

## Electronic Commerce Legal Case

Failure to obtain a full, ceremonial signature on an electronic commerce document can undermine its legal effectiveness. Bellco First Fed. Credit Union v. Kaspar (In re Kaspar), 125 F.3d 1358 (10th Cir. 1997) is a bankruptcy case in point. When a consumer applied for a credit card by telephone, he gave false information to a financial institution. An employee of the institution recorded the information in a computer record. The consumer did not sign the information or see a computer display or printout of it. Later, when the consumer filed for bankruptcy, the institution asserted under the Bankruptcy Code that the debt to the institution should not be discharged because the consumer lied when he applied for credit.

The court examined section 523(a)(2)(B) of the Bankruptcy Code, which provides the debt would be immune from discharge only if originated on the basis of a false "statement in writing." The court examined whether the computer record in question constituted a statement in writing. The court concluded it did not. Even though many other courts and legislatures in different situations have ruled that computer records can be considered "writings," the Kaspar court believed it was unfair to consider this computer record a writing for purposes of section 523(a)(2)(B). The essential problem was that the record was not solemn enough. The record itself had not been brought to the consumer's attention in a way that warned him of its serious nature. The consumer had done nothing, such as a ceremonial signing, that would indicate his meaningful examination and approval of the record.

Had the consumer signed the record with PenOp, the outcome would likely have been better for the financial institution. PenOp ensures that the signer sees the document being signed, is informed of the document's importance, and then performs a socially-recognized ritual (i.e., affixation of a handwritten signature) to indicate deliberation, commitment and resolve.

PenOp overcomes any allegation that the signer did not understand the consequence of what he was doing. This type of allegation is a problem for electronic commerce because most computer input procedures like typing or mouse-clicking are so informal. PenOp, on the other hand, arrests the user's attention and alerts him that he is entering a transaction that carries legal significance.