

BUSINESSES BEAT LAWSUITS ALLEGING WEBSITE TERMS VIOLATE NEW JERSEY LAW

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Every retailer that does business in New Jersey needs to know about New Jersey's Truth in Consumer Contract, Warranty and Notice Act ("TCCWNA"), which was passed in 1981 to protect the rights of consumers from allegedly deceptive practices in consumer contracts, warranties, notices and signs. Recently, however, the TCCWNA has been the basis of a flurry of pre-suit demand letters to retailers and class action lawsuits filed in state and federal courts in New Jersey.

The TCCWNA's prohibition of the use of certain terms or disclaimers in warranties, consumer contracts, and other consumer-facing materials has been interpreted to include language typically used by retailers in their websites' terms and conditions, rules of use, on social media, and in contracts - such as commonly used provisions seeking to hold the retailer harmless/limit liability, requiring the customer to assume risks, provisions waiving certain fees and costs, and cost-shifting language. A general disclaimer directed to New Jersey residents has been deemed insufficient to satisfy the requirements of the statute.

However, businesses have had some recent success in defeating TCCWNA claims. For example, in *Palomino v. Facebook, Inc.*, No. 16-cv-04329-HSG, (N.D. Cal. Jan. 9, 2017), Facebook was successful in dismissing a putative class action against it alleging a violation of the TCCWNA based on the choice-of-law clause in its website's terms of service.

More recently, in *Norris Hite v. Lush Internet, Inc.*, Case No. 16-1533 (D. N.J. March 22, 2017), Lush Internet, Inc. was successful in dismissing a putative class action against it alleging a violation of the TCCWNA when the court determined that the plaintiff lacked standing to sue under New Jersey's TCCWNA because she failed to read the website's terms of use. [Read further case analysis >](#)

Our firm wide team offers retailers, online vendors and other affected parties expertise to protect their businesses across the TCCWNA spectrum.

MEET THE TEAM



Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com

[+1 415 675 3435](tel:+14156753435)

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