



**Businesses Must Be Sure That No Part of a Credit
Card Expiration Date Appears On a Customer Receipt**
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Earlier this week, a federal appellate court issued an opinion concluding that a merchant violated a federal statute after it sold a customer \$25 in neckwear that the customer purchased with his credit card because the merchant gave him a receipt that identified the month, but not the year, that the credit card expired. But the customer's lawsuit – a putative nationwide class action – was nevertheless dismissed because the merchant's identification of the credit card expiration month on the receipt was not willful.

Long v. Tommy Hilfiger U.S.A., Inc., --- F.3d ---- (3d Cir. 2012) (decided January 24, 2012), involved what may appear to be, at least at first blush, trivial facts and a provision of the Fair and Accurate Credit Transactions Act (FACTA) that prohibits a person who accepts credit cards from printing “the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.” Congress enacted FACTA in 2003 to prevent identify theft and, to this end, consumers may recover actual or statutory damages as well as punitive damages from willful violators of the Act. If a FACTA violation is negligent but not willful a consumer-plaintiff may only recover actual damages, *i.e.*, the amount necessary to compensate the consumer-plaintiff for a proven injury or loss resulting from the violation.

The merchant-defendant in *Long* argued that the receipt at issue, which identified the credit card expiration date as “EXPIRY: 04/ ,” did not violate the statute

because it only contained part of the expiration date, namely the month and not the year. The federal appellate court rejected the merchant's argument noting that, if this argument were accepted, a merchant could redact only a single digit from an expiration date printed on the credit card receipt and still comply with FACTA. The court also pointed out that, if different merchants redacted differed parts of the expiration date, it may be possible to piece together the entire expiration date from multiple receipts. For these reasons, the court determined that the merchant's position was inconsistent with Congress's goal of preventing identify theft by enacting FACTA.

While the court concluded that the merchant's printing of the month of the credit card expiration date on the customer's receipt was a FACTA violation, it also went on to state that dismissal of the customer's lawsuit – which sought damages for a willful violation of FACTA – was appropriate. The court said that even though the merchant's interpretation of FACTA was erroneous it “was at least objectively reasonable” in part because no court of appeals had yet considered the interpretation of FACTA offered by the merchant and the case therefore presented an issue of first impression. For these reasons, the *Long* court concluded that the customer's complaint was properly dismissed because it failed to state a claim for a “willful” FACTA violation.

Although the merchant in the *Long* case ultimately won, the victory must have been expensive. After all, the customer-plaintiff commenced his lawsuit against the merchant on December 29, 2009 and *two years* passed before the merchant (who was represented by two law firms) finally prevailed in the appellate court. The opinion also puts businesses on notice that the issuance of credit card receipts that reveal even a portion of a credit card expiration date is a violation of FACTA. Thus the very existence of the *Long* opinion will dilute the effectiveness of the “objectively reasonable” defense

asserted by the merchant (which was successful in that case because, among other reasons, at the time no court of appeals had yet considered the issue) in future cases involving similar facts. Consequently, the *Long* case may come to be used as ammunition by savvy consumers and their attorneys asserting claims for willful violations of FACTA against unwary merchants who print part of a credit expiration date on a receipt. Merchants can best guard against this prospect by making all efforts to strictly comply with FACTA.

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