

James J. Welch, # 09546
Assistant Attorney General
Office of the Attorney General
Memorial Hall, 2nd Floor
120 SW 10th Street
Topeka, Kansas 66612-1597
(785) 296-3751

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 14

STATE OF KANSAS, ex rel.,)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
)
)
CNS GLOBAL INTERNATIONAL, INC.,)
and RICHARD SOMERS, individually, and)
d/b/a CNS GLOBAL INTERNATIONAL, INC.)
)
Defendants.)

Case No. 00 C 376

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

JOURNAL ENTRY OF JUDGMENT

NOW on this 21 day of May, 2001, comes on for hearing the motion of Plaintiff for a summary judgment in the matter above captioned.

Plaintiff appears by and through James J. Welch, Assistant Attorney General for the State of Kansas. There are no other appearances.

WHEREUPON, the Court, after having heard the statements of counsel, having examined the papers and pleadings filed herein, and being well and duly advised in the premises, finds:

1. That the Court has jurisdiction over the parties and subject matter of this action.
2. That on March 9, 2001, Plaintiff filed a *Motion to Strike Defendants' Purported Answer*

and for Default Judgment or in the Alternative for Summary Judgment.

3. That no responsive pleading has been filed with this Court and that the Defendants are in default.

4. That on at least one occasion, Defendants caused a classified advertisement for the sale of a hosiery distributorship business opportunity to be printed in a newspaper in Wichita, Kansas, in substantially the following form, to wit:

<p style="text-align: center;">HOSIERY Successful Marketing System IT WORKS - WILL YOU? \$9999 Inv. Req. Growth Oriented Free packet of info 215-464-5604 anytime</p>
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5. That on or about February 26, 1999, Defendants entered into a contract with James McCall, a consumer as defined by K.S.A. 50-624(b), for the sale to the consumer of a hosiery distributorship display rack business opportunity.

6. That the consumer entered into the contract to purchase certain hosiery display and promotional materials and hosiery inventory and assistance in "setting up" consumer's business from Defendants after responding to a newspaper advertisement placed by Defendants, as described *supra*, and after receiving a series of telephone calls from the Defendant Somers.

7. That the consumer paid Defendants \$10,545.00, pursuant to the contract, but never received any of the materials, assistance or hosiery inventory for which the consumer had paid, thereby denying the consumer any material benefit from the transaction, in violation of K.S.A. §50-627(b)(3), for resulting in a loss to the consumer in the amount of \$10,545.00.

8. That the purpose of the Federal Trade Commission's Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (16 C.F.R. 436.1 *et seq.*) (hereinafter "FTC Franchise Rule") is to provide specific disclosure and procedural protections for consumers who purchase franchises and/or business opportunities.

9. That the business relationship between Defendants and the consumer James McCall

constituted a franchise as defined by 16 C.F.R. 436.2(a) and, therefore, Defendants are subject to the requirements of 16 C.F.R. 436.1 *et seq.* and are franchisors as defined by 16 C.F.R. 436.2(c).

10. That at all times relevant hereto, the consumer James McCall was either a prospective franchisee, as defined by 16 C.F.R. 436.2(e), or a franchisee, as defined by 16 C.F.R. 436.2(d).

11. That the "time for making disclosures," as defined by 16 C.F.R. 436.2(g), was ten business days before the consumer James McCall entered into a contract with the Defendants.

12. That Defendants provided no disclosure information to the consumer satisfying any requirements of the FTC Franchise Rule prior to or after the consumer signed a contract with the Defendants.

13. That the company's sale of a business franchise opportunity to the consumer without making any of the disclosures required under the FTC Franchise Rule, 16 CFR Part 436, constitutes an unconscionable act in violation of KSA §50-627(b).

14. That the company represented to the consumer that the product the consumer contracted to buy had certain characteristics, benefits or qualities, to wit: that the hosiery was manufactured by a specific manufacturer when in fact the samples received by the consumer from the company were not made by the manufacturer represented by the company constituting a deceptive act or practice in violation of KSA 50-626(b)(1)(A).

15. That the company represented to the consumer that the product had certain characteristics, benefits or qualities, to wit: that the hosiery was guaranteed to be "run free" when in fact the samples received by the consumer were of an inferior quality and were anything but "run free," a deceptive act or practice in violation of KSA 50-626(b)(1)(A).

16. That the company knowingly or with reason to know represented to the consumer that it had an affiliation or connection that the company did not have, to wit: that the hosiery that the consumer was purchasing was manufactured by a specific manufacturer when in fact the company had not done business with that specific manufacturer for several years, a deceptive act or practice in violation of KSA 50-626(b)(1)(B).

17. That the company represented to the consumer that the hosiery the consumer was

purchasing was of a particular standard, quality, grade, style or model when it was in fact of another which differed materially from the representation, to wit: that the hosiery was manufactured by a specific manufacturer when in fact the samples received by the consumer from the company were not made by the manufacturer represented by the company, a deceptive act or practice in violation of KSA 50-626(b)(1)(D).

18. That the company represented to the consumer that the hosiery the consumer was buying had benefits and characteristics without reliance upon or possession of any reasonable basis for making such a representation, to wit: that the hosiery was guaranteed to be "run free" when in fact the samples received by the consumer were of an inferior quality and were anything but "run free," a deceptive act or practice in violation of KSA 50-626(b)(1)(F).

