

James J. Welch, #09546
Assistant Attorneys General
Office of the Attorney General
120 SW Tenth Street
Topeka, Kansas 66612-1597
(785) 296-3751

00-09

KC DISTRICT COURT
THIRD DISTRICT
MAR 6 3 54 PM '00
GENERAL JURISDICTION
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 5

STATE OF KANSAS, *ex rel.*
CARLA J. STOVALL, Attorney General,

Plaintiff,

vs.

NEW RIVER SUBSCRIPTION SERVICES, INC.,

Defendant.

Case No. 00 C 55

Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 6 day of MAR, 2000, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendant appears not, having first entered into this Consent Judgment.

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

1. Carla J. Stovall is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

3. Defendant New River Subscription Services, Inc. is a corporation organized under the laws of the state of Virginia. Defendant may be served with process by serving its registered agent, Terry G. Ethridge, 3055 Riner Road, Christianburg, Virginia 24073.

4. Defendant is a supplier within the definition of the Kansas Consumer Protection Act, K.S.A. 50-624(i).

5. Defendant has engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

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

9. Venue is proper in Shawnee County because an act or practice declared to be a violation of the Kansas Consumer Protection Act occurred in Shawnee County and because Defendant has no principal place of business in the State of Kansas.

10. The Attorney General alleges (and Defendant denies that) Defendant engaged in the following acts and practices which are deceptive and violate the Kansas Consumer Protection Act:

- a. Defendant failed to provide to the Kansas consumer the written notice of cancellation required by K.S.A. §50-640(b)(2). The failure to provide the required notice constitutes a deceptive act in violation of K.S.A. §50-626 as enumerated in K.S.A. §50-640(b).
- b. Defendant failed to inform some Kansas consumers orally of such consumers' rights of cancellation, as required by K.S.A. §50-640(b)(5). The failure to provide the required oral notice constitutes a deceptive act in violation of K.S.A. §50-626 as enumerated in K.S.A. §50-640(b).
- c. When defendant did inform consumers orally of such consumers' rights to cancel, Defendant misrepresented consumers' rights to cancel, telling consumers that they

could cancel the transaction by stopping-payment on their check, by telephoning the company, and the like, in violation of K.S.A. §50-640(b)(6).

- d. Defendant cashed checks given to Defendant by the above-referenced consumer as payment for magazine subscriptions and/or books prior to the fifth business day following the day the contract was signed. This is in violation of K.S.A. §50-640(b)(8), which provides that a note or other evidence of indebtedness incurred as a result of a door-to-door sales may not be negotiated, transferred, sold or assigned prior to midnight of the fifth business day following the day the contract was signed or the products/services were purchased.
- e. Defendant was enjoined from doing business within the State of Kansas after December 8, 1998, by virtue of an Order issued by the Shawnee County District Court, Division 6; however, Defendant made at least 294 sales on or about July 5-8, 1999. Defendant's continuing to transact business notwithstanding the order which enjoined Defendant from transacting business within the State of Kansas by the District Court of Shawnee County, Kansas, sixth division (Case No. 98 CV 1346), without having complied with the State's subpoena issued during August, 1998. A true and correct copy of the Order of such proceeding is attached hereto and marked as Exhibit A. This is in violation of K.S.A. §50-626(b)(3), in that it is the wilful failure to state the material fact and the willful concealment, suppression and omission of the material fact that Defendant was, at the time of such solicitations and sales, enjoined from doing business within the State of Kansas.

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

12. Defendant agrees to refrain from and to be permanently enjoined from engaging in acts and practices which violate the Kansas Consumer Protection, as set out in paragraph ten (10)

of this Consent Judgment. Defendant agrees that engaging in such acts and practices after the date of this Consent Judgment shall constitute a violation of this Order.

13. The provisions of this Consent Judgment will be applicable to Defendant, and every employee, agent or representative of Defendant.

14. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant after the date of this Consent Judgment to the satisfaction of the Attorney General within thirty (30) days of the date such complaint is forwarded to Defendants for resolution.

15. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

16. Defendant agrees to promptly cancel transactions and pay restitution to any and all Kansas consumers who request cancellation of their transactions with Defendant which were entered into at any time after December 8, 1998.

17. Defendant agrees to pay \$7,500 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$7,500 in civil penalties to the "State of Kansas". Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas, beginning at the time of Defendant's signing this Consent Judgment. Payment of \$2,000.00 per month shall commence on or before March 15, 2000, with subsequent \$2,000.00 payments thereafter due on or before the fifteenth (15th) day of each month, until the entire amount payable is satisfied. Defendant agrees that failure to make timely payments, as set out above, will result in the entire outstanding balance becoming due within five (5) days of the first payment missed.

18. Defendant agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendant does not pay the amounts as agreed herein within the time frame stated.

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

20. If any portion, provision or part of this 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.

21. Compliance with this 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.

22. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant nor shall Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

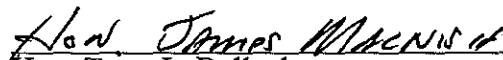
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact

and conclusions of law of the Court and any monies owed hereunder by Defendant immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$15,000.00.


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 Consent Judgment and adopts the same as the Order of the Court.

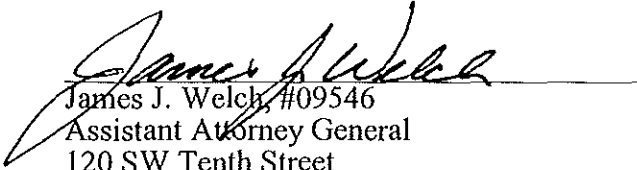
IT IS SO ORDERED.



Hon. Terry L. Bullock
Judge of the District Court
Sixth Division

PREPARED AND APPROVED BY:

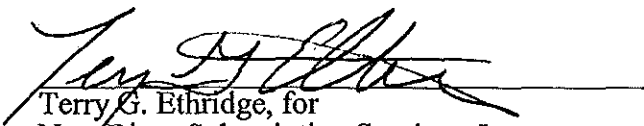

CARLA J. STOVALI, #11433
Attorney General



James J. Welch, #09546
Assistant Attorney General
120 SW Tenth Street
Topeka, Kansas 66612-1597
(785) 296-3751

Attorney for Plaintiff

APPROVED BY:



Terry G. Ethridge, for
New River Subscription Services, Inc.
3055 Riner Road
Christianburg, Virginia 24073
Defendant