

2002 ANNUAL REPORT

Consumer Protection & Antitrust Division



**Office of Attorney General
Phill Kline**

(Submitted pursuant to K.S.A. 50-628 and K.S.A. 50-109)



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-3751 • FAX (785) 291-3699
CONSUMER HOTLINE (800) 432-2310
WWW.KSAG.ORG

December 16, 2003

PHILL KLINE
ATTORNEY GENERAL

TO: The Honorable Kathleen Sebelius, Governor
and Members of the Kansas Legislature

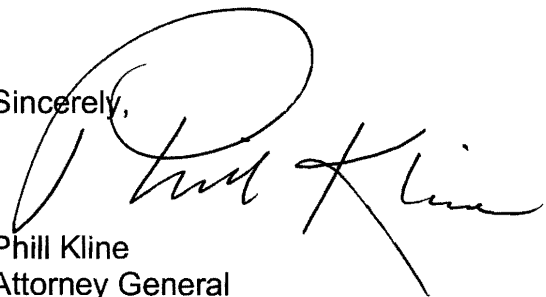
I am pleased to submit the following report detailing the year 2002 activities of Attorney General Carla Stovall's Consumer Protection/Antitrust Division. General Stovall is to be commended, as is her staff, for accomplishing the goals which she set for the Division.

In year 2003, under my watch, the goals and managerial priorities of the Division have changed. The Division has rededicated itself to the all-important task of confronting deceptive, unconscionable and/or anti-competitive business practices which affect the Kansas marketplace. The Division has instituted many new standard operating procedures. These written procedures serve to prioritize the Division's workload. They also serve to guard the mission of the Consumer Protection / Antitrust Division, limiting its intervention in the Kansas marketplace to situations in which credible allegations of jurisdiction-granting acts are present.

It is significant that this Division has now dedicated itself to acting, first and foremost, to remedy violations of the law that affect the most vulnerable citizens of Kansas. This managerial system was realized through the launching of the Vulnerable Adults Task Force ("VATF"). The VATF continues to be the driving force behind the reorganization of the Consumer Protection / Antitrust Division, for the good of the most vulnerable citizens of our great state.

The Division looks forward to another successful year educating and advocating on behalf of all Kansans, and wishes to thank the executive and legislative branches of government for their assistance in that important endeavor.

Sincerely,



Phill Kline
Attorney General

**OFFICE OF THE ATTORNEY GENERAL
STATE OF KANSAS
PHILL KLINE
ATTORNEY GENERAL**

2002 CONSUMER PROTECTION/ANTITRUST STAFF

	Bryan J. Brown	Deputy Attorney General
*	C. Steven Rarrick	Deputy Attorney General
	Kristy L. Hiebert	Assistant Attorney General
*	James J. Welch	Assistant Attorney General
	Joseph N. Molina	Assistant Attorney General
	Rex G. Beasley	Assistant Attorney General
*	David L. Harder	Assistant Attorney General
	Stacy A. Jeffress	Assistant Attorney General
	Shelley H. King	Assistant Attorney General
	James R. McCabria	Assistant Attorney General
	Teresa A. Salts	Special Agent Supervisor
*	Amy E. Elliott	Special Agent
*	Michele R. Welch	Special Agent
	Erica D. Strome	Special Agent
	Jared M. Reed	Special Agent
	Tiffanie A. Walters	Special Agent
	Angela N. Nordhus	Special Agent
*	J. Michael Enzbrenner	Special Agent
	Judy Jenkins	Special Agent
	Jerry Howland	Special Agent
	Mary Kennedy	Special Agent
*	Katrina Rice	Special Agent
*	Susan Labrador	Special Agent
	Natalie A. Hogan	Special Agent
	Deborah L. Johnson	Special Agent
	Larry Larsen	Consumer Specialist
	Sarah R. Weeks	Legal Assistant
	Connie Ullman	Secretary
	Sheila Meneses	Secretary
*	Judy Copeland	Secretary
	Amber Meseke	Secretary-Part time
*	Sara Wurtz	Law Clerk
	Leslie Hendrix	Law Clerk
*	Served a portion of 2002. No longer with the Consumer Protection Division.	

CATEGORIES OF NEW COMPLAINTS

Complaints Filed:	7,554
Complaints Closed:	7,626
Written Inquiries:	8,564
Total Annual Savings:	\$2,854,934

<u>Category</u>	<u>Complaints Received</u>	<u>Percent of Total</u>
Advertising (general)	65	0.86%
Antitrust	6	0.08%
Appliances	45	0.60%
Assistive Device Lemon Law	3	0.04%
Auto	879	11.64%
Boats, Boating Equipment, Repairs, etc.	10	0.13%
Book, Record & Tape Clubs	17	0.23%
Business Opportunity Services	36	0.48%
Cable Television	54	0.71%
Cemeteries	13	0.17%
Charitable Organizations	67	0.89%
Clothing	17	0.23%
Collectibles/Antiques	8	0.11%
Computer - Unsolicited e-mail (spamming)	22	0.29%
Collection	341	4.51%
Computer - Internet Gambling	0	0.00%
Contests/Promotional	120	1.58%
Computer - Internet Sales	308	4.08%
Computer Online Services	151	2.00%
Computers	127	1.68%
Contests/Sweepstakes	12	0.16%
Credit	546	7.23%
Credit Reporting Agencies	66	0.87%
Discount Buying Clubs	128	1.69%
Door-To-Door Sales	76	1.01%
Education	4	0.05%
Employment Services	450	5.96%
Energy Savings Devices	1	0.01%
Failure to Furnish Merchandise (other than mail order)	14	0.19%

