

Courts Begin to Rein in Scope of New Jersey Truth in Consumer Contract, Warranty and Notice Act

The Bottom Line

- *As the barrage of TCCWNA-related class actions continues, courts are beginning to rein in the scope and applicability of New Jersey's consumer protection statute.*
- *Claims by consumers who allege technical violations without any separate, identifiable harm may finally begin to diminish.*
- *Nonetheless, the TCCWNA remains a significant weapon for class action counsel, and companies should have their terms and conditions reviewed for compliance with the Act.*

Recent cases may suggest a shift in courts' views on New Jersey's Truth in Consumer Contract, Warranty and Notice Act (TCCWNA). Plaintiffs have used the TCCWNA to attack an increasingly broad array of agreements, particularly online terms and conditions, and have often built their cases on mere technical violations unaccompanied by any real harm.

As discussed in a previous [Alert](#), the past few years have seen a surge in these consumer class action lawsuits under the TCCWNA, as e-commerce sites – and their requisite online terms of use – have proliferated. Courts appear to be recognizing that plaintiffs have expanded this consumer protection law well beyond its drafters' intentions, and some have begun reining in claims under the statute.

Standing to Sue Under the TCCWNA

The TCCWNA allows “aggrieved consumers” to recover a \$100 statutory penalty per violation, and courts have previously held that plaintiffs need not demonstrate actual damages to recover an award. In several recent opinions, however, the U.S. District Court for the District of New Jersey has dismissed TCCWNA cases due to the plaintiffs' lack of “standing” under the U.S. Constitution. To demonstrate standing, plaintiffs must establish that they suffered an injury-in-fact – the invasion of a concrete, particularized, legally protected interest that results in actual or imminent harm. Plaintiffs in these recent cases all alleged that terms and conditions posted on the websites of the defendant companies – a clothing retailer, a cosmetics company, and a rental car company – violated the TCCWNA. None of the plaintiffs had suffered any actual harm resulting from the allegedly improper terms, however, other than the mere fact of having been offered terms that did not comport with the TCCWNA. In fact, none of them alleged that they had actually seen or read the offending terms and conditions, or that they acted in reliance on them. Indeed, none of them asserted any problems with the products or services they had purchased, or that they had sought to vindicate some right or remedy only to find that the defendant's website terms barred them from doing so.

Relying on a recent decision of the U.S. Supreme Court concerning the types of injuries that give rise to standing in a federal court, the judges in these recent cases held that “without an underlying concrete harm, a plaintiff may not base his/her complaint solely on allegations of wrongdoing predicated on TCCWNA

violations.” In other words, a TCCWNA claim must specifically allege some actual injury suffered by the plaintiff. Plaintiffs who allege mere technical violations of the TCCWNA without any specific harm arising out of the violation lack standing to bring their claims in federal court.

“Aggrieved Consumers” Under The Act

Relatedly, the TCCWNA provides that only an “aggrieved consumer” may recover the civil penalty the Act prescribes. New Jersey’s Supreme Court will soon consider whether a plaintiff who suffered no actual harm constitutes an “aggrieved consumer,” regardless of whether that plaintiff would have standing to sue in federal court. Similar to standing, this issue boils down to whether a contract that is, on its face, not compliant with the TCCWNA can form the basis of a valid claim where the consumer suffers no distinct, adverse consequences.

In two recent cases involving furniture sellers, plaintiffs alleged that the defendants’ purchase agreements violated certain technical aspects of New Jersey regulations concerning the timely delivery of furniture, and, by extension, violated the TCCWNA. Like their counterparts in the cases discussed above, the federal district judges in these cases dismissed the claims, finding that the plaintiffs were not “aggrieved consumers,” because they timely received their furniture deliveries, and therefore suffered no adverse consequences related to the TCCWNA. The plaintiffs in these cases appealed to the U.S. Court of Appeals for the Third Circuit, which, in turn, has asked the New Jersey Supreme Court to clarify the “aggrieved consumer” standard under New Jersey law. The Supreme Court will answer this question in the coming months, and its answer could profoundly impact the future of class action cases under New Jersey’s broad consumer protection law.

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