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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2020-CV-000090



Court: Shawnee County District Court
Case Number: 2020-CV-000090
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Philip Colwell Jr
Type: Order for Default Judgment Against Defendant

SO ORDERED.

A handwritten signature in cursive script that reads "M.E. Christopher".

/s/ Honorable Mary E Christopher, District Judge

Kaley Schrader, #27700
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
PHILIP COLWELL JR, an individual)
d/b/a NOVELTIES BY JR,)
)
Defendant.)

Case No. 2020-CV-000090

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

ORDER FOR DEFAULT JUDGMENT AGAINST DEFENDANT

NOW, on this date, Plaintiff’s Motion for Default Judgment against Defendant Philip Colwell Jr., doing business as Novelties by Jr., and Memorandum in Support (“Motion for Default Judgment”) comes before this Court for consideration. Plaintiff, State of Kansas ex rel. Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Kaley Schrader. Defendant appears not and is in default.

WHEREUPON, after reviewing the Court’s file and Plaintiff’s Motion for Default Judgment, the Court finds the following:

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. This Court has personal and subject matter jurisdiction over this controversy by the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*, specifically K.S.A. § 50-638(a).

4. Venue is proper in the Third Judicial District (Shawnee County), pursuant to K.S.A. § 50-638(b).

5. On January 30, 2020, Plaintiff filed a Petition against Defendant Philip Colwell Jr., doing business as Novelties by Jr.

6. Defendant Philip Colwell Jr. is the owner and operator and exercises exclusive control over Novelties by Jr.

7. Defendant has a principal place of business located at 15145 Highland Drive, McKenzie, Tennessee.

8. Defendant was served with Plaintiff's Petition and Summons by personal service on January 31, 2020 by Special Agent John Anguiano of the Kansas Attorney General's Office pursuant to K.S.A. § 60-205 and K.S.A. § 60-303.

9. Defendant has failed to file an Answer within thirty (30) days after being served with process, as required by K.S.A. § 60-308(a)(3).

10. Plaintiff filed its Motion for Default Judgment on April 3, 2020.

11. Plaintiff's Motion for Default Judgment is predicated on Defendant's failure to file an Answer to the Plaintiff's Petition, which was filed on January 30, 2020.
12. Defendant is not a minor or an incapacitated person.
13. Defendant is in default pursuant to K.S.A. § 60-255.
14. The factual allegations set forth in the Plaintiff's Motion for Default Judgment are adopted by the Court as its findings of fact and conclusions of law and are as follows:
 - a. Defendant Philip Colwell Jr. is the owner and operator and exercises exclusive control over Novelties by Jr.
 - b. At all times relevant hereto, and in the ordinary course of business, the Defendant acted as a "supplier," as that term is defined by K.S.A. § 50-624(1).
 - c. At all times relevant hereto, and in the ordinary course of business, the Defendant made or caused to be made "consumer transactions," as that term is defined by K.S.A. § 50-624(c).
 - d. At all times relevant hereto, the Defendant engaged in door-to-door sales in violation of K.S.A. § 50-640.
 - e. The Defendant knowingly, or with reason to know, entered into consumer transactions and represented to consumers that his property and services were of a particular standard, quality, grade, style, or model when the merchandise offered for sale was counterfeit and not genuine branded merchandise as presented pursuant to K.S.A. § 50-626(b)(1)(D).
 - f. The Defendant knew or had reason to know the sale of counterfeit merchandise deprived the consumer of a material benefit from the transaction pursuant to K.S.A. § 50-627(b)(3).

IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED that Plaintiff's Motion for Default Judgment is granted.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Judgment is hereby entered against Defendant Philip Colwell Jr. in favor of Plaintiff on all Counts of the Petition.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that the actions and practices alleged in Plaintiff's Petition are declared to be deceptive and unconscionable and in violation of the Kansas Consumer Protection Act.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Philip Colwell Jr. and any employees, agents, representatives, affiliates, assignees and successors are permanently enjoined from doing business in the State of Kansas.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Philip Colwell Jr. and any employees, agents, representatives, affiliates, assignees and successors are permanently enjoined from conducting door-to-door sales in the State of Kansas.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Philip Colwell Jr. pay reasonable investigative fees and expenses to Plaintiff, in this case amounting to \$5,812.50.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Philip Colwell Jr. pay a civil penalty in the amount of \$10,000.00 for each violation of the Kansas Consumer Protection Act alleged in the Plaintiff's Petition, pursuant to K.S.A. § 50-636(a), in this case in the aggregate of \$30,000.00.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Philip Colwell Jr. pay all Court Costs and all costs associated with distributing and executing this judgment.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendant Philip Colwell Jr. is hereby notified that he is permanently enjoined and expressly prohibited from conducting and making door-to-door sales, as defined in K.S.A. § 50-640, in Kansas pursuant to the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*, K.S.A. § 21-6423, and pursuant to this Order.

Defendant Philip Colwell Jr. is hereby notified that so long as this Order remains in place, if the Defendant Philip Colwell Jr. participates, directly or indirectly, in any door-to-door sales in the state of Kansas in violation of this Order, Defendant Philip Colwell Jr. may be subject to prosecution pursuant to K.S.A. § 21-6423, a Level 9, Person Felony.

Defendant Philip Colwell Jr. is hereby notified that so long as the Order remains in place, if the Defendant Philip Colwell Jr. causes, directs, employs, enables or assists others in engaging in door-to-door sales in the state of Kansas in violation of this Order Defendant Philip Colwell Jr. is committing a crime and may be subject to prosecution pursuant to K.S.A. § 21-6423, a Level 9, Person Felony.

Defendant Philip Colwell Jr. is hereby notified that the criminal liability imposed by K.S.A. § 21-6423 does not relieve Defendant Philip Colwell Jr. 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.

IT IS SO ORDERED.

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

Respectfully submitted,

/s/ Kaley Schrader
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