

BACK TO BASICS, Continued—What's in a Name? Here's a Test.

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First, some background: I have written many times in the past about the Fair Debt Collection Practices Act (FDCPA) and that the law generally does not apply to those creditors collecting debt owed to them. I may not have clearly said, though, that if while collecting a debt, a creditor identifies itself other than by using its "true name," the creditor can inadvertently become subject to the FDCPA.

Now, the test question: If you are JPMorgan Chase, and you use the name "Chase Home Finance" in your collection efforts have you, in essence, been converted into a debt collector for the purposes of the FDCPA?

We know that using the right name can make the difference between being a creditor pursuing one's own debt and being deemed a debt collector under the FDCPA. But, exactly what makes the name the right name?

According to the U.S. Court of Appeals for the Ninth Circuit, the test answer is to be decided by application of the "least sophisticated consumer" standard that is the benchmark used in the Fair Credit Reporting Act. Even though the two laws are distinct, the Court applied this same "least sophisticated consumer" standard to determine the true-name test under the FDCPA.

So, what is the result of applying the "least sophisticated consumer" standard to the true-name test?

Well, the Court had no problem with this one. It held that even the least sophisticated consumer would understand that the names "JPMorgan Chase" and "Chase Home Finance" are so closely related, that when JPMorgan Chase was collecting the debt under the name "Chase Home Finance" no consumer could reasonably be confused. Therefore, Chase did not violate the FDCPA.

Notably, the Court refused to adopt a "bright-line" test as argued for by the consumer, that would say that the creditor must use its exact name when collecting; yet, it also did not adopt Chase's position that use of any name as long as it included "Chase" would meet the standard.

Practice Pointer: When collecting debt, be exceedingly careful about using any name other than the same name in which the debt is created.

Please note: This is the eighty-seventh blog in a series of *Back to Basics* blogs, in which relevant and resourceful information can be easily accessed by clicking [here](#).