

99-026

James J. Welch, #09546
Assistant Attorney General
Office of the Attorney General
301 SW 10th
Topeka, Kansas 66612-1597
(785) 296-3751

FILED BY CLERK
KS. DISTRICT COURT
3RD JUDGE

MAR 26 4 02 PM '99

TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 4

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

Plaintiff,

vs.

JEFF BAILEY, d/b/a EAGLE PROMOTIONS,

Defendant.

Case No. 99-C-168

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 26th day of March, 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 Jeff Bailey, d/b/a Eagle Promotions, appears by his attorney, Cary L. Standiferd.

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 Jeff Bailey, d/b/a Eagle Promotions is a business organized under the laws of the state of Michigan. The principal office of the business is located at 3711 Rector NE, Rockford, Michigan. Defendant Jeff Bailey, d/b/a Eagle Promotions, has not applied with the Kansas Secretary of State for authority to do business in the State of Kansas. Defendant Jeff Bailey, d/b/a Eagle Promotions, may be served with process by serving Jeff Bailey at the principal office of the business (same as above).

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. Venue is proper in Shawnee County because an act or practice declared to be a violation of the Kansas Consumer Protection Act occurred in such county and because Defendant has no principal place of business in the state of Kansas.

7. Defendant is an advertising agency and performed contest promotions for Briggs Supercenter in Topeka, Kansas, and sent flyers containing prize notifications and advertising for Briggs Supercenter to consumers.

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

- a. Defendant caused promotional flyers to be sent to consumers which, among other things, indicate that the consumer has "already won \$5,000.00." The flyer also promises consumers a free gift of "accommodation vacations" to "3 days & 2 nights" of the consumers' choice of Myrtle Beach, Nashville, Orlando, Gatlinburg. This constitutes a prize notice, as defined by K.S.A. §50-692(a)(2).
- b. Defendant's solicitation flyer represents to consumers that they have been selected to receive a prize and, immediately thereafter, solicits consumers to visit Briggs

Supercenter. 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 offered prizes, in violation of K.S.A. §50-692(c).

- c. Defendant's solicitation flyer represents that Briggs Supercenter is having a "factory-authorized invitation-only clearance sale!"; however, Briggs Supercenter neither has a factory nor requires authorization to have a clearance sale. This is in violation of K.S.A. §50-626(b)(1)(B), in that it is the representation made knowingly and with reason to know that Briggs Supercenter has status, affiliation and connection that it does not have.

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. 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.

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

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

14. Defendant agrees to cooperate with the Office of the Attorney General in resolving any future complaints concerning Defendant.

15. 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.

16. Defendant agrees to pay \$1,250.00 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$1,250.00 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.

17. If Defendant does further business in the State of Kansas, Defendant agrees to maintain all business records for a period of five years and to allow the Attorney General to inspect such records.

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 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.

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.

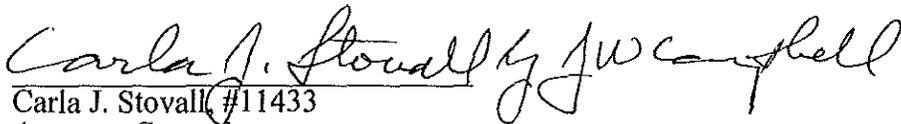
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$2,500.

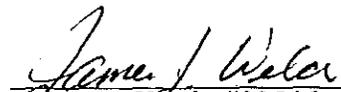
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

/s/ Hon. Thomas R. Conklin
DISTRICT COURT JUDGE

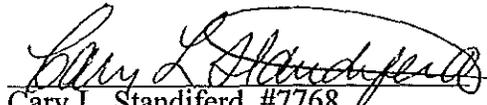
Approved by:


Carla J. Stovall, #11433
Attorney General


James J. Welch, #09546
Assistant Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(785) 296-3751

Attorney for Plaintiff


Jeff Bailey,
d/b/a Eagle Promotions
3711 Rector Northeast
Rockford, Michigan 49341
Defendant


Cary L. Standiferd, #7768
Waggener, Arterburn & Standiferd
1400 SW Topeka Boulevard
Topeka, KS 66612-1819
(785) 235-2364

Attorney for Defendant