

Stacy A. Jeffress, #12460
Assistant Attorney General
Office of the Attorney General
120 West 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST
2001 OCT 30 A 10:21

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 6

STATE OF KANSAS, *ex rel.*,)
CARLA J. STOVALL, Attorney General, and)
)
KANSAS BOARD OF PHARMACY,)
)
)
Plaintiffs,)
)
v.)
)
)
ROY C. ALIVIO, BO PLATT, and)
MALE CLINIC, L.L.C., d/b/a MALE CLINIC,)
DAVID HAIRHOGER,)
d/b/a COMMUNITY DRUG OF PITTSBURGH,)
MILES JONES, M.D., and)
RICK WILLIAMS, M.D.,)
)
Defendants.)

Case No. 99 C 751

AS to
Male Clinic

99-048

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

JOURNAL ENTRY OF DEFAULT JUDGMENT

NOW on this 30th day of October, 2001, comes before the Court the Motion for Judgment by Default Against Defendant Male Clinic, L.L.C., filed herein by the Plaintiff State of Kansas, *ex rel.* Carla J. Stovall, Attorney General. Plaintiff appears by and through counsel, Stacy A. Jeffress, Assistant Attorney General. There are no other appearances.

Upon review of the file and the statements of counsel, and being fully apprised of the particulars in this matter, the Court finds and concludes as follows:

1. On June 21, 1999, the Plaintiff filed an Amended Petition alleging that Defendant

Male Clinic, L.L.C. (hereafter "Defendant Male Clinic"), committed violations of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

2. Defendant Male Clinic was served with a copy of the summons and Amended Petition by certified mail on or about June 28, 1999. The Kansas Secretary of State was served on or about June 24, 1999.

3. Plaintiff has requested that judgment by default be entered in favor of Plaintiff and against Defendant Male Clinic.

4. This Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

5. This Court has jurisdiction over the parties pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

6. More than thirty (30) days have elapsed since Defendant Male Clinic was served with a copy of the summons and a copy of the Amended Petition.

7. Defendant Male Clinic has not filed an answer.

8. Defendant Male Clinic is in default.

9. More than ten (10) days prior to the filing of the Motion for Judgment by Default, Defendant Male Clinic was notified of the amount of monetary judgment that would be entered against it in the event of default.

10. Judgment by default should be entered in favor of Plaintiff and against Defendant Male Clinic for all relief to which Plaintiff is by law entitled.

11. Plaintiff has properly shown that Plaintiff's Motion for Judgment by Default has merit. Plaintiff's Motion for Judgment by Default should be granted and sustained.

12. Plaintiff has alleged in the Amended Petition that the following acts and practices by Defendant Male Clinic are violations of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, and are deceptive and unconscionable:

a. Defendant Male Clinic represented that it and its services had sponsorship and approval it did not have in violation of K.S.A. 50-626(b)(1)(A) and (B), in that Defendant Male Clinic advertised, sold, and caused to be dispensed prescription-only medications, including Viagra, from its website to Kansas consumers, thereby representing that Defendant Male Clinic had approval to do so in the State of Kansas, when in truth and in fact, one of the physicians who wrote the prescriptions, Defendant Rick Williams, M.D., was not licensed by the Kansas State Board of Healing Arts to engage in the practice of healing arts in Kansas as required by K.S.A. 65-2803, and the pharmacy which dispensed the prescriptions, Defendant David Hairhoger d/b/a Community Drug of Pittsburgh, was not registered with the Kansas Board of Pharmacy as a nonresident pharmacy as required by K.S.A. 65-1657

b. Defendant Male Clinic willfully failed to state a material fact, and willfully concealed, suppressed, and/or omitted a material fact in violation of K.S.A. 50-626(b)(3) in that Defendant Male Clinic advertised for sale on its website to Kansas consumers, prescription-only medications, but willfully failed to state, concealed, suppressed, and/or omitted the material facts that one of the physicians prescribing the medications, Defendant Rick Williams, M.D., was not licensed by the Kansas Board of Healing Arts to engage in the practice of the healing arts in Kansas, and the pharmacy which dispensed the prescriptions, Defendant Hairhoger, was not

registered with the Kansas Board of Pharmacy as a nonresident pharmacy.

c. Defendant Male Clinic took advantage of the inability of Kansas consumers' ability to reasonably protect the consumers' interests because of the consumers' inability to understand the language of an agreement or similar factor, in violation of K.S.A. 50-627(b)(1), in that Defendant Male Clinic engaged in consumer transactions in Kansas in which potentially dangerous prescription-only medications, including Viagra, were advertised for sale, prescribed, sold, and caused to be dispensed to consumers without requiring an examination by or actual consultation with a physician to determine the medical need for these medications and to explain the proper administration, potential side effects, dangers, and contraindications of these medications.

d. Defendant Male Clinic induced consumers to enter into a transaction which is excessively one-sided in favor of the Defendant, in violation of K.S.A. 50-627(b)(5), in that consumers must release Defendant Male Clinic and its employees from all liability in order for consumers to purchase Viagra.

e. Defendant Male Clinic committed unconscionable acts and practices in reckless disregard of the safety and welfare of Kansas consumers who entered into consumer transactions to purchase prescription-only medications, in that the Defendant obtained prescriptions for, sold, and caused to be dispensed prescription-only medications to Kansas consumers in violation of state law due to the fact that one of the physicians prescribing the medications, Defendant Rick Williams, M.D., was not licensed to engage in the practice of the healing arts in Kansas by the Kansas

Board of Healing Arts, and the pharmacy was not registered as a nonresident pharmacy by the Kansas Board of Pharmacy, as is required by law.

f. Defendant Male Clinic committed unconscionable acts and practices in reckless disregard of the safety and welfare of Kansas consumers who entered into consumer transactions to purchase prescription-only medications, in that Defendant Male Clinic obtained a prescription for, sold, and caused to be dispensed the prescription-only medication Viagra to a minor consumer in the State of Kansas without requiring parental consent.

g. Defendant Male Clinic committed unconscionable acts and practices in reckless disregard of the safety and welfare of Kansas consumers who entered into consumer transactions to purchase prescription-only medications, in that Defendant Male Clinic obtained prescriptions for, sold, and caused to be dispensed the prescription-only medication Viagra to Kansas consumers without requiring examination by or actual consultation with a physician to determine the medical need for Viagra and to explain the proper administration, potential side effects, dangers, and contraindications of Viagra.

IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Judgment by Default is granted and sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Plaintiff and against Defendant Male Clinic, as set forth in this Journal Entry of Default Judgment, on all claims.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the acts and practices

alleged in Paragraph 12 above are hereby declared to be deceptive and/or unconscionable and in violation of the Kansas Consumer Protection Act.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Male Clinic, together with such Defendant's officers, directors, employees, shareholders, agents, successors, servants and assigns, are hereby permanently enjoined from engaging in the above-cited deceptive and unconscionable acts and practices.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Male Clinic, together with such Defendant's officers, directors, employees, shareholders, agents, successors, servants and assigns, are hereby permanently enjoined from the unlawful advertising, selling, prescribing, dispensing, and delivering of prescription-only drugs to consumers within the State of Kansas.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Plaintiff State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, and against Defendant Male Clinic, L.L.C., for civil penalties in the amount of \$25,000.00.

IT IS SO ORDERED.

15/
The Honorable Terry L. Bullock
District Court Judge

Prepared by:

Stacy A. Jeffress
Stacy A. Jeffress, #12460
Assistant Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751
Attorney for Plaintiff