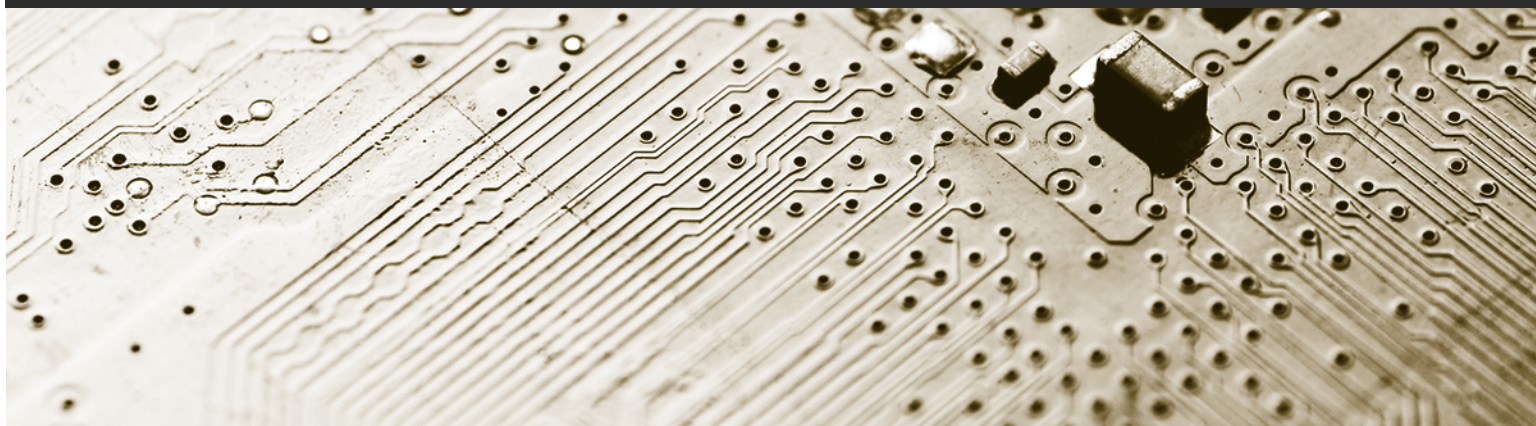


## **Alert** | Intellectual Property & Technology/Retail



May 2018

### **Actual Harm Required to Sue Under the NJ Truth-in-Consumer Contract, Warranty and Notice Act**

We previously [reported](#) that New Jersey's Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA) is being used with increasing frequency to bring class action lawsuits against online retailers for allegedly unlawful website terms of use. TCCWNA permits "aggrieved consumers" to seek civil penalties, damages, attorneys fees, and costs based on contracts containing provisions that violate any "clearly established legal right." In some cases, consumers alleged that the limitation of liability and indemnification provisions in typical website terms of use violated "clearly established legal rights," regardless whether the consumers had suffered any actual injury.

On April 16, 2018, the New Jersey Supreme Court ruled in *Spade v. Select Comfort Corp* and *Wenger v. Bob's Discount Furniture, LLC* that TCCWNA applies only to consumers who suffer an actual injury.

Specifically, the Court held that, where online furniture orders admittedly were delivered on time, consumers who ordered such furniture had no basis to complain about the presence of "no-refund" provisions in the terms of use, even if such provisions were contrary to a New Jersey consumer protection regulation entitling consumers to a refund in the event of late delivery. In short, the Court has created a higher threshold for bringing cases under TCCWNA and, by doing so, has narrowed the field of plaintiffs who may sue for damages under TCCWNA.

Online retailers should continue to consult legal counsel about their website terms of use and other consumer contracts or notices to assist with compliance with TCCWNA. However, now that plaintiffs must show actual harm, the risk of damage awards for a TCCWNA claim or class action based solely on a potentially unlawful provision in a contract has decreased.

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