<u>Category</u>	<u>Complaints Received</u>	<u>Percent of Total</u>
Farm Implements/Equipment	25	0.33%
Faxes Unsolicited	46	0.61%
Fire, Heat & Smoke Alarms	0	0.00%
Floor Coverings (carpet, etc.)	22	0.29%
Food Products	24	0.32%
Funeral Homes and Plans	1	0.01%
Furniture	50	0.66%
Gasohol & Stills	0	0.00%
Gasoline Pricing and Contents	15	0.20%
Health Services (doctors, dentists, hospitals, etc.)	161	2.13%
Health Spas & Weight Salons	70	0.93%
Hearing Aids	14	0.19%
Heating & Air Conditioning	42	0.56%
Home Construction	23	0.30%
Home Improvement	272	3.60%
Identity Theft	38	0.50%
Invoice & Billing Schemes (noncredit code)	39	0.52%
Jewelry	16	0.21%
Land Sales/Subdivided KS	3	0.04%
Land Resale Companies	0	0.00%
Loan Finders	59	0.78%
Magazine Subscriptions	99	1.31%
Mail Order	298	3.94%
Medical Equipment/Devices	43	0.57%
Medical Discount Cards	54	0.71%
Miscellaneous	10	0.13%
Mobile Home Parks	2	0.03%
Mobile Homes & Manufactured Homes	53	0.70%
Mortgage Escrow Problems	5	0.07%
Mortgages	124	1.64%
Motor Homes/RV's/Campers (anything on wheels)	13	0.17%
Motorcycles & Bicycles	15	0.20%
Moving & Storage	26	0.34%
Multi-level & Pyramid Distributorship Co.	26	0.34%
Musical Instruments, Lessons, etc.	4	0.05%
Negative Selection	40	0.53%
Nurseries, Lawn, Gardening and Landscape Service & Supplies	19	0.25%

<u>Category</u>	<u>Complaints Received</u>	<u>Percent of Total</u>
Nursing Homes	3	0.04%
Office Equipment & Supplies	9	0.12%
Pest Control	11	0.15%
Pets/Animals	15	0.20%
Photo Studios, Equipment & Services	18	0.24%
Privacy Issues	9	0.12%
Real Estate (houses)	27	0.36%
Real Estate (other than houses)	2	0.03%
Rebates	34	0.45%
Recovery Companies	1	0.01%
Referral Selling	1	0.01%
Satellite Systems	50	0.66%
Scanning Equipment	6	0.08%
Securities & Investments (other than stocks & bonds)	25	0.33%
Security Systems and Services	56	0.74%
Services (general)	407	5.39%
Services (professional)	10	0.13%
Sewing Machines	4	0.05%
Sporting Goods	36	0.48%
Steel Buildings	8	0.11%
Stereo Equipment	10	0.13%
Telephone - 800#s, 900#s and International Calls	73	0.97%
Telephone - Cramming	36	0.48%
Telephone - Service, Cell Phones & Slamming	843	11.16%
Telephone - Prepaid Phone Cards	9	0.12%
Telephone Solicitations	47	0.62%
Telephone Solicitations/General	158	2.09%
Televisions and VCR's	13	0.17%
Timeshare Sales	21	0.28%
Tobacco Sales	0	0.00%
Toys	1	0.01%
Trade & Correspondence Schools	44	0.58%
Travel	109	1.44%
Unauthorized Practice of Law	19	0.25%
Vending Machines	2	0.03%
Warranty Problems (other than automobiles)	36	0.48%
Water Softeners, Conditioners, Purifiers, etc.	31	0.41%
Work-at-Home Schemes	33	0.44%
TOTAL CASES OPENED	7554	100.00%

2002 DISPOSITION OF CLOSED COMPLAINTS

	<u>Complaints</u> <u>Closed</u>	<u>Percent of</u> <u>Total</u>
Inquiry or Information Only	377	4.94%
Referred to Private Attorney	226	2.99%
Referred to County/District Attorney	22	0.29%
Referred to Other State Attorney General	196	2.59%
Referred to Other Kansas Agency	169	2.24%
Referred to Small Claims Court	158	2.09%
Referred to Federal Agency (FTC, Post Office, etc.)	63	0.83%
Money Refunded/Contract Cancelled	3031	40.12%
Merchandise Delivered to Consumer	108	1.43%
Repaired/Replaced Product	124	1.64%
Mediation Only - No Savings	548	7.25%
No Reply from Complainant	544	7.20%
Unable to Locate Respondent	172	2.28%
Practice Complained of Discontinued	168	2.22%
Respondent Out of Business	104	1.38%
Refer to other Country	21	0.28%
No Violation	766	10.14%
Insufficient Evidence to Prove Violation	77	1.02%
Complaint Withdrawn	107	1.42%
Unable to Satisfy Complainant - No Further Action	149	1.97%
Other	27	0.36%
No Jurisdiction under KCPA	231	3.06%
No Jurisdiction - Supplier Declined Mediation	3	0.04%
Lawsuit Complaint Files		
Respondent Enjoined	0	0.00%
Respondent Enjoined/Violations Found	8	0.11%
Consent Judgment	203	2.69%
Voluntary Compliance Agreement	1	0.01%
Default Judgment	0	0.00%
Other Lawsuit	7	0.09%
Defendant Filed Bankruptcy	13	0.17%
Dismissed	3	0.04%
TOTAL CASES CLOSED	7626	100.00%

SUMMARY OF 2002

CONSUMER PROTECTION ENFORCEMENT ACTIONS

State v. Access Resource Services, Inc., Psychic Readers Network, Inc., Steven L. Feder, individually, and Peter Stolz, individually

On October 22, 2002, the Attorney General entered into a Consent Judgment with the Defendants for violations of the KCPA related to deceptive billing tactics for psychic services. The Defendants' were ordered to be enjoined from doing business in the State of Kansas, to pay restitution to consumers and \$20,000.00 in investigative fees.

