

Legal Developments Affecting Payment Card Data Pass Practices

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On-line marketers that share their customers' credit or payment card information with other business partners without the consumer's knowledge or active consent – a practice referred to as a "data pass" – may wish to read a recently published BNA Privacy & Security Law Report titled ["Scrutiny on Payment Card Data Pass: Raising the Profile of Personal Information Sharing Among Marketers."](#) Kelley Drye attorneys Alysa Z. Hutnik and Joseph D. Wilson co-authored this article, which:

- explores a rule recently announced by VISA and legislation recently proposed by Senate Commerce Committee Chairman, Jay Rockefeller (D-W.Va.) entitled "The Restore Online Shoppers' Confidence Act" (S. 3386), both of which restrict companies' ability to share customer payment card information. (Visit Kelley Drye's [Advertising Law Blog](#) for related articles on these topics);
- reviews two recently filed class actions, *Ferrington, et al. v. McAfee Inc.*, 5:10-cv-1455 (N.D. Cal.), and *Van Tassell, et al. v. United Marketing Group Inc., et al.*, 1:10-cv-2675 (N.D. Ill.), alleging that the data pass practices of certain on-line marketers violated numerous state consumer protection laws;
- advises on steps companies should consider taking to mitigate the risk that their data pass practices will come under FTC scrutiny; and
- discusses considerations companies should make if they find themselves the subject of a class action relating to their data pass practices.