

## **CLIENT ALERT: CALIFORNIA SUPREME COURT RULES THAT ZIP CODES ARE PERSONAL IDENTIFICATION INFORMATION**

By Robert E. Braun and Craig A. Levine, 02/16/11

On February 10, 2011, the California Supreme Court held in *Pineda v. Williams Sonoma* that ZIP codes are considered "personal identification information" under the Song-Beverly Credit Card Act, California Civil Code § 1747 et seq. (the "Act").

As previously discussed in our [January](#) and [March](#) 2009 client alerts, the Act is intended to protect consumer privacy rights by restricting the type of information retailers can request from consumers in connection with credit card transactions. At the same time, the Act also makes it difficult for retailers to collect information from their customers that could help them offer services and goods on a competitive basis.

### **Background**

The Act provides in part that retailers shall NOT do any of the following:

1. Request or require the cardholder to write any personal identification information on the credit card transaction form as a condition to accepting the credit card as payment in full or in part for goods or services.
2. Request or require the cardholder to provide personal identification information, which company personnel writes or otherwise records on the credit card transaction form as a condition to accepting the credit card as payment.
3. Use a credit card form which contains preprinted spaces specifically designated for filling in any personal identification information of the cardholder in any credit card transaction. See Cal. Civ. Code § 1747.08(a).

Under the Act, personal identification information is "information concerning the cardholder, other than information set forth on the credit card, and including, but not limited to, the cardholder's address and telephone number." *Id.* at § 1747.08(b).

On December 19, 2008, in *Party City Corp. v. The Superior Court of San Diego County*, the California Court of Appeal held that ZIP codes did not fall within the definition of personal identification information. This ruling allowed retailers to request ZIP code information prior to a credit card transaction provided that such information is not requested in connection with other personal information (i.e., name, phone number, address, etc.) and the customer is not required to give this information in order to consummate the transaction.

The trial court in *Pineda* applied *Party City's* logic, and concluded that a ZIP code, without more, did not constitute personal identification information. The Court of Appeal affirmed the trial court's decision in all

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respects, in large part because a ZIP code pertains to a *group* of individuals, unlike an address or telephone number that is “specific in nature regarding an individual.”

The California Supreme Court, however, rejected this reasoning and relied on the Act’s protective purpose and expansive language by holding that the word “address” should be construed as “encompassing not only a complete address, but also its components.” The court expressed misgivings about Williams-Sonoma’s “reverse append” practices and the potential for retailers to circumvent the Act by collecting indirectly what they cannot legally collect directly. In reversing *Party City*, the Supreme Court pointed out that Williams-Sonoma had the following intention by requesting plaintiff’s ZIP code:

“[Williams-Sonoma] subsequently used customized computer software to perform reverse searches from databases that contain millions of names, e-mail addresses, telephone numbers, and street addresses, and that are indexed in a manner resembling a reverse telephone book. The software matched plaintiff’s name and ZIP code with plaintiff’s previously undisclosed address, giving defendant the information, which [Williams-Sonoma] now maintains in its database. [Williams-Sonoma] uses its database to market products to customers and also sell the information it has compiled to other businesses.”

Although the Supreme Court may have had this particular fact-pattern in mind in overturning *Party City*, the Court’s language does not appear to be limited to collecting and using ZIP codes to perform such reverse appends. Rather, the decision broadly states that “[i]n light of the statute’s plain language, protective purpose, and legislative history, we conclude that a ZIP code constitutes ‘personal identification information’ as that phrase is used in section 1747.08.”

### Penalties for Violation

The penalties for violating the Act can be significant, and can include a civil penalty not to exceed two hundred fifty dollars (\$250) for the first violation and one thousand dollars (\$1,000) for each subsequent violation. The fines can be assessed and collected in a civil action by the Attorney General, or by the district attorney or city attorney of the county or city in which the violation occurred. In addition, more than a dozen national retail chains operating in California have been hit with lawsuits since the *Pineda* decision, setting off a flurry of litigation with most of the lawsuits being filed in San Francisco or Los Angeles courts.

### Future Questions

One potential question that *Pineda* raises is whether ZIP codes are the end of the line or whether other “non-traditional” forms of personal identification information, such as emails and/or IP addresses could

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be treated as personal identification information for purposes of the Act. In light of the court's decision in *Pineda*, it seems possible that plaintiff and consumer advocacy groups may wish to revisit the *Symantec* holding (discussed in our [March 2009 Client Alert](#)) in order to try to eliminate the "online" vs. "offline" distinction between retailers.

### **Suggested Actions**

JMBM represents many retailers, and we strongly recommend that our clients implement written policies and procedures that comply with the aforementioned requirements of the Act. We would be happy to assist you if you require additional information on these recent developments, the Act or preparing policies and procedures.

### **Please Contact Us**

*Please contact Robert E. Braun or Craig A. Levine with any questions regarding this information.*

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