

Frances R. Brunner, # 17433
Wm. Scott Hesse, #12013
Assistant Attorneys General
Office of the Attorney General
120 SW 10th Avenue, 4th Floor
Topeka, Kansas 66612-1597
(785) 296-3751

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST
2000 JUN -2 A 10: 15
GENERAL JURISDICTION
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 9

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

Plaintiffs,

vs.

LIFESTYLE USA, Inc.,
(formerly PERFORMANCE DRUGS, Inc.
d/b/a PERFORMANCE DRUGS, and
LIFESTYLE USA,

Defendant.

Case No. 99-CV-260

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 2 day of June, 2000, comes before the Court the Journal Entry of Consent Judgment entered into between the parties pursuant to K.S.A. § 50-632(b). The State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Frances R. Brunner, Assistant Attorney General. The Kansas Board of Pharmacy appears by and through Wm. Scott Hesse, Assistant Attorney General. Defendant Lifestyle USA, Inc., appears by and through counsel, Steve A. Schwarm and None.

Whereupon, the Court, after reviewing the file and statements of counsel, finds that the Motion to Enforce Settlement should be sustained and the Court finds the parties have stipulated

and agreed to the following matters:

THE PARTIES

1. Carla J. Stovall is the Attorney General of the State of Kansas.
2. Defendant Lifestyle USA, Inc., f/d/b/a Performance Drugs and d/b/a Lifestyle USA, is an unauthorized foreign corporation organized under the laws of the State of Washington. Defendant maintains a principal office at 720 Olive Way, Suite 510, Seattle, Washington 98101-1865.
3. Defendant is a supplier as defined by K.S.A. § 50-624(i).
4. At all times relevant hereto, and in the ordinary course of business, Defendant has engaged in consumer transactions in Kansas as defined by K.S.A. § 50-624(c).

JURISDICTION AND VENUE

5. Defendant enters its voluntary general appearance.
6. Defendant admits the Court has jurisdiction over the parties and the subject matter.
7. Defendant admits venue is proper in the Third Judicial District of Kansas (Shawnee County).

ALLEGATIONS

8. The Attorney General has alleged the Defendant has engaged in deceptive and unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*, as set forth in paragraphs fourteen (14), fifteen (15), sixteen (16) and seventeen (17) of Plaintiff's Petition in this case, including all subparagraphs thereof. Defendant denies the allegations of the Attorney General.
9. The Attorney General, at the request of the Kansas Board of Pharmacy, has alleged the Defendant has committed violations of the Kansas Pharmacy Practice Act, K.S.A. § 65-1626 *et seq.*, as set forth in paragraphs eighteen (18) and nineteen (19) of Plaintiff's Petition

in this case, including all subparagraphs thereof. Defendant denies the allegations of the Attorney General and the Kansas Board of Pharmacy.

10. For the purpose of settlement of this case only, Defendant voluntarily agrees to entry of this Consent Judgment without trial or adjudication of any issue of fact or law.

INJUNCTIVE RELIEF

11. Defendant agrees to refrain from, and to be permanently enjoined from, each of the following acts and practices:

- a. Representing, on any Internet website or otherwise, that consumers will be contacted by staff members if no staff member will, in truth and in fact, contact consumers. Contact by telephone or by electronic mail shall be sufficient to satisfy the requirement of this subparagraph;
- b. Representing, on any Internet website or otherwise, that a physician will review applications for the purchase of prescription-only drugs if in fact not every application is reviewed by a licensed physician;
- c. Charging a fee for physician review of applications for the purchase of prescription-only drugs if in fact not every application is reviewed by a licensed physician;
- d. Representing for sale any prescription-only drug without disclosing to the consumer, in a clear and conspicuous manner and prior to the ordering of such prescription-only drug by the consumer, that the drugs being sold are in fact "prescription-only" drugs;
- e. Representing for sale any prescription-only drug without simultaneously disclosing, in a clear and conspicuous manner, known possible risks, side effects and contraindications for usage. It shall be deemed sufficient compliance with this subparagraph of the Consent Judgment if Defendant does either of the following: (1) reproduces on the Internet website, in a clear and conspicuous

manner, the manufacturer's required insert accompanying the prescription medication, or (2) provides a clear and conspicuous link to the manufacturers' insert information;

