

STATE OF KANSAS

1978 ANNUAL REPORT

OFFICE OF THE ATTORNEY GENERAL
Consumer Protection Division



CURT T. SCHNEIDER

ATTORNEY GENERAL
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PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE
KANSAS CONSUMER PROTECTION ACT

January 1, 1979

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STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER
ATTORNEY GENERAL

January 2, 1979

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION (998-3251)

HONORABLE JOHN CARLIN, GOVERNOR
AND MEMBERS OF THE 69th LEGISLATURE

For the fourth and final time, I am pleased to submit my office's annual report on the activities of the Consumer Protection Division for the calendar year 1978. As you will note, more than 4,000 Kansans utilized the Consumer Protection Division.

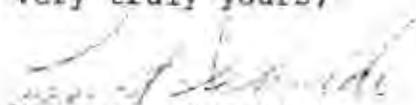
The division's educational program was increased. Representatives from the office delivered more than 250 speeches and presentations to audiences throughout the state of Kansas. The audiences included senior citizen groups, schools, chambers of commerce, and churches.

During 1978, the Consumer Protection Division operated with a staff of four Assistant Attorneys General, four Special Agents, and one intern.

It is my hope that during 1979, the division will continue to grow in its enforcement of the Kansas Consumer Protection Act.

Should further information be desired, please do not hesitate to contact me directly.

Very truly yours,


CURT T. SCHNEIDER
Attorney General

CTS:ts

INTRODUCTION

The year 1978 marked a milestone for the Consumer Protection Division in that it was the division's 15th year of existence. The division has grown many hundreds of times since 1963. For instance, slightly more than 50 Kansans filed consumer-related complaints with the Attorney General's Office. During 1978, the Attorney General and his staff completed a year long series of speaking tours and town hall meetings throughout Kansas to further explain and define the activities of the Consumer Protection Division to Kansas senior citizens. Between March, 1977 and June 1, 1978, more than 10,000 senior citizens attended consumer protection meetings sponsored by the Attorney General's Office. Already, we feel that the meetings are paying huge dividends and that Kansans now know that they have an agency to air their grievances. The division continued its distribution of a popular book entitled "Consumer Protection in Kansas". More than 10,000 Kansans requested and received this booklet during 1978. Also, the division continued its circulation of a popular thirty-minute film entitled "On Guard" which was shown to more than 150 audiences throughout Kansas.

In May, 1978, the Consumer Protection Division concluded one of its larger cases against the Family Heritage Society of Windom, Kansas. In 1974 and 1975, the organization received orders for more than 200 historical books in Pratt County.

Before completing the book, the company ran out of funds. The Attorney General's Office assisted all parties involved in obtaining performance on a bond and, in turn, the funds were raised to complete the book.

It was estimated that as many as 25,000 Kansans contacted the Consumer Protection Division by telephone during the year of 1978 to request assistance and information about consumer protection.

It is our sincere hope that 1979 will reflect even greater results for the people of Kansas through their Consumer Protection Division. We continue to feel that much has been accomplished and even more remains to be done.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

JAMES W. BERRY

This contempt proceeding was brought in Johnson County District Court against a house mover. In 1970, defendant was permanently enjoined from moving houses in Kansas. Defendant contracted for a move in violation of the Court's order and was found guilty of contempt. Defendant was committed to jail for a brief period of time and released to enable him to move the consumer's house, this being the only way to provide the consumer with adequate relief.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

RAY ROBINSON

This action was brought in the U. S. District Court for the District of Kansas. A state action had been filed in 1974; however, defendant Ray Robinson fled and was not located until January, 1978. Robinson was brought from California and proceeded against for deceptive acts committed by him in doing business as Air Jayhawk Tours and in soliciting monies from Kansas citizens in connection therewith. Judgment by default was granted against Robinson. In addition to being enjoined from doing business in Kansas as a travel agency, tour club or offering air transportation to the public, defendant is to pay \$13,300.00 to the Office of the Attorney General. The monies for restitution will be distributed by this office. The above judgment has not been satisfied. Defendant was proceeded against criminally for actions arising out of these same circumstances. After being granted probation, defendant disappeared. In late December, this office was advised defendant surfaced in Missouri. Attempts will be made to satisfy the judgment from any assets he may have available.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

CONTINENTAL KENNEL
ASSOCIATION, LTD., INTER-
NATIONAL CAT BREEDERS
ASSOCIATION, BANKERS FINANCIAL
SERVICES, CALVIN CHAUSSEE, and
A. M. CHAUSSEE