State v. American Auto Consultants, Inc.

On July 9, 2002, the Attorney General filed a Petition for two counts of deceptive contract practices, one count of unconscionable practices, and one count of a deceptive contract term regarding the Defendant's home-based business website services. The Defendant has been served and the case is pending.

In the Matter of Apex Marketing, Inc.

On May 20, 2002, the Attorney General entered into an Assurance of Voluntary Compliance with this telemarketing company. The Attorney General alleged violations of the KCPA related to failure of terminating a call upon receipt of a negative response. The respondent agreed to refrain from future violation and to pay \$8,000.00 for civil penalties and investigative fees.

In the Matter of AT&T Corporation

On February 6, 2002, the Attorney General along with 20 other state Attorneys General entered into an Assurance of Voluntary Compliance (some states entered into Consent Judgments) with this company related to their long distance advertising. The Respondent agreed to disclose clearly and conspicuously all material terms and conditions in future ads and to pay \$500,000.00 to the states, of which \$11,666.67 was paid to Kansas.

State v. Rick Bernstien, d/b/a 21st Century Sales

On March 15, 2002, the Attorney General filed a Petition for two counts of deceptive business practices, one count of failing to obey the Attorney General's subpoena duces tecum, and one count of unconscionable business practices related to the sale of novelties for retail sale. The Attorney General obtained Default Judgment for \$10,000.00 in civil penalty, \$467.02 in consumer restitution, and \$150.00 in investigative fees.

In the Matter of BP Products North America Inc.

On December 9, 2002, the Attorney General along with 38 other state Attorneys General entered into an Assurance of Voluntary Compliance with this company setting tobacco retailing practices with regard to sales to minors. The Respondent agreed to pay \$50,000.00 to the states, of which \$1,444.66 was paid to Kansas.

State v. Cashable Rebates, Inc., f/k/a Cashback USA, Inc. and EuroFinance, S.A.

On March 20, 2002, the Attorney General entered into a Consent Judgment with this company for violations of the KCPA related to Defendant making false and misleading representations to consumers as to the nature of the “rebate program” that the company operates. EuroFinance, based in London, England, began marketing to merchants a “Cashable Bond” program, and then changed the name to “Cashable Rebate”. In fact, the program was neither a bond nor a rebate. The Defendant agreed to refrain from future violations and to pay \$15,000.00 in civil penalties and investigative fees as well as offer consumers who had entered the program prior to the date of the Consent Judgment the option of obtaining an immediate payment or remaining in the program.

In the Matter of Citibank

On February 5, 2002, the Attorney General along with 27 other state Attorneys General entered into a multistate Assurance of Voluntary Compliance with this company. The Assurance of Voluntary Compliance addressed Citibank’s business relationships with third-party vendors and the telemarketing practices of those vendors. The respondent agreed to pay \$1,600,000.00 to the states, of which \$40,000.00 was paid to Kansas.

State v. Civic Development Group, L.L.C.

On August 6, 2002, the Attorney General entered into a Consent Judgment with this company that solicits donations to benefit Firefighters Charitable Foundation. The Attorney General alleged violations of the KCPA related to failure of terminating a call upon receipt of a negative response. The Defendant agreed to pay \$10,000.00 in civil penalties and investigative fees.

State v. Consumer Insight, Inc. d/b/a Business Insight

On October 11, 2002, the Attorney General entered into a Consent Judgment with this telemarketing company. The Attorney General alleged violations of the KCPA related to predictive dialing and not complying when consumers requested to be on their do not call list. The Defendant agreed to pay \$2,000.00 in civil penalties and investigative fees.

State v. Contest America Publishers, Inc., a Nevada corporation; Opportunities Unlimited Publications, Inc., a Missouri corporation d/b/a North American Award Center, Inc.

On September 17, 2002, the Attorney General entered into a Consent Judgment with this company. The Attorney General alleged violations of the KCPA related to misrepresentations of the mailed skill contests that this company engaged in. The Defendants agreed to injunctive terms, to pay \$43,822.00 for consumer education and investigative fees and to remind consumers of companies’ refund policy.

State v. Michael Cooper, Renaissance TTP, Inc., d/b/a The Tax People.net, d/b/a Advantage International Marketing (AIM)

On October 19, 2000, the Attorney General filed a lawsuit and obtained a Temporary Restraining Order (TRO) against Michael Cooper and Renaissance TTP for deceptive marketing claims and violations of the state’s prohibition against referral sales schemes. In promotional materials the company claimed to have more than 50,000 participants in its home-based business tax-reduction scheme who were paying the company \$100.00 per month for prepaid tax advice. This

