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CLERK OF THE WYANDOTTE COUNTY DISTRICT COURT
CASE NUMBER: 2020-CV-000457



Court: Wyandotte County District Court
Case Number: 2020-CV-000457
Case Title: State of Kansas ex rel vs. Estanya Tenhue, et al.
Type: Default Judgment Against Defendant America for
Humanity, Inc.

SO ORDERED.

A handwritten signature in black ink, appearing to be "C. Alvey", is written over a faint circular stamp.

/s/ Honorable Constance M. Alvey, District Court
Judge

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IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

STATE OF KANSAS, *ex rel.*)
Derek Schmidt, Attorney General,)
)
 Plaintiff,)
)
 v.)
)
 ESTANYA TENHUE, an individual)
)
 and)
)
 AMERICA FOR HUMANITY INC.)
 dba BARGAIN HUNTERS;)
)
 Defendants.)
)

Case No. 2020-CV-000457

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

**ORDER FOR DEFAULT JUDGMENT AGAINST
DEFENDANT AMERICA FOR HUMANITY, INC DBA BARGAIN HUNTERS**

NOW, on this date, Plaintiff's Motion for Default Judgment against the Defendant America for Humanity Inc. d/b/a Bargain Hunters ("Motion for Default Judgment") comes before this Court for consideration. Plaintiff, State of Kansas ex rel. Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Sarah M. Dietz. Defendant America for Humanity Inc. d/b/a Bargain Hunters appears not and is in default.

WHEREUPON, after reviewing the Court's file and Plaintiff's Motion for Default Judgment, the Court finds the following:

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for the State of Kansas.

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

3. This Court has personal and subject matter jurisdiction over this controversy by the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*, specifically K.S.A. § 50-638(a).

4. Venue is proper in the Twenty-Ninth Judicial District (Wyandotte County), pursuant to K.S.A. § 50-638(b).

5. On August 4, 2020, Plaintiff filed a Petition against Defendant America for Humanity Inc. doing business as Bargain Hunters ("Defendant").

6. Defendant America for Humanity Inc. is an organization previously registered at 2021 Oakland, Kansas City, Kansas 66102, which was forfeited in 2016 for failing to timely file.

7. Defendant was served with Plaintiff's Petition and Summons by Personal Service September 11, 2020 through Estanya Tenhue as Resident Agent for the company, pursuant to K.S.A. 60-205 and K.S.A. 60-303.

8. The Return of Service for the Petition and Summons was filed with the Court on September 23, 2020, establishing proper service on Defendant, pursuant to K.S.A. 60-205 and K.S.A. 60-303.

9. Defendant failed to file an Answer within thirty (30) days after being served with process, as required by K.S.A. 60-308(a)(3). Therefore, Defendant is in default as set forth in K.S.A. 60-255.

10. Defendant has not appeared in this action. Therefore, no notice of a hearing on Plaintiff's Motion for Judgment by Default need be served on Defendant, pursuant to K.S.A. 60-255(a) and K.S.A. 60-205(a)(2).

11. Defendant is not a minor or an incapacitated person.

12. Plaintiff filed its Motion for Default Judgment on April 27, 2021.

13. Plaintiff's Motion for Default Judgment is predicated on Defendant's failure to file an Answer to the Plaintiff's Petition within thirty (30) days after being served with process, as required by K.S.A. 60-308(a)(3).

14. Defendant is not a minor or an incapacitated person.

15. Defendant is in default pursuant to K.S.A. 60-255.

16. The factual allegations set forth in the Plaintiff's Motion for Default Judgment are adopted by the Court as its findings of fact and conclusions of law and are as follows:

a. At all times relevant hereto, and in the ordinary course of business, the Defendant acted as a "supplier," as that term is defined by K.S.A. § 50-624(l).

b. At all times relevant hereto, and in the ordinary course of business, the Defendant made or caused to be made "consumer transactions," as that term is defined by K.S.A. § 50-624(c).

c. At all times relevant hereto, the KCPA prohibited Defendant, as a supplier, from engaging in deceptive acts or practices in connection with a consumer transaction.

d. Upon information and belief, at all times relevant hereto, Defendant engaged in deceptive acts and practices related to the sale of counterfeit or fake designer merchandise with Kansas consumers.

