

NATIONAL LITIGATION



California stores cannot ask for customer zip codes, court rules

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NEW YORK, Feb 10 (Reuters Legal) - Retail stores may not ask a customer to provide a zip code in the course of a credit card transaction, the California Supreme Court ruled on Thursday.

The decision, which has implications for all retailers doing business in California, arose in a class action suit against Williams-Sonoma. Plaintiff Jessica Pineda alleged that the housewares company used customer zip codes to obtain the home addresses of "hundreds of thousands, if not millions" of customers and then used the data to market products to customers or sold the information to other businesses.

Pineda claimed the practice breached her right to privacy under the California Constitution and violated the Song-Beverly Credit Card Act of 1971, which prohibits retailers from recording a customer's "personal identification information" in a credit card transaction. Each violation carries a civil penalty of up to \$1,000.

In its 15-page, unanimous decision, the California Supreme Court ruled that the act was "designed to promote consumer protection" and that "personal identification information" includes a cardholder's zip code. Any other result, the court wrote, would be an "end run" around the statute's clear purpose. The ruling reversed two lower courts and rejected an argument by Williams-Sonoma that the statute was unconstitutionally vague. The ruling also allowed the decision to be applied retroactively to past customer transactions.

"People don't understand they're giving information on their addresses," said Gene Stonebarger, a lawyer for Pineda who presented oral arguments before the Supreme Court in January. "They believe they need to provide the zip code to process the transaction, similar to what they do at a gas station." Gas stations, however, do not store zip codes after a transaction has been approved.

Stonebarger said it is dangerous to store this kind of information for so many customers. He pointed to the major breach of TXJ Companies Inc's customer database in 2007, in which hackers stole over 45,000 credit card numbers and the personal information of Marshall's and TJ Maxx customers.

Thursday's opinion is "an important decision to protect the rights of California customers, to prevent against credit card fraud and identity theft that can occur from this type of conduct," Stonebarger said.

RETAILERS HAVE FACED SIMILAR LAWSUITS

Williams-Sonoma had argued that the law was never intended as sweeping privacy legislation to prevent a retailer from using legal means to send catalogues to its customers. Even without zip codes, a business could still use other ways to track down customer addresses, such as a phone book or electronic database, the company said.

Sheppard Mullin's Craig Cardon, who represented Williams-Sonoma, declined to comment on the court's decision.

Retailers doing business in California, including Pottery Barn and Polo Ralph Lauren, have faced a number of similar lawsuits. Most recently, in a 2008 case against Party City, the California 4th District Court of Appeals ruled that zip codes were too general to fall under the law's ban.

Donna Wilson, a partner at Buckley Sandler who has defended multiple retailers in these cases said the Williams-Sonoma decision was "about as broad a decision as could have been issued" and raises the question of how retailers can maintain contact with their customers without risking a violation of the law. Applying it retroactively, she said, exposes retailers to liability even though they relied on lower court opinions that blessed the practice of zip-code gathering.

David Faustman, a partner at Fox Rothschild who represented Party City in the previous case, said this kind of litigation has caused retailers to reconsider doing business in California.

It was not immediately clear whether the ruling would have an impact beyond California. The Song-Beverly act was modeled after a similar statute in New York, and other states including Delaware,

Kansas, Maryland, Massachusetts, Nevada and Rhode Island have similar laws. None of those states prohibit the collection of zip codes, Williams-Sonoma argued in its brief.

The high court sent the case back to San Diego superior court for further proceedings.

The case is Pineda v. Williams-Sonoma Stores Inc, California Supreme Court, No. S178241.

For Pineda: Gene Stonebarger, James Lindsay and Richard Lambert of Lindsay & Stonebarger; James Patterson, Harry Harrison & Matthew O'Connor of Harrison Patterson & O'Connor.

For Williams-Sonoma: Craig Cardon and Elizabeth Berman of Sheppard Mullin Richter & Hampton.

(Reporting by Terry Baynes of Reuters Legal)