

THE HIDDEN DANGER FOR RETAILERS DOING BUSINESS IN NEW JERSEY: ALERT REGARDING THE TRUTH-IN-CONSUMER CONTRACT, WARRANTY AND NOTICE ACT

May 09, 2016

A New Jersey statute intended to prevent deceptive practices in consumer contracts recently has become a focus for litigation in the state.

The Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. §56:12-14 *et seq.*, (“TCCWNA”) prohibits the use of illegal terms in consumer contracts and also provides that consumer contracts may not state that any of its provisions are void, unenforceable or inapplicable in some jurisdictions “without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey.” See TCCWNA at §56:12-16. In other words, a general disclaimer regarding a consumer contract that is directed to New Jersey residents is not sufficient. Instead, it appears the customer-facing language used by a retailer should identify the specific provisions of its contracts, warranties, notices, loyalty programs, signs, etc. that are void, unenforceable or inapplicable in New Jersey.

Courts have interpreted the statute to apply to language typically used by retailers in their websites’ Terms and Conditions and Rules of Use, on social media, and in contracts - such as commonly used provisions seeking to hold the retailer harmless or limit liability, requiring the customer to assume risks, and waiving certain fees and costs. As a result, retailers should evaluate all customer-facing language, notices and disclosures to ensure that the rights of New Jersey customers are not being waived or restricted. Retailers should note, however, that plaintiffs are in the process of testing the boundaries of the TCCWNA with courts, which means that the law is unsettled and subject to swift change.

Violation of the TCCWNA may result in a \$100 civil penalty *per violation*, actual damages, attorneys’ fees, and costs, making the economic consequences of non-compliance significant, particularly in the context of a potential class action lawsuit.

[Click here](#) for more details.

MEET THE TEAM



Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com

+1 415 675 3435

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.