COFFEY COUNTY, KANSAS
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DEBRA ...
CLERK OF DISTRICT COURT

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IN THE DISTRICT COURT OF COFFEY COUNTY, KANSAS
DIVISION _____

STATE OF KANSAS, ex rel., ROBERT T. STEPHAN, Attorney General, Plaintiff, vs. FREEDOM FINANCIAL CORPORATION, Defendant.	Case No. 88 CV 29

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 6th day of September, 1988, the Petition for approval of Consent Judgment filed by the State of Kansas comes on for hearing. The State of Kansas appears by Robert T. Stephan, Attorney General and Mark S. Braun, Assistant Attorney General. The Defendant appears by its attorneys, Orville J. Cole and Ford R. Nelson, Jr. Whereupon, the parties advise the Court they have stipulated and agreed to the following matters:

1. Robert T. Stephan is the duly elected, qualified and acting Attorney General of the State of Kansas.

3. Defendant enters its voluntary general appearance. The Defendant has been properly served with process in the above-captioned case. The Defendant admits the Court has jurisdiction over the parties and the subject matter.

4. Venue is proper in Coffey County according to K.S.A. 50-638.

5. The Defendant advertises and sells vacation resort property. It is a "supplier" under K.S.A. 50-624.

6. The Defendant entered into "consumer transactions" as defined under K.S.A. 50-624 (c) and (g) by advertising and selling vacation resort property located outside Kansas to Kansas consumers.

7. Consumers who received Defendant's advertisements, copies of which are attached as Exhibits "A", "B", and "C", are alleged by Plaintiff to have relied on said advertisements that they had won certain awards or prizes.

8. The Attorney General, pursuant to K.S.A. 50-631, has investigated the business activities of the Defendant based on a belief that the Defendant has engaged in, was engaging in or was about to engage in, deceptive and unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-626 and K.S.A. 50-627.

9. The Attorney General alleges the following acts and practices by the Defendant are violations of the Kansas Consumer Protection Act and are deceptive and unconscionable:

a) Defendant's advertisements are intended to induce consumers to visit Defendant's

cash, a 1988 BMW 325 luxury automobile, video cassette recorder multi-system, or $1,000 cash." (See attached Exhibits "D", "E", "F" & "G".)

c) Consumers who visit the resort are told they have not won any of the prizes listed but have "won" some other prize for which they must pay a substantial "redemption fee." The redemption fee is the Defendant's cost of the "prize". (See attached Exhibits "A", "B", "C" & "F");

d) Defendant's advertisements list prize claim numbers which are the same;

e) Defendant's advertisements are also titled "Prize/Merchandise Rejection Form" implying that consumers have already won the prizes. (See attached Exhibits "A", "B" & "C");

f) To date, no Kansas consumer has won the major prizes shown on the advertisement;

g) Defendant, a Texas corporation, use "Washington, D.C., United States of America", as a return address which leads consumers to believe the mail is an official government document (see Exhibit "G"); and

h) Defendant's solicitations resemble trust

10. The Attorney General alleges these acts and practices are violations of the Kansas Consumer Protection Act, including but not limited to the following:

a) Engaging in any deceptive act or practice in connection with a consumer transaction K.S.A. 50-626(a);

b) Representations made knowingly or with reason to know that property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have K.S.A. 50-626(b)(1)(A);

c) Representations made knowingly or with reason to know that the supplier has a sponsorship, approval, status, affiliation or connection that he or she does not have K.S.A. 50-626(b)(1)(B);

d) The intentional use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact K.S.A. 50-626(b)(2);

e) The intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact, whether or not any person has in fact been misled K.S.A. 50-626(b)(3);

f) Engaging in any unconscionable act or practice in connection with a consumer transaction. An unconscionable act or practice violates this act

ignorance, illiteracy, inability to understand the language of an agreement or similar factor K.S.A. 50-627(b)(1);

h) That, when the consumer transaction was entered into, the consumer was unable to receive a material benefit from the subject of the transaction K.S.A. 50-627(b)(3); and

i) That the transaction the supplier induced the consumer to enter into was excessively one-sided in favor of the supplier K.S.A. 50-627(b)(5).

11. Defendant denies the allegations contained herein and in the Petition and the parties acknowledge that this agreement by Consent Judgment is made as a settlement of the dispute pending between the parties without trial or adjudication of any issues of fact or law.

12. The provisions of this Consent Judgment will be applicable to the Defendant, every employee or agent of the Defendant and further that Defendant will instruct its employees and agents to act within the provisions of this Consent Judgment in sending further solicitations to Kansas consumers.

