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Dec 28 3 13 PM '93

GENERAL  
JURISDICTION  
TOPEKA, KS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 7

STATE OF KANSAS, ex rel.  
ROBERT T. STEPHAN, Attorney General,  
  
Plaintiff,

vs.

Case No. 92 CV 1497

SONNY HILL JEEP-EAGLE, INC.; and  
SONNY HILL CHEVROLET, INC.;

Defendants.

JOURNAL ENTRY

NOW on this 20th day of October, 1992, this matter comes on for trial before the court. The State of Kansas ex rel. Robert T. Stephan, Attorney General, appears by and through Shelly Gasper and Martin Peck, Assistant Attorneys General. The defendants appear by and through Clyde Meise of Meise, Coen, Hutchison & Rumley.

Whereupon, the plaintiff presents its case, including stipulations of the parties, and rests. At the close of plaintiff's case, defendants move for directed verdict. Defendants' motion is denied.

Whereupon, defendants present their case, and rest. Defendants again move for directed verdict. Defendants' motion is denied.

Thereupon, at the close of evidence, the court recesses. The court then makes its findings of fact and conclusions of law, to wit:

1) Count 2 of plaintiff's petition was dismissed by plaintiff, and no evidence on that count is presented.

2) The court takes judicial notice of the fact that advertising is done with the intent to either sell something or to draw customers to the place where they can be sold something.

3) With regard to count 1 of the petition, plaintiff alleges that Exhibit 2 is deceptive because defendant intentionally suppressed or omitted a material fact. Exhibit 2 shows several cars with a delivered price. Only the astute consumer would notice the tiny print that says price after 20% MSRP down, et cetera, and be able to interpret what that information means. The court finds that the ad is deceptive and violates K.S.A. 1992 Supp. 50-626(b)(3) of the consumer protection act.

4) The second portion of Count 1 is that three of the cars advertised in Exhibit 2 were sold prior to the advertisement, by at least 30 days. This would constitute violations of both K.S.A. 1992 Supp. 50-626(b)(5) and K.S.A. 1992 Supp. 50-626(b)(6).

5) The court finds a total of three violations under Count 1 of the petition.

6) With regard to Count 3 of the petition, plaintiff alleges defendant Sonny Hill Jeep Eagle placed an advertisement which appeared in both the Leavenworth Times and Great Plains Journal. The ad shows a '93 Cherokee Sport that states "Auto,

A/C & more Purchase for \$243 for 23 mo. at 5% A.P.R." There are no other limitations or disclosures in the ad.

7) Defendant's advertisement of some of the terms, but not all, is a deceptive practice. Plaintiff has met its burden to show the willful failure to state a material fact in violation of K.S.A 50-626(b)(3).

8) The court finds one violation under Count 3 of the petition.

9) The court imposes the maximum civil penalty of \$5,000 per violation.

10) The court declines to carry out the transaction complained about in Count 3 as it was advertised, finding it sufficient to impose the \$5,000 civil penalty.

11) Defendants will be enjoined from engaging in all acts and practices found to be deceptive and unconscionable herein.

12) The court allows \$ 100<sup>00</sup> as a reasonable amount of investigative fees and expenses to be paid by defendants to plaintiff.

13) Defendants will pay costs.

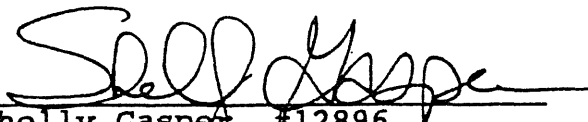
IT IS SO ORDERED.

*[Signature]*

DISTRICT COURT JUDGE

12-28-93

PREPARED BY:



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