In May, 1978, a consent judgment was filed and approved by the Johnson County Distirct Court. The case involved alleged misrepresentations by defendants in connection with selling and offering to sell memberships in defendant corporations. Plaintiff alleged defendant engaged in deceptive and unconscionable acts in connection with the "Advice and Consultation Agreement", said memberships being advertised as enabling one to become a professional cat or dog breeder. The consent judgment called for defendant to cease doing business in Kansas by offering or selling memberships in Continental Kennel Association or International Cat Breeders Association. In addition, defendants are enjoined from engaging in any deceptive or unconscionable practice in violation of the Consumer Protection Act. Restitution and costs in the amount of \$4,750.00 have been paid.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

JALCO, E.G. ENTERPRISE, and
MICHAEL LAGARDA

A petition was filed in Shawnee County District Court alleging a violation of the Consumer Protection Act. E.G. Enterprise, an Ohio company, allegedly made false representations to induce the complainant to sell its products of tire sealant and pumps. The complainant contended the merchandise was unsatisfactory and defendant failed to perform as promised. The action was dismissed without prejudice after defendant refunded the purchase price of \$760.00.

STATE OF KANSAS, ex rel.,
DENNIS MOORE and
CURT T. SCHNEIDER

vs

PERFORMANCE ENTERPRISES, INC.

This action, in which the Attorney General intervened, was filed in 1976 by the Johnson County District Attorney. Allegations against the company and several individuals involved misrepresentations in the sale of vending machines and distributorships. The company was adjudicated and bankrupt in 1977.

The lawsuit has been settled by a consent judgment which provides for an injunction against the company and its president and a distribution of escrow account funds. The escrow account funds were established by the Court's temporary restraining order at the beginning of the litigation and will be distributed between the trustee in bankruptcy, who would otherwise be entitled to all the company's assets, and Kansas consumers who purchased vending machines.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

AMERICAN COUNCIL OF THE BLIND

This action under the Charitable Solicitations Act seeks to enjoin operation of a thrift store until defendants register as charitable organizations and fund raisers. The action has proceeded slowly due to changes in defendant's counsel. The action may be moot due to a possible reorganization of the defendant's operations.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

PHILADELPHIA AND NATIONAL
TRADE, INC.

A petition was filed on November 15, 1977, for civil penalties, restitution and other relief. The defendant sells a business opportunity involving the operation of panty hose vending machines. The lawsuit alleges that in selling the distributorships the company violated the Consumer Protection Act by engaging in "bait and switch" tactics and by misrepresenting that buyers will receive an exclusive territory for operation of the machines so that they would vend a specific number of sales per day. The suit also alleges that the sales transactions are unconscionable as being excessively one-sided and of no material benefit to the consumer.

Service of process and attached interrogatories were served. Defendant answered petition but has failed to answer the interrogatories. Kansas counsel for the defendant has since withdrawn from the case and a motion to compel discovery is pending.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER vs NATIONAL MARKETING
SERVICES, INC., ET AL.

A petition was filed on May 18, 1978, for civil penalties, restitution and other relief. The defendants sell a business opportunity involving the operation of display racks that sell toys. Defendants had also failed to respond to a subpoena issued by the Attorney General's Office concerning these distributorships. The lawsuit alleges that in selling the distributorships the company violated the Consumer Protection Act by engaging in deceptive business practices that misrepresent to the buyers that they will receive an exclusive territory which would vend a specific number of sales per day. The suit also alleges that the sales transactions are unconscionable as being excessively one-sided and of inferior material benefit to the consumer.

A motion to dismiss Michael Kaplan for lack of jurisdiction was heard on July 24, 1978. Said motion was denied. Defendants have filed further motions to dismiss for lack of jurisdiction. Said motions have not been set for hearing.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER vs. WORLD CHANGERS INTERNATIONAL

A petition was filed on May 19, 1978, for civil penalties, restitution and other equitable relief. The defendant is a charitable organization that solicits contributions through national publications for the funding of various programs that provide services to needy children, mostly Indian.

The petition alleges that the defendant fails to spend the mandatory percentage, as established by statute, on services to the children. Such is a violation of the Charitable Solicitations Act. The petition further alleges that the defendant fails to disclose the actual nature of how the contributions are spent to the contributors. Such is a violation of the Consumer Protection Act.

