inc. and Anthropologie, Inc., for violations of the District of Columbia's Use of Consumer Identification Information Act (CII Act) and Consumer Protection Procedures Act (CPPA). The plaintiffs claimed that they were asked for their ZIP codes when they used their credit cards to purchase items from the defendants and that the cashiers in each instance entered the ZIP code information into the point-of-sale register (not the credit card swipe machine).

The plaintiffs alleged violations of (i) Section 47-3153 of the CII Act, which prohibits any person as a condition of accepting a credit card as payment for a sale of goods or services, from requesting or recording the address or telephone number of a credit card holder on the credit card transaction form except in certain circumstances and (ii) Sections 28-3904(e), (f) and (t) of the CPPA, which prohibit misrepresenting material facts which have a tendency to mislead, failing to state a material fact if such failure tends to mislead and using deceptive representations or designations of geographic origin in connection with goods or services, respectively. The defendants filed a motion to dismiss.

With respect to the CII Act claim, the court found that the complaint failed to meet the following four of five requisite elements of a *prima facie* case for violation of Section 47-3153 — that (i) the consumer's "address or telephone number" (ii) was requested or recorded (iii) on "the credit card transaction form" and (iv) "as a condition of accepting a credit card as payment." As to elements (i) and (ii), the word "address" is not defined in the CII Act and therefore, the court found, must be afforded its common meaning. The plaintiffs offered the dictionary definition of "address" as being "the location at which a person or organization may be found or reached." The court found neither of the plaintiffs' arguments — that the ZIP

code is an essential part of an address or that the ZIP code alone is an address — to be credible. First, the court concluded, a ZIP code is the only component of an address that is not essential. Second, no matter how broadly one interprets the statute, asking for a ZIP code standing alone is not asking for an "address," as it is a component that merely identifies the general area in which a person's mail is delivered. Agreeing with the defendants, the court concluded that a ZIP code contains thousands of addresses and therefore is not a unique location identifier.

As to element (iii), the court determined that common sense would equate the "credit card transaction form" with the credit card receipt. And, it was the recording of consumer telephone numbers and addresses on a credit card sales slip, which the court found to be the impetus for the law. By pleading that the ZIP codes were recorded on the point-of-sale register and not the credit card swipe machine, the court noted, the plaintiffs only reinforced that the defendants not only did not record anything on the credit card transaction form, but took steps to conform to the law by separating the ZIP code information from the credit card information. Finally, as to element (iv), even assuming the ZIP code was an "address," the court rejected the plaintiffs' argument that the request was a condition of accepting payment. In fact, if anything, the court said, the plaintiffs asserted that the transaction already had occurred when the ZIP code request was made.

Because the plaintiffs' CPPA claims were predicated on violation of the CII Act, the court found plaintiffs failed to allege a violation of the CPPA. Accordingly, the court granted the defendants' motion to dismiss.

It is worth noting that the court in *Hancock* discussed other cases, which also addressed collection of ZIP code information, but which reached different conclusions (*see, e.g., Pineda v. Williams-Sonoma Stores, Inc.* and *Tyler v. Michaels Stores, Inc.*, discussed in our Alerts of March 18, 2011 and February 6, 2012). The court noted that the statutes in those cases prohibited the collection of a substantially broader set of consumer information. While *Hancock* may support retailers collecting ZIP codes in credit card transactions, care should continue to be taken to closely examine the particularities of state law when developing policies and procedures on this issue. □

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