

Second CG 96-119

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KS. DISTRICT COURT
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TOPEKA, KAN.

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 6

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General)
)
Plaintiff,)
)
vs.)
)
MAZDA MOTOR OF AMERICA, INC.)
)
Defendant.)

Case No. 96-CV-1478

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF SECOND CONSENT JUDGMENT

NOW, on this 28th day of September, 1999, Plaintiff's Petition for Approval of Second Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendant Mazda Motor of America, Inc., appears by and through Marjorie Ehrich Lewis of Gibson, Dunn, & Crutcher, L.L.P., and Morrison & Hecker L.L.P.

WHEREUPON, the parties advise the Court that they have stipulated and agreed to the following matters:

1. Carla J. Stovall is the Attorney General of the State of Kansas.

2. Defendant Mazda Motor of America, Inc., is a foreign corporation organized under the laws of the state of California. The principal office of the corporation is located at 7755 Irvine Center Drive in Irvine, California.

3. Defendant is a supplier within the definition of K.S.A. 50-624(i) and has engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

4. Defendant admits the Court has personal and subject matter jurisdiction over the parties.

5. Defendant is in the business of advertising, promoting, selling and distributing motor vehicles in the United States, including Kansas. In particular, Defendant advertises, promotes, sells and distributes motor vehicles manufactured by Mazda Motor Corporation, which has its principal place of business in Hiroshima, Japan.

6. The parties entered into a Consent Judgment in this action on December 19, 1996, whereby Defendant was enjoined from various activities that violate the Kansas Consumer Protection Act. Specifically, section 11(c) provided that the Defendant was to "clearly and conspicuously" disclose certain information in any advertisement pertaining to a lease transaction.

7. The Attorney General alleges the Defendant violated section 11(c) of the prior Consent Judgment. Beginning about February 11, 1997, the advertisements for Mazda vehicles stated the amount of any payment or that any or no initial payment was required at lease inception, but failed to state the disclosures required by section 11(c) of the prior Consent Judgment "clearly and conspicuously" as that term is defined in section 10(a) of the prior Consent Judgment. These lease disclosures, including but not limited to the total amount due at lease inception, were not stated "clearly and conspicuously" because, among other deficiencies, they appeared in small type, for a

short duration, or were accompanied by distracting or obscuring sounds or images.

8. Each failure by Defendant to make the required disclosures "clearly and conspicuously," as that term is defined in section 10(a) of the prior Consent Judgment, as set forth in Paragraph 7 above, constitutes a separate violation of the prior Consent Judgment for which Plaintiff seeks monetary civil penalties.

9. K.S.A. 50-636(b) authorizes this Court to award monetary civil penalties of not more than \$10,000 for each such violation of the prior Consent Judgment.

10. Defendant voluntarily agrees to this Second Consent Judgment without trial or adjudication of any issue of fact or law.

11. Defendant, by entering into this Second Consent Judgment, shall not be deemed to admit the violations of the Kansas Consumer Protection Act alleged herein, or any violation of state or federal law. Defendant has agreed to entry of this Second Consent Judgment without admitting any wrongdoing and for settlement purposes only.

12. Mazda Motor of America, Inc., and its employees, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it are permanently enjoined from violating the injunctive provisions of the Consent Judgment entered in this action on December 19, 1996.

13. Defendant agrees to refrain from and is permanently enjoined from failing to maintain and upon request make available to the State of Kansas, for five years after entry of this Second Consent Judgment, copies of all records that will demonstrate compliance with the requirements of this Second Consent Judgment.

14. Defendant agrees to and is permanently enjoined from representing that this Second

Consent Judgment constitutes an approval by the State of Kansas of any of Defendant's past or future advertising.

15. Defendant agrees that violation of the injunctive provisions contained in paragraphs 12-15 above shall constitute a violation of this Second Consent Judgment and subject Defendant to civil and other penalties that may be imposed by the Court pursuant to K.S.A. 50-636.

16. Defendant shall pay to Plaintiff a civil penalty in the amount of \$25,000.00 pursuant to K.S.A. 50-636(b), and investigative fees and expenses in the amount of \$25,000.00, pursuant to K.S.A. 50-636(c). Defendant shall make the payment by cashier's check made payable to the "Office of the Attorney General." This amount \$50,000.00 shall be delivered to the Office of the Attorney General on the later of July 1, 1999 or thirty (30) days after the execution of the Second Consent Judgment.

17. The parties agree that this Second Consent Judgment resolves all issues under the Kansas Consumer Protection Act relating to the acts and practices alleged to be deceptive or unconscionable in Paragraph seven (7) of this Second Consent Judgment up through the date of the execution of this Second Consent Judgment. Pursuant to the terms of this Second Consent Judgment, the Kansas Attorney General agrees that she and her office will not pursue any claims, demands, or civil causes of action under the Kansas Consumer Protection Act against Defendant for the acts and practices alleged to be deceptive or unconscionable in Paragraph seven (7) of this Second Consent Judgment up through the date of the execution of this Second Consent Judgment, excepting only any action which may be required to enforce the provisions of this Second Consent Judgment as set forth in Paragraph 19 below.

18. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to

this Second Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof

19. If any portion, provision, or part of this Second Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

20. Compliance with this Second Consent Judgment does not relieve Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction.

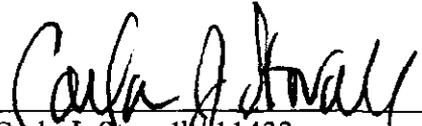
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies payable hereunder by Defendant immediately become a judgment upon filing.

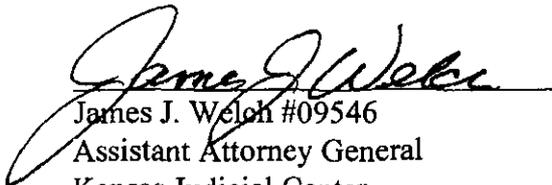
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Second Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

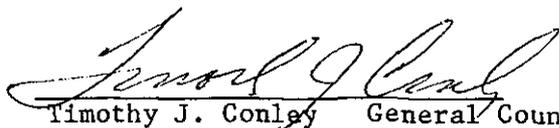
15/Hon. Terry L. Bullock
DISTRICT COURT JUDGE

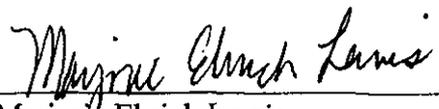
Approved by:


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Approved By:


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(Must have Kansas counsel)

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