was generating in excess of \$5,000,000.00 per month in revenue to the company. The company claimed to have participants in all 50 states. On October 11, 2000, agents of the Kansas Attorney General's Consumer Protection Division assisted agents of the Internal Revenue Service Criminal Investigation Division and the United States Postal Inspection Service in executing federal criminal search warrants at the company's properties in Topeka, Kansas. Cash and other assets were seized with an approximate value of \$8.9 million dollars. The United States Attorney in Kansas filed a forfeiture action against the seized assets. That action alleged that the assets were the result of mail fraud and money laundering. Additional assets were seized with a second search warrant in April 2001. After an evidentiary hearing in the Attorney General's lawsuit to convert the TRO into a Temporary Injunction, the Court found that the Defendants were operating an illegal pyramid scheme, and that they had engaged in other acts in violation of the KCPA too numerous to itemize. The Court entered a Temporary Injunction which froze the Defendants' bank accounts, appointed a receiver for the company and revoked its authority to do business in Kansas. The Defendants filed an appeal with the Kansas Court of Appeals, but the Injunction remained in effect. The appeal was dismissed by the Court and the matter is back before the District Court to make the injunction permanent and to assess damages and penalties. Our investigation continues. A Federal Grand Jury is still hearing evidence. The Internal Revenue Service Criminal Investigation Division and the United States Postal Inspection Service continue their investigations and the Internal Revenue Service Civil Division is now investigating. Copies of some of the federal documents may be obtained through links from <http://www.cjonline.com/community/taxpeople>. A copy of the Memorandum Decision and Order of Temporary Injunction may be obtained from the Court Decisions section of the Shawnee County District Court's website at <http://www.shawneecourt.org>.

State v. Mark Emberton and DeAnn Emberton, individually, and d/b/a Emberton Photography

On February 4, 2002, the Attorney General filed a lawsuit against this company for violations of the KCPA related to the failure to perform on an agreement to provide wedding photography. The defendants failed to answer and an Order for Default Judgment was filed on October 3, 2002. The Defendant was ordered to pay \$1,079.20 in civil penalties and \$5,000.00 in consumer restitution.

In the Matter of Exxon Mobil Corporation

On August 7, 2002, the Attorney General along with 45 other Attorneys General entered into a multistate Assurance of Voluntary Compliance with this company. The Assurance of Voluntary Compliance addressed setting tobacco retailing prices with regard to sales to minors. The respondent agreed to pay \$100,000.00 to the states of which \$2,643.83 was paid to Kansas.

In the Matter of First USA Bank, N.A.

On December 26, 2002, the Attorney General along with 28 other Attorneys General entered into a multistate Assurance of Voluntary Compliance with this company regarding the release of Cardmembers information to vendors. The Respondent agreed to pay \$1,300,000.00 to the states of which \$26,041.00 was paid to Kansas.

State v. Ford Motor Company, a Delaware corporation with its principal place of business in Dearborn, Michigan

On December 20, 2002, the Attorney General along with 52 other Attorneys General, entered into a multistate Agreed Final Judgment with this company. The states alleged that Ford failed to

disclose known safety risks with tires on some SUV's. The Defendant agreed to pay the State of Kansas \$300,000.00 in civil penalties and investigative fees.

State v. Jeff Gardella d/b/a First Class Tickets

On December 10, 2002, the Attorney General obtained a Default Judgment against this retailer of event tickets (sporting, entertainment, etc.) alleging that the business engaged in deceptive acts with regard to the sale of tickets by failing to disclose material limitations on the use of tickets. The Defendant was permanently enjoined and ordered to pay \$1,750.00 in consumer restitution and \$10,000.00 in civil penalties.

State v. Genuine Parts Company, Inc., d/b/a NAPA, and JETA, Inc., d/b/a Jayhawk Auto Supply

On May 18, 2001, the Attorney General filed a lawsuit against the above named auto parts dealers for inaccurate price scanning equipment and practices. The parties have concluded discovery and a motion for summary judgment by the Defendants is before the court. A pretrial conference occurred in October, 2002.

State v. Glazier's, Inc.

On September 20, 2002, the Attorney General entered into a Consent Judgment with this company. This company did advertisements of meat for sale and did not disclose price-per-pound. The Defendant agreed to pay \$1,000.00 in civil penalties and investigative fees.

State v. Tommy Brown Gorman

On August 7, 2002, the Attorney General entered into a Consent Judgment with this individual for violations of the KCPA related to the solicitation of his services to Kansas consumers. The Defendant agreed to pay \$850.00 in restitution to consumers and \$918.00 in civil penalties and investigative fees.

State v. Household International/Beneficial Finance

On December 16, 2002, the Attorney General, along with the Kansas Banking Commission, filed court documents to implement a settlement with Household International. The agreement is intended to resolve concerns raised about the lending practices of its subsidiaries, including Household Finance Corporation and Beneficial. The preparation and filing of these court documents is part of the initial stage in a process to identify and notify the consumers who may be eligible for one or more of the kinds of relief under this settlement. This settlement applies only to certain loans which are secured by borrowers' homes, primarily first lien loans. Kansas consumers are expected to be eligible to receive \$5.8 million dollars in restitution. The Defendant also agreed to pay \$50,000.00 in investigative fees.

Internet Drug Cases

The Attorney General filed one lawsuit in February 1999 and five lawsuits in June 1999 against various Internet companies, doctors and pharmacies for deceptive and unconscionable practices which violated the KCPA and the Pharmacy Practice Act. These lawsuits stemmed from the Internet sales of Meridia, Phentermine, Viagra and Propecia. Both Meridia and Phentermine are controlled substances. We settled many of the cases through Consent Judgments or obtained Default Judgments. In January 2002 the Kansas Supreme Court held that selling prescription drugs (Viagra)

to a year old minor who had never spoken to or examined by a Kansas physician was not an unconscionable act or practice in *State ex rel. Stovall v. Confimed.com*, ___ Kan. ___, 38 P.3d 707 (2002). In January 2003, the Kansas Supreme Court held that a blanket waiver of liability alone is insufficient to waive warranties of merchantability and fitness for a particular purpose in *State ex rel. Stovall v. DVM Enterprises* (No. 88,657, January 31, 2003).