e. Advanced Investigative Services, Inc. (“AIS”) of Nashville, IL, is a private investigation company that investigates trademark infringement and counterfeiting of intellectual property and consumer products that private companies manufacture and distribute. AIS assists with intellectual property enforcement and expert identification of counterfeit merchandise.

f. “JUUL” is a brand name of electronic cigarette made by JUUL Labs, Inc., a Delaware corporation. JUUL devices are battery operated and work by heating a pod of liquid or “juice” containing nicotine and other chemicals. When heated, the liquid creates a nicotine vapor that the user inhales. JUUL has trademarks on the JUUL logo and the JUUL stylized logo.

g. On January 1, 2020, Defendant America for Humanity Inc. was issued a Retail Cigarette/Electronic Cigarette Dealer’s License from the Kansas Department of Revenue.

h. On December 5, 2019, Defendant America for Humanity Inc. was issued a Consumable Material Tax Registration from the Kansas Department of Revenue.

i. On November 26, 2019, Inspector Franklin Watson and Field Supervisor Brandon Weyand, Kansas Department of Revenue (“KDOR”) and Special Agent Terry Haak, Office of the Attorney General (“OAG”) conducted a compliance inspection of Defendant’s retail business at 4301 State Ave. Suite B, Kansas City, Kansas to determine if Defendant was complying with all Kansas Department of Revenue regulations.

j. During the inspection, KDOR and the OAG noticed e-juice packaged

similar to JUUL products. The OAG identified twenty-two (22) items: fourteen (14) were labeled “JUUL Classic Menthol” 4 pod packages and eight (8) were labeled “JUUL Cool Cucumber” 4 pod packages. Defendant was unable to provide any invoices or receipts showing where the items were purchased. Defendant further advised the agents that the products were not purchased from a distributor licensed to conduct business in Kansas.

k. During the inspection on November 26, 2019, the OAG sent photos of each kind of the products referenced in the above paragraph to Sean Dees, President, AIS. President Dees is trained in identifying counterfeit products. President Dees determined that all of the products depicted in the photos were likely counterfeit and, therefore, not genuine products made, marketed, endorsed, or promoted by JUUL. Based upon all this information, the OAG seized all the items identified in the above paragraph. On March 30, 2020, the OAG sent more photos of the products referenced in the above paragraph to President Dees and he confirmed in writing that all the products depicted in the photos were counterfeit and, therefore, not genuine products made, marketed, endorsed, or promoted by JUUL.

l. Defendant knowingly or with reason to know solicited or entered into consumer transactions and represented to consumers that the property and services were of a particular standard, quality, grade, style or model when the merchandise offered for sale was counterfeit and not genuine branded merchandise as presented, pursuant to K.S.A. 50-626(b)(1)(D).

IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED that Plaintiff’s Motion for Default Judgment is granted.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Judgment is hereby entered against Defendant America for Humanity Inc. d/b/a Bargain Hunters in favor of Plaintiff on all Counts of the Petition.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that the actions and practices alleged in Plaintiff's Petition are declared to be deceptive and unconscionable and in violation of the Kansas Consumer Protection Act.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant America for Humanity Inc. d/b/a Bargain Hunters be temporarily and permanently enjoined from conducting consumer transactions (as defined by K.S.A. 50-624(c)) of any product or service and any other practices in violation of the KCPA, pursuant to K.S.A. 50-632(a)(2) and K.S.A. 50-632(c).

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant America for Humanity Inc. d/b/a Bargain Hunters pay reasonable investigative fees and expenses to Plaintiff, in this case amounting to \$1,218.75.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant America for Humanity Inc. d/b/a Bargain Hunters pay a civil penalty in the amount of \$10,000.00 for each violation of the Kansas Consumer Protection Act alleged in the Plaintiff's Petition, pursuant to K.S.A. 50-636(a), in this case in the aggregate of \$220,000.00.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant America for Humanity Inc. d/b/a Bargain Hunters forfeit all twenty-two (22) counterfeit merchandise seized.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant America for Humanity Inc. d/b/a Bargain Hunters pay all Court Costs and all costs associated with distributing and executing this judgment.

IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME SHOWN ON THE ELECTRONIC FILE STAMP.

Respectfully submitted,

/s/ Sarah M. Dietz
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