

James J. Welch, #09546
Assistant Attorney General
Office of the Attorney General
120 SW 10th, 4th Floor
Topeka, Kansas 66612-1597
(785) 296-3751

FILED BY CLERK
U.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS
2001 AUG 15 P 4: 261

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General)
)
Plaintiff,)
)
vs.)
)
Wendall Durand Martin)
)
Defendant.)

Case No. 010953

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 15th day of August, 2001, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendant Wendall Durand Martin, appears pro se.

Whereupon, the parties advise the Court that 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 the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*

3. Defendant Wendall Durand Martin operates as a sole proprietorship organized under the laws of the state of Oklahoma. The principal office and residence of the Defendant is located at 2025 Timberlane, Pawnee, Oklahoma 74058-4527.

4. Defendant is a supplier within the definition of K.S.A. §50-624(i) and has engaged in consumer transactions in Kansas within the definition of K.S.A. §50-624(c) and (h).

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

6. Defendant stipulates and waives any objection to venue in Shawnee County.

7. Defendant sells shoes, t-shirts, jeans, wallets, and other merchandise to consumers. Defendant's sales constitute door-to-door sales, as defined by K.S.A. §50-640.

8. The Attorney General alleges and Defendant admits Defendant engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

a. Defendant failed to furnish consumers with fully completed receipts which contained in immediate proximity to the space reserved for the consumers' signature a notice of consumers' rights to cancel, in violation of K.S.A. §50-640(b)(1).

b. Defendant failed to furnish consumers with a completed "Notice of Cancellation" form in duplicate, attached to consumers' receipts which was easily detachable and which contained the consumers' right to cancellation form in 10-point boldface type, in violation of K.S.A. §50-640(b)(2).

c. Defendant failed to inform consumers orally of such consumers' rights to cancel, at the time such consumers signed the contracts and purchased shoes from Defendant, in violation of K.S.A. §50-640(b)(5).

d. Defendant solicited and sold merchandise to consumers at prices which Defendant represented were special, discounted prices for that sale and that the \$19.95 price

had previously been \$39.95 and/or \$29.95; however, Defendant is unable to substantiate that Defendant sells or has sold the same products for the higher prices. This is in violation of K.S.A. §50-626(b)(7), in that it is the making of false or misleading representations, knowingly or with reason to know, of fact concerning the existence of and amounts of price reductions, or the price in comparison to prices of competitors at a past or future time. This is also in violation of K.S.A. §50-626(b)(2), in that it is the willful use of exaggeration, falsehood, innuendo, and ambiguity as to a material fact.

9. Defendant voluntarily admits liability and agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

10. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph eight (8) of this Consent Judgment, and Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

11. Defendant agrees to refrain from and to be permanently enjoined from engaging in any and all deceptive and/or unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*, as it now exists or as amended in the future and Defendant agrees that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

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

13. Defendant agrees to make available and to disclose the provisions of this Consent Judgment to its employees, agents and representatives within five days of signing the Consent Judgment.

14. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant by paying full refunds after the date of this Consent

Judgment to the satisfaction of the Attorney General within 30 days of the date such complaint is forwarded to Defendant 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 pay \$500 in civil penalties and \$500 in investigative fees, pursuant to K.S.A. §50-632, to "Office of the Attorney General" of the State of Kansas. Payment of \$1000 shall be made by cashiers check or cash at the time of signing this Consent Judgment.

17. 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.

18. Defendant agrees to maintain all business records for a period of five years and to allow the Attorney General to inspect all of Defendant's business records in the future.

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 Defendants 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.

precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction.

22. The parties understand that 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.

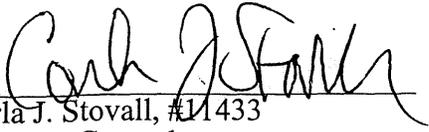
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants in favor Plaintiff in the amount of \$1000.

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.

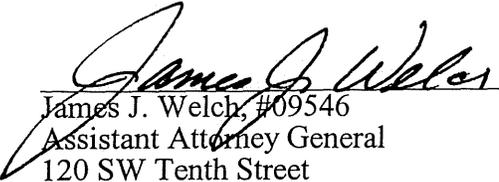
IT IS SO ORDERED.

/s/ Hon. Franklin R. Theis
DISTRICT COURT JUDGE

Approved by:



Carla J. Stovall, #11433
Attorney General



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

Attorney for Plaintiff



Wendall Durand Martin
2025 Timberlane
Pawnee, Oklahoma 74058-4527

Defendant