

James R. McCabria, #16563
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

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K.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS.
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 12

STATE OF KANSAS, *ex rel.*)
PHILL KLINE, Attorney General,)
)
Plaintiff,)
)
v.)
)
KANSAS FOOD SERVICE COMPLIANCE)
CENTER,)
)
Defendant.)

Case No. 06 C 1258

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

Journal Entry of Consent Judgment

NOW on this 20th day of ~~October~~^{November}, 2006, 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.* Phill Kline, Attorney General, appears by and through James R. McCabria, Assistant Attorney General. Defendant appears pro se. There are no other appearances.

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

1. Phill Kline 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. Kansas Food Service Compliance Center is the business name used by The Mandatory Poster Agency, Inc., to conduct business in this State for purposes of soliciting and selling handwashing posters. The Mandatory Poster Agency, Inc., ("Defendant") is the true party defendant in this action. Defendant maintains a corporate office at 6323 W. Saginaw, Suite E in Lansing, Michigan and service may be effectuated upon it at that location.

4. Defendant is a supplier, as defined by K.S.A. 50-624(j).

5. At all times relevant hereto, and in the ordinary course of business, Defendant engaged in consumer transactions as defined by K.S.A. 50-624(c)

6. The Attorney General alleges that, were this matter to be litigated, the following facts could be proven:

- a) Defendant solicited and entered into consumer transactions in the State of Kansas under the name "Kansas Food Service Compliance Center".
- b) Defendant does not maintain a physical presence in the State of Kansas.
- c) Defendant sent or caused to be sent solicitations to Kansas consumers regarding employee hand washing posting requirements. An example of said solicitation is attached as Exhibit A.
- d) Defendant sold or caused to be sold posters in Kansas to consumers as a means of employer compliance with state and federal posting requirements regarding employee hand washing.
- e) Posters such as are being solicited by Defendant are readily available free of charge from government agencies or can be created independently by the individual food service facility.
- f) Defendant's solicitation represented, knowingly or with reason to know, that it has a sponsorship, approval, status, affiliation or connection that it does not, in fact, have, all in violation of K.S.A. 50-626(b)(1)(B)
- g) Defendant's solicitation represents, inter alia, the following matters:

- i) that "State and Federal food codes have recently been amended to include a new hand washing posting requirement";
 - ii) "Effective immediately all Food Service Establishments will be required to post at all hand washing facilities a poster reminding FOOD SERVICE EMPLOYEES to regularly wash their hands";
 - iii) "Posters must also meet the exact specifications and procedures presented in section 2-301.12 of the code and should not be self-made";
 - iv) "Any Food Service Establishment found to be in violation of State or Federal law by willfully failing to post approved hand washings posters may be subject to fines up to \$2,500 and suspension or revocation of license, as well as possible civil liability actions."
- h) The Kansas Food Code Regulations have not been amended since they were adopted in 1999 and do not require such postings, nor prohibit self made posters, nor does the code imbue the Kansas Department of Health and Environment with the authority to levy such fines as represented. Defendant's representation to the contrary constitutes the willful use, in a written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact, a deceptive act in violation of K.S.A. 50-626(b)(2).
- i) The Kansas Food Code Regulations do not require food service establishments to purchase hand washing signage. The Kansas Department of Health and Environment (KDHE) will provide free signs to food service establishments or each establishment may make their own signs to post.
- j) Defendant's solicitation for its product represents knowingly or with reason to know that such posters are legally required and/or fails to disclose that the information set forth in such posters is available free of cost to the consumer from KDHE. Such representations constitute a deceptive act in violation of K.S.A. 50-626(b)(1)(A).

7. Defendant agrees to this Consent Judgement without trial or adjudication of any issue of fact or law.

8. As part of the matters giving rise to this settlement, Defendant represents that it has contacted each Kansas consumer that purchased a poster after receiving the instant solicitation and offered to pay, or has paid, a full refund to such consumer for the cost of the posters. As a further part of this settlement, Defendant agrees to the following injunctive provisions:

- a) refrain from and to be permanently enjoined from engaging in the acts and practices described in Paragraph Six (h) & (j) hereof in any future consumer transactions;
- b) Include in a type of the same size and font as the rest of the type in any similar solicitation that Defendant is not affiliated with any government agency and that such posters may be available free from various government sources;
- c) For a period of ten years, be enjoined from sending or distributing, or causing the same to be sent or distributed, into the State of Kansas any solicitation for the purchase of its goods or services without including the Kansas Attorney General's Office in the mailing or distribution of same. All such future solicitations directed to Plaintiff shall be addressed as follows:

Kansas Attorney General's Office
Consumer Protection Division
Attn: Deputy Attorney General
120 SW 10th Avenue
Topeka, KS 66612

9. Defendant agrees that engaging in acts or similar acts to those described in Paragraphs Six (h) & (j) hereof shall constitute a violation of this order.

10. Defendant shall pay to Plaintiff as civil penalties and investigative fees and costs of this action the sum of Ten-Thousand Dollars (\$10,000.00), such amount to be paid at the time of the filing of this Consent Judgment. Defendant further agrees that future willful violations of this Consent Judgment, if proven by Plaintiff, shall result in entry by the district court of the maximum penalty allowed by law for each such violation.

11. The provisions of this Consent Judgment will be applicable to Defendant, and every employee, agent, or representative of Defendant insofar as the prohibitions of paragraph Eight.

12. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structure, where such restructuring is done for the purpose or object of avoiding compliance with the terms of this Consent Judgment.

13. 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 or compliance herewith, and for the punishment of violations hereof.

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

15. Compliance with this Consent Judgment does not relieve Defendant of any obligation imposed by applicable federal, state or local law, nor shall this Consent Judgment preclude the Attorney General from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction. Defendant further understands that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against Defendant in operating this or any other program or business upon belief that the program or business is being promoted or operated in a fashion that otherwise violates the law.

16. 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 which the Attorney General now has in his possession and believes forms the basis for a violation of any law within his jurisdiction, including criminal violations, to enforce 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 shall immediately become a judgment upon filing.

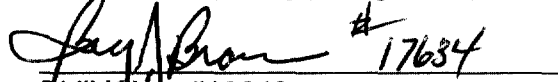
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against the Defendant and in favor of Plaintiff in the amount of \$10,000.00.

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.

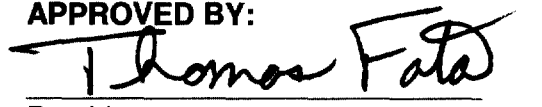
IT IS SO ORDERED.

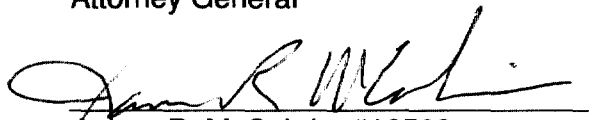

Judge of the District Court

PREPARED AND APPROVED BY:


Phill Kline, #13249
Attorney General

APPROVED BY:


President
The Mandatory Poster Agency, Inc.
d/b/a Kansas Food Center Compliance Center


James R. McCabria, #16563
Assistant Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751
Attorney for Plaintiff