

81-301. Lender name, trade name or trademark; solicitation violations; injunction. (a) No person may include the name, trade name or trademark of a lender or a name, trade name or trademark similar to that of a lender in a solicitation for products or services without the consent of the lender unless the solicitation clearly and conspicuously states in bold-faced type on the front page of the correspondence that the person is not sponsored by or affiliated with a lender and that the solicitation is not authorized by the lender, which shall be identified by name. The statement shall include the name, address and telephone number of the person making the solicitation and that any loan information referenced was not provided by the lender.

(b) No person may include a loan number, loan amount, or other specific loan information that is not publicly available in a solicitation for the purchase of products or services.

(c) No person may include a loan number, loan amount or other specific loan information that is publicly available in a solicitation for the purchase of products or services if use of such information is prohibited by K.S.A. 45-230, and amendments thereto.

(d) No person may include a loan number, loan amount or other specific loan information that is publicly available in a solicitation for the purchase of products or services and allowed in K.S.A. 45-230, and amendments thereto, unless the solicitation clearly and conspicuously states in bold-faced type on the front page of the correspondence that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender, which shall be identified by name. The statement shall include the name, address and telephone number of the person making the solicitation and that any loan information referenced was not provided by the lender.

(e) No person shall make reference to an existing lender without the written consent of the lender or make reference to a loan number, loan amount or other specific loan information on the outside of an envelope, visible through the envelope window, or on a postcard in connection with any written communication that includes or contains a solicitation for products or services offered by the other lender.

(f) A lender or owner of a name, trade name or trademark may seek an injunction against a person who violates this section to stop the unlawful use of the name, trade name, trademark or loan information. The person seeking the injunction shall not have to prove actual damages as a result of the violation. Irreparable harm and interim harm to the lender or owner shall be presumed. The lender or owner seeking the injunction may seek to recover actual damages and any profits the defendant has accrued as a result of the violation. The prevailing party in any action brought pursuant to this section is entitled to recover costs associated with the action and reasonable attorney fees for the other party.

(g) The following are exempt from the provisions of this section:

(1) Any communications by a lender or its affiliates with a current customer of the lender or with a person who was a customer of the lender during the immediately preceding 18 months; and

(2) any advertisement or solicitation for products or services that compares the products or services offered by the other lender provided that person making the comparison clearly and conspicuously identifies itself in the advertisement or solicitation.

(h) As used in this section "lender" means a bank, savings and loan association, savings bank, credit union, finance company, mortgage bank, mortgage broker and any affiliate.

History: L. 2005, ch. 60, § 1; July 1.