

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICAN BAR ASSOCIATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 09-1636 (RBW)
FEDERAL TRADE COMMISSION,	)	
	)	
Defendant.	)	
	)	

**ORDER**

On August 27, 2009, the plaintiff, the American Bar Association, filed a three-count complaint against the Federal Trade Commission (the "Commission"), alleging that the Commission's application of Final Rule, Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, 72 Fed. Reg. 63,718 (Nov. 9, 2007) (the "Red Flags Rule"), to attorneys exceeds the Commission's statutory authority under the Fair and Accurate Credit Transactions Act of 2003, See Pub. L. No. 108-159, 117 Stat. 1952 (codified at 15 U.S.C. §§ 1681-1681x; 20 U.S.C. §§ 9701-8) ("FACT Act"), and therefore the Commission's actions in implementing the Red Flags Rule as it has transgress the Administrative Procedure Act, 5 U.S.C. §§ 702-706 (2006). See Complaint for Declaratory and Injunctive Relief ("Compl."). Specifically, the plaintiff alleges that the Commission's application of the Red Flags Rule to attorneys violates 5 U.S.C. § 706(2)(C) as it is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," Compl. ¶¶ 54-60 (Count I), and 5 U.S.C. § 706(2)(A), as it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," id. ¶¶ 61-64 (Count II), entitling the plaintiff to declaratory relief

under 28 U.S.C. § 2201, *id.* ¶¶ 65-67 (Count III). On September 23, 2009, the plaintiff filed a motion for partial summary judgment in this case, seeking summary judgment on Count I of its complaint. Plaintiff's Motion for Partial Summary Judgment at 1. The defendant's opposed the motion.<sup>1</sup> See generally Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Partial Summary Judgment. The parties came before the Court on October 29, 2009, for a hearing on the pending motion. Upon consideration of the parties' written submission, the applicable legal authority, the oral arguments presented by the parties, and for the reasons that will be set forth in the Memorandum Opinion to be issued by the Court within the next thirty days, absent extraordinary circumstances, it is hereby

**ORDERED** that the plaintiff's motion for summary judgment on Count I of its complaint is **GRANTED**. It is further

**ORDERED** that the parties shall submit to the Court by November 20, 2009, a joint proposed schedule setting forth agreed-upon deadlines for the ultimate resolution of this matter.

**SO ORDERED** this 30th day of October, 2009.

\_\_\_\_\_/s/\_\_\_\_\_  
REGGIE B. WALTON  
United States District Judge

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<sup>1</sup> The Court also considered the following documents in ruling on the motion: Memorandum of Points and Authorities in Support of Plaintiff's Motion for Partial Summary Judgment; Plaintiff's Statement of Material Facts not in Dispute; Reply Memorandum of Points and Authorities in Support of Plaintiff's Motion for Partial Summary Judgment ("Pl.'s Reply"); and Brief Amicus Curiae of The American Association for Justice in Support of Plaintiff's Motion for Partial Summary Judgment.