Kansas counsel for the defendant has met with William Griffin, Deputy Attorney General, and they agreed that defendant would supply to the plaintiff a full disclosure of defendant's spending for the past several years. To date, said disclosure has not been made.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER vs C&J MOTORS, INC., DAVID
STUDNA, JOE STUDNA and
CINDY STUDNA

A petition was filed by the State of Kansas in the United States District Court for the District of Kansas on July 1, 1977, alleging

the defendant David Studna violated the Federal Motor Vehicle Cost Information and Savings Act, in that he did reset the odometer on a 1975 Nova Chevrolet to indicate less mileage than the actual mileage on the vehicle. The State requested under the federal law that the defendant pay to the ultimate purchaser of the 1975 Nova Chevrolet damages in the amount prescribed by the Court and pay civil penalties to the State, and that his dealer's license be permanently revoked in the State of Kansas. Mr. Studna had a wholesale dealer's license and he had also been found guilty of rolling odometers under the same federal law in Nebraska by Chief Judge Erbaum in that jurisdiction. Based on the Nebraska case, the Kansas Motor Vehicle Department revoked Mr. Studna's dealer's license. That revocation was appealed to the Shawnee County District Court, and upheld. Subsequently, Mr. Studna turned in his dealer's license and plates. The State is currently attempting to set a date for pretrial of the Federal Court case.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

RICHARD SMITH, W. C. ADAMS,
d/b/a INTERNATIONAL MAIL ORDER
COMPANY and INTERNATIONAL SEWING
MACHINE COMPANY, IMOCO, INC.,
a Texas Corporation; DON R. BALL,
president of IMOCO, INC.,
TOMMY RICHARDSON, employee of
IMOCO, INC.

A petition requesting a permanent injunction and recovery of actual damages and civil penalties was filed on December 30, 1976, in Shawnee County District Court. Defendants had run "contests" in which all entries but the name drawn were "second place winners" who received a \$200.00 check toward the purchase of a \$299.95 sewing machine. In fact, the retail value of the machine was not \$299.95 and the sole purpose of the contest was to obtain names of individuals who were all contacted as "second place winners". Defendants also sent brochures and letters to Kansas residents stating they had been computer selected to participate in a test being conducted by the company. Enclosed was a \$200.00 check toward the purchase of a \$269.95 cookware set. As with the sewing machines, the stated retail value of the cookware was grossly inflated so that the enclosed check was of no intrinsic value.

The petition has been amended to include as defendants IMOCO, INC., and Don R. Ball, who is president of IMOCO, INC. Don R. Ball is the former business manager for W. C. Adams. This corporation, which was incorporated in Texas in February of 1977, is using the same brochure material as International Mail Order with only a name change and selling the same cookware; therefore, they were added to the suit because their method of operation is the same and the misrepresentation is the same.

The State of New Mexico obtained a preliminary injunction against W. C. Adams, which was probably the reason that his mailings into Kansas ceased for a considerable time. Therefore, the State dismissed its Motion For Preliminary Injunction in exchange for an agreement by

Mr. Adams not to mail further advertising into the State of Kansas pending trial on the merits. Depositions of Mr. Adams and Don R. Ball were taken in Dallas in June, 1978. Since that time, no new advertising has been received in Kansas from Mr. Adams as far as we know. We have been successful in negotiating a number of changes in the advertising of IMOCO, INC.

Mr. Adams was killed in an accident in November. We are in the process of obtaining a dismissal of the case against Mr. Adams and Mr. Smith, in exchange for the agreement of Mr. Smith not to continue Mr. Adams' business in this state, and the agreement of defense counsel to assist in filing any remaining unsatisfied complaints as claims in the probate of Mr. Adams' estate. We are currently negotiating additional changes in the advertising of IMOCO, INC. in the hope of reaching a consent decree with IMOCO and Don R. Ball around the first of January, 1979.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

WILLIAM E. JOHNSON

This is a case of fraudulent misrepresentation in the sale of land. Defendant made representations to potential purchasers regarding the number of houses that could be built on the land, access to the land, and city improvements to be made, all of which turned out to be false. When the buyers discovered the misrepresentations they refused to sign the contract but defendant would not return their \$500.00 earnest money. The State sued for the earnest money and a \$2,000.00 civil penalty. The trial was held in September and resulted in a decision for the defendant. The State filed Notice of Appeal in this matter on the theory that the Judge, in his decision, was applying an incorrect burden of proof. However, the transcript of the decision has been received and it appears that the facts of this case would not warrant further litigation of the Appeal. Therefore, the State has filed a Motion To Dismiss The Appeal.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

BROWNING SEED, INC.,
JEANE BROWNING, NEW MEXICO
SEEDS, INC., and KENNETH
YOUNG

The case was filed in the U. S. District Court in Topeka. This office filed suit on the basis of misrepresentation in the sale of barley seed to a wholesale seed distributor who then distributed the seed to individual farmers who were damaged. The seed sold was Will barley seed and Tambar barley seed, both of which were represented to be spring barley seed, when in actuality they are winter barley seed. The defendants answered and denied the misrepresentation and denied that farmers were damaged by use of their seed.

