

DATA SECURITY & PRIVACY ALERT

FEDERAL COURT UPHOLDS FEDERAL TRADE COMMISSION'S POWER TO BRING ENFORCEMENT ACTIONS AGAINST COMPANIES FOR FAILURE TO PROVIDE REASONABLE DATA SECURITY

On April 7, 2014, the U.S. District Court for the District of New Jersey ruled that the U.S. Federal Trade Commission has the power to hold companies responsible for failing to use reasonable security practices.

The FTC sued Wyndham Worldwide Corp. in 2012 after hackers broke into Wyndham's computer system during the period of 2008 to early 2010. The hackers stole the credit and debit card account information of several hundred thousand consumers. The suit by the FTC alleges that Wyndham failed to adequately protect consumers' information because Wyndham failed to utilize reasonable data security measures.

In 2012 Wyndham's lawyers filed a motion seeking to dismiss the FTC's lawsuit on the basis that the FTC exceeded its statutory powers by attempting to regulate and enforce the data security practices of companies. The court, however, did not agree and has denied Wyndham's Motion to Dismiss, indicating that the FTC does possess the power to regulate the adequacy of companies' data security through enforcement actions.

Although the FTC has brought dozens of enforcement actions based upon companies' alleged inadequate data security, most such cases are settled and Wyndham's motion to dismiss the FTC's action was the first serious court challenge to the FTC's authority in this area. The lawsuit is expected to proceed on the merits, although Wyndham may appeal the District Court's refusal to grant the Motion to Dismiss.

*This Data Security & Privacy Alert is intended to keep readers current on developments in the data security & privacy world and in the law, and is not intended to be legal advice. If you have any questions, please call **Sandy B. Garfinkel**, Chair of the firm's Data Security & Privacy Group, at 412-566-6868, or e-mail him at sgarfinkel@eckertseamans.com.*

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