

01-030

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ATTORNEY GENERALS OFFICE

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 1

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST
2001 SEP 14 P 4: 01

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

Plaintiff,

vs.

RICHARD H. BIRKENSHAW and CLAUDIA FERNANDEZ,
d/b/a SUNGLASS WORLD, and SUNGLASS WOLRD, INC.,

Defendants.

Case No. DC 1070

Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 14th day of September, 2001, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendants Richard Birkenshaw and Claudia Feranandez, d/b/a Sunglass World, and Sunglass World, Inc. appear pro se.

WHEREUPON, the parties advise the Court 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 statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

3. Defendants Richard Birkenshaw and Claudia Feranandez, d/b/a Sunglass World, and Sunglass World, Inc. are suppliers within the definition of the Kansas Consumer Protection Act, K.S.A. §50-624(i) and have engaged in consumer transactions, as defined by K.S.A. 50-624(c).

4. Defendants Richard Birkenshaw and Claudia Feranandez, d/b/a Sunglass World, and Sunglass World, Inc. may be served with process at 5140 SW 21st Street, Topeka, Kansas 66614, or at 2840 West Bay Drive #255, Bellaire Bluffs, Florida 33370-2620, or wherever in Kansas he may be found.

5. During August, 2001, Defendants solicited and sold sunglasses to consumers in Topeka, Kansas.

6. The Attorney General alleges Defendant engaged in the following acts and practices which are deceptive and violate the Kansas Consumer Protection Act:

a. During August, 2001, Defendants solicited and sold sunglasses to consumers at a place other than the usual place of business of Defendants, and for a purchase price 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 all of the above described solicitations, the defendants failed to provide to the Kansas consumers the written notice of cancellation required by K.S.A. 50-640(b)(2). The failure to provide the required notice constitutes a deceptive act in violation of K.S.A. 50-626 as enumerated in K.S.A. 50-640(b).

b. In each of the above described solicitations, the defendants failed to inform Kansas consumers orally of their rights to cancellation, as required by K.S.A. 50-640(b)(5).

The failure to provide the required oral notice constitutes a deceptive act in violation of K.S.A. 50-626 as enumerated in K.S.A. 50-640(b). Further, Defendants told consumers that they might exchange - but not return merchandise for refunds. This is in violation of K.S.A. 50-640(b)(6), in that it is a misrepresentation of the consumer's right to cancel.

- c. Defendants cashed checks and/or charged credit card accounts given to Defendants by consumers as payment for services immediately upon receipt thereof. This is in violation of K.S.A. §50-640(b)(8), which provides that a note or other evidence of indebtedness incurred as a result of a door-to-door sales may not be negotiated, transferred, sold or assigned prior to midnight of the fifth business day following the day the contract was signed or the services were purchased.
- d. Defendants solicited consumers to purchase sunglasses by way of signs along the road and at the Defendants' kiosk that represented such sunglasses offered for sale were \$5.00; however, only a slight percentage of Defendants' merchandise was actually offered for sale for \$5.00; most of the merchandise offered by Defendants cost \$7.00, \$10.00, or \$15.00. This is in violation of K.S.A. §50-626(b)(2), in that it is with willful use of exaggeration, falsehood, innuendo and ambiguity as to a material fact.
- e. Defendants displayed signs which advertised "High Fashion Sunglasses, Your Choice \$5.00 . . . Values to \$19.95"; however, Defendants have neither sold such sunglasses for said price, nor are Defendants able to substantiate that anyone else has - at any time - sold such sunglasses for said price. Such use of a false reference price is in

violation of K.S.A. §50-626(b)(7), in that it is the making of false or misleading representations of the existence of or amounts of price reductions an/d/or the price in comparison to prices of competitors or one's own price at a past or future time.

7. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law.

8. Defendants agree to refrain from and to be permanently enjoined from engaging in acts and practices described in paragraph six (6) in violation of the Kansas Consumer Protection Act. Defendants agree that engaging in acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Order.

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

10. Defendants agree to resolve any future complaints filed with the Office of the Attorney General regarding Defendants after the date of this Consent Judgment to the satisfaction of the Attorney General within thirty (30) days of the date such complaint is forwarded to Defendants for resolution.

12. 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.

13. Defendants agree to pay \$1,250.00 in investigation fees and expenses to the Office of the Attorney General of the State of Kansas and \$1,250.00 in civil penalties to the State of Kansas. All payments shall be made by cash and/or cashier's check, payable to the "Office of the Attorney General," and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment.

14. 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 thereof.

15. 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.

16. 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.

17. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendants 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.

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 Defendants 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 \$2,500.00.

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. Jan DeWitt

Judge of the District Court

PREPARED AND APPROVED BY:

Carla J. Stovall by Jan Campbell

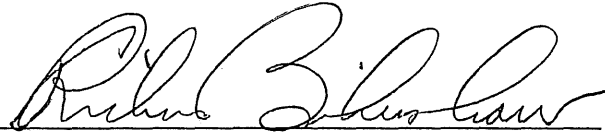
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Attorney for Plaintiff

APPROVED BY:



Richard Birkenshaw, individually and d/b/a Sunglass World,
and Sunglass World, Inc.
2840 West Bay Drive #255
Belleaire Bluffs, FL 33370-2620

Defendant



Claudia Fernandez, d/b/a Sunglass World,
2840 West Bay Drive #255
Belleaire Bluffs, FL 33370-2620

Defendant