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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,)
)
v.)
)
Al Khatib)
and John or Jane Does 1-10, Individually,)
and d/b/a National Sales.)
)
Defendants.)

Case No. 01 C 123

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this ____ day of _____, 2001, 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.* Carla J. Stovall, Attorney General, appears by and through David L. Harder, Assistant Attorney General. Defendants Ali Khatib and National Sales appear by and through Benoit M.J. Swinnen, Schroer Rice P.A. There are no other appearances.

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

3. Defendant Ali Khatib is president of National Sales Expo, Inc. , a California corporation involved in transient sales of consumer goods in various states including Kansas.

4. Defendant National Sales Expo, Inc. is a California corporation involved in transient sales of consumer goods in various states including Kansas.

5. Defendants are suppliers within the definition of K.S.A. 50-624(i) and have engaged in consumer transactions in Kansas within the definitions of K.S.A. 50-624(c).

6. Defendants admit the Court has personal and subject matter jurisdiction.

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

a. Defendants willfully used exaggeration, falsehood, innuendo or ambiguity as to a material fact, in violation of K.S.A. 50-626(b)(2), in that:

- i. Defendants represented it had available for sale Nike, Tommy Hilfiger, and other name-brand clothing, when they did not, in fact, have such merchandise, as issued by such companies;
- ii. Defendants represented such products to be originals when, in fact, products were of an inferior quality and factory-returned products;

- iii. Defendants represented only those products “meeting the original high factory standard are made available,” when in fact, products of an inferior quality and factory returned products were actually available; and
 - iv. Defendants’ advertised prices for the products were lower than what the products were actually priced at the time of sale.
- b. Defendants willfully failed to state, or willfully concealed, suppressed, or omitted material facts, in violation of K.S.A. 50-626(b)(3), in that:
- i Consumers were not informed prior to the purchase transaction that the products offered were “factory renewal,” non-original, and/or counterfeit merchandise;
 - ii Defendants’ solicitations represented that consumers who attended Defendants’ sale would receive free cell phones and/or free satellites, however, the solicitation did not disclose the requirement that said “free” merchandise required further obligation on the part of the consumer, specifically that consumers were required to make additional purchases.
- c. Defendants offered property without the intent to sell it, in violation of K.S.A. 50-626(b)(5), in that Defendants represented it had available for

sale genuine Nike, Tommy Hilfiger, and other name-brand clothing, when they did not.

- d. Defendants offered property without the intent to supply reasonable, expectable public demand, in violation of K.S.A. 50-626(b)(6), in that many of the advertised items were not available in sufficient quantities, and/or sizes.
- e. Defendants failed to advise consumers of the true identity of products as “factory renewal,” non-originals, and/or counterfeit, in violation of K.S.A. 50-626(b)(1)(B), in that they represented to have sponsorship, approval, status, affiliation and connection that they did not have, specifically with the manufacturer of the name-brand merchandise.
- f. On at least February 1 and February 2, 2001, Defendants solicited and sold merchandise to consumers in Topeka, Kansas at a place other than the usual place of business of Defendants, and for a purchase price of \$25.00 or more. Such solicitations constitute door-to-door sales and are subject to the provisions of K.S.A. 50-640.
- g. Defendant’s contract failed to have in close proximity of the signature line, in boldface type of a minimum of 10 points, a statement in substantially the following form: “YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF

CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT,”
in violation of K.S.A. 50-640(b)(1);

- h. Defendant failed to provide each and every consumer with a completed form in duplicate, captioned “NOTICE OF CANCELLATION,” which shall be attached to the contract or receipt and be easily detachable, and which shall contain in 10-point boldface type a general statement of consumer’s right to cancel, in violation of K.S.A. 50-640(b)(2);
- i. Defendant failed to inform each consumer orally of such consumer’s right to cancel in violation of K.S.A. 50-640(b)(5);

7. Defendants deny each of the Attorney General’s allegations and further do not admit any violation of Kansas law, but agree to this Consent Judgment without trial or adjudication of any issue of fact or law in order to bring this matter to a mutually beneficial conclusion.

8. Defendants agree to refrain from and to be permanently enjoined from engaging in violations of the Kansas Consumer Protection Act described in paragraph six (6) above. Defendants agree that engaging in such acts after the date of this Consent Judgment shall constitute a violation of this Order.

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

10. Defendants agree 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.

11. Defendants agree to pay \$5,000.00 in civil penalties, investigative fees and expenses to the "Office of the Attorney General" of the State of Kansas. Payment of \$2,000.00 by cashier's check shall be made at the time of execution of this Consent Judgment. Thereafter, payments shall be by cashier's check and shall be made monthly, in the amount of \$500.00 per month, due by the 7th day of the month, commencing July 1, 2001. Defendants agree that failure to make any payment pursuant to this Consent Judgment shall constitute a violation of this Order.

12. Defendants agree to supply to the Office of the Attorney General the names, identities, telephone numbers, addresses, and any other information in their possession regarding the other persons and entities participating or involved in the sale at the Kansas Expocentre's Agricultural Hall in Topeka, Kansas on or about February 2, 2001. Defendants agree that failure to provide this information by July 1, 2001 shall constitute a violation of this order.

13. Defendants agree to withdraw and dismiss their counterclaim against the Plaintiff filed in response to the Plaintiff's petition in this matter.

14. 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.

15. 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.

16. 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.

17. 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 Defendants nor shall Defendants 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.

18. This Consent Judgment shall only resolve the liabilities of Defendants Ali Khatib and National Sales Expo, Inc., and shall not apply to other Defendants to this action, named or yet un-named.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein reflects the oral negotiations and agreements of the parties and is adopted and approved as the findings of fact and conclusions of law of the Court, and that under the doctrine of *Lewis v. Gilbert*, 14 Kan App.2d 201, 785 P.2d 1367 (1990), the

Court approves this Journal Entry of Consent Judgment without the signature of Defendants Ali Khatib and National Sales and instructs Counsel to approve this order in like manner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants Ali Khatib and National Sales Expo, Inc. and in favor of Plaintiff in the amount of \$5,000.00, and that any funds payed by said Defendants into Defense Counsel's Trust Fund shall be remitted to the Office of the Attorney General, minus any legal fees owed to Defense Counsel.

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.

THE HONORABLE NANCY E. PARRISH
Judge of the District Court

PREPARED AND APPROVED BY:



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Attorney General



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Attorney for Plaintiff

APPROVED BY:

Ali Khatib
Personally and for the Corporation
President, National Sales Expo. Inc.
Defendants



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