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DISTRICT COURT
BY _____

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IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS
Division Three

STATE OF KANSAS, *ex rel.*
CARLA J. STOVALL, Attorney General

Plaintiff,

vs.

DUFF'S INC.

Defendant.

Case No. 95 C 3641

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this _____ day of _____, 199~~6~~⁷, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through C. Steven Rarrick, Deputy Attorney General. Defendant Duff's, Inc., appears by and through Mark J. Sachse.

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

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

4. Defendant admits the Court has personal and subject matter jurisdiction over the parties.

5. Defendant is a Kansas corporation and is doing business as Duff's Thriftway at 5100 Leavenworth Road, Kansas City, Kansas, 66104.

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

- a. Utilization of ingredients, including sodium bisulfite, citric acid, sodium citrate and sodium erythorbate in and on all fresh beef and pork products and further soy flour, hydrolyzed plant protein and spice in all of the ground products produced for its retail cases at the store;
- b. Said ingredients were not declared on the labels of the beef and pork products offered for sale and sold to the public;
- c. Defendant knew the use of the undeclared ingredients was illegal and the supply of ingredients was kept at the personal residence (home) of Defendant's Meat Department Manager;
- d. Defendant's owner, George W. Duff, Jr., acknowledged the utilization of undeclared ingredients in the Defendant's beef and pork products for an approximate three (3) year period;
- e. Defendant's failure to disclose all actual contents and ingredients on the label of the beef and pork products prepared for and sold in its retail sales cases constitutes the willful concealment, suppression or omission of a material fact in violation of K.S.A. 50-626(b)(3)(1) and K.S.A. 50-903;

- f. Defendant's failure to disclose all actual contents and ingredients on the label of the beef and pork products prepared for and sold in its retail sales cases constitutes a misrepresentation, which was made knowingly or with reason to know, that the beef and pork products were of a particular standard, quality, grade, style or model which differed materially from the representation;
- g. Defendant placed misleading and deceptive advertisements before the consuming public relative to the sale of its beef and pork products, which advertisements misrepresented the actual contents and ingredients of the beef and pork products offered by Defendant in violation of K.S.A. 50-626(b)(1)(A) and (d) and K.S.A. 50-902;
- h. Defendant's failure to disclose all actual contents and ingredients in its advertisements constitutes a violation of K.S.A. 50-902, in that the product advertisements were not truthful and accurate; and
- i. Defendant's misrepresentation of the actual contents and ingredients of the beef and pork products advertised constitutes the willful use of exaggeration, falsehood, innuendo or ambiguity as to a material fact in violation of K.S.A. 50-626(b)(2).

7. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

8. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph 6 of this Consent Judgment, and Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

9. Defendant agrees to refrain from and to be permanently enjoined from engaging in any and all deceptive and/or unconscionable acts and practices in violation of the Kansas

Consumer Protection Act, K.S.A. 50-623 *et seq.*, as it now exists or as amended in the future and Defendant agrees that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

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

11. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives within five days of signing the Consent Judgment.

12. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant after the date of this Consent Judgment to the satisfaction of the Attorney General within 30 days of the date such complaint is forwarded to Defendant for resolution.

13. Defendant agrees 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.

14. Defendant agrees to pay \$12,500.00 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay a \$7,500.00 charitable donation to a charity chosen by the Attorney General and \$5,000.00 in civil penalties to the "State of Kansas". Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment.

15. Defendant admits that all fines, penalties, payments to charities and investigative fees imposed and agreed to herein are a result of willful and/or malicious injury to another entity or the property of another.

16. Defendant agrees to maintain all business records for a period of five years and to allow the Attorney General to inspect all of Defendant's business records in the future.

17. 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.

18. 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.

19. 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.

20. The parties understand that 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. 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.

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.

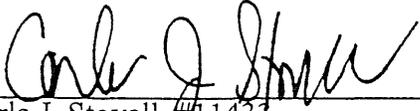
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

DANIEL A. DUNCAN

The Honorable Daniel A. Duncan
DISTRICT COURT JUDGE

Approved by:



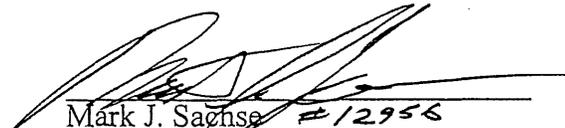
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