Several of the complainants brought private lawsuits in Western Kansas against the co-ops from which they had purchased, and Stafford Seed Company who sold the seed to the co-ops. Since a major problem

with our Federal Court suit was proving that the misrepresentations alleged to have been made by the seed companies had been passed on to the consumers, it was determined that this matter would best be litigated in the context of the private lawsuits, where legal theories other than the Consumer Protection Act could be employed. Therefore, a voluntary dismissal was obtained by the State, and the defendants in the private lawsuits are currently in the process of adding Browning Seed and New Mexico Seeds as third party defendants in those suits.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER vs COCKRELL MUSIC CITY, INC.

The suit against Cockrell Music City, Inc. was filed on December 2, 1977, and a copy of the Summons and Petition were served on December 3, 1977. The Petition alleges that the defendant sold an organ with a mis-stated suggested retail price and/or list price to the complainant. Also, the defendant discussed the purchase price and consummated the contract purchase at a location other than defendant's regular place of business without a three-day cancellation clause in the contract.

The prayer requests the contract be voided and all payments made under the security interest agreement be repaid to the complainant and that complainant be reimbursed \$4,965.00, the trade-in or market value of the complainant's organ.

The suit is now set for pretrial.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER vs SKAGGS MOTORS, INC.

The suit against Skaggs Motors, Inc. was filed on June 19, 1978, and a copy of the Summons and Petition were served on June 20, 1978. The Petition alleges that the defendant advertised a diesel truck with 50,000 miles with a major in-frame overhaul; however, defendant failed to disclose to the consumer that they knew that the truck, subsequent to the major in-frame overhaul, required additional repairs. The repairs which were made were made only to keep the truck running and defendant utilized salvage parts in lieu of new or rebuilt parts. The mechanic who worked on the truck advised defendant that the truck was in need of repair and should be sold only over the auction block in order that a warranty not be given on said truck.

The prayer requests that the contract be rescinded and for damages in the amount of approximately \$9,000.00 and a civil penalty.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER vs MARION ADAMS, RICHARD
HAITBRINK and THE SPORTS
CAR SHOPPE, LTD.

A Petition was filed against the defendants on March 30, 1977. It was alleged that defendants sold the car as one with only minor damage. Also, defendants are accused of failing to have the automobile

inspected pursuant to K.S.A. 8-1854 and refusing to lawfully assign the title of the car to the consumer as required by K.S.A. 8-135(c)(7).

This case went to default judgment. An Order of the Court allowed all damages, including a civil penalty, plus a permanent injunction from conducting business in the State of Kansas in violation of the Kansas Consumer Protection Act. The case is now ready for pre-trial.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

THOMAS ALEX SHANKS and
SHANKS IMPORTS AND PARTS, INC.

A petition for Injunction, Restitution and Civil Penalties was filed on December 3, 1976. Defendants were served on February 14, 1977. Defendants were accused of fraudulently representing they were qualified to repair foreign automobiles. It was also alleged they charged consumers for repairs not performed and parts not replaced. A default judgment was entered against defendants on November 23, 1977. That judgment has not been satisfied.

On December 15, 1977, the Attorney General's Office intervened in an action against defendants similar to the one above. An Order of the Court allowed all damages, including a civil penalty, plus a permanent injunction from conducting business in the State of Kansas in violation of the Kansas Consumer Protection Act.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

FIRESTONE PHOTOGRAPHS, INC.
DANIEL FIRESTONE and
INTERNATIONAL PHOTO SUPPLY,
INC.

In February, 1976, the Petition was filed in Shawnee County District Court. It alleged that defendant Firestone Photographs committed fraud and misrepresentation to Kansas citizens who purchased distributorships.

Firestone Photographs refused to sign a consent decree worked out.

On November 9, 1977, an amended Petition was filed adding International Photo Supply, Inc. as a defendant. It is alleged that International Photo Supply, Inc. is an alter-ego of the earlier defendants and has engaged in the same and/or similar practices as the other defendants.

It has been learned that Firestone Photographs, Inc. is insolvent and any recovery of monies is doubtful. There is a high probability that this suit will be dismissed without prejudice.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

SPIRIT OF AMERICA, INC.
and LOWELL SMITH

A Petition was filed in Wyandotte County District Court on November 9, 1976, alleging that in selling an ice cream parlor franchise defendants represented that the buyers would receive supervision and training, a 100% turnkey operation, financing, discounts on dairy products from wholesalers, and the ability to purchase

products on credit from certain companies. Defendants also misrepresented the number of retail franchise stores they had in operation. Certain inventory and equipment that the purchasers paid for has never been delivered by defendants. The Petition asks for monetary damages, civil penalties, investigation expenses and an injunction permanently restraining defendants from making the described misrepresentations.

