

02-015

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 01

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General)
)
Plaintiff)
)
)
)
TABLE TOP VENDING, INC., a Utah Corporation)
)
Defendant,)
)

Case No. 02C925

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 9th day of July, 2002, 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 James R. McCabria, Assistant Attorney General. Defendant TableTop Vending, Inc. appears by and through its attorney Curtis J. Waugh of Goodell, Stratton, Edmonds & Palmer, LLP. There are no other appearances.

WHEREUPON, the parties advise the Court they have stipulated and agreed 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 Table Top Vending, Inc., is a Utah corporation with its principal place of business being located at 8031 South 700 East, Suite A, Sandy, Utah 84070.

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

5. Defendant admits that this Court has personal and subject matter jurisdiction over the parties hereto and the subject matter of this action.

6. The nature of Defendant's business in Kansas is soliciting persons to operate a vending business based upon use of "The Coin Shooter" that is sold by Defendant. In use, the Coin Shooter invites persons to play a game with the opportunity to win a variety of prizes. Defendant manages and operates the prize promotion service on behalf of the consumers who have purchased the Coin Shooters.

7. The Attorney General alleges Defendant violated the Kansas Consumer Protection Act by engaging in the following acts and practices in conjunction with the solicitation of the Coin Shooter to Kansas consumers:

(a) Defendant uses a written solicitation directed at consumers which makes the following representations to consumers concerning use of the Coin Shooter as a business, to wit: "Make \$250 Per Hour!" and "All (machines) Generating \$\$\$\$ On A Daily Basis". The Attorney General alleges that Defendant's claims constitute a knowing representation that the property or services offered by Defendant have uses, benefits or characteristics when Defendant does not possess a reasonable basis for making such representations. The Attorney General alleges that such acts and practices are all in violation of K.S.A. 50-626(b)(1)(G).

(b) The contracts the Defendant offers to Kansas consumers contain a warranty for the Coin Shooter that is substantially as follows:

The Seller guarantees to replace, or at its option, repair any products or parts thereof, which are found to be defective in material or workmanship within one (1) year from the date of purchase. The obligation with respect to such

products shall be limited to replacement or repair F.O.B., the Seller's Warehouse, and in no event shall the Seller be liable for consequential or special damages, or for transportation in connection with such product or Parts. This warranty is expressly made in lieu of all other warranties expressed or implied, including the warranties of merchantability and fitness for a particular purpose, all of which are expressly disclaimed.

The Attorney General alleges that such a limited warranty constitutes an unconscionable act pursuant to K.S.A. 50-627(b)(7).

- (c) Defendant, through one of its agents, made an express representation to Kansas consumer Linda Lavender that such consumer would realize sufficient sales from the purchase and use of ninety-six "Coin Shooter" vending machines to easily pay off a loan in six months that the consumer had advised Defendant she would need to make in order to purchase the machines when, in truth and in fact, Defendant had no basis to know or substantiate that claim, which statement constitutes a misleading statement of opinion as to a material fact which the Attorney General alleges the consumer was likely to rely to the consumer's detriment as prohibited by K.S.A. 50-627(b)(2) and/or a deceptive practice in violation of K.S.A. 50-626(b)(1)(G).

8. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law, but specifically denies each act, or that any described act constitutes a violation of law or that any intent to willfully commit any act or practice prohibited by the Kansas Consumer Protection Act existed.

- (a) More specifically, with respect to the allegation in Section 7(a) hereof, Defendant denies that the statements made in Defendant's advertising constitute an unconditional representation or an unconditional guarantee of earnings for every particular consumer or that Defendant does not possess a reasonable basis for making such statements.
- (b) With respect to the allegation in Section 7(c), Defendant asserts that Defendant did make an express representation to Kansas consumer Linda Lavender that "if her machines earned one dollar (\$1.00) per day, she would realize sufficient sales from the use of ninety-six "Coin Shooter" vending machines to pay off a loan in six months that the consumer had advised Defendant she would need to make in order to purchase the machines. Defendant denies such statement was a violation of K.S.A. 50-626(b)(1)(G).

9. Defendant agrees to refrain from and to be permanently enjoined from engaging in the acts and practices described in paragraph seven.

10. Defendant further agrees that the following specific acts and practices are enjoined by this Order:

(a) Making any oral, written or visual representation to a prospective consumer which states without qualification a specific level of potential sales, income, gross or net profit that prospective consumer will realize by engaging in the business of operating the Coin Shooter, or states other facts which suggest such a specific level, unless

1) Defendant can provide evidence upon which a reasonable person would conclude that such sales, income or profits are likely to be generated by the average person engaging in such business in markets where the consumer is going to be operating such business; and

2) Defendant discloses in a clear and conspicuous manner in immediate conjunction with the representation that such information is available to the prospective consumer.

(b) Requiring consumers to execute contracts which contain the limited warranty described in paragraph 7(b) unless the contract clearly and conspicuously discloses that such limitations may not apply in Kansas or language of similar import so as to reasonably notify a Kansas consumer that they have rights beyond the limited warranty.

11. Defendant shall pay \$12,096.00 in restitution to Kansas Consumer Linda Lavender.

Payment shall be as follows:

<u>Date of Payment</u>	<u>Amount of Payment</u>
At Signing of Consent Judgment	\$4,096.00
May 30, 2002	\$4,000.00
June 30, 2002	\$4,000.00

All payments shall be by cashier's check and shall be delivered in full to the Attorney General of the State of Kansas. Failure to make payment on or before the prescribed date shall cause the full amount of the judgment to become immediately due. Prepayment of any amount owing may be made at any time.

12. Defendant agrees to pay \$2,500.00 in civil penalties and investigative fees and expenses to the "Office of the Attorney General" of the State of Kansas. Payment shall be by cashier's check and shall be delivered to the Attorney General of the State of Kansas on or before July 30, 2002.

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

14. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, where such restructuring is done for the purpose or object of avoiding compliance with the terms of this Consent Judgment.

15. 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 hereof.

16. 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.

17. Compliance with this Consent Judgment does not relieve Defendant 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. Defendant further understands that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against this Defendant in promoting, soliciting or selling the "Coin Shooter" or any business associated therewith upon belief that such activity is being promoted or operated in a fashion that otherwise violates the law.

18. 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 Defendant nor shall Defendant represent the decree as such an approval.

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 the Defendant and in favor of Plaintiff in the amount of \$14,596.00.

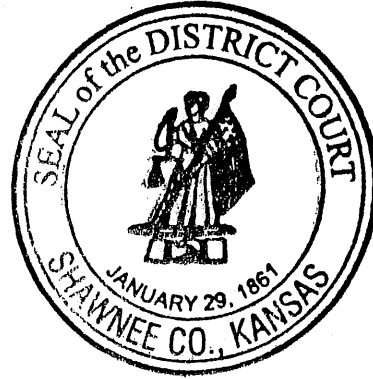
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.

JAN W. LEUENBERGER
Judge of the District Court

PREPARED AND APPROVED BY:

Carla J. Stovall
CARLA J. STOVALL, #11433
Attorney General



James R. McCabria
James R. McCabria, #16563
Assistant Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751
Attorney for Plaintiff

STATE OF KANSAS, COUNTY OF SHAWNEE, S.S.
I hereby certify the above and foregoing to be
a true and correct copy, the original of which
is filed and entered of record in the court

Dated 7/10/02
CLERK of the DISTRICT COURT

By [Signature]
DEPUTY

APPROVED BY:

Curtis Waugh
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