



Court: Shawnee County District Court
Case Number: 2018-CV-000036
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. American Made Matters Corp, et al.
Type: Consent Judgment

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson", is written over a large, stylized circular flourish.

/s/ Honorable Teresa L Watson, District Court Judge

Kathryn Carter, #12969
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 3

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
AMERICAN MADE MATTERS CORP., and)
KCONE CORPORATION, and)
JASON TODACK, an individual)
)
Defendants.)

Case No. 2018-CV-36

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

CONSENT JUDGMENT

COMES NOW BEFORE THE COURT Plaintiff's Petition for Approval of Consent Judgment pursuant to K.S.A. 50-632(b). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Kathryn Carter. Defendants appear by and through David Holstead, Law Office of David N. Holstead, LLC.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for 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 American Made Matters Corp. is a Kansas corporation.

4. Defendant KCONE Corporation is a Nebraska corporation.

5. Defendant Jason Todack is an individual residing at 6939 Westlake Rd., Meriden, KS 66512. Defendant Jason Todack is the President of KCONE Corporation and American Made Matters Corp.

6. All references to Defendants herein include acts performed individually, in concert, or by or through directors, officers, owners, members, managers, agents, employees, representatives, affiliates, assignees and successors.

7. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

8. Defendants stipulate and admit that venue is proper in this Court.

ALLEGATIONS

9. Plaintiff alleges that, at all times relevant hereto, Defendant Jason Todack, as President of Defendants KCONE Corporation and American Made Matters Corp, managed and controlled the day to day operations of those businesses.

10. Plaintiff alleges that, at all times relevant hereto, Defendants have acted as "suppliers" in Kansas, as that term is defined by K.S.A. 50-624(l).

11. Plaintiff alleges that, at all times relevant hereto, Defendants have engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. 50-624(c).

12. Plaintiff alleges that, at all times relevant hereto, Defendants solicited Kansas consumers for sales of Kirby vacuum cleaners in a manner that is subject to the requirements for door-to-door sales set out in K.S.A. 50-640.

13. Plaintiff alleges that, at all times relevant hereto, Defendants, while conducting the aforementioned solicitations in Kansas, engaged in unfair and deceptive acts and practices in violation of the Kansas Consumer Protection Act, specifically violating the requirements for door-to-door sales set out in K.S.A. 50-640, which acts and practices include, but are not limited to:

- a. Failure to complete the consumer’s notice of the right to cancel the sale, as set out in K.S.A. 50-640(b)(3); and
- b. Failure to furnish the consumer the completed notice of the right to cancel the sale, as set out in K.S.A. 50-640(b)(2); and
- c. Negotiating, transferring, selling, or assigning a note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the property or services were purchased, in violation of K.S.A. 50-640(b)(8);

14. Those acts set out in paragraph thirteen (13) are unfair and deceptive practices and constitute violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-626.

15. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law as a compromise and settlement of all issues and allegations contained herein for the purpose of avoiding the time, expense, risk and uncertainty associated with litigation.

16. Pursuant to K.S.A. 50-632(b) Defendants are not deemed to admit the alleged violations set forth above.

INJUNCTIVE RELIEF

17. Defendants agree to refrain, and to be permanently enjoined, from conducting and making door-to-door sales, as defined in K.S.A. 50-640, in Kansas.

18. Defendants agree to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division against Defendants.

19. 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.

20. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing the Consent Judgment or within fifteen (15) days after any person assumes such position or responsibilities.

21. Defendants shall require all independent contractors to comply with the terms set forth in this Consent Judgment.

22. Defendants agree that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors.

INVESTIGATIVE FEES AND CIVIL PENALTIES

23. Defendants agree to pay to the Office of the Kansas Attorney General fifteen thousand dollars (\$12,500 civil penalties and \$2,500 investigative fees). Upon receipt of payment

in full, Plaintiff agrees to release and discharge Defendants from all claims Plaintiff could have brought for civil penalties, costs, and/or investigative fees under K.S.A. 50-640(b)(2), (b)(3) and (b)(8) arising out of Defendants' conduct prior to June 1, 2017.

24. Payment shall be made at the time of the filing of this consent judgment in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, marked **CP-16-2391** and delivered to:

Kathryn Carter, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612

OTHER PROVISIONS

25. 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.

26. 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.

27. 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 his jurisdiction.

28. 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 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.

29. Defendants acknowledge receiving notice that so long as this order prohibiting door-to-door sales, as defined in K.S.A. 50-640, remains in place, if Defendant participates, directly or indirectly, in any door-to-door solicitation or sale in the State of Kansas in violation of this order, Defendant may be subject to prosecution pursuant to K.S.A. 21-6423, a level 9 Person Felony.

30. Defendants acknowledge receiving notice that so long as this order prohibiting door-to-door sales, as defined in K.S.A. 50-640, remains in place, if Defendant causes, directs, employs, enables, or assists others in engaging in door-to-door solicitations or sales in the state of Kansas in violation of this Order, Defendant is committing a crime and may be subject to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony.

31. Defendants acknowledge receiving notice that the criminal liability imposed by K.S.A. 21-6423 does not relieve Defendant of any civil liability for violating the terms of this Order or any other judgments and civil sanctions, and liability may be imposed in addition to any authorized criminal penalties.

32. Each of Defendants' representatives signing this Journal Entry of Consent Judgment warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of that Defendant. Defendants further represent that each has had an opportunity to

consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

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. The acts recited herein are declared to be unfair and deceptive acts and practices, pursuant to K.S.A. 50-640(b) and, further, to be violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-626.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are permanently enjoined and expressly prohibited from conducting and making door-to-door sales in Kansas, as the term door-to-door sales is defined in K.S.A. 50-640, and that so long as this order prohibiting door-to-door sales remains in place, if Defendant participates, directly or indirectly, in any door-to-door solicitation or sale in the State of Kansas in violation of this order, Defendant may be subject to prosecution pursuant to K.S.A. 21-6423, a level 9 Person Felony.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants, jointly and severally, and in favor of Plaintiff in the amount of \$15,000.00 and, upon payment in full, Defendants shall be released and discharged from all claims Plaintiff could have brought for civil penalties, costs, and/or investigative fees under K.S.A. 50-640(b)(2), (b)(3) and (b)(8) arising out of Defendants' conduct prior to June 1, 2017.

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.

**THIS ORDER IS EFFECTIVE ON THE DATE AND TIME SHOWN BY THE
ELECTRONIC FILE STAMP.**

Prepared and approved by:

PLAINTIFF:

/s/ Derek Schmidt
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Attorney for Plaintiff

DEFENDANT:



Jason Todack
On his own behalf and as
President on behalf of
American Made Matters Corp. and
KCONE Corporation



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