

Barbara A. Lombrano
 Supreme Court #14120
 Assistant Attorney General
 Office of the Attorney General
 Kansas Judicial Center - Lower Level
 Topeka, Kansas 66612-1597
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
 DIVISION _____

STATE OF KANSAS, ex rel.,)
 ROBERT T. STEPHAN, Attorney General,)
)
 Plaintiff,)
)
 vs.)
)
 SAFETY PLUS, INC.)
)
 Defendant.)

Case No. 91CV353

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this _____ day of _____, 1991, the Petition for approval of Consent Judgment filed by the State of Kansas comes on for hearing. The State of Kansas appears on the relation of Robert T. Stephan, Attorney General, by and through Barbara A. Lombrano, Assistant Attorney General. The Defendant appears by and through its attorney, Bob Ristaneo.

Whereupon, the parties advise the Court they have stipulated and agreed to the following matters:

1. Robert T. Stephan is the Attorney General of the State of Kansas.

2. Defendant is a foreign corporation. Defendant's business is located at 921-A Beasly Street, Lexington, Kentucky 40509. The Defendant enters its voluntary general appearance. The Defendant admits the Court has jurisdiction over the parties and the subject matter.

3. The Attorney General alleges the following acts and practices by the Defendant are violations of the Kansas Consumer Protection Act and are deceptive and/or unconscionable:

MISLEADING ADVERTISEMENT

a. Safety Plus, Inc. places ads in various Kansas newspapers representing "\$9.00 to start" leading consumers to believe they will receive \$9.00 an hour, when in fact the consumers are not compensated at an hourly rate but are paid a commission contingent on the number of sales presentations and/or sales made. This violates the Kansas Consumer Protection Act proscription against representations made knowingly or with

reason to know that property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have, K.S.A. 50-626(b)(1)(a), and the intentional use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact, K.S.A. 50-626(b)(2), and the intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact, whether or not any person has in fact been misled, K.S.A. 50-626(b)(3).

MISREPRESENTATIONS IN INTERVIEW

b. During the initial interview the Defendant tells consumers it wants to open offices in the "local area" and throughout the United States, leading the consumers to believe the Defendant will be responsible for the expenses of establishing new offices, when in fact the consumers are responsible for opening the new office and must expend their own funds in the process. This violates the Kansas Consumer Protection

Act proscription against the intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact, whether or not any person has in fact been misled. K.S.A. 50-626(b)(3).

c. In the interview the consumers are told there are six (6) steps to become a manager. One step requires the consumer to meet a specific sales quota, for example, two thousand dollars (\$2,000). The other steps are not explained. Once the consumer reaches the specified quota the Defendant then informs the consumer of the additional steps, at least some of which involve additional sales quotas, in amounts determined by the defendant, before the consumer may become a manager. This is the intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact, whether or not any person has in fact been misled, a violation of K.S.A. 50-626(b)(3).

d. The Defendant represents to the consumer during the interview that a security fee, defined by the Defendant as a bonding fee, must be paid when in fact the fee is for the Defendant's use and not to bond the consumer. This is the intentional use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact in violation of K.S.A. 50-626(b)(2) and the intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact, whether or not any person has in fact been misled in violation of K.S.A. 50-626(b)(3).

NOTICE OF CANCELLATION

e. Consumers who purchased the Defendant's products did not receive a "NOTICE OF CANCELLATION" in duplicate. This is the failure to furnish each buyer, at the time he or she signs the door-to-door sales contract or otherwise agrees to buy consumer property or services from the seller, a completed form in duplicate, captioned

"NOTICE OF CANCELLATION..." in violation of
K.S.A. 50-640(b)(2), 50-640(b)(1),
50-640(b)(3), 50-640(b)(5).

MISREPRESENTATION IN VACATION PACKAGE

f. Consumers were informed through the solicitation that they will receive a "free Hawaiian Vacation," when in fact consumers are required to pay for seven (7) days of accommodations. This is a representation made knowingly or with reason to know that property or services have sponsorship, approval,... characteristics ... benefits or quantities that they do not have in violation of K.S.A. 50-626(b)(1)(a) and the intentional use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact in violation of K.S.A. 50-626(b)(2).

4. The Defendant voluntarily agrees to this Consent Judgment and acknowledges that this Consent Judgment is entered in settlement of plaintiff's allegations and that

defendant has engaged in acts which are alleged to be in violation of the Kansas Consumer Protection Act and to which the Defendant has not admitted.

5. The Plaintiff and Defendant have stipulated, agreed, and consented to this final judgment without trial or adjudication of any issue of fact or law.

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

7. The Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to their employees, agents and representatives.

8. The Defendant agrees to refrain from and to be enjoined from engaging in all acts and practices alleged by the State of Kansas to be deceptive and unconscionable, in paragraph number 3.

9. The Defendant shall not enter into, form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

10. The Defendant agrees to pay \$2,500.00 in investigation fees and expenses to the Attorney General of the State of Kansas and \$500.00 in civil penalties to the State of Kansas at the time of filing this Consent Judgment. Payment will be by certified check.

11. The Defendant shall pay the Court costs of this action to the Clerk of the District Court, upon the filing of this Consent Judgment, in the amount of \$60.00.

12. The Defendant agrees to allow the Attorney General to inspect relevant business records in the future. The Attorney General will give reasonable notice for these inspections.

13. In order to prevent future violations of the Kansas Consumer Protection Act, the Defendant agrees to take the following action:

(a) It shall not represent in any help wanted ad, in any Kansas newspaper or other Kansas publication that compensation shall be at a specified amount, unless the position offered is on a salary or wage basis, provided, however, that defendant may state that the position advertised has an earning "potential" of a specified amount, so long as the recent experience of the company provides a reasonable basis for such a representation. Additionally, it shall not advertise a specific dollar amount "to start".

(b) It shall alter its initial presentation so as to clearly inform consumers that the additional steps which must be taken to become a manager will include some additional sales quotas.

(c) It shall agree to end its Hawaii vacation drawing beginning in January, 1991.

(d) It shall instruct its local office personnel to not misrepresent the use and purpose for the registration fee.

(e) It shall instruct its local office personnel to not misrepresent who is responsible for expenses associated with opening new offices.

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 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.

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JUDGE OF THE DISTRICT COURT

Approved by:


ROBERT T. STEPHAN
Attorney General


ARTHUR R. WEISS
Deputy Attorney General


BARBARA A. LOMBRANO
Assistant Attorney General


Attorneys for Plaintiff.

Safety Plus, Inc.

By : 

Title: SECRETARY / TREASURER

Defendant.


Attorney for Defendant

B/SAFE.CJ/TXTATTY