

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

STATE OF IOWA ex rel. Thomas J. Miller,
Attorney General of Iowa

Plaintiff,

v.

TELEDRAFT, INC., a Delaware corporation,

AL SLATEN, individually and in his
corporate capacity, and

DAN WOLFE, individually and in his
corporate capacity,

Defendants.

Civil No. 4:04 - CV - 90507

**STIPULATED PRELIMINARY
INJUNCTION**

WHEREAS, Plaintiff, having filed its Complaint for a permanent injunction and other relief in this matter, pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 et seq., charging that Defendants engaged in deceptive and abusive acts or practices in violation of the Telemarketing Sales Rule, 16 C.F.R. Part 310, and pursuant to the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2003) and the Iowa Loan Broker Act, Iowa Code Ch. 535C (2003), and having moved for a Preliminary Injunction and other equitable relief pursuant to Rule 65 of the Federal Rules of Civil Procedure, and

WHEREAS, Plaintiff and Defendants have agreed to the entry of this Stipulated Preliminary Injunction,

NOW, THEREFORE, it is hereby AGREED, ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. Subject matter jurisdiction over the federal claim(s) is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337(a), and by 15 U.S.C. § 6103(a). Supplemental jurisdiction over the state claim is conferred upon this Court by 28 U.S.C. § 1367.
2. Venue in the Southern District of Iowa is proper as to all parties under 15 U.S.C. § 6103(e) and under 28 U.S.C. § 1391.
3. Plaintiff asserts that there is good cause to believe that Defendants have engaged and are likely to engage in acts and practices that violate the Telemarketing Sales Rule, 16 C.F.R. Part 310, and that the Plaintiff is therefore likely to prevail on the merits of this action.
4. Plaintiff asserts that the entry of this Order is in the public interest.
5. Plaintiff and Defendants have agreed that no security be required of Plaintiff in connection with the issuance of a Preliminary Injunction. Fed. R. Civ. P. 65.
6. This Order does not constitute and shall not be interpreted as an admission by Defendants that they have engaged in violations of any law or regulations.

CONDUCT PROHIBITIONS

IT IS THEREFORE AGREED AND ORDERED that Defendants, and each of them, and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who have actual notice of this Order,

whether acting directly or through any corporation, subsidiary, division, or other entity (hereinafter "Defendants et al."), are hereby restrained and enjoined from violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, including without limitation violating the prohibition of 16 C.F.R. § 310.3(b) against a person's providing "substantial assistance or support" to any seller or telemarketer when that person "knows or consciously avoids knowing" that the telemarketer is engaged in acts or practices that violate 16 C.F.R. § 310.3(a) (relating to false or misleading statements) or that violate 16 C.F.R. § 310.4 (relating *inter alia* to advance payment for extensions of credit).

IT IS FURTHER AGREED AND ORDERED that Defendants et al. refrain from processing from any bank account in Iowa an ACH debit that such Defendant(s) know or should know, at the time the transaction is processed, is derived from conduct that violates the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2003).

IT IS FURTHER AGREED AND ORDERED that Defendants et al. refrain from processing from any bank account an ACH debit that such Defendant(s) know or should know, at the time the transaction is processed, (a) is derived from conduct that involves telemarketing, and (b) either violates the National Automated Clearing House Association's TEL Rule or would violate the TEL Rule but for a mischaracterization of the source or nature of the debit, for example, by applying an incorrect standard entry class code.

IT IS FURTHER AGREED AND ORDERED that, without limiting the foregoing injunctive provisions, and in order to ensure that Defendants are apprised of facts necessary to refrain from facilitating unlawful activity Defendants et al. shall, in connection with the

processing of ACH debits that it knows or should know are derived from transactions involving telemarketing, refrain from failing to:

- A. Perform due diligence information gathering concerning each entity, and the principals of such entity where applicable, for which Defendant processes or may undertake processing ACH debits.
- B. Decline to continue processing or undertake processing (as applicable) for any entity that fails to provide information within its possession or control that is reasonably necessary for Defendant to meet its obligations under the law and this Order.
- C. Actively monitor no less frequently than on a weekly basis the return rates of each entity for which Defendant performs such processing.

IT IS FURTHER AGREED AND ORDERED that Defendants et al. shall cease processing as soon as practicable for any entity the ACH debits of which generate a rate exceeding 2.5 % attributable to unauthorized returns.

IT IS FURTHER AGREED AND ORDERED that, in connection with each entity engaged in telemarketing for which Defendants begin to perform ACH processing after the date of the filing of this Order, Defendants shall retain a copy of the entity's merchant application and telemarketing script(s).

IT IS FURTHER AGREED AND ORDERED that Defendants shall not create, operate, or exercise any control over any business entity engaged in the processing of ACH transactions for telemarketers, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing Plaintiff with a written statement disclosing: (a) the name of the business entity; (b) the address and telephone number of the

business entity; (c) the names of the business entity's officers, directors, principals, managers and employees; and (d) a detailed description of the business entity's intended activities.

IT IS FURTHER AGREED AND ORDERED that Defendants shall immediately distribute a copy of this Order to each officer, director, and manager, and shall, within ten (10) business days from the date of filing of this Order, provide Plaintiff with the sworn affidavit of Al Slaten (or, if applicable, Slaten's successor) attesting to compliance with this distribution requirement and stating the names and addresses of each such person and entity receiving a copy.

IT IS FURTHER AGREED AND ORDERED that, pursuant to Fed. R. Civ. P 26(d), discovery may commence at any time after the entry of this Order.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO STIPULATED:

FOR PLAINTIFF:

Date: _____

Steve St. Clair
Attorney for Plaintiff
Iowa Department of Justice

FOR ALL DEFENDANTS:

Date: October 4/04

Andrew N. Cove

Andrew N. Cove, Esq.
Hector E. Lora, Esq.
Cove & Associates, PA
Attorney for All Defendants

SO ORDERED:

DATED this _____ day of _____, 2004.

Judge Robert W. Pratt
United States District Court
Southern District of Iowa

[Entered Oct-7, 2004.]