

92-29

CLERK
COURT
DISTRICT

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION _____

Dec 1 11 29 AM '92

STATE OF KANSAS, ex rel.,)
 ROBERT T. STEPHAN, Attorney)
 General,)
)
 Plaintiff,)
)
 vs.)
)
 WAL-MART STORES, INC. d/b/a)
 HYPERMART U.S.A.,)
)
 Defendant.)

Case No. 92 CV 1518

GENERAL
JURISDICTION
TOPEKA KS

JOURNAL ENTRY OF CONSENT JUDGMENT

Now on this _____ day of _____, 1992, the plaintiff's petition for approval of consent judgment comes before the court for consideration under K.S.A. 1991 Supp. 50-632(b). The State of Kansas ex rel. Robert T. Stephan, Attorney General, appears by and through Shelly Gasper, Assistant Attorney General. Wal-Mart Store, Inc. appears by and through John R. Cleary and Karen J. Halbrook of Husch & Eppenberger.

Whereupon, the parties advise the court that they have stipulated and agreed to the following matters:

1. Robert T. Stephan ("Attorney General") is the Attorney General of the State of Kansas.
2. Wal-Mart Stores, Inc. ("Wal-Mart") is a Delaware corporation which conducts business in Kansas and particularly operates a Hypermart at 1501 S.W. Wanamaker Road, Topeka, Kansas.

3. Wal-Mart enters its voluntary general appearance and admits that this court has jurisdiction over the parties and the subject matter.

4. The Attorney General alleges the following practices by Wal-Mart at its Hypermart located in Topeka violate the Kansas consumer protection act and are deceptive and unconscionable:

a) Wal-Mart intentionally entered the price of \$9.99 into the cash register computer system for all items in the produce department that were not available in the store;

b) In the event that an item was inadvertently marked with the product look-up (PLU) code of an out-of-stock item, customers may have been charged \$9.99 rather than the correct price or \$0.00;

c) Wal-Mart's practice was deceptive pursuant to K.S.A. 1991 Supp. 50-626(a) by falsely stating, knowingly or with reason to know, that a consumer transaction involves consumer obligations as prohibited by K.S.A. 1991 Supp. 50-626(b)(8);

(d) Wal-Mart's practice was also unconscionable in that the transaction contained a grossly unfair surprise to consumers and shifted the burden to the unsuspecting consumer to catch the false price at the cash register check-out. Such practice violated K.S.A. 1991 Supp. 50-627(a).

5. Wal-Mart denies that the practice described in subparagraphs a) and b) of paragraph 4 above which was used for a short period of time at the Hypermart in Topeka and which has now been discontinued was deceptive, unconscionable or was in any way in violation of K.S.A. 1991 Supp. 50-626(a), 50-626(b)(8) or 50-627(a). Wal-Mart contends that the practice was implemented without any intention to deceive, cheat or falsify but was implemented in an effort to insure that customers were charged

correct prices by detecting items that had been inadvertently mislabeled with erroneous PLU price code labels. Wal-Mart desires to avoid the delays, business interruptions and costs of litigation concerning the claims of the Attorney General and, therefore, voluntarily agrees to this consent judgment without trial or adjudication of any issue of fact or law.

6. The provisions of this consent judgment will be applicable to Wal-Mart and its employees, agents or representatives in Kansas.

7. Wal-Mart agrees to make available and/or disclose the provisions of this consent judgment to its Kansas employees.

8. Wal-Mart agrees to refrain from and to be enjoined from engaging in the practice described in paragraph number 4 above at its businesses in Kansas. Without admitting that the practice described in paragraph number 4 caused the consumer to be charged an incorrect or false price Wal-Mart agrees that it will not at its businesses in Kansas employ a practice whereby the consumer is charged an incorrect or false price.

9. Wal-Mart agrees for a period ending on April 1, 1993, to resolve to the satisfaction of the office of the Attorney General all consumer complaints made by any consumers who claim that they were overcharged because of the practice described in paragraph 4 and who can document such overcharge by refunding the amount of the overcharge. Wal-Mart agrees to apprise the Attorney General in a simple and concise manner of the

disposition of any such complaints within thirty (30) days after resolution.

10. Wal-Mart agrees that it will not enter into, form, organize or reorganize into any partnership, corporation, sale proprietorship or any other legal structures for the purpose of avoiding compliance with the terms of this consent judgment.

11. Wal-Mart agrees to pay \$2,000 for investigation fees and expenses to the Attorney General. Wal-Mart also agrees to contribute \$1,000 to an appropriate charity of the Attorney General's choice. Payments will be by certified checks.

12. Wal-Mart agrees to allow the Attorney General to inspect relevant business records in the future with regard to compliance with this consent judgment.

13. Wal-Mart agrees to pay all court costs and filing fees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of the court.

IT FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas consumer protection act, and the provisions of K.S.A. 50-632(b), the court hereby approves the terms of the consent judgment and adopts the same as the order of the court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant will pay all court costs and filing fees.

IT IS SO ORDERED.

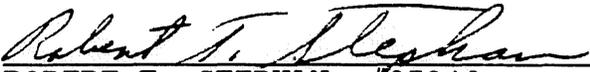
DISTRICT COURT JUDGE

Consented to:

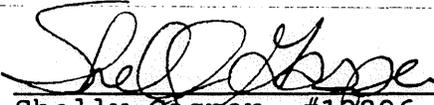


WAL-MART STORES, INC.

Approved by:

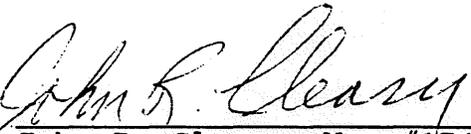


ROBERT T. STEPHAN, #05340
Attorney General



Shelly Casper, #10896
Assistant Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(913) 296-3751

Attorneys for plaintiff



John R. Cleary, Mo. #17403
HUSCH & EPPENBERGER
1200 Main Street
Suite 1700
Kansas City, Missouri 64105
(816) 421-4800



Karen Halbrook, Ks. #14299
HUSCH & EPPENBERGER
1200 Main Street
Suite 1700
Kansas City, Missouri 64105
(816) 421-4800

Attorneys for defendant