State v. Gary P. Jones, d/b/a Gary P. Jones Paving and Seal Coating

On June 18, 2001, the Attorney General filed a lawsuit against the Defendant, based in St. Charles, Missouri, for numerous violations of the KCPA in connection with his solicitation and sales of asphalt paving services which targeted elderly consumers. The allegations include misrepresentations about his status/affiliation and usual price of services, unconscionable pricing, and failure to comply with the door-to-door sales act. The lawsuit was dismissed without prejudice for lack of service.

State v. Rheuben Clifford Johnson III, d/b/a Killcreek Farm & Landscape Supply, d/b/a A-bees Beekeepers Honeybee Removal & Animal Specialists, d/b/a Apex Lawn & Landscape, d/b/a Budget Bee Wildlife Management, d/b/a Econolawn, and d/b/a Aquatic Gardens

On December 13, 2002, the Attorney General entered into a Consent Judgment with this company. The Attorney General alleged that the Defendant engaged in deceptive and unconscionable business practices violating the KCPA. The Defendant agreed to injunctive terms, and pay \$250.00 in civil penalties and investigative fees and \$719.58 in consumer restitution.

State v. Richard Kaylor, individually and as an officer of Triad Discount Buying Service, Inc., Member Service of America, LLC, and other affiliated companies

On December 21, 2001, the Attorney General entered into a Consent Judgment with Triad Discount Buying Service, Inc., its related companies and owner Ira Smolev. Defendants paid more than \$9 million to settle charges brought by the Federal Trade Commission and state Attorneys General that they misled consumers into accepting trial club memberships and obtained consumers' billing information from telemarketers without the consumers' knowledge or authorization. Consumers then were enrolled in the clubs and charged up to \$96.00 per year in yearly membership fees. Of the \$9 million, \$8.3 million was returned to consumers in restitution. A total of \$750,000.00 was paid to the Attorneys General for investigative fees, of which Kansas received \$10,000.00. In February, 2002, the State of Kansas entered into a Consent Judgment with Mr. Richard Kaylor. Mr. Kaylor had been an officer of Triad Discount Buying Services, Inc., Member Service of America, L.L.C. and other affiliated companies. This Consent Judgment required Mr. Kaylor to comply with the requirements of the FTC's order addressing monetary relief for consumers. The State of Kansas did not receive any additional civil penalties or fees with regard to Mr. Richard Kaylor.

State v. Mark Mason d/b/a RR Custom Paint

On November 6, 2002, the Attorney General filed a lawsuit with this company that does custom painting and modification of model railroad trains for several violations of the KCPA relating to unconscionable and deceptive business practices. The lawsuit is pending.

In the Matter of MCI Worldcom Communications, Inc.

On January 17, 2002, the Attorney General along with 20 other state Attorneys General entered into an Assurance of Voluntary Compliance (some states entered into Consent Judgments) with this company related to their long distance advertising. The Respondent agreed to disclose clearly and conspicuously all material terms and conditions in future ads and to pay \$500,000.00 to the states, of which \$11,666.67 was paid to Kansas.

State v. New Beginning Credit Association, Inc.

On July 13, 2000, the Attorney General filed a lawsuit against New Beginning Credit Association, Inc., a company based in Nashville, Tennessee, for violations of the Credit Services Organizations Act. The lawsuit was dismissed without prejudice for lack of service.

State v. New Horizons TKD, Inc. d/b/a Sixth Street Fitness, Donald Booth, individually, The Club, L.L.C. d/b/a Total Fitness Athletic Center, and Martin Tuley, individually

On October 2, 2002, the Attorney General filed a Petition for deceptive and unconscionable business practices. Total Fitness and Sixth Street Fitness claimed to have merged when in fact no merger had taken place. Sixth Street Fitness closed and transferred all memberships to Total Fitness. The case is pending.

State v. Robert Wayne Pollard d/b/a Pollard Construction

On December 5, 2002, the Attorney General obtained a Default Judgment against the Defendant for violations of the KCPA including door-to-door sales act violations. The Defendant was ordered to be enjoined from future violations, to pay \$2,550.00 in consumer restitution and \$30,000.00 in civil penalties.

State v. Shariar Rahimi

On June 3, 2002, the Attorney General entered into a Consent Judgment with this Defendant for violations of the KCPA related to this individual's failure to render any material benefit to the consumer. Representations were made about transferring funds to family members in middle eastern countries, which funds were never received. The Defendant agreed to pay \$10,200.00 in consumer restitution and \$5,000.00 in civil penalties.

State v. RF Management Group of Wichita, Inc., d/b/a Bernard Haldane Associates; RF Management Group of Kansas City, Inc. d/b/a Bernard Haldane Associates; and DRB, Ltd., d/b/a Bernard Haldane Associates

On September 13, 2002, a Consent Judgment was filed. This Consent Judgment was later placed under seal by the Court and an amended Consent Judgment was filed on October 13, 2002. The Attorney General alleged that the company engaged in deceptive acts and practices in violation of the KCPA. The Defendant agreed to pay \$300,000.00 in consumer restitution and \$100,000.00 in civil penalties and investigative fees.

State v. David Scott d/b/a Slanted Fedora Entertainment

On February 11, 2002, the Attorney General filed a Petition for Civil Enforcement of Agency Subpoena against the Defendant related to misrepresentations associated with charges for and products and personalities available at Star Trek conventions that the company organizes. We

obtained Default Judgment and shut down the website which finally captured Scott's attention. He complied with the subpoena and refunded the consumers.

In the Matter of Sharp Honda, Inc.

