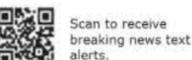


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23andMe bankruptcy requires unique scrutiny, experts say

23andMe's bankruptcy filing raises unique concerns over its DNA data sale, with experts and regulators scrutinizing consumer privacy as the company navigates Chapter 11 after a 2023 breach.



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Bankruptcy attorneys said Monday that 23andMe Inc.'s bankruptcy filing requires unique scrutiny on the next buyer of the business given the amount of DNA customer profiles and data the company still holds.

Ori S. Blumenfeld, a Sherman Oaks partner for Levinson Arshonsky Kurtz & Komsky LLP who specializes in bankruptcy proceedings, said that 23andMe's desire to sell its assets, the customers' DNA profiles, to a future buyer through the bankruptcy proceedings creates distinct concerns for state regulators as well as the customers.

"23andMe's case is a super unique one because of the specific services they offer. I haven't seen this type of sale before and we don't know if we will see this come across again," Blumenfeld said in a phone interview Monday.

On Sunday, 23andMe filed for Chapter 11 protection in federal court in Missouri after the fallout from an October 2023 data breach left the San Francisco based genealogy company financially strained.

The ramifications drew the concern of California Attorney General Rob Bonta, who issued a consumer alert on Friday, warning customers 23andMe customers to delete their data.

"California has robust privacy laws that allow consumers to take control and request that a company delete their genetic data," Bonta said in a news release. "Given 23andMe's reported financial distress, I remind Californians to consider invoking their rights and directing 23andMe to delete their data and destroy any samples of genetic material held by the company."

In September, the company agreed to a \$30 million settlement in a multidistrict litigation action in San Francisco federal court combining putative class action lawsuits by customers whose data was among the 7 million accounts compromised in the data breach. The company has denied liability throughout the litigation. U.S. District Judge Edward Chen conditionally approved the settlement on Dec. 4. *In re: Customer Data Security Breach Litigation*, 24-md-03098 (N.D. Cal. filed April 16, 2024).

In an open letter to 23andMe customers on Monday, and in a news release announcing the bankruptcy filing, the company assured customers their data would be protected.

"In both documents, the company clearly states there are no changes to the way the company stores, manages, or protects customer data," said an email from the company's media office on Monday. "Any buyer will be required to comply with applicable law with respect to the treatment of customer data and any transaction will be subject to customary regulatory approvals, including, as applicable, approvals under the Hart-Scott-Rodino Act and the Committee on Foreign Investment in the United States."

Zev M. Shechtman, a Los Angeles partner for Saul Ewing LLP, said in a phone interview Monday that buyers of bankrupt businesses in "highly regulated or controversial" areas are sometimes scrutinized and explained why 23andMe's assets could fall into that category.

"The assets are the customer accounts. The judge, creditors, the U.S. Trustee, or other governmental entities, like the California Attorney General, would probably want to weigh in to make sure that consumer rights are protected," he said. "That's different from a typical bankruptcy case where there isn't always a high level of consumer protection issues. Even companies that do have a consumer facing side, those proceedings present a very different issue for consumers than 23andMe. It's very easy to see how much more sensitive those customer's accounts are, in terms of the data that they contain, than in a typical retail company's case."

Denver G. Edwards, a New York City partner at Bradford Edwards LLP that specializes in representing creditors seeking to recover in bankruptcy proceedings, said that 23andMe customers not involved in the litigation could file a class claim as creditors but expressed doubts the costs of litigation would be worth it.

"I think the claim would be characterized as something that is contingent or disputed or unliquidated, and those terms are just there, because there isn't a specific dollar amount that you know of when you filed your claim, you know that an injury has occurred," Edwards said.

"I just don't think it's fruitful at this time to speculate on what your recovery might be. And this is a debtor. Obviously, it doesn't have money, and so they might spend a fair amount of time to get back a couple of cents on the dollar," Edwards added.

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