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TOPEKA, KANSAS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 5

STATE OF KANSAS, *ex rel.* )  
CARLA J. STOVALL, Attorney General )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TERRILL G. TROUT, )  
d/b/a MIDWEST KIRBY; )  
 )  
Defendant. )

Case No. 97CV471

Petition Pursuant to K.S.A. Chapter 60

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 9 day of April, 1997, 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 James J. Welch, Assistant Attorney General. Defendant Terrill G. Trout, d/b/a Midwest Kirby, appears by and through Robert E. Diehl.

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 stipulates and waives any objection to venue in Shawnee County.

6. Defendant is selling Kirby vacuum sweepers door-to-door, using the business name Midwest Kirby.

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

Defendant represented to at least one consumer that he was alerting such consumer of a factory recall of Kirby vacuum sweepers, in response to complaints that their particular model had been responsible for starting fires; however, no such factory recall exists, nor has Kirby received a pattern of complaints that such vacuum sweepers have been responsible for starting fires. This is in violation of K.S.A. §50-626(b)(9), in that it is the representation made falsely stating, knowingly and with reason to know, that replacements are needed. This is also in violation of K.S.A. §50-626(b)(2), in that it is the willful use of exaggeration and falsehood as to a material fact.

8. Defendant voluntarily admits liability and agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

9. 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 seven (7) 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.

10. 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.

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

12. 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.

13. 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.

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, for the purpose of avoiding compliance with the terms of this Consent Judgment.

15. Defendant agrees to pay \$1,000.00 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$1,000.00 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 within 30 days of the date of filing of this Consent Judgment.

16. Defendant agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendant does not pay the amounts as agreed herein within the time frame stated.

17. 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.

18. 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.

19. 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.

20. 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. The Attorney General will take no further legal action against the defendant pursuant to the Kansas Consumer Protection Act based on information now in the possession of the Attorney General, excepting only any action which may be required to enforce the provisions of this Consent Judgment as set forth herein.

21. 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 and any monies owed hereunder by Defendant immediately become a judgment upon filing.

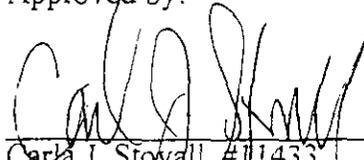
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor Plaintiff in the amount of \$2,000.00.

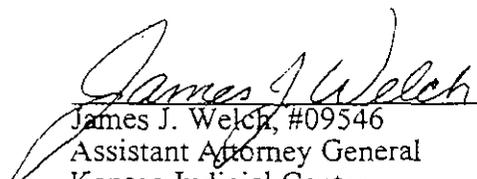
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

*151 Hon. Charles Andrews*  
DISTRICT COURT JUDGE

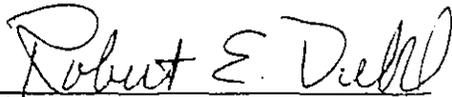
Approved by:

  
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Carla J. Stovall, #11433  
Attorney General

  
\_\_\_\_\_  
James J. Welch, #09546  
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Defendant



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