- f. Representing, on any Internet website or otherwise, that any prescription-only drug is safe if, in truth and in fact, there are known side effects, risks or contraindications associated with the use of the prescription-only drug, unless such representation is specifically allowed by the federal Food and Drug Act, the Kansas Pharmacy Practice Act, or any regulation promulgated pursuant to either such Act; and
- g. Representing that the sale of any drug has the endorsement of any state regulatory agency (a conspicuous disclaimer that information provided on the Internet website does not constitute, nor should it be interpreted as, endorsement by any regulatory agency is sufficient for compliance with this component of the Consent Judgment);

Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

12. Defendant agrees to refrain from, and to be permanently enjoined from, each of the following acts and practices:

- a. Obtaining prescriptions for, selling, delivering, causing to be delivered, dispensing, and/or causing to be dispensed any prescription-only drug if the Defendant knows or has reason to know that the physician who prescribed the prescription-only drug never conducted an actual physical examination of the consumer for whom the drug is prescribed; and
- b. Obtaining prescriptions for, selling, delivering, causing to be delivered, dispensing, and/or causing to be dispensed any prescription-only drug if the prescribing physician's examination of the consumer is conducted while the

consumer is physically within the State of Kansas and if the physician who prescribed the prescription-only drug was not licensed by the Kansas State Board of Healing Arts to engage in the practice of the healing arts, unless such physician is specifically exempted under K.S.A § 65-2872.

Defendant agrees that any failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

13. Defendant agrees to refrain from, and to be permanently enjoined from, selling, delivering, causing to be delivered, dispensing, and/or causing to be dispensed any prescription-only drug to any consumer located in the State of Kansas unless such drug is dispensed by a pharmacy properly registered with the Kansas board of pharmacy. Defendant agrees that any failure to refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

14. Defendant agrees to refrain from, and be permanently enjoined from, delivering prescription-only medications to consumers and/or other persons in Kansas unless Defendant has complied fully with all applicable requirements of the Kansas Pharmacy Practices Act, K.S.A. § 65-1626 *et seq.* Defendant agrees that any failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

INVESTIGATIVE FEES AND CIVIL PENALTIES

15. Defendant agrees to pay \$4,500.00 in investigation fees and an additional \$4,500.00 in civil penalties to the "Office of the Attorney General" at the time of signing of this Consent Judgment, pursuant to K.S.A. § 50-623 *et seq.* Payment shall be by cashier's check.

GENERAL PROVISIONS

16. Defendant agrees to be bound by this Journal Entry of Consent Judgment at all times after the date of entry without regard to whether Defendant acts through its principals, officers, directors, shareholders, representatives, agents, servants, employees, subsidiaries,

successors, assigns or whether acting through any corporation or other entity whose acts, practices or policies are directed, formulated, or controlled by Defendant.

17. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives not later than twenty (20) days after the date of this Consent Judgment.

18. Defendant agrees not to enter into, form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose and/or with the effect of avoiding compliance with the terms of this Consent Judgment.

19. Defendant agrees to refrain from and to be permanently enjoined from representing, in any manner whatsoever and to any person or entity whatsoever, that this Consent Judgment constitutes approval by, endorsement by or authority from the State of Kansas and/or the Attorney General of the State of Kansas for the business practices of Defendant. Defendant agrees that making of any such representation, after the date of this Consent Judgment, shall constitute a violation of this Order.

20. 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 hereof.

21. If any portion, provision or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reasons whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining portions, provisions, or parts.

22. 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.

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 the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Exhibits A, B, and C are incorporated herein by reference and made part of the Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act and the Kansas Pharmacy Practice Act, the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant Lifestyle USA, Inc., f/d/b/a Performance Drugs, Inc., in the amount of \$9,000.00.

IT IS SO ORDERED.


DISTRICT COURT JUDGE

Prepared by:

Frances R Brunner
Frances R. Brunner, #17433
Assistant Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

Frances R Brunner, for
Wm. Scott Hesse, #12013
Assistant Attorney General
120 SW 10th Avenue
Topeka, Kansas 66612-1597
(785) 296-3751

Attorneys for Plaintiffs