19. That the company represented to the consumer that the use benefit or characteristics of the hosiery that the consumer was buying had been proven or otherwise substantiated without reliance on and possession of the type and amount of proof or substantiation represented to exist, to wit: that the hosiery was guaranteed to be "run free" when in fact the samples received by the consumer were of an inferior quality and were anything but "run free," a deceptive act or practice in violation of KSA 50-626(b)(1)(G).

20. That the company willfully used a written representation of falsehood as to a material fact, to wit: the company provided the consumer with a written document purporting to verify that the company had a business relationship with a certain hosiery manufacturer when in fact it did not, a deceptive act or practice in violation of KSA 50-626(b)(2).

21. That the company willfully failed to state or concealed a material fact in its dealings with the consumer, to wit: that the company was having serious financial difficulties, a deceptive act or practice in violation of KSA 50-626(b)(3).

22. That the company willfully failed to state or concealed a material fact in its dealings with the consumer, to wit: that the company did not in fact have a relationship with any supplier to supply the hosiery that the consumer was purchasing, a deceptive act or practice in violation of KSA 50-626(b)(3).

23. That the company offered property or services without the intent to sell them, a deceptive act or practice in violation of KSA 50-626(b)(5).

24. The company falsely stated, knowingly or with reason to know that the transaction the consumer was entering into with the company would involve a consumer right, to wit; the right to obtain health insurance for the consumer through the company once the consumer purchased this business opportunity from the company, a deceptive act or practice in violation of KSA 50-626(b)(8).

WHEREFORE, the Court hereby orders, adjudges and decrees that the Defendants are in default for failure to answer or otherwise plead in the above-captioned action by and through a licensed Kansas attorney as required by law and to grant the relief in the Petition, specifically:

a. the contract between Defendants and James McCall, and all subsequent agreements entered into pursuant thereto, is hereby declared null and void *ab initio*, pursuant to K.S.A. 50-632(c)(2) and K.S.A. 50-632(c)(8); and, accordingly, the Defendant is hereby ordered to pay restitution in the amount of \$10,545.00 to James McCall, a consumer, pursuant to Count I of Plaintiff's Petition and to K.S.A. §50-632(a)(3);

b. the Defendant is hereby ordered to pay civil penalties in the amount of \$5,000 for each violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-636(a), (as set out in Plaintiff's petition (totaling \$120,000.00), specifically:

- i. \$5,000 for violations of K.S.A. §50-627(b), as set out in Count II of Plaintiff's Petition;
- ii. \$5,000 for violations of K.S.A. §50-626(b)(1)(A), as set out in Count III of Plaintiff's Petition;
- iii. \$5,000 for violations of K.S.A. §50-626(b)(1)(A), as set out in Count IV of Plaintiff's Petition;
- iv. \$5,000 for violations of K.S.A. §50-626(b)(1)(B), as set out in Count V of Plaintiff's Petition;
- v. \$5,000 for violations of K.S.A. §50-626(b)(1)(D), as set out in Count VI of

- Plaintiff's Petition;
- vi. \$5,000 for violations of K.S.A. §50-626(b)(1)(F), as set out in Count VII of Plaintiff's Petition;
 - vii. \$5,000 for violations of K.S.A. §50-626(b)(1)(G), as set out in Count VIII of Plaintiff's Petition;
 - viii. \$5,000 for violations of K.S.A. §50-626(b)(2), as set out in Count XI of Plaintiff's Petition;
 - ix. \$5,000 for violations of K.S.A. §50-626(b)(5), as set out in Count X of Plaintiff's Petition;
 - x. \$5,000 for violations of K.S.A. §50-626(b)(3), as set out in Count XI of Plaintiff's Petition;
 - xi. \$5,000 for violations of K.S.A. §50-626(b)(5), as set out in Count XII of Plaintiff's Petition;
 - xii. \$5,000 for violations of K.S.A. §50-626(b)(8), as set out in Count XIII of Plaintiff's Petition;

c. The above-mentioned acts and practices are hereby declared deceptive and/or unconscionable and in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(1);

d. Defendants and their officers, directors, shareholders, employees and agents are hereby permanently enjoined from doing any further business as a supplier in the state of Kansas, pursuant to K.S.A. 50-632(a)(2);

e. Defendant is hereby assessed all court costs.

IT IS, THEREFORE, BY THE COURT ORDERED that Defendants, their officers, directors, shareholders, employees and agents be permanently enjoined from these and other violative acts and practices, pursuant to K.S.A. 50-632(a)(2) and that the contract entered into between Defendants and James McCall be declared null and void ab initio pursuant to K.S.A. §50-632(c)(2) and K.S.A. §50-632(c)(8),

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED that Defendants pay to James McCall the sum of \$10,545.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED that the Defendants pay to the Office of the Attorney General for the State of Kansas the sum of \$60,000 for violations of the Kansas Consumer Protection Act.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED that the costs of this action be taxed to the Defendants herein.

IT IS SO ORDERED.

(5) Hon. Nancy Parrish

HONORABLE NANCY E. PARRISH
Judge of the District Court
Division Fourteen

Respectfully Submitted by:

James J. Welch

James J. Welch, #09546
Assistant Attorney General
Consumer Protection Division
120 W. 10th Street
Topeka, KS 66612-1597
(785) 296-3751

Attorney for Plaintiff