

# UnZIPped in New Jersey?

*September 22, 2011 by Sheppard Mullin*

A New Jersey state trial court has initially weighed in on the issue of whether a retailer violates state law by requesting a customer's zip code at the point of purchase. In a case fashioned after the California Supreme Court's decision in *Pineda v. Williams-Sonoma*, 51 Cal.4th 524 (Feb. 10, 2011), New Jersey Superior Court Judge Stephan Hansbury has denied a motion to dismiss brought by Harmon Stores, Inc. (Bed, Bath & Beyond), finding that the plaintiff Robert Imbert adequately pled a claim for violation of New Jersey's Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:11-17 ("TCCWNA"). The Court's ruling allows plaintiff to proceed beyond this initial stage, but no liability has been found.

In the matter of *Imbert v. Harmon Stores, Inc.*, plaintiff Robert Imbert filed a complaint against Harmon Stores, Inc., alleging that Harmon Stores violated the TCCWNA by requesting his and other customers' zip codes at the point of sale. The allegations in the complaint (which are virtually the same as the allegations set forth in California cases) assert that Harmon Stores' practice of requiring a customer's zip code at the point of sale violates the New Jersey Restrictions on Information Required to Complete Credit Card Transactions (the "Restriction Statute"), which prohibits a retailer from requiring a customer to provide "personal identification information" to complete the credit card transaction. The Restriction Statute is only directly enforceable by the state Attorney General. However, plaintiff has alleged that a violation of the Restriction Statute, in turn, violates the TCCWNA's prohibition against "enter[ing] into any written consumer contract or giv[ing] or display[ing] any written consumer warranty, notice or

sign . . . which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law . . .” which does provide for a private right of action. In issuing his ruling from the bench, Judge Hansbury held that, as pled, the transaction appears to qualify as a written consumer contract within the meaning of the TCCWNA. The judge's reasoning in reaching this limited conclusion is not specifically known as no written opinion was issued. This decision appears to be the first decision outside of the State of California where a court has held that a retailer could potentially be held liable under state law for requesting a customer’s zip code at the point of sale.

One important difference between the Restriction Statute and California's Song-Beverly is that a "request" does not violate the Restriction Statute -- only "requiring" the information does. This issue is before a federal court in a different case alleging violations of the TCCWNA for requesting a zip code. That case against Williams-Sonoma Stores, Inc. (“Williams-Sonoma”) is currently pending in the District Court for the District of New Jersey. Williams-Sonoma has filed a motion to dismiss the plaintiff’s claims and is awaiting a ruling from the Court. That motion addresses the fact that Williams-Sonoma requires the posting of a sign at the point of purchase which explains that a zip code is requested for marketing purposes and that providing it is voluntary.

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