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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 5

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General)
)
)
Plaintiff,)
)
)
vs.)
)
)
)
AMERICA'S CHOICE STEAK, INC.,)
d/b/a AMERICA'S CHOICE STEAK & SEAFOOD)
COMPANY; RODNEY Y. CREIGHTON;)
and CHRISTOPHER L. MASELKA,)
)
Defendants.)

Case No. 98 CV 380

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 22 day of Oct., 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. Defendants America's Choice Steak, Inc., Rodney Y. Creighton, and Christopher L. Maselka, appear by and through counsel Robert S. Caldwell.

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 America's Choice Steak, Inc. (hereinafter, "America's Choice") is a foreign corporation organized under the laws of the state of Iowa. The principal office of the corporation is located at 5261 NW 114th Street, Suite I, Grimes, Iowa 50111. Defendant America's Choice Steak, Inc. applied with the Kansas Secretary of State for authority to do business in Kansas in May, 1997 by filing Articles of Incorporation. The corporation can be served with process by serving its registered agent, The Corporation Company, Inc., 515 South Kansas Avenue, Topeka, Kansas 66603.

4. Defendant Rodney Y. Creighton is an individual and an officer and director of America's Choice Steak, Inc., doing business in Iowa and in Sedgwick County and other places within the State of Kansas. He can be served with process at his last known business address, 5261 NW 114th Street, Suite I, Grimes, Iowa 50111, or wherever in Kansas he may be found.

5. Defendant Christopher L. Maselka is an individual and an officer and director of America's Choice Steak, Inc., doing business in Sedgwick County and other places within the State of Kansas. He can be served with process at his last known business address, 5261 NW 114th Street, Suite I, Grimes, Iowa 50111, or wherever in Kansas he may be found. The principal office of the corporation is located at 5261 Northwest 114th Street, Suite I, Grimes, Iowa 50111.

6. America's Choice is a supplier, as defined by K.S.A. §50-624(i), and a seller, as defined by K.S.A. §50-901(g) and has engaged in consumer transactions within the definition of K.S.A. §50-624(c) and (h), both with consumers, as defined by K.S.A. §50-624(b) and with buyers, as defined by K.S.A. §50-901(a).

7. Since at least May of 1996, Defendant America's Choice has solicited and sold meat products to consumers within the State of Kansas. Plaintiff alleges that America's Choice

engaged in deceptive and unconscionable acts and practices in violation of the Kansas Consumer Protection Act. These alleged violations include, but are not limited to:

a. During consumer transactions, America's Choice solicited, sold, and accepted payments for meat products to consumers at a place other than the usual place of business of America's Choice, and for purchase prices of \$25.00 or more. Such solicitations constitute door-to-door sales and are subject to the provisions of K.S.A. §50-640. In these transactions, America's Choice failed to provide at least twenty (20) consumers with receipts or any other documentation of said transactions which contained the written notice of cancellation. The failure to provide the required notice constitutes a deceptive act in violation of K.S.A. §50-640(b)(1) and (b)(2).

b. In the above-described transactions, America's Choice failed to provide at least eighteen (18) consumers with oral notices of cancellation. The failure to provide such required notice constitutes a deceptive act in violation of K.S.A. §50-640(b)(5).

Ryc / Am
c.

Defendant America's Choice Steak, Inc. solicited and sold to at least twenty-three (23) consumers meat products by the box or by the case, but did not disclose orally or in America's Choice's brochure and in at least three (3) printed advertisements - to such consumers the price-per-pound of such meat products. True and correct copies of America's Choice print advertisements which appeared in publications between at least December 24, 1996 and January 13, 1997 are attached hereto and marked as Exhibit A. A true and correct copy of America's Choice's brochure is attached hereto and marked as Exhibit B. Representing to consumers prices of products to be offered for sale in units larger than one pound in terms other than price-per-single-pound constitutes a deceptive act, in violation of K.S.A. §50-903(b)(4).

- d. By soliciting and selling to consumers meat products by the box or by the case, but failing to disclose to such consumers the price-per-pound of such meat products, America's Choice made at least twenty-six (26) representations in which advertising was misleading and deceiving in respect to price-per-pound, in violation of K.S.A. §50-902. By doing so, America's Choice took advantage of at least twenty-three (23) consumers' inability to protect the consumers' interests because of the consumers' inability to determine the price-per-pound, in violation of K.S.A. §50-627(b)(1) and induced consumers to enter into were excessively one-sided in favor of America's Choice, in violation of K.S.A. §50-627(b)(5).
- e. America's Choice brochures list prices identified as "America's Choice Suggested Retail" prices; however, America's Choice is unable to substantiate any time at which America's Choice has sold the same products for the prices listed and so designated. Additionally, America's Choice made misrepresentations to at least fifteen (15) consumers concerning the prices of local supermarkets and other competitors. Making of false and misleading representations of fact concerning the existence of and amounts of price reductions, or the price in comparison to prices of competitors at a past or future time is a deceptive act, in violation of K.S.A. §50-626(b)(7). Use of such misrepresentations is also an unconscionable act, in violation of K.S.A. §50-627(b)(1), in that America's Choice took advantage of the inability of at least fifteen (15) consumers reasonably to protect the consumers' interests because of the consumers' inability to determine whether or not such products have been sold at some past or future time for the prices designated as "suggested retail," and of in violation of K.S.A. §50-627(b)(5), in that the transactions America's Choice induced at least fifteen (15) consumers to enter into were excessively one-sided in favor of America's Choice.
- f. America's Choice, by placing advertisements in newspapers and other publications, advertised for sale by placing at least three (3) advertisements in

newspapers and other publications and sold to at least seven (7) consumers within the State of Kansas. True and correct copy of such advertisements are attached hereto and marked as Exhibit A. The advertisement represents a "Six Pack Case Special," in which a consumer who purchases one receives another one free. Making use of the words "six pack case" to describe a quantity of meat or poultry without itemizing each type of cut and the weight of each type of cut which consumers will receive constitutes a deceptive act, in violation of K.S.A. §50-903(c)(13) and (c)(14). This is also an unconscionable practice, in violation of K.S.A. §50-627(b)(1), in that America's Choice took advantage of the inability of at least seven (7) consumers reasonably to protect the consumers' interests because of the consumers' inability to determine the type of cut and weight of each type of cut consumers would receive, and in violation of K.S.A. §50-627(b)(5), in that the transactions America's Choice induced at least seven (7) consumers to enter into were excessively one-sided in favor of America's Choice.

