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Assistant Attorney General  
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 12

STATE OF KANSAS, ex rel. )  
CARLA J. STOVALL, Attorney General )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TRULY SPECIAL, INC., et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. 94-CV-1429

JOURNAL ENTRY OF CONSENT JUDGMENT  
PURSUANT TO K.S.A. 50-632(b)

NOW on this 20<sup>th</sup> day of MARCH, 1996, the plaintiff's motion for approval of consent judgment comes before the Court for consideration. The State of Kansas appears by and through James J. Welch, Assistant Attorney General. Defendant Truly Special, Inc., a Wyoming corporation, appears by and through its attorney, Thomas D. Haney, of Porter, Fairchild, Wachter & Haney, P.A. The defendant Briarwood Farms, Ltd. appears by and through its attorney, Donald R. Hoffman, of Tilton & Hoffman. Defendants

Gary Kershner and Steve Little appear pro se. There are no other appearances.

In lieu of investigating or continuing the action, the signing parties acquiesce in and accept this consent judgment with respect to acts and practices alleged in this lawsuit to be violations of the Kansas Consumer Protection Act. The consent judgment entered into herein, pursuant to law, shall not be deemed to admit a violation of the Consumer Protection Act by any consenting defendant.

WHEREUPON, the parties advise the Court that they have stipulated and agreed to the following matters:

1. Carla J. Stovall is the Attorney General of the State of Kansas.

2. Defendant Truly Special, Inc. is a Wyoming corporation.

3. Defendant Briarwood Farms is a Kansas corporation.

4. Defendants admit that the Court has personal and subject matter jurisdiction of the signing parties.

5. The defendants are suppliers within the definition of the Kansas Consumer Protection Act, K.S.A. 50-624(i).

6. The defendants have engaged in consumer transactions, as defined by K.S.A. 50-624(c).

7. Defendant Briarwood Farms manufactures speciality food items such as jellies and condiments.

8. The named defendants have developed a sales program for the purpose of distributing the products manufactured by Briarwood Farms and others.

9. Prior to the filing of this lawsuit, in order to enter the distribution program, recruits were required to purchase \$100.00 of product from Truly Special. In exchange for this amount of money, a recruit received a box of products and the right to offer the same arrangement to future recruits. An active participant in this plan was called the "Truly Special Marketing Associate" and their position in the distribution structure is called a "business center."

10. At the recruiting meetings, agents of the defendant Truly Special represented a tremendous financial opportunity was available for people to join the Truly Special Plan. Recruits were told that for a \$100.00 investment or purchase, they could earn and receive up to \$100,000.00 per year in income.

11. Prior to the filing of this lawsuit, in order to receive a return on their \$100.00 investment, marketing associates were required to sell the program to others. Each person the associate recruited was required to pay \$100.00 in order to obtain the product and the right to sell the concept to two more people. Once an associate had ten (10) people signed up below him on the distribution chain, the associate would receive a \$100.00 bonus. When an associate had fifty (50) down-line sales, the associate would receive an additional bonus of \$400.00. This cycle would be

repeated for several stages. The defendants allege that this practice has been discontinued.

12. The Attorney General alleges the following acts and practices by defendants were deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

- a. Defendants have engaged in multiple deceptive acts by making representations knowingly or with reason to know that the consumer would receive a rebate, discount or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, where receipt of the benefit is contingent upon an event occurring after the consumer enters into the transaction. Consumers were induced into paying to join the Truly Special plan with the promise that the consumer will receive a future bonus for finding additional persons who are willing to join the program. The promotion and implementation of a referral sales scheme constitutes multiple deceptive acts in violation of the Kansas Consumer Protection Act, K.S.A. 50-626(a) as defined in K.S.A. 50-626(b)(1)(E).
- b. Defendants have willfully failed to state a material fact, or willfully concealed, suppressed or omitted a material fact by failing to explain market saturation and its

