

## Hilton Pulls Plug On 1-800-HAMPTON Privacy Class Action

By **Zach Winnick**

*Law360, Los Angeles (June 4, 2012, 4:35 PM EDT)* -- A California federal judge on Monday threw out a class action accusing Hilton Worldwide Inc. of violating state privacy laws by recording phone calls to 1-800-HAMPTON, saying customers could not reasonably believe their hotel reservation calls wouldn't be overheard or recorded.

At a hearing Monday, U.S. District Judge Manuel Real rejected plaintiff Rick Young's call to send the case back to state court and granted Hilton's motion for dismissal, telling Young's attorneys they have 10 days to amend their complaint and try again.

"Plaintiff's subjective belief that his call was not being recorded is insufficient to support the determination that it was confidential," Judge Real told attorneys Monday. "Plaintiff called the defendant for routine matters regarding reservations and billing. ... Plaintiff knew or should have known that it would be necessary to share this information with others who were not parties to the telephone conversation."

Monday's ruling marked a victory for Hilton, which said it faced hundreds of millions in potential damages, and raised questions about whether Young will be able to pursue a class action on claims the hotel giant violated Golden State privacy laws when it recorded calls to the reservation line for its 1,700 Hampton hotels.

Young filed the lawsuit in state court in January, saying that he called 1-800-HAMPTON in November to update his credit card information on file with the hotel.

According to Young, his phone call that day was recorded, even though he shared sensitive information and was never warned that the call was being taped.

"Plaintiff did not give, and could not have given, consent for the telephone call to be recorded because he was entirely unaware that defendants were utilizing such practice during the telephone call," Young wrote in his complaint. "Such recording without his consent is highly offensive to plaintiff and would be highly offensive to a reasonable person."

Young argued that he and other consumers had an objectively reasonable expectation the calls would be private, making the communications confidential so that recording them violated two provisions of California's penal code.

He sought to represent all consumers who called 1-800-HAMPTON and were recorded between January 2011 and January 2012, seeking \$5,000 in statutory damages for each alleged call and a permanent injunction prohibiting the practice.

Hilton removed the case to federal court in March and filed a motion to dismiss the case that month, arguing that the customer calls are not confidential by nature, since they require conveying information that is meant to be shared.

Young filed a motion seeking to send the case back to state court, arguing that the court lacked jurisdiction because the amount at issue didn't exceed \$5 million.

At the hearing Monday, Judge Real rejected Young's request to remand the case, saying Hilton had provided evidence showing that it had received substantially more than 1,000 calls from California area codes between January 2011 and January 2012, so that possible damages exceeded \$5 million.

The judge also granted Hilton's motion to dismiss the case, agreeing with the company's arguments that calls to the reservation line were not confidential, since callers could not reasonably expect they wouldn't be overheard or recorded. The judge granted Young leave to amend his complaint within 10 days.

Representatives for Young and Hilton declined to comment Monday.

Young is represented by Eric A. Grover of Keller Grover LLP and Daniel F. Gaines of Gaines & Gaines PLC.

Hilton is represented by Randall J. Sunshine, Angela C. Agrusa and Allen Lohese of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP.

The case is Rick Young v. Hilton Worldwide Inc. et al., case number 2:12-cv-01788, in the U.S. District Court for the Central District of California.

--Editing by Kat Laskowski.