

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON VICINAGE

CONSUMER DATA INDUSTRY)
ASSOCIATION,)

Plaintiff,)

v.)

ANNE MILGRAM, in her official capacity)
as ATTORNEY GENERAL FOR THE)
STATE OF NEW JERSEY,)

Defendant.)

Civil Action No. 09 cv 01270 (MLC)

ORDER FOR PRELIMINARY
INJUNCTION

RECEIVED

JUN 26 2009

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

AND NOW, this 26th day of June, 2009, the parties appear by their respective counsel on the last effective day of the Temporary Restraining Order ("TRO") previously entered by this Court on March 30, 2009.

The parties represent to the Court that although Assembly Bill 3821 repealing N.J. Stat. §46:10B-52 was passed by the N.J. Assembly on June 25, 2009, it has not been signed by the Governor and it is uncertain whether it will be signed by the Governor on or before 11:59 pm June 26, 2009, the expiration date of the TRO entered by this Court on March 30, 2009.

In light of the above-described uncertainty, plaintiff Consumer Data Industry Association ("CDIA") requests that this Court enter an order granting CDIA's motion for preliminary injunction and refer the matter to a U.S. Magistrate for expedited discovery, in accordance with the status conference call of June 18, 2009 among the Court and counsel, and to set this matter for final hearing on CDIA's complaint for declaratory judgment and permanent injunction.

Defendant Anne Milgram, in her capacity as Attorney General for the state of New Jersey,

~~expressly~~ does not oppose ~~CDIA's motion~~ entry of this order in light of the pending legislation, without prejudice if legislation not enacted.

Having considered the arguments of counsel and reviewed the parties' prior submissions, the Court makes the following **FINDINGS of FACT and CONCLUSIONS of LAW and ORDERS** as follows:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. N.J. Stat. Ann. § 46:10B-52 provides that:

A consumer reporting agency or any other business entity shall not sell to, or exchange with, a third party, unless the third party holds an existing mortgage loan on the property, the existence of a credit inquiry arising from a consumer mortgage loan application when the sale or exchange is triggered by an inquiry made in response to an application for credit. This section shall not apply to information provided by a mortgage originator or servicer to a third party providing services in connection with the mortgage loan origination or servicing; a proposed or actual securitization; secondary market sale, including sales of servicing rights; or similar transaction related to the consumer mortgage loan.

2. If effective, § 46:10B-52 would prohibit consumer reporting agencies ("CRAs") from furnishing so-called "mortgage trigger leads" to users of consumer reports.

3. The Fair Credit Reporting Act ("FCRA") preempts any State law regarding the subject matter of prescreening, providing that:

No requirement or prohibition may be imposed under the laws of any state:

(1) with respect to any subject matter regulated under

(A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports....

15 U.S.C. § 1681t(b)(1)(A); *see also*, S. Rep. No. 104-185 at 59-60, 104th Cong., 1st Sess. (Dec. 14, 1995) ("In short, under section 624 [1681t], any State or local authority is precluded from employing or establishing any provisions relating to any aspect of prescreening.").

4. When a CRA furnishes mortgage triggers leads, the CRA is furnishing prescreened consumer reports as permitted by the FCRA, 15 USC § 1681b(c). Other courts, considering

similar prohibitions on the furnishing of mortgage trigger consumer reports have reached the same conclusion. *Consumer Data Industry Association v. Swanson*, 2007 U.S. Dist. LEXIS 55571 (D.Minn. 2007). In informal guidance, the Federal Trade Commission, charged with enforcing the FCRA for CRAs, has also explained that mortgage trigger leads are consumer reports that CRAs are permitted to furnish under the FCRA's prescreening permissible purpose provisions. FTC Consumer Alert, *Shopping for a Mortgage? Your Application May Trigger Competing Offers 1* (Feb. 2007) ("When you apply for a mortgage, the lender usually gets a copy of your credit report. At that point, an "inquiry" appears on your report showing that the lender has looked at it. The inquiry indicates you're in the market for a loan. That's why mortgage companies buy lists of consumers who have a recent inquiry from a mortgage company on their credit report. Federal law allows this practice...."). *available at*, <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt171.pdf>

5. Because §46:10B-52 would prohibit CRAs from furnishing prescreened consumer reports in the form of mortgage trigger leads, the Court finding that CDIA is likely to prevail on its claim that §section 46:10B-52 is preempted by the FCRA, 15 USC § 1681t(b)(1)(A).

6. CDIA and its members will suffer irreparable harm if this preliminary injunction is not entered and §46:10B-52 becomes effective on June 27, 2009.

7. Neither the State of New Jersey, nor its residents, will suffer irreparable harm if a preliminary injunction enjoining the effectiveness and enforcement of §46:10B-52 is entered.

8. The public interest weighs in favor of granting the requested preliminary injunction to CDIA.

Based upon the foregoing, **IT IS ORDERED AND DECREED THAT:**

A. A preliminary injunction is issued immediately without need for CDIA to post a bond in

this matter.

B. This preliminary injunction enjoins N.J. Stat. Ann. § 46:10B-52 from becoming effective on June 27, 2009, following the expiration of this Court's March 30, 2009 TRO. This preliminary injunction shall remain in effect until the earlier of: (i) the entry of a Final Judgment on CDIA's complaint for declaratory judgment and permanent injunction; or (ii) the law repealing N.J. Stat. Ann. § 46:10B-52 is signed into law and becomes effective.

C. The State of New Jersey is enjoined from enforcing, directly or indirectly, or through any designee, N.J. Stat. Ann. § 46:10B-52.

D. The Court refers this matter to U.S. Magistrate Judge Lois H. Goodman for further proceedings consistent with this Order.

E. The parties are directed to notify the Court if Assembly Bill 3821 becomes law, thereby mooting the need for a final adjudication of this matter.

ENTERED



Mary L. Cooper
United States District Court Judge