

Small Business Notes

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New Minnesota Law Prohibiting Discrimination Based on Hair Texture and Hair Style

The Minnesota Human Rights Act ([Minn. Stat. Chapter 363A](#)) prohibits discrimination based on race in employment, housing, public accommodation, public services, and public education. A newly enacted law ([Chapter 3, Section 1 of Laws, 2023](#)) amends that act by adding new language at 363A.03 that defines “race” to include “...traits associated with race, including but not limited to hair texture and hair styles such as braids, locks, and twists.”

Other than “braids, locks, and twists” the new law is silent as to specific hairstyles covered. Look for the Minnesota Department of Human Rights to follow up with further guidance.

Consumer Privacy Issues Continue to Increase in Importance

As noted in the January issue of Small Business Notes, businesses can anticipate increased federal regulation of the collection, dissemination, and use of consumer information gathered by business processes and business technology.

A current, private, class action lawsuit in California offers an example of how both future litigation and regulation might look. The case, *Keith Carroll v. Chick-Fil-A, Inc* [Case No. 3:23-cv-314, U.S. District Court, Northern District of California, January 23, 2023] involves claims under the federal [Video Privacy Protection Act \[18 U.S.C. 2710\]](#). That act, which dates from pre-Internet days, was written to prevent the dissemination of personal data from video store rental records. It has been interpreted to apply also to online videos. It was amended in 2013 to permit social media sharing of personal information with the identified party’s consent.

The restaurant chain Chick-Fil-A has for several years produced and shown on the Internet a series of Christmas videos “The Story of Evergreen Hills.” In making those videos, Chick-Fil-A incorporated Facebook’s Tracking Pixel app which, according to the plaintiff’s complaint, gathered and transmitted to Facebook the video’s title, description, URL, and other information “sufficiently permitting an ordinary person to identify a specific individual’s video viewing behavior”. This was done without alerting the consumer to the operation of the app and without seeking consumer consent.

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The complaint seeks punitive damages. The case will be difficult since the Video Privacy Protection Act applies only to a “video tape service provider.” The plaintiff’s case will center on showing that Chick-Fil-A is such a provider because it “delivers” audio visual materials.

Regardless of the outcome here, the lesson is that consent from consumers to the collection, dissemination, and use of their personal data is absolutely necessary especially for processes and technology that are not transparent to the consumer.

U.S. Treasury Requests Comment on Proposed Form for Corporate Transparency Act Reports

On January 17, 2023, Treasury’s [Financial Crimes Enforcement Network \(FinCen\)](#) published a request for comment on the newly developed form for reporting beneficial ownership of corporations as required by the Corporate Transparency Act (88 Federal Register 2760).

Interested and affected parties should note especially the section of the comment request detailing FinCen’s estimate of time and cost burdens to complete the form, keeping in mind that there is no small business size exemption in the law’s reporting requirement.

Comments are due to by March 20, 2023.

Internet Sellers Face New Disclosures and Transparency Requirements Under New Law

On December 29, 2022 the President signed into law the [“Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act” \(INFORM for Consumers\)](#) with an effective date of June 27, 2023. The new law requires that “online marketplaces” that facilitate the sale of “consumer products” by “high volume third-party sellers” collect, maintain, and disclose to consumers certain information relating to the third party sellers to prevent the online sale of counterfeit or stolen goods.

The Act defines “high volume third party sellers” as sellers that are independent of an online marketplace and have made 200 or more sales amounting to \$5,000 or more in a 12 month period during the previous 24 months on the online marketplace.

The Act defines an “online marketplace” as a consumer-directed, electronically based or accessed platform that facilitates the sale, payment, shipping, storage or delivery of consumer products in the United States.

The Act defines “consumer products” using the definition in the Magnuson-Moss Warranty Act to mean any tangible personal property that is distributed in commerce and which is normally used for personal, family, or household purposes...”

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Under the Act, an online market place must:

- Collect from a high volume third-party seller bank account information; contact information to include any government issued licenses or other information and the sellers email address and phone number which the online marketplace must verify within 6 days of receipt; tax identification numbers.
- For every third-party seller that has an aggregate total of \$20,000 or more in annual gross revenues through the online marketplace, disclose to consumers the full name of the seller; the seller's physical address; other contact information such as phone number and email address.
- Display this information in a clear and conspicuous manner using a hyperlink on the product listing page or in the order confirmation.
- Notify the online marketplace at least annually of its obligation to keep this information current and certify to the current status of all provided information.
- Implement and maintain reasonable security measures to protect collected information from unauthorized use, disclosure, access, modification, or destruction.

Violations of the Act would constitute an unfair or deceptive trade practice enforceable by the FTC or by a state Attorney General.

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