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FILED BY CLERK
KS. DISTRICT COURT
3RD JUDICIAL DISTRICT
NOV 13 2 49 PM '98
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 2

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

Plaintiff,)

vs.)

CLL, INC., d/b/a BLUE MAX,)

Defendant.)

Case No. 98CV1491

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 5th day of NOVEMBER, 1998, 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 CLL, Inc., d/b/a Blue Max appears by and through Frank W. Lipsman, Bryan Cave, L.L.P.

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 CLL, Inc. is a foreign corporation organized under the laws of the state of Colorado. The principal office of the corporation is located at 3009 West Colorado Avenue, Colorado Springs, Colorado 80904. Defendant CLL, Inc. has not applied with the Kansas Secretary of State for authority to do business in Kansas by filing a Foreign Corporation Application.

4. Defendant CLL., Inc., d/b/a Blue Max may be served with process by serving its registered agent, Craig Linn Leerberg, 2117 Templeton Gap Road, Colorado Springs, Colorado 80907.

5. The directors CLL, Inc., d/b/a Blue Max are Craig Linn Leerberg (5162 South Carefree, Colorado Springs, Colorado 80917), Ronald Lee Gardner (5240 Teardrop Place, Colorado Springs, Colorado 80917), and Brenda Landis Garnder (5240 Teardrop Place, Colorado Springs, Colorado 80917).

6. 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).

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

8. Defendant stipulates and waives any objection to venue in Shawnee County.

9. Defendant sells, among other things, the Blue Max wet-dry vacuum cleaner. Defendant's transactions with consumers within the State of Kansas constitute door-to-door sales, as defined by K.S.A. §50-640.

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

- a. Defendant solicited Kansas consumers by "Draw Poker" post cards mailed to consumers which invited consumers to telephone Defendant to learn what, if any prize, they had won. A true and correct copy of such post card is attached hereto

and marked as Exhibit A. Defendant's solicitations represent to consumers that they have been selected to receive a prize and, immediately thereafter, solicits consumers to telephone Defendant. The solicitation does not contain: (1) the name and address of the solicitor; (2) the verifiable retail value of each prize; or (3) a listing of the consumer's odds of winning prizes offered in immediate proximity to each listing of the prizes in each place the prizes appear on the prize notice in the same size and boldness of type as the prize, in violation of K.S.A. §50-692(c).

- b. Defendant's solicitation represents to consumers that the prize-offer contained therein is "void after 48 hours," creating the impression for consumers that the recipient must act immediately by telephoning Defendant in order to claim such recipient's prize; however, the solicitation and prize offer have no expiration date. This is in violation of K.S.A. §50-626(b)(2), in that it is the willful use of exaggeration, falsehood, innuendo, and ambiguity as to a material fact.
- c. Defendant was investigated regarding other possible violations of Kansas law, including whether its prizes were of verifiable retail value within K.S.A. §50-692(a)(5); whether prize notices appropriately identified its primary business pursuant to Kansas law; whether it has available required prizes within K.S.A. §50-626(b)(2); and whether its receipts and "notices of cancellation" were of a proper form within K.S.A. §50-640(b)(1) and (2). Defendant agrees to comply with K.S.A. §50-692(a)(5), §50-626(b)(2), and §50-640(b)(1) and (2).

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

12. Defendant, by entering into this Consent Judgment, shall not be deemed to admit the violations of the Kansas Consumer Protection Act alleged herein.

13. 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 ten (10) 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.

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

15. 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.

16. 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.

17. 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.

18. Defendant agrees to pay \$2,500 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$2,500 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 Defendant's signing this Consent Judgment.

19. 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.

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

21. 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 for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof, or for modification of this Consent Judgment upon agreement of the parties. The parties agree that this Consent Judgment resolves all issues known to parties under the Kansas Consumer Protection Act relating to the acts and practices alleged to be deceptive or unconscionable in paragraph ten (10, including subparagraphs, of this Consent Judgment up through the date of the execution of this Consent Judgment. Pursuant to the terms of this Consent Judgment, the Kansas Attorney General agrees that she and her office will not pursue any claims, demands or civil causes of action under the Kansas Consumer Protection Act against Defendant for the acts and practices alleged to be deceptive and/or unconscionable in paragraph ten (10) of this Consent Judgment up through the date of the execution of this Consent Judgment, excepting only any action which may be required to enforce the provisions of this Consent Judgment.

22. 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.

23. 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.

24. 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 \$ 5,000.

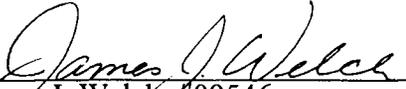
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

(S) Hon. James MacNish
DISTRICT COURT JUDGE

Approved by:

Carla J. Stoyal by John W. Campbell
Carla J. Stoyal, #11433
Attorney General


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