On September 9, 2002, the Attorney General entered into an Assurance of Voluntary Compliance with this company for violations of the KCPA related to deceptive and misleading advertising acts and practices. Respondent agreed to pay \$2,500.00 in investigative fees and civil penalties.

State v. James Snell

On February 22, 2000, the Attorney General filed a lawsuit against James Snell of Lawrence, Kansas, in connection with solicitations to consumers to "rent-with-the-option-to-purchase" homes in an equity-skimming scheme. The Defendant offered homes to consumers on a rent-to-own basis, but failed to remit rent payments to the mortgage companies. Consumers on the other end of the deal, who were told that the Defendant would sell their homes for them, learned of the foreclosures on their homes after being told that their homes were being rented out and monies were being paid to the mortgage companies. The lawsuit was dismissed without prejudice for lack of service.

In the Matter of Sprint Communications Company, LP

On February 15, 2002, the Attorney General along with 20 other state Attorneys General entered into an Assurance of Voluntary Compliance (some states entered into Consent Judgments) with this company related to their long distance advertising. The Respondent agreed to disclose clearly and conspicuously all material terms and conditions in future ads and to pay \$500,000.00 to the states, of which \$11,666.67 was paid to Kansas.

In the Matter of Superior Steel and Stuart Nelson

On February 22, 2002, the Attorney General entered into an Assurance of Voluntary Compliance with this company for violations of the KCPA related to using a competitor's signs, buildings and samples to advertise a different manufacturer's products. Respondent agreed to pay \$250.00 in investigative fees and to remove all offending signs and materials.

In the Matter of T & M Financial, Inc., and Tantillo & Miller, Inc.

On March 29, 2002, the Attorney General entered into an Assurance of Voluntary Compliance with this company. The Attorney General alleged violations of the KCPA and Credit Services Organization Act related to debt adjusting. Respondent agreed to refrain from future violations and to refund all consumers.

State v. Table Top Vending, Inc.

On July 10, 2002, the Attorney General entered into a Consent Judgment with this company for violations of the KCPA related to Defendant making false and misleading representations to consumers related to the amount of money a consumer and their vending machine can make and for limiting the implied warranty of merchantability. The Defendant agreed to pay \$12,096.00 in restitution and \$2,500.00 in civil penalties and investigative fees.

State v. Telco Partners, Inc.

On June 14, 2001, the Attorney General filed a lawsuit against this Pennsylvania corporation for placing or maintaining sweepstakes drop boxes to collect authorizations for a personal 800 number service in violation of a provision of the state's "slamming law" which makes such boxes illegal. In May 2002, the parties entered into Consent Judgment. The Defendant agreed to pay \$50,000.00 in civil penalties and investigative fees.

State v. Samantha J. Tolbert, d/b/a KMH Enterprise

On September 17, 2002, the Attorney General entered into a Consent Judgment with Samantha J. Tolbert, d/b/a KMH Enterprises, for violations of the KCPA related to: failure to disclose that the business was a dealership; failure to disclose that the vehicle had been materially damaged in a flood; failure to provide a three-day right to cancel; limiting the implied warranty of merchantability by selling the vehicle "as is - no warranty;" and failure to disclose that the vehicle had previously been leased. The Defendant agreed to pay \$15,000.00 in consumer restitution and \$2,500.00 in civil penalties.

In the Matter of Walgreen Co.

On February 13, 2002, the Attorney General along with 39 other state Attorneys General entered into an Assurance of Voluntary Compliance with this company setting tobacco retailing practices with regard to minors. The Respondent agreed to adopt and to implement tobacco retailing practices and to pay \$320,000.00 to the states, of which \$9,354.35 was paid to Kansas.

State v. Charles R. Wood Oil Company, Inc., d/b/a Wood Oil, d/b/a Wood's Mini Mart

On October 12, 2001, the Attorney General filed a lawsuit against this gasoline retailer alleging unconscionable price increases following in the immediate aftermath of the September 11, 2001, attacks. The company agreed to an Assurance of Voluntary Compliance in which they paid restitution to consumers and \$16,500 in civil penalties and investigative fees.

SUBPOENA ENFORCEMENT ACTIONS

The following have been enjoined from doing business in the State of Kansas by virtue of Default Judgments entered on Petitions to Enforce unanswered subpoenas:

State v. Jack Williams d/b/a Check Guarantee Services, Check Guarantee Services, Inc., Check Guarantee Services of Missouri (Grandview, Missouri)

CONCLUSION

The above enforcement actions taken by the Consumer Protection Division reflect the priority that the Office of Attorney General Phill Kline has in protecting Kansas consumers from deceptive and unconscionable business practices. Strong, yet fair enforcement of consumer laws, combined with effective consumer education efforts, provide the level of protection to Kansas consumers mandated by the Kansas Legislature under the KCPA.

SUMMARY OF 2002 **ANTITRUST ENFORCEMENT ACTIONS**

State of Kansas ex rel. vs Abbott Laboratories Inc., Geneva Pharmaceuticals, Inc., and IVAX Pharmaceuticals, Inc., formerly known as Zenith Goldline Pharmaceuticals, Inc.

On September 27, 2001, Kansas joined Florida and Colorado in filing a complaint against Abbott Laboratories, Geneva Pharmaceuticals, Inc and IVAX Pharmaceuticals. The case involves the drug Hytrin, a brand-name drug manufactured by Abbott that is prescribed for the treatment of hypertension and benign prostatic hyperplasia ("BPH"). The complaint alleges that certain conduct by these companies prevented generic versions of Hytrin from coming to the market and that this conduct violates the antitrust laws of the United States and Kansas. A settlement has been reached with IVAX Pharmaceuticals. The case involving Abbot Laboratories, Inc. and Geneva Pharmaceuticals, Inc. is still pending.