impact on future earnings in oral and written representations of the Truly Special sales referral scheme. Consumers are induced into paying to join the Truly Special plan with the promise that they can earn up to \$100,000.00 per year on a \$100.00 investment. Future wealth and earnings are strenuously emphasized during recruitment meetings and teleconference calls. The money received in return for the investment was derived from the recruitment of additional members, and not from retail product sales. Defendants did not explain to consumers the eventual economic and mathematical failure of such a pyramid system due to market saturation. Thus, consumers were unaware that those recruited last in the system would have little chance of finding additional investors. Such failure constitutes multiple deceptive acts, in violation of the Kansas Consumer Protection Act, K.S.A. 50-626(a) as defined in K.S.A. 50-626(b)(3).

13. Defendants agree to utilize the materials marked as "Exhibit A" and attached in training, recruitment and/or any presentation of Truly Special's marketing plan, and not to deviate therefrom in any material manner.

14. Defendants are enjoined from engaging in the various acts and practices as set out in paragraph 12. Any commission of the acts and practices set out in paragraph 12 by the defendants after

the filing of this consent judgment shall constitute a violation of this consent judgment.

15. Defendants also agree to provide and allow for a three-day cancellation period as provided by K.S.A. 50-640. Failure to provide the three-day cancellation period will constitute a violation of this consent judgment.

16. Defendants agree to limit the number of business centers a Marketing Associate or Marketing Coordinator may purchase in Kansas to three (3) business centers in their first three (3) months.

17. Defendants agree to pay reasonable expenses and investigation fees to the Office of the Attorney General in the amount of \$15,000.00 at the time of signing this consent judgment. Payment will be by certified check.

18. Defendants agree to pay civil penalties to the Office of the Attorney General in the amount of \$1,000.00 at the time of the signing this consent judgment. Payment will be by certified check.

19. Defendants agree to make a \$5,000.00 charitable contribution at the time of signing this consent judgment to charities designated by the Attorney General. Payment will be made by certified checks.

20. Defendants agree to make a 100% refund to all consumers, including but not limited to Marketing Coordinators and Marketing Associates, who have requested or will request such of the company or who have complained or will complain to the Attorney General's office about the above-described solicitation if the product is

returned to Truly Special in a saleable and reusable condition, regardless of the date, terms or conditions of purchase. Such refunds will be executed within approximately thirty (30) days of written notice to defendants of the complaint.

21. Defendant Truly Special agrees to place ~~\$25,000.00~~ <sup># 20,000.00</sup> in segregated bank account in a Topeka, Kansas financial institution for the distinct purposes of paying future refunds, penalties for any violation of this consent judgment, and investigative fees in the event defendant becomes insolvent or otherwise unable to pay the same. Said money shall be reduced in <sup>12 + 18 CS</sup> eighteen (18) equal amounts <sup>12 MONTHS CS</sup> monthly over an <sup>CS</sup> ~~eighteen~~ (18) month period <sup>after September 1996 CS</sup> by withdrawals by Truly Special. The authorized signators on said account for any withdrawals shall be Thomas Haney and Attorney General Carla J. Stovall. <sup>12 + 18 CS</sup> The eighteen (18) withdrawals may be automatic absent any objection placed by the Attorney General within five (5) days of the withdrawal.

22. Nothing in regard to this consent judgment shall allow the defendants to imply or state at any time that the Kansas Attorney General has approved of, endorsed, or sanctioned any marketing plan or sales presentation, nor shall this consent judgment serve as an admission by the state, nor shall it serve as a stipulation in any future proceeding.

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

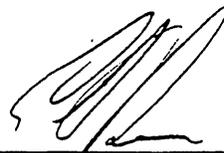
24. Defendants agree to make available and/or disclose the provisions of this consent judgment to its current and future employees, agents and representatives.

25. Compliance with this consent judgment does not relieve defendants of any obligation imposed by applicable federal, state or local laws, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction for anything other than the subject matter of this consent judgment.

26. Defendants consent to personal and subject matter jurisdiction in Kansas for the purpose of enforcing this consent judgment.

