

92-006
DISTRICT COURT
3RD JUDICIAL DIST.
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TOPEKA JURISDICTION
TOPEKA KANSAS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 3

STATE OF KANSAS, ex rel.,)
ROBERT T. STEPHAN, Attorney General,)
)
Plaintiff,)
)
vs.)
)
NATIONAL SYNDICATIONS, INC.)
d/b/a HEALTHSTYLE,)
)
Defendant.)
_____)

Case No. 92 CV 260

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 27th day of April, 1992, the plaintiff's motion 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 Daniel P. Kolditz, Deputy Attorney General, and Mark W. Stafford, Assistant Attorney General. The defendant appears by and through Robert J. Vancrum, Gage and Tucker, 9401 Indian Creek Parkway, Building 40, Suite 400, P. O. Box 25830, Overland Park, Kansas.

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

1. Robert T. Stephan is the Attorney General of the State of Kansas.

2. Defendant voluntarily appears and submits itself to the jurisdiction of the court in this action.

3. The defendant is a foreign corporation who did business as Healthstyle and has a principal place of business at 37 11th Avenue, Huntington Station, New York.

4. The court has personal and subject matter jurisdiction over the parties in this action.

5. The Attorney General alleged the following acts or practices (stated in the petition) were deceptive and violated the Kansas consumer protection act:

"COUNT I

9. Plaintiff hereby incorporates by reference paragraphs 1 - 8, as though fully stated herein.

10. By marketing the product as "Aerobic Training Eyeglass System," defendant represented that use of the product results in an aerobic effect to the human body.

11. No aerobic effect occurs to the human body through use of defendant's product referred to as Aerobic Eyeglasses.

12. Defendant knew or should have known that the product would not create an aerobic effect on the human body.

13. By referring to the product as an Aerobic Training Eyeglass System or as Aerobic Eyeglasses, defendant has made representations that the product has characteristics, benefits or qualities that the product does not have, which is a

deceptive act or practice as defined by K.S.A. 1991 Supp. 50-626(b)(1).

14. Deceptive acts or practices by suppliers in connection with consumer transactions are prohibited by K.S.A. 1991 Supp. 50-626(a), and are violations of the Kansas consumer protection act.

15. Each issue in which defendant's advertisement appeared in the magazine constituted a separate occurrence, and separate violations of K.S.A. 1991 Supp. 50-626(a).

COUNT II

16. Plaintiff hereby incorporates by reference paragraphs 1 - 15, as though fully stated herein.

17. Defendant's advertisements included representations as to the ability of the product to reduce consumers' reliance on prescription eyeglasses for vision correction.

18. Pinhole spectacles do not correct vision defects caused by refractive error after the device is removed.

19. Defendant knew or should have known that the aerobic eyeglasses would not cause consumers to change to weaker prescriptions or discard their prescription eyeglasses when the need for prescription eyeglasses is based on refractive error.

20. By making representations knowingly or with reason to know that the product has characteristics, uses or benefits it does not have, defendant has engaged in a deceptive act and practice as defined by K.S.A. 1991 Supp. 50-626(b)(1).

21. Deceptive acts and practices are prohibited by K.S.A. 1991 Supp. 50-626(a), and are violations of the Kansas consumer protection act.

22. Each issue of the magazine in which defendant's advertisements appear constitutes a separate occurrence, and are separate violations of K.S.A. 1991 Supp. 50-626(a)."

6. Defendant voluntarily 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.

7. The provisions of this consent judgment are applicable to defendant and its agents, representatives or employees.

8. Defendant agrees to discontinue selling in Kansas the product referred to in plaintiff's petition and known commonly as pinhole eyeglasses.

9. Defendant agrees to refund, on request, monies paid to defendant by consumers who seek a refund from defendant or who complain to the Attorney General and seek a refund. Defendant shall apprise the Office of the Attorney General of the disposition of such consumer complaints within thirty (30) days after resolution.

10. Defendant agrees to pay and is assessed seven thousand dollars (\$7,000.00) in civil penalties. Payment is to be to the State of Kansas by certified check at the time of filing of this journal entry.

11. Defendant agrees to pay seven thousand dollars (\$7,000.00) toward investigative fees and expenses of the Attorney General. Such payment is to be to the Attorney General by certified check and delivered to plaintiff's counsel at the time of filing of this consent judgment.

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

- a) \$1,000 to Doorstep, Inc. of Topeka, Kansas;

- b) \$1,000 to Family Crisis Services of Garden City, Kansas;
- c) \$1,000 to the Rebecca Vincson Center of Kansas City, Kansas;
- d) \$1,000 to the Wichita Rescue Mission of Wichita, Kansas;
- e) \$1,000 to Safehome, Inc. of Olathe, Kansas; and
- f) \$1,000 to Victory in the Valley of Wichita, Kansas.

Such contributions will be made payable to such charities and delivered to the Attorney General at the time of filing of this journal entry.

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.

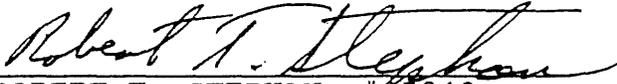
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to K.S.A. 1991 Supp. 50-632(b), the court hereby approves the terms of this consent judgment and adopts the same as the order of this court.

Court costs are assessed to defendant.

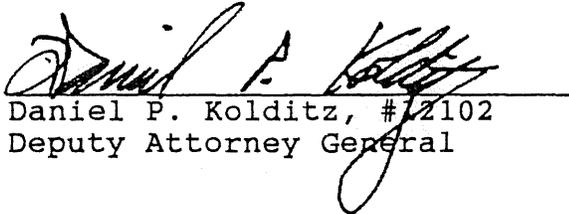
IT IS SO ORDERED.

LS/ MARIA J. LUCKETT
DISTRICT COURT JUDGE

APPROVED AND AGREED TO BY:



ROBERT T. STEPHAN, #05340
Attorney General



Daniel P. Kolditz, #2102
Deputy Attorney General



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