13. Defendant specifically agrees to stop sending solicitations similar to Exhibits "A" through "G" to Kansas consumers.

14. In order to avoid engaging in acts and practices as alleged by the state to be deceptive and unconscionable, the Defendant agrees to refrain from, and be enjoined from engaging in, the following acts and practices:

consumer to believe that the mailings are government documents, court documents, or are from an official government agency;

c) Defendant will not use language in its advertising which implies a consumer is "guaranteed" to win any prize unless consumer will be awarded that prize;

d) Defendant will not use any language in its advertising which makes it appear that a consumer has already won a prize and merely needs to claim it, unless consumer has in fact won that prize and is awarded that prize; and

e) Defendant will not charge a redemption fee for any prize or gift awarded that would exceed the cost of shipping and handling such prize or gift to the consumer.

15. Defendant agrees to the following guidelines on awarding any prizes to consumer:

a) Defendant may only charge the consumer the actual, verified shipping and handling charges for each prize or gift awarded to the consumer;

b) Defendant will furnish the Attorney General, upon request, with the actual costs to Defendant for shipping and handling of each prize awarded within thirty (30) days of the shipping or delivery date to the consumer; and

c) Any prizes redeemed by consumer will be shipped within thirty (30) days of the receipt of the consumer's payment of shipping and handling charges.

16. Defendant shall, contemporaneous with the filing of this Consent Judgment, deliver a certified check in the amount of $5,000 to the Attorney General for consumer complaint

as Exhibits "A" through "G". Upon receipt of proof of visitation at Defendant's resort, the Attorney General may, at his discretion, make payment to complainant in such amount as he deems fair and equitable. All of the fund shall be used by the Attorney General as set forth above until fully expended. Defendant shall not be required to make any further payments to this fund. Complainants shall have six (6) months from date of the entry of Consent Judgment to notify the Attorney General's Office in writing of their complaint against Defendant. If the full amount of said fund has not been expended within nine (9) months from the date of the entry of the Consent Judgment, the Attorney General may, at his discretion, continue to hold any portion of the fund for the purpose set forth above, or may use such remaining portion to defray costs of administration in handling complaints related to the fund.

17. Defendant agrees to pay a $15,000 charitable donation to the following charities designated by the Attorney General of the State of Kansas:

1)	RENO COUNTY FOOD BANK	$ 2,500
2)	SALVATION ARMY FOOD BANK OF COFFEYVILLE, MONTGOMERY COUNTY	$ 2,500
3)	TOPEKA RESCUE MISSION	$ 5,000
4)	WICHITA RESCUE MISSION	$ 5,000

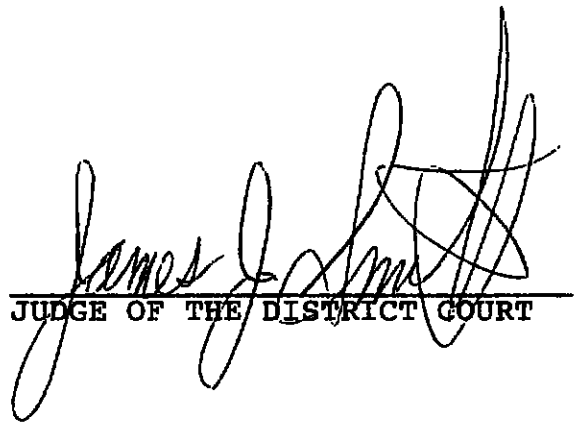
Payments will be made by certified check payable to the charities named above and delivered to the Attorney General of the State of Kansas at the time of filing the Consent Judgment. The Attorney General will deliver the checks to the charities.

18. Defendant agrees to pay $15,000 in investigative 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 IS 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 agreements of the Consent Judgment and adopts the same as the Order of the Court.

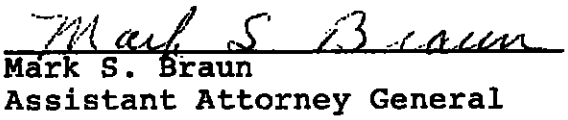
IT IS SO ORDERED.



JUDGE OF THE DISTRICT COURT

Approved by:

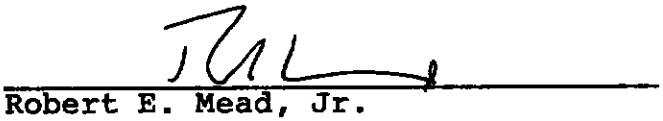
ROBERT T. STEPHAN
Attorney General



Mark S. Braun
Assistant Attorney General

Attorneys for Plaintiff.

FREEDOM FINANCIAL CORPORATION



Robert E. Mead, Jr.
President

Edward M. Nelson

~~Ford R. Nelson, Jr.~~
Edward M. Nelson

Attorneys for Defendant.