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97-575
FILED BY CLERK
DISTRICT COURT
1997 OCT 22 P 3:07
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 5

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

Plaintiff,

vs.

PRAIRIEFIELD WATER, INC.
d/b/a CULLIGAN WATER,

Defendant.

Case No. 97 CU 1325

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 22 day of Oct, 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 Terry A. Iles, Assistant Attorney General. Defendant, Prairiefeld Water, Inc. d/b/a Culligan Water, appears by and through James R. Hubbard, Norton, Hubbard, Ruzicka & Kreamer.

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, *Prairiefield Water, Inc. d/b/a Culligan Water*, is a corporation organized under the laws of the State of Kansas. The principal office of the corporation is located at 3024 SW Topeka Blvd., Topeka, Kansas 66611. Defendant, *Prairiefield Water, Inc. d/b/a Culligan Water* applied with the Kansas Secretary of State for authority to do business in Kansas in March 1993 by filing its Articles of Incorporation.

4. 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).

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

6. Defendant stipulates and waives any objections to venue in Shawnee County.

7. Defendant is in the business of providing *Culligan Water* products and service to consumers.

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

a. Defendant engaged in multiple false and misleading statements in its sales presentations concerning water softeners in violation of the Kansas Consumer Protection Act, K.S.A. 50-626(a) and (b), in that:

i. Defendant misrepresented its property had approval for which it did not have, in violation of K.S.A. 50-626(b)(1)(A), including, representing to consumers that the water system complied with local fire codes when in truth and in fact a consumer was issued a Notice of Violation for non-compliance with the local fire codes.

ii. Defendant made oral representations of exaggeration, falsehood, innuendo and ambiguity as to a material fact, in violation of K.S.A. 50-626(b)(2), including, representing that:

- (1) A consumer would receive a savings on her water bill, when in truth and in fact the consumer never received such a savings;
 - (2) The monthly payment for the water softener would be lower than what was actually charged by the finance company, when in truth and in fact consumers are always obligated to pay 2% of the balance of their account;
 - (3) The water system would take away the rust stains from the sink and toilet, when in truth and in fact the system failed to remove such stains; and
 - (4) The salt for the water softener would not cost more than \$20 every 3 months, when in truth and in fact consumers routinely paid \$40 every 3 months.
- iii. Defendant willfully failed to state a material fact, or willfully concealed, suppressed or omitted a material fact, in violation of K.S.A. 50-626(b)(3), in that its prize notification invited consumers to submit a questionnaire and receive a free turkey, when in truth and in fact consumers are required to listen to a sales presentation and have their water tested before they can receive the turkey.
- b. Defendant committed unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-627(a) and (b), in that Defendant's contract excluded, modified or otherwise attempted to limit the implied warranties of merchantability and fitness for a particular purpose, in violation of K.S.A. 50-627(b)(7).
- c. Defendant committed unfair and deceptive acts and practices by failing to provide each and every consumer with a three day right to cancel in

violation of the Kansas Consumer Protection Act, K.S.A. 50-640(a) and (b), in that, Defendant failed to furnish each consumer with a completed form in duplicate, captioned "NOTICE OF CANCELLATION," that is attached to the contract or receipt and easily detachable, in violation of K.S.A. 50-640(b)(2).

- d. Defendant committed unconscionable acts and practices through its telephone solicitations in violation of the Kansas Consumer Protection Act, K.S.A. 50-670, in that, Defendant failed to ask within 30 seconds after beginning the conversation, whether the person being solicited is interested in listening to a sales presentation and failed to immediately discontinue the solicitation when the person being solicited gave a negative response, in violation of K.S.A. 50-670(b)(2).
- e. Defendant committed unconscionable acts and practices through its prize notification in violation of the Kansas Consumer Protection Act, K.S.A. 50-692, in that:
 - i. Defendant failed to provide its name and address, in violation of K.S.A. 50-692(c)(1)(A);
 - ii. Defendant failed to provide a verifiable retail value of each prize, in violation of K.S.A. 50-692(c)(1)(B);
 - iii. Defendant failed to provide a requirement or invitation for the individual to view, hear or attend a sales presentation in order to claim a prize, the approximate length of the sales presentation and a description of the property or service that is the subject of the sales presentation, in violation of K.S.A. 50-692(c)(1)(D); and
 - iv. Since the receipt of the prize is subject to a restriction, Defendant failed to provide a statement that a restriction applies, a description

of the restriction and a statement containing the location in the notice where the restriction is described, in violation of K.S.A. 50-692(c)(1)(F).

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

10. 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 eight (8) 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.

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 ten days (10) 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 \$5,000.00 in investigation fees and expenses and \$5,000.00 in civil penalties to the "Office of the Attorney General" of the State of Kansas. Payments shall commence at the signing of this judgment with \$5,000.00 payment due, and subsequent payments of \$500.00 due on or before 30 days from the date of this Judgment, until such time as the entire amount is satisfied. All payments shall be made payable to the "Office of

the Attorney General” of the State of Kansas. In the event Defendant fails to make any payment as required herein, then all unpaid amounts shall immediately become due and owing.

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 or for the enforcement of compliance herewith.

18. If any portion, provisions, 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 obligations 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 of Defendant.

IT IS FURTHER 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 judgment is entered against Defendant in favor of Plaintiff in the amount of \$10,000.00.

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.


DISTRICT COURT JUDGE

Approved by:

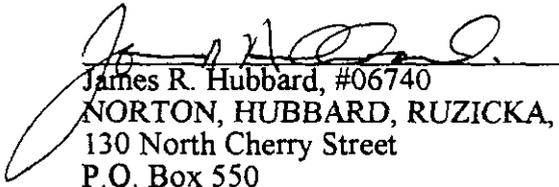

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