

ZIPped Back Up: Williams-Sonoma Gains Federal Dismissal Of New Jersey Consumer Privacy Claim in *Feder*

October 12, 2011 by [Ted Max](#) and [Valentina Shenderovich](#)

In *Feder v. Williams-Sonoma Stores, Inc.*, the United States District Court for the District of New Jersey joined the New Jersey Superior Court in weighing in on the issue of whether a retailer violates consumer privacy state law by requesting a customer's zip code at the point of purchase. *Feder* was brought by the same plaintiff's lawyers and with claims similar to those in the state court case *Imbert v. Harmon Stores, Inc.* (Bed, Bath & Beyond). *Imbert* was decided last month, but without any [written decision](#), and permitted that case to proceed past the pleading stage. The District Court in *Feder*, however, issued the first written opinion under the New Jersey statutes, finding that allegations that a zip code was verbally requested could not support a claim under New Jersey law.

Both *Feder* and *Imbert* involved plaintiffs suing under New Jersey's Truth-in-Consumer Contract, Warranty and Notice Act ("TCCWNA"), alleging that a store's requirement that customers provide their zip codes during a credit card transaction violates their rights under the TCCWNA. The TCCWNA prohibits a seller from "offering, entering into, giving or displaying a written consumer contract or notice that violates a clearly established right of the consumer." [N.J. Stat. Ann. 56: 12-15](#). As a predicate for the TCCWNA claim, both *Feder* and *Imbert* relied on the Restrictions on Information Required to Complete Credit Card Transactions ("[Restriction Statute](#)"). The Restriction Statute prohibits a retailer from requiring a customer to provide "personal identification information"

to complete a credit card transaction, thus providing the basis for violation of a "clearly established consumer right."

Senior District Judge Walls in *Feder* granted Williams-Sonoma's Motion to Dismiss, finding that the plaintiff failed to sufficiently allege conduct that violated the TCCWNA because she failed to identify a particular provision of a written consumer contract that violated her rights. Feder pled that the credit card transaction form constituted the written consumer contract. Judge Walls, skeptical of this assertion, reasoned that even if the form qualified as a contract, plaintiff's recorded zip code and verbal request for the same did not constitute a contract provision. Consequently, Judge Wales found that plaintiff failed to satisfy the elements of TCCNWA because "[t]he alleged requirement that plaintiff provide her zip code would only violate the TCCWNA if it was a provision of a written contract." Plaintiff also alleged that her rights were violated under the Restriction Statute -- not by the recording of her zip code -- but by the requirement that she provide her zip code. However, the Restriction Statute does not provide for a private right of action, and, as discussed above, a claim under Plaintiff's proposed private vehicle for enforcement, the TCCNWA, failed.

Williams-Sonoma also argued that if the credit card transaction was considered a written consumer contract, the court must consider all terms of that "contract" including the point of sale signage at Williams-Sonoma stores expressly stating that when a zip code is requested it is used for marketing purposes, and that providing it is voluntary and is not a condition of processing the transaction. The Restriction Statute differs critically from California's Song-Beverly in that New Jersey's Restriction Statute only applies to information being "required," whereas Song-Beverly also applies to a "request." This issue was not presented in *Imbert*. However, since the District Court ruled on the TWNCCA, it did not need to reach this issue.

One additional anomaly between the *Feder* and *Imbert* cases is that in *Imbert* the state court permitted the plaintiff to proceed with an invasion of privacy claim. However, when presented with Williams-Sonoma's Motion to Dismiss, Feder abandoned her invasion of privacy claim in her Opposition because the Motion revealed she had previously provided her contact information to Williams-Sonoma. Feder also filed a cross-motion for leave to file an Amended Complaint, which the District Court denied as futile.

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