State of Kansas ex rel. vs BMG Music, Bertelsmann Music Group Inc., Capitol Records Inc., d/b/a EMI Music Distribution, Virgin Records America Inc., Priority Records, L.L.C., MTS Inc., d/b/a Tower Records, Musicland Stores Corporation, Sony Music Entertainment, Inc., Trans World Entertainment Corporation, Universal Music Group, Inc., Universal Music & Video Distribution Corp., UMG Recordings Inc., Warner-Elektra-Atlantic Corp., Warner Music Group Inc., Warner Bros. Records Inc., Atlantic Recording Corp., Elektra Entertainment Group Inc., and Rhino Entertainment Co.

On August 8, 2000, the Attorney General, along with 41 other states and three territories, filed suit in the United States District Court for the Southern District of New York, against the nation's largest distributors of recorded music, affiliated labels and various retailers for price fixing. Also named were retail giants Musicland, which operates more than 1,300 retail outlets under the Musicland and Sam Goody trade names, Trans World, which operates more than 900 stores under the names Camelot, FYE, Music & Movies, Planet Music, Record Town, Saturday Matinee, Spec's Music, Strawberries and the Wall, and MTS Inc. (doing business as Tower Records.) The complaint further targets unnamed co-conspirators "both known and unknown" and calls for the awarding of triple damages to consumers and the assessment of civil penalties against the companies. The complaint alleges that in the early 1990's, recorded music outlets such as Best Buy, Circuit City and Target began to offer stiff competition to mall-based music stores. The Defendants are accused of engaging in an unlawful scheme designed primarily to stop retail outlets from offering music at deep discounts. The parties have agreed to a settlement which must be approved by the court.

State of Kansas ex rel. vs Bristol-Myers Squibb Co., Danbury Pharmacal, Inc., and Watson Pharma, Inc. (In Re Buspiron Antitrust Litigation)

This case was first filed by thirty-two states in December, 2001, in the federal district court for the Southern District of New York. Kansas joined the multistate suit in April, 2002. The case involves the anti-anxiety drug BuSpar, which is Bristol Myers Squibb Co.'s name for bupirone. The states' complaint alleged that Bristol-Myers Squibb Co. fraudulently listed its patent for BuSpar in the FDA's Orange Book and that Bristol-Myers Squibb Co. entered into anticompetitive agreements with two companies to prevent distribution of generic bupirone. The case is pending and settlement negotiations are ongoing.

State of Kansas ex rel. vs Cardizem

On July 2, 2001, this action was brought by the Attorney General, along with Attorneys General of 26 other states, seeking relief for a series of anti-competitive and illegal acts by which Defendants sought to delay or prevent the marketing of less expensive, generic alternatives to Cardizem CD, a highly profitable, brand-name drug for treatment of chronic chest pains, high blood pressure, and prevention of heart attacks. The parties have agreed to a settlement which must be approved by the court.

State of Kansas ex rel. v. Microsoft

On May 18, 1998, the Attorney General, along with 18 other states and the Department of Justice, filed an antitrust action against Microsoft Corporation in the United States District Court for the District of Columbia. The suit alleged that Microsoft's conduct violated state and federal antitrust laws. In November 1999, the court found that Microsoft had violated the state and federal antitrust laws and caused consumer harm by, *inter alia*, engaging in a series of actions designed to protect its monopoly power. The Court also found that Microsoft demonstrated that it would use its prodigious market power and immense profits to harm any firm that insisted on pursuing initiatives that could intensify competition against one of Microsoft's core products, and that Microsoft's past success in hurting such companies and stifling innovation deters investment in technologies and businesses that exhibit the potential to threaten Microsoft. The Court issued an order in June 2000 which included remedies involving the reorganization of the structure of Microsoft. Microsoft appealed to the United States Court of Appeals for the District of Columbia which affirmed the Findings of Fact that Microsoft's conduct violated the law, but reversed and remanded the case for further proceedings and consideration of the remedy to be imposed for the illegal conduct. In November 2000, nine states and the Department of Justice entered into a settlement of the case which must be approved by the Court. The State of Kansas and the other non-settling states continued to litigate and submitted a separate remedy proposal. The litigating states presented their case last spring. Although there was significant industry opposition to the DOJ settlement the court approved the settlement while at the same time granting judgement to the litigating states for some, but not all, of the additional relief suggested by the litigating states. Two states appealed that ruling to the United States Court of Appeals where it is still pending. Kansas and the other states are working with Microsoft to insure compliance with the settlement and judgement.

State of Kansas ex rel. vs Commercial Paper Products

Several years ago this office joined other states in an investigation of Bay West Paper Corporation, Encore Paper Company, Georgia-Pacific Corporation (including Fort Howard Corporation, James River Corporation of Virginia, Fort James Corporation, and Wisconsin Tissue Mills, Inc.), Kimberly-Clark Corporation (including Scott Paper Company and Kimberly-Clark Tissue Company), and Marcal Paper Mills, Inc., for manipulating the price of various commercial paper products. School districts, state agencies, and cities were asked to furnish purchase data. Kansas then joined other states in a lawsuit filed in federal court in Florida. Our claim was for damages on behalf of only those entities who submitted purchase data.

During the pretrial stages of the proceedings the court ruled that it was not appropriate for the Kansas claims to be asserted in Florida and dismissed our claims in that case. Thereafter we monitored the progress of the case as a way to judge whether to re-file the claims in Kansas.

