

MoveOn's 'Hope You Don't Love Your Health' Sign Stays In La.

By Zachary Zagger

Law360, New York (April 07, 2014, 7:06 PM ET) -- MoveOn.org gets to keep a billboard criticizing Louisiana Gov. Bobby Jindal's refusal to join Medicaid expansion, after a federal judge denied on Monday the state's attempt to take down the billboard for infringing Louisiana's "Pick Your Passion" tourism-slogan trademark.

Louisiana Lt. Gov. Jay Dardenne, who filed the suit last month as commissioner of the Louisiana Department of Culture, Recreation and Tourism, alleges the California-based activist nonprofit group's billboard rips off the tourism board's registered trademark for slogan "LOUISIANA Pick Your Passion," written in purple and red fonts. MoveOn's billboard, which is located along Interstate 10, outside state capital Baton Rouge, features the slogan followed by the sentence, "But hope you don't love your health. Gov. Jindal's denying Medicaid to 242,000 people."

On Monday, U.S. District Judge Shelly D. Dick denied Dardenne's motion for a preliminary injunction to have the billboard immediately taken down and to stop MoveOn from using similar designs, ruling that MoveOn's free speech rights outweighed the state's rights under its trademark infringement claims.

MoveOn did not challenge that the state had a valid trademark but argued that it was parodying the state's tourism slogan to make a political point.

"It is clear to the court that MoveOn.org did not use Louisiana's service mark for the purpose of gaining attention to products and services associated with mark, but as a parody for the purpose of expressing an idea, opinion or criticism," the judge said.

Judge Dick also rejected the state's argument that viewers of the billboard may be confused into thinking the lieutenant governor was criticizing Jindal, saying there is nothing on the billboard to indicate that it is a creation of or endorsed by Dardenne.

"Furthermore, neither the lieutenant governor himself, nor the Office of the Lieutenant Governor as an agency of the state, is the owner of the mark. The owner of the mark is the state, and more specifically its citizens," the judge said. "Hence, the court is being asked to find that viewers of the billboard are likely to believe that the state, as the owner of the service mark, is being critical of the governor."

The judge found that there is no compelling reason to harm MoveOn's free speech rights and that Louisiana had not proven there would be irreparable harm in keeping the billboard.

The state said it has spent over \$70 million, through the Office of the Lieutenant Governor, in developing and using the registered trademark, according to the judge's decision.

“This decision is a victory for common sense, freedom of speech, and the 242,000 Louisianians being denied health care because of Governor Jindal and Louisiana Republicans’ outrageous refusal to let them access Medicaid. What it means is, our billboard is staying up,” MoveOn’s executive director for civic action, Anna Galland, said in a statement.

The billboard also contains a picture of a plate of crawfish taken directly from the tourism board's website, according to Dardenne's complaint.

MoveOn put its billboard up on March 4, according to the complaint, and the tourism board subsequently issued a written cease-and-desist demand.

In response to the cease-and-desist, MoveOn a week later began running a television advertisement in the Baton Rouge area that included a photo of the billboard and further reiterated the group's argument that Jindal's refusal to accept federal funds to expand the state's health program for low-income residents is harming the state.

Representatives for Jindal’s and Dardenne’s offices could not immediately be reached for comment Monday.

Dardenne is represented by Dale R. Baringer and James R. Bullman of The Baringer Law Firm LLC.

MoveOn is represented by Matthew S. Almon, Stephen G. Bullock and Lesli D. Harris of Stone Pigman Walther Wittmann LLC; and Dara Lindenbaum and Joseph E. Sandler of Sandler Reiff Young & Lamb PC.

The case is Dardenne v. MoveOn.org Civil Action, case number 3:14-cv-00150, in the U.S. District Court for the Middle District of Louisiana.

--Additional reporting by Daniel Siegal. Editing by Edrienne Su.