

Happiness is not a Fresh Baguette: Failure to Redact Expiration Date Insufficient to Create Standing under FACTA

1 min read

Jul 5, 2017

By: Brent M. Reitter

Happiness is not a fresh baguette...at least not for one FACTA plaintiff. In *Crupar-Weinmann v. Paris Baguette America, Inc.*, the Second Circuit, in line with the recent U.S. Supreme Court decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), affirmed the District Court's dismissal of plaintiff's complaint with prejudice. The Second Circuit held that while Paris Baguette's failure to redact the expiration date of plaintiff's credit card number was a technical violation of the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"), by itself, that violation did not result in an injury sufficient to confer Article III standing.

FACTA's primary purpose is to lessen the risk of credit card fraud and identity theft by regulating how consumer account data is handled. Recognizing this purpose, the Second Circuit utilized Congress' clarification of FACTA through the Credit and Debit Card Receipt Clarification Act of 2007 by highlighting that "[e]xperts in the field agree that proper truncation of the card number . . . regardless of the inclusion of the expiration date, prevents a potential fraudster from perpetrating identity theft or credit card fraud." Other than Paris Baguette's technical violation of FACTA, the plaintiff was unable to plead that the inclusion of her credit card expiration date caused a specific, non-speculative injury that increased the chances that her identity would be compromised.

While the Second Circuit dismissed plaintiff's complaint as a "bare procedural violation of FACTA, the Court left open the possibility that a different "bare procedural violation" of FACTA, where a plaintiff could demonstrate a concrete injury or the potential for a concrete injury, may still be actionable.

Topics

FACTA, Fair And Accurate Credit Transactions Act