- g. America's Choice willfully caused to be transported into the State of Kansas, offered for sale, and/or sold at least eleven (11) boxes of meat product which were labeled with net-weights significantly larger than the amounts of meat which were actually contained within said boxes. True and correct copies of package check reports prepared by the Weights & Measures Division of the Kansas Department of Agriculture are attached hereto and marked as Exhibit C. This is in violation of K.S.A. §50-626(b)(2), in that it is the willful use in oral and written representation of exaggeration and falsehood as to a material fact. This is also an unconscionable act and practice in violation of K.S.A. §50-627(b)(1), in that the America's Choice took advantage of the inability of at least six (6) consumers reasonably to protect the consumers' interests because of the consumers' inability to determine the net weight of meat product within boxes of meat product, and in violation of K.S.A. §50-627(b)(5), in that the transactions America's Choice

induced at least six (6) consumers to enter into were excessively one-sided in favor of America's Choice.

8. Defendants voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law. Defendants, by entering into this Consent Judgment, shall not be deemed to admit the violations of the Kansas Consumer Protection Act alleged herein, or any violation of state or federal law. Defendants have agreed to entry of this Consent Judgment without admitting any wrongdoing and for settlement purposes only.

9. America's Choice agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph seven (7) of this Consent Judgment, and, further, agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

10. America's Choice 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 Defendants agree that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

11. The provisions of this Consent Judgment will be applicable to America's Choice, and its every employee, independent contractor, agent or representative.

12. America's Choice agree to make available and disclose the provisions of this Consent Judgment to its employees, independent contractors, agents and representatives within fifteen (15) days of signing the Consent Judgment.

13. Defendants agree to respond in writing to any consumer complaints filed with the Attorney General's Office within thirty (30) days of the date such complaint is received by the Defendants.

14. Defendants agree 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.

15. America's Choice agrees to pay \$8,750.00 in investigation fees and expenses and to reimburse \$87.00 (towing bill) to the "Office of the Attorney General" of the State of Kansas and \$2,000.00 in investigative fees and expenses to the "Office of the Sedgwick County District Attorney." In addition, America's Choice agrees to pay a \$6,750.00 in civil penalties to the "State of Kansas." Payment shall be made by certified checks and shall commence on October 5, 1998 with delivery of this Consent Judgment, signed by Defendants with a payment of \$5,000.00 to the "Office of the Attorney General." Payment of \$750.00 per month shall commence on or before November 1, 1998, with subsequent \$750.00 payments thereafter due on or before the first (1st) day of each month, until the entire amount payable is satisfied.

16. Parties agree that payment of investigation fees and expenses and civil penalties, as set out in paragraph fifteen (15) of this Consent Judgment shall not be subject to interest as long as all payments are timely made. Defendants agree that failure to make timely payments of investigative fees and expenses and civil penalties, as set out in paragraph fifteen (15) of this Consent Judgment, will result in the amount of the entire unpaid balance becoming due within five (5) days of the first payment missed and subject to interest, as provided in K.S.A. §16-204.

17. America's Choice agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided America's Choice does not pay the amounts as agreed herein within the time frame stated.

18. America's Choice agrees to maintain all business records for a period of five years after entry of this Consent Judgment and to allow the Attorney General to inspect all of Defendants' business records that will demonstrate compliance with the requirements of this judgment in the future upon request.

19. 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 seven (7), including sub-paragraphs, 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 seven (7) 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.

20. 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.

21. Compliance with this Consent Judgment does not relieve Defendants 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.

22. 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 America's Choice nor shall Defendants 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.

23. The Attorney General will file a Satisfaction of Judgment as to the monetary terms of this Consent Judgment upon America's Choice's payment of the amount recited herein.

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 America's Choice immediately become a judgment upon filing.

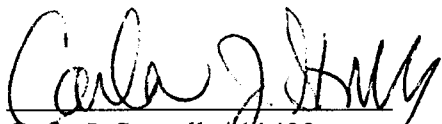
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against America's Choice in favor Plaintiff in the amount of \$17,587.00, payable as recited herein.

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.

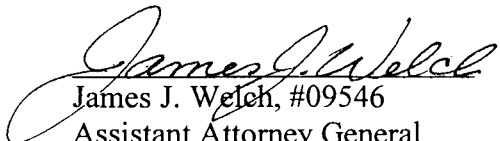
IT IS SO ORDERED.

/s/ Hon James McNair
DISTRICT COURT JUDGE

Approved by:

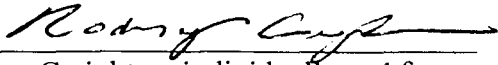


Carla J. Stovall, #11433
Attorney General

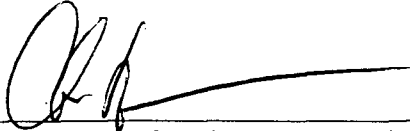


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