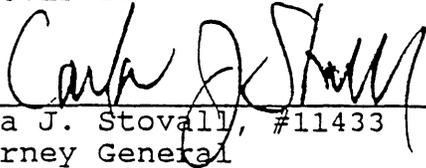
27. Corporate defendants Truly Special, Inc., Briarwood Farms, Ltd., and Aunt Myra's, Inc. agree that a breach of this consent judgment may subject corporate defendants to legal action by the State of Kansas. Individual defendants agree that a breach of this consent judgment by the named individual may subject said individual to legal action by the State of Kansas.

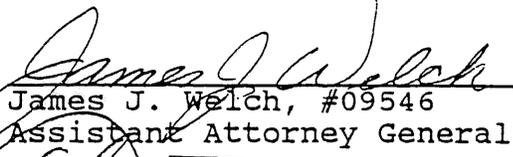
IT IS SO ORDERED.

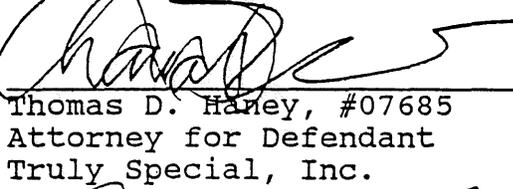


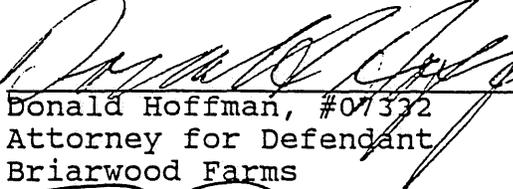
JAMES BUCHELE, District Judge

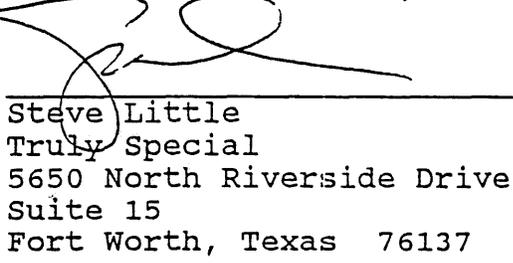
APPROVED BY:

  
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Carla J. Stovall, #11433  
Attorney General

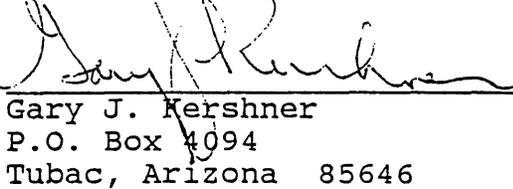
  
\_\_\_\_\_  
James J. Welch, #09546  
Assistant Attorney General

  
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Thomas D. Haney, #07685  
Attorney for Defendant  
Truly Special, Inc.

  
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Donald Hoffman, #07332  
Attorney for Defendant  
Briarwood Farms

  
\_\_\_\_\_  
Steve Little  
Truly Special  
5650 North Riverside Drive  
Suite 15  
Fort Worth, Texas 76137

Chairman of the Board of Truly  
Special, Inc.

  
\_\_\_\_\_  
Gary J. Kershner  
P.O. Box 4094  
Tubac, Arizona 85646

Chairman of the Board of Aunt  
Myra's, Inc.

The undersigned defendants acknowledge that they are bound by the provisions of this consent judgment and that violations of this consent judgment could subject them to personal liability.



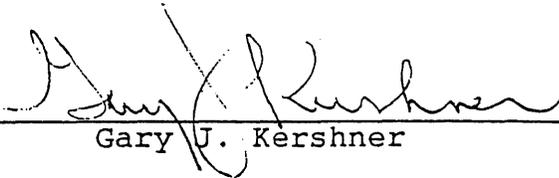
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Steve Little

6-25-60

\_\_\_\_\_  
Date of Birth

449-19-4852

\_\_\_\_\_  
Social Security Number



\_\_\_\_\_  
Gary J. Kershner

8-6-40

\_\_\_\_\_  
Date of Birth

\_\_\_\_\_  
Social Security Number

TRULY/JIMW/TRULY