

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 9

FILED BY CLERK  
U.S. DISTRICT COURT  
3RD JUDICIAL DISTRICT  
TOPEKA, KANSAS

JUL 30 4 25 PM '92

STATE OF KANSAS, ex rel.  
ROBERT T. STEPHAN, Attorney General,

Plaintiff,

vs.

DIAMOND CORPORATION OF CALIFORNIA, INC.  
d/b/a DIAMOND CORPORATION OF AMERICA,  
d/b/A INSTITUTE FOR EYE THERAPY,

Defendant.

GENERAL JURISDICTION  
TOPEKA KANSAS

Case No. 92 CV 259

K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this \_\_\_\_ day of \_\_\_\_\_, 1992, the motion for approval of consent judgment is considered by the court. The plaintiff, State of Kansas, appears by and through Daniel P. Kolditz, Deputy Attorney General, and Mark W. Stafford, Assistant Attorney General. Defendant, Diamond Corporation of California, Inc., d/b/a Institute for Eye Therapy appears by and through Greg B. Lam and Mark R. Schmid, Copilevitz, Bryant, Gray & Jennings, P.C., 1500 One Kansas City Place, 1200 Main Street, Kansas City, Missouri 64105.

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

1. Robert T. Stephan is the Attorney General of Kansas.
2. Defendant voluntarily submits itself to the jurisdiction of the court and waives all prior claims to any lack of jurisdiction over it.

3. Defendant is a foreign corporation who does business as the Institute for Eye Therapy and does business as the Diamond Corporation of America.

4. The court has personal and subject-matter jurisdiction over the parties.

5. At Counts I through V of the Petition herein, the Attorney General alleged defendant engaged in deceptive acts or practices in violation of the Kansas Consumer Protection Act, specifically K.S.A. 1991 Supp. 50-626(a); defendant responded to said Petition, denying any liability or wrongdoing.

6. Defendant agrees to the terms in this Journal Entry of Consent Judgment without admitting liability and without trial or adjudication of any issue of fact or law. This journal entry does not constitute an admission by the defendant of a violation of any statute or rule of law and is made only to effectuate a compromise of all controversies between the parties.

7. The provisions of the Consent Judgment are applicable to defendant and its agents, representatives, and employees.

8. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to its managerial employees, representatives and agents engaged in the marketing of Laservision.

9. For ninety (90) days following the entry of this Consent Judgment, defendant agrees to refund, on request, the purchase price, including postage and handling, for Laservision paid to defendant by any consumers who, in writing, seek a refund directly from defendant; who have been referred to the Kansas Attorney

General's Office by the Attorney General's Office of another state and who seek in writing a refund from defendant; or who have complained to the Kansas Attorney General's Office in writing and seek a refund from defendant. Upon receipt of requests from the Kansas Attorney General's Office, defendant shall promptly issue such refunds to the consumers who have purchased the Laservision product and who have not previously received a refund and shall forward such refunds with self-addressed, postage paid envelopes to the Kansas Attorney General's Office for distribution. Also, defendant shall promptly inform the Kansas Attorney General's Office of the disposition of refund requests made directly to defendant by consumers.

10. Defendant agrees to not market or sell Laservision glasses, or pinhole spectacles, in Kansas except if a consumer contacts defendant to re-order another pair of such spectacles.

11. Defendant agrees to be and is enjoined from using a Kansas address in any manner unless defendant has a place of business in Kansas or it is clear that such address is a mail receiving facility.

12. Defendant agrees to be and is enjoined from utilizing "tearsheets" in the marketing or sale of its products in Kansas unless such "tearsheets" are identified as advertisements and the sender is clearly identified. "Tearsheets" appear to be a torn-away page of newspaper, but in fact are not from a newspaper.

13. Defendant agrees to disclose all known dangers when selling its products to Kansas consumers in Kansas.

14. Defendant agrees to pay Seventeen Thousand Five Hundred Dollars (\$17,500) toward investigative fees and expenses (which includes expert consultation fees) of the Attorney General. Payment is to be made payable to the Attorney General, and shall be made from those funds that were attached by the court's order of February 19, 1992, and that are held by the Clerk of the District Court of Shawnee County, Kansas. This payment is not a fine or penalty.

15. Defendant agrees to pay Seven Thousand Five Hundred Dollars (\$7,500) in civil penalties. Payment is to be made payable to the State of Kansas and shall be made from funds that were attached by the court's order of February 19, 1992, and are held by the Clerk of the District Court of Shawnee County, Kansas.

16. Defendant agrees to make the following contributions to charities:

- a) \$1,000 to Elm Acres Youth Home (Pittsburgh, Kansas)
- b) \$1,000 to Kansas Food Bank (Wichita, Kansas)
- c) \$1,000 to Safehouse (Pittsburg, Kansas)
- d) \$1,000 to Marian Clinic (Topeka, Kansas)
- e) \$1,000 to Crisis Center, Inc. (Manhattan, Kansas)
- f) \$1,000 to Crisis Center of Dodge City (Dodge City, Kansas)
- g) \$1,000 to Alliance Against Family Violence (Leavenworth, Kansas)
- h) \$1,000 to DOVES (Domestic Violence Shelter, Atchison, Kansas)

- i) \$1,000 to Hope Unlimited (Domestic Violence Shelter, Iola, Kansas)
- j) \$1,000 to Domestic Violence Association of Central Kansas (Salina, Kansas).

Such contributions will be made to such charities and delivered to the Attorney General pursuant to paragraph 17.

17. All payments under paragraph numbers 14, 15, and 16 shall be made within five (5) days of the filing of this Consent Judgment. In accordance with paragraph numbers 14 and 15, the Clerk shall pay-out the funds in the amounts stated.

18. All other funds presently held by the District Court of Shawnee County, Kansas per the court's order of February 19, 1992, shall be released to defendant's attorneys and the Order of Attachment shall be dissolved.

IT IS THEREFORE ORDERED AND DECREED that the stipulations and agreements 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 K.S.A. 1991 Supp. 50-632(b), the court hereby approves the terms of this Consent Judgment and adopts the same as the order of this court.

Court costs are assessed to defendant.

IT IS SO ORDERED.

\_\_\_\_\_  
DISTRICT COURT JUDGE

APPROVED AND AGREED TO BY:

  
Robert T. Stephan, #05340  
Attorney General

  
Daniel P. Kolditz, #12102  
Deputy Attorney General

  
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