

5. The people listed in Appendix A are consumers as defined by K.S.A. 50-624(b).

6. Defendants Willis and OTB have engaged in consumer transactions, as defined by K.S.A. 50-624(c), in Kansas with the people listed in Appendix A.

7. Defendant OTB offered birds and aviary products to consumers. Defendants' products must be paid for in advance, and consumers are promised that defendant will deliver products. Defendants are in violation of K.S.A. 50-626(b)(6), in that they offered products without intent to sell them, as promised merchandise was not delivered. Defendant OTB subsequently told consumers that defendant did not have the merchandise.

8. Consumers initially saw Defendants' advertisements in BirdTalk magazine. Said advertisements represent that On The Birdwalk, Inc. is offering birds for sale; however, Jason A. Blades, an employee of On The Birdwalk, Inc., was actually offering birds for sale, and birds are unavailable through the Defendant corporation.

9. Jason A. Blades and Denny Willis are officers of On The Birdwalk, Inc.; however, Jason Blades was offering the birds for sale with the knowledge and/or approval of defendant Denny Willis outside the scope of his employment with On The Birdwalk, Inc. The defendant corporation sells aviary products, but not birds. This is a violation of K.S.A. 50-626(b)(1)(B), in that, by and through said advertisements, Jason Blades and Denny Willis represented approval, status, affiliation, and connection with On the Birdwalk, Inc. that they did not have.

10. Because Defendant offered and received payment for merchandise from consumers listed in Appendix A, but did not deliver the merchandise, consumers were unable to receive a material benefit from the subject of the transaction in violation of K.S.A. 50-627A(3).

11. Consumers relied upon the false statements made by the defendant.

12. In this reliance, consumers listed in Appendix A paid defendants amounts listed in Appendix A.

13. Consumers listed in Appendix A have not received merchandise ordered from defendant for their money.

14. The conduct described in paragraphs 5 - 14 constitutes deceptive acts in violation of K.S.A. 50-626(a).

15. The conduct described in paragraphs 4 - 14 constitutes unconscionable acts in violation of K.S.A. 50-627.

16. The provisions of this consent judgment will be applicable to the defendants, and every employee, agent or representative of the defendant corporation.

17. The defendants agree to make available and/or disclose the provisions of this consent judgment to his employees, agents and representatives.

18. This consent judgment shall be binding on any partnership, corporation, sole proprietorship or any other legal structures with which Defendant Denny Willis is or shall be associated in an ownership or managerial capacity.

19. The defendants agree to refrain from and to be enjoined from engaging in all acts and practices alleged above by the State

of Kansas to be deceptive and unconscionable.

20. The Defendants agree to resolve all consumer complaints currently on file with the Attorney General's Office to the satisfaction of the Attorney General within thirty (30) days of the date of this consent judgment.

21. The Defendants agree to provide refunds on all consumer complaints sent to Defendants' last known address by the State of Kansas after the date of the filing of this consent judgment.

22. The Defendants agree to pay \$1,500.00 in investigation fees and expenses to the Attorney General of the State of Kansas.

23. The Defendants agree to allow the Attorney General to inspect relevant business records in the future upon request of the Attorney General.

24. The Defendants agree to pay all court costs and filing fees.

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 the court.

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 FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant will pay all court costs and filing fees.

IT IS SO ORDERED.

DISTRICT COURT JUDGE

APPROVED:

STATE OF KANSAS

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