

Third Circuit Shreds Plaintiff's Credit Card Receipt Case On Standing Grounds

Proskauer on Advertising Law on April 2, 2019

The Third Circuit recently held that procedural violations of the Fair and Accurate Credit Transactions Act ("FACTA"), absent any showing of concrete harm, do not meet Article III standing requirements. *Kamal v. J. Crew Group*, 2019 WL 1087350 (3rd Cir. 2019).

Plaintiff Ahmed Kamal commenced a suit against J. Crew Group after making purchases at various J. Crew retail stores. Kamal's receipts allegedly violated FACTA because they contained the first six and last four digits of his credit card number as well as the name of his card issuer. Although Kamal conceded that neither his identity nor his credit card number were ever stolen, he maintained that the printing of FACTA-prohibited information and the resulting increased likelihood of identity theft constituted the concrete harm necessary for Article III standing. Judge William J. Martini of the United States District Court for the District of New Jersey disagreed, and granted J. Crew's motions to dismiss for lack of standing.

Affirming the district court's decision, the Third Circuit panel evaluated Kamal's standing arguments in light of the Supreme Court's 2016 decision in *Spokeo v. Robins*, 136 S.Ct. 1540 (2016). In *Spokeo*, the Supreme Court explained that "Article III standing requires a concrete injury even in the context of a statutory violation."

The Third Circuit panel held that Kamal’s claims were “conclusory” and relied on a “highly speculative chain of future events” whereby identity thieves first had to obtain his credit card receipts, decipher the remaining credit card numbers, and then use his credit card information to commit fraud. In so holding, the court noted that amendments to FACTA in the Clarification Act of 2008 limited FACTA only to claims “implicating actual harm.” Indeed, Kamal had not even alleged disclosure of his information to a third party, so his claim could not be analogized to the common law privacy torts of unreasonable publicity or breach of confidence. Bolstering its decision, the court cited holdings in the Second, Seventh, and Ninth Circuits which dismissed FACTA allegations on similar standing grounds. Emphasizing that Kamal never claimed actual disclosure to third parties, the court distinguished an Eleventh Circuit opinion finding concrete injury on common law breach of confidence grounds. *See Muransky v. Godiva Chocolatier*, 905 F.3d 1200 (11th Cir. 2018).

Kamal’s core reasoning applies equally in the false advertising context. Merely being exposed to false advertising is not enough for Article III standing. Rather, a plaintiff must plausibly allege, and ultimately prove, that the defendant’s false advertising caused him or her a concrete harm. We anticipate that *Spokeo* and its progeny will continue to impact how false advertising class actions are litigated. Watch this space for further developments.

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