This suit was dismissed without prejudice in order to allow the complainants to file suit utilizing theories outside the provisions of the Kansas Consumer Protection Act.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER vs FASHION WORLD, INC. and
MARTIN H. KELLY

On May 18, 1977, a lawsuit was filed against the Utah defendants alleging they engaged in deceptive and unconscionable acts in the course of selling exclusive territories and distributorships for womens' clothing to Kansas residents.

It has been learned that Fashion World, Inc. is insolvent and there is a very high probability no monies will ever be recovered due to the insolvency.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER vs MIDWAY MOTOR COMPANY, INC.

This lawsuit was filed on December 12, 1977, and alleged defendant attempted to sell an automobile with a 301 C.I.D. engine as one with a 350 C.I.D. engine. After the consumer placed a \$500.00 deposit on the car she learned the exact engine size. After defendant refused to return the \$500.00 the lawsuit was filed seeking restitution and civil penalties.

This case was dismissed with prejudice, as the defendant settled the case on terms satisfactory to the complainant, which was a return of the down payment of \$500.00.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER vs RALPH GARCIA, d/b/a
GARCIA'S AUTORAMA

This lawsuit was filed on September 8, 1978, alleging that defendant advertised a vehicle as being a 1969 Chevrolet Z-28 Camero. A Z-28 Camero commands a higher market price than a normal Camero. The vehicle in question was not a Z-28 Camero but was made to appear as a Z-28 Camero by some unknown party, and the defendant knew or had reason to know said vehicle was not a Z-28 Camero. The odometer reading for the pseudo Z-28 Camero was also incorrect. The Petition requests a refund of all monies, \$2,750.00, rescision of the contract and other provable damages.

The defendant has not been served and is attempting to elude service of process.

STATE OF KANSAS, ex rel.,
CURT T. SCHNEIDER

vs

AMERICAN TRUST COMPANY

This lawsuit was filed on June 21, 1978. Defendant sold complainant a retirement plan which would be absolutely of no benefit to the complainant due to his age and health. Defendant, in selling the retirement plan door-to-door, failed to place a three-day cancellation clause in the contract which is in violation of the Kansas Consumer Protection Act.

The Petition requests rescission of the contract damages in the amount of \$500.00, civil penalties for each violation of the Kansas Consumer Protection Act, and a permanent injunction against the defendant to prohibit them from any further violations of the Kansas Consumer Protection Act.

Service of process has been impossible due to the fact the defendant was found to be insolvent by the Colorado Banking Commission, and at the same time, defendant filed for voluntary bankruptcy in the State of Texas. Therefore, there is a question as to which Court would have jurisdiction in order to appoint a receiver for service of process. As soon as the jurisdiction question has been resolved, the Summons and Petition will be served on defendant.

STATISTICS FOR JANUARY 1, 1978, THROUGH DECEMBER 31, 1978

| | |
|--------------------------------------|--------------|
| CASES RECEIVED | 4,320 |
| CASES CLOSED | 4,621 |
| MONEY RETURNED TO KANSAS CONSUMERS . | \$881,122.21 |

CLOSING CODE

| | |
|---|-------|
| 1. Inquiry or information only | 1,203 |
| 2. Referred to private attorney | 158 |
| 3. Potential violator out of business | 47 |
| 4. Merchandise repaired, replaced or delivered . . | 1,958 |
| 5. Referred to County Attorney | 60 |
| 6. Referred to other agency | 440 |
| 7. Referred to Small Claims Court | 58 |
| 8. No Jurisdiction | 318 |
| 9. Unable to locate violator | 60 |
| 10. No basis | 233 |
| 11. Unable to satisfy complainant - further action not warranted | 60 |
| 12. Voluntary assurance of discontinuance | 8 |
| 13. Court cases closed | 18 |

CONCLUSION

During the past four years, the Consumer Protection Division has investigated more than 17,000 complaints on behalf of consumers and businesses from all of our state's 105 counties. During the same period of time, the division has recovered and returned to Kansans approximately 2.6 million dollars. It is obvious that Kansans are receiving a definite benefit from their tax dollars as evidenced by this figure. The Consumer Protection Division is most certainly fiscally responsible and it is my sincere hope that future Attorneys General will continue to give this division high priority.

Those who desire additional information on the Consumer Protection Division should direct their inquiries to the Office of the Attorney General, Kansas Judicial Center, Topeka, Kansas 66612.