Eventually the case in Florida was settled and we began negotiations with the defendants to resolve the Kansas claims for an amount similar to that received by settling states whose purchases were similar to Kansas. A settlement has been reached which requires the defendants to pay \$65,000 cash and \$75,000 worth of bathroom tissue. This settlement represents a compromise of the amount of the alleged overcharges for the paper products purchased during the applicable time frame. The product and the net cash after deduction for fees and expenses will be distributed on a pro-rata basis to all of the Kansas entities that provided purchase information. Because of the number of beneficiaries and the diversity of the commercial paper products purchased by each we asked the Department of Administration for advice. A determination was made that it was not economically feasible to handle multiple paper products and that we needed to find a product common to all of the beneficiaries. The Department of Administration suggested that toilet tissue was the most logical common product. The product will be shipped to Topeka for pick up by the beneficiaries. Any unclaimed product will be forfeited to the State Surplus Center.

State of Kansas ex rel. vs Salton

Kansas and the Attorneys General of all States (except Minnesota, Missouri and New Mexico), Puerto Rico, and the District of Columbia brought a resale price maintenance, exclusive dealing and monopolization lawsuit against Salton, Inc., claiming that Salton's alleged practices affected the price at which some Salton products (primarily the George Forman Grill)were sold at some retail stores during the period from Jan. 1, 1998 -Sept. 6, 2002. The case has been settled subject to court approval.

Under the proposed settlement, Salton has agreed to pay the States \$7.654 million for claimed damages. This payment will be made in three installments, the last of which is on or before March 1, 2004. Salton will also pay the States \$200,000 for costs and attorneys' fees. Salton has agreed to a court order prohibiting certain conduct in the sale of its indoor contact grills, including agreements to set retail prices.

In view of the difficulty in identifying the millions of purchasers of the George Forman Grills covered by the settlement and the relatively small alleged overcharge per grill, the settlement funds will be distributed in each state on a *cy pres* basis to not-for-profit corporations, charitable organizations, or governmental entities to advance health or nutrition-related causes, so as to benefit purchasers of George Forman Grills. Kansas' share is expected to be \$75,000 plus approximately \$5,000 interest on the escrowed funds.

The settlement contains opt-out provisions with an opt-out date of April 18, 2003. The Court will hold a Fairness Hearing on May 30, 2003.

State of Kansas ex rel. vs Bristol-Myers Squibb Co. ("BMS"), (Taxol)

Kansas, along with a group of 28 other states, the District of Columbia, Puerto Rico, and the Virgin Islands joined together in the multi-state action that accuses Bristol of acting illegally to keep the cheaper, generic version of Taxol off the market. Suit was filed in the United States District Court for the District of Columbia.

The lawsuit alleges that Bristol knowingly manipulated the US Patent and Trademark Office process by fraudulently securing patents that had no legal validity, which prevented generic drug manufacturers from entering the marketplace until 2000. Bristol's sales of Taxol have totaled at least \$5.4 billion since 1998. A standard course of treatment using the name brand drug can cost between \$6,000 and \$10,000 per patient. The case is pending and settlement negotiations are ongoing.

INVESTIGATIONS

An investigation was conducted in 2002 regarding the following company.

ConocoPhillips merger

SUMMARY OF 2002 NO-CALL ACTIVITY

Kansas overwhelmingly supported the enactment of a “no-call” law and this support led to the passage of the Kansas No-Call Act, ch.179 § 1-2 (2002 Session Laws). Following the passage of the No-Call Act, the Office of the Attorney General commenced negotiations with the Direct Marketing Association (DMA), seeking to conclude negotiations in time to implement the law by July 1, 2002. Unfortunately, negotiations with the DMA were terminated on July 5, 2002, due primarily to the DMA’s inability to meet the 30-day registration deadline required by the Kansas No-Call Act. Members of the Senate Judiciary Committee and the House Utilities Committee were contacted and advised of the termination of contract negotiations with the DMA.

The Office of the Attorney General then began taking bids from other vendors pursuant to the Act, to effectuate a seamless transition from DMA to a new vendor. On July 7, 2002, a contract was reached with GovConnect to maintain the Kansas No-Call list. The one-year contract provides free consumer registration by phone and the internet. Consumer registration was implemented on August 12, 2002, with a deadline of September 23, 2002, to be included on the first published list on October 1, 2002, which became enforceable on November 1, 2002.

In the two short months that the Kansas No-Call Act was enforceable in 2002, there were 2,292 complaints filed with the Attorney General’s Office. By December 31, 2002, 190 complaint files were closed and negotiations for enforcement action were pending on several telemarketing companies.

2002 NO-CALL COMPLAINTS

Complaints Filed:	2,292
Complaints Closed:	190

2002 DISPOSITION OF NO-CALL CLOSED COMPLAINTS

	<u>Complaints Received</u>	<u>Percent of Total</u>
Unable to Locate Respondent	4	2.11%
No Violation	11	5.79%
No-Call Charity	42	22.11%
No-Call Political	10	5.26%
No-Call Polling	36	18.95%
No-Call Established Business Relationship Exemption	55	28.95%
No-Call Express Authorization Exemption	1	0.53%
No-Call Collection Exemption	24	12.63%
No-Call Affirmative Defense - Business Phone	7	3.68%
TOTAL CASES	190	100.00%

* Statistics provided by Joseph N. Molina, Assistant Attorney General for the Consumer Protection/Antitrust Division on January 28, 2003 to the Senate Commerce Committee were inaccurate due to a technological error. This error affected the calculation of complaints closed and the appropriate category under which the closed complaint fell. This error has been corrected and the database is now reporting accurate information as listed above.

