

Denver County Court

CIVIL DIVISION

1515 CLEVELAND PLACE, 4TH FLOOR

DENVER, COLORADO 80202

October 25, 2005

To: Defendant(s) and Defense Counsel

Re: Consumer Crusade, Inc. litigation.

We write to you because your case is one of forty cases pending in our three courtrooms here in the Denver County Court wherein Consumer Crusade, Inc. is a plaintiff and you are either a named defendant or defendant's counsel. The complaint in each case is based upon the allegations of receipt of the plaintiff's assignor(s) of unsolicited faxes from the defendant(s) in violation of the Telephone Consumer Protection Act, 42 U.S.C. §227. Grounds for liability differ from case to case. In addition various cases may be in different stages of litigation in our various courtrooms.

All of these cases have common legal questions:

1. Does the Denver County Court have subject matter jurisdiction over cases where it is alleged that defendants violated the Telephone Consumer Protection Act (TCPA), 42 U.S.C. §227 by sending faxes **prior to** the 2004 revision to the Colorado Consumer Protection Act (CCPA) in C.R.S. §6-1-702(1)? Alternatively, does the Denver County Court have subject matter jurisdiction over cases where it is alleged that defendants violated the Telephone Consumer Protection Act (TCPA), 42 U.S.C. §227 by sending faxes **after** 2004? Based upon the recent holding in *Consumer Crusade Inc. v. Affordable Health Care Solutions, Inc.*, ___ P.3d ___ (Colo.App. 2005) (04CA1839, announced August 25, 2005), it appears that this court has subject matter jurisdiction. Certiorari to the Colorado Supreme Court was not sought in that case.


2. Does Consumer Crusade have **standing** to maintain these TCPA claims? In *U.S. Fax Law Center, Inc v. IHire, Inc.*, 362 F.Supp.2d 1248 (D.Colo. 2005), Judge Babcock ruled that since a similar plaintiff never **received** the faxes in question, it lacks standing to bring these "privacy claims" that seek statutory damages. It is our understanding that this case is on appeal to the United States Tenth Circuit Court of Appeals.

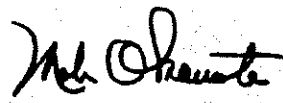
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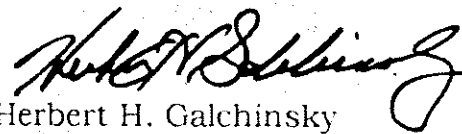
3. Are the TCPA claims of the fax recipients (assignors) assignable to Consumer Crusade? In *U.S. Fax Law Center, Inc v. IHire, Inc.*, 362 F.Supp.2d 1248 (D.Colo. 2005), Judge Babcock further concluded that the TCPA claims were penal in nature and **not** assignable. Upon re-hearing (373 F.Supp.2d 1208) Judge Babcock emphasized this was based upon substantive Colorado law. In the Denver District Court, Judge McMullen recently ruled in *U.S.Fax Law Center, Inc. v. The Barrington Group, et. al.*, (Case No. 05-CV-2090, July 1, 2005) that the TCPA claims are punitive in nature and are not assignable, citing *IHire, supra*. Consumer Crusade has not brought any claims under the Colorado Consumer Protection Act.

We have decided to wait until the Tenth Circuit determines standing and assignability in the *U.S. Fax Law Center v. IHire* case before we rule on the viability of each of these pending cases. We will contact you once there is a definitive ruling.

Cordially,


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