

Golfsmith Bankruptcy Sale Approved After Clearing Consumer Privacy Hurdles

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The proposed bankruptcy sale of Golfsmith International Holdings to Dick's Sporting Goods was recently approved, after the privacy ombudsman recommended that almost 10,000,000 consumer records (i.e., the personal information of consumers) of Golfsmith International Holdings can be transferred to Dick's Sporting Goods. As part of the transfer, the ombudsman has required Dick's to provide Golfsmith customers of the sale, and to give consumers notice that Dick's is the buyer and successor-in-interest under the Golfsmith privacy policy, and that consumers can opt-out of either (or both) (a) having their information transferred to Dick's and/or (b) having Dick's send them communications.

The notice must be posted within two days (48 hours) after closing, and be up for 30 days. It must also be provided in stores for the same period of time, and must be emailed to any customers of whom Golfsmith has their email addresses (and if not, sent by mail). Customer data cannot be transferred to Dicks until the opt-out deadline expires. Once transferred, individuals can be "converted" over to the Dicks privacy policy if they are given notice and the ability to opt out. Golfsmith must delete customers' personal information 90 days after closing.

To create her recommendations, the ombudsman reviewed both the current Golfsmith privacy policy, as well as the prior policy. She noted that both documents contained restrictions on when consumer information could be transferred. Since the document did not anticipate the transfer of personal information in the event of a situation like the bankruptcy, the ombudsman turned to the Bankruptcy Code (11 USC 361(b)(1)), which prohibits a transfer if the privacy policy prohibits it, unless an ombudsman recommends that a transfer would be appropriate.

TIP: This ombudsman report provides companies in bankruptcy with a potential roadmap for effectuating the transfer of consumer information when the privacy policy is silent on—or does not permit—such transfer. Companies that wish to modify their privacy policy to anticipate a transfer of consumer information should keep in mind the diligence conducted by the ombudsman, including the review of the older Golfsmith policy.

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Author

[Becky Troutman](#)

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