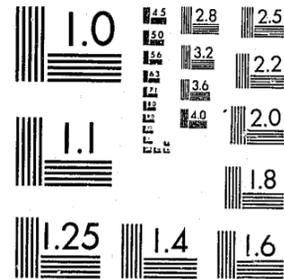


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CONSUMER PROTECTION 1979



Annual Report of the Consumer Protection Division
OFFICE OF ATTORNEY GENERAL
ROBERT T. STEPHAN
State of Kansas

Submitted this January 1, 1980, pursuant to K.S.A. 50-628.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 2, 1980

NCJRS

AUG 10 1980

ACQUISITIONS

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

The Honorable John Carlin
Governor
and
Members of the Kansas Legislature

I am pleased to report to you after this, my first year as Kansas Attorney General, of continued success of the Attorney General's Consumer Protection Division. I suppose the most salient point made in the report which follows is that for the first time in the history of the division, its recoveries and savings to Kansas consumers total over \$1 million.

Certainly, I believe this milestone is a tribute to those in the Consumer Protection Division who toil daily with the problems of Kansas consumers who turn to this office for assistance. It also indicates the deterioration our economic times have caused in the marketplace.

More and more shortcuts seem to be coming to our attention in the manufacture of consumer goods. Energy-related schemes are proliferating, as are new twists on the old con artist get-rich-quick schemes. The most rapidly increasing area of complaints handled by this office involves collection agencies and related credit problems, directly attributable to our economic times.

To combat these ills of the marketplace, Kansas consumers need an accessible and responsive Consumer Protection Division. I believe this report demonstrates this office is meeting that need.

If my staff or I can be of service to you or your constituents, or if we can answer any questions you may have regarding this report, please feel free to contact us.

Very truly yours,

Robert T. Stephan
Attorney General

INTRODUCTION

"Kansas consumers have been provided with an excellent Consumer Protection Act by the state legislature. This act gives the state and consumer an improved opportunity to combat the deceptive activities of unscrupulous individuals holding themselves out as reputable businessmen and women."

Attorney General
Robert T. Stephan

Under the direction of Attorney General Robert T. Stephan, consumer protection in Kansas celebrated its 16th anniversary in 1979, and for the first time the Consumer Protection Division exceeded \$1 million in recoveries and savings to Kansas consumers. During the year, the Consumer Protection Division made substantial gains in making the office more accessible and receptive to the general public.

Kansans are welcome to file complaints or request information by mail, phone or in person. The office, in increasing its efforts to meet the needs of Kansans, is recognizing the unique problems of the deaf population of Kansas by installing a "TTY machine," a device used by the deaf to communicate by telephone.

The distribution of information and education remain high priorities of the division as preventive measures. In 1979 over 100 lectures receiving excellent responses were delivered by division personnel to public schools, colleges, civic organizations, senior citizen groups and others. This means of personal communication with Kansas citizens exposed over 10,000 Kansans to consumer protection, preventive measures and the duties and services of the Consumer Protection Division. Two new films have proven both popular and educational. Both films, "It's New, It's Neat, It's Obsolete" and "Contract Law," were added to the film "On Guard" to create a collection of diversified educational tools for a variety of age groups.

The Consumer Protection Division is in the process of revising the "Consumer Protection in Kansas" booklet. The need for this revision comes as old schemes become outdated and are no longer used by "con men." The new booklet will bring up-to-date information regarding new schemes which have been created in light of double digit inflation, soaring energy costs and the age-old desire to "get rich quick."

The Attorney General's Consumer Protection Division is reaching hundreds of thousands of Kansans weekly with the new "Consumer Corner" column and

cartoon, of which over 100 Kansas newspapers and publications have requested receipt. The column receives numerous comments each week and has brought to the public's attention many consumer issues normally not addressed by other means.

Solar energy and wind power companies found new markets and almost ideal settings in Kansas during 1979. To meet the new increasing need for consumer protection in these highly technical fields, a member of the consumer division was briefed by the Federal Department of Energy's Solar Energy Research Institute with other consumer representatives from all 50 states. As a result of the week-long session, the division cooperates directly with the Kansas Department of Energy and has formed a network of communication with industry, governmental agencies, and consumer groups involved in forms of solar energy in a 12-state area. Because of this, Kansas consumers may be assured better energy systems and a less likely event of fraudulent companies dealing in this market.

The Attorney General's Consumer Protection Division has fielded an estimate of over 34,000 calls during 1979. These calls from Kansas consumers and businesses were for information or assistance. Assistance was requested in over 34 different subject areas, the major areas being automobiles, mail orders and collection agencies.

The year 1979 has been a busy one for the Consumer Protection Division and 1980 promises to be equally as active. Much has been done the past year to improve the division's responsiveness to the public. Much more remains to be done. With legislative approval, we hope to install a toll-free inward WATS line in 1980 to allow consumers across the state to seek assistance, even when for them a phone call to Topeka is a major expenditure. It is our desire to maintain and improve our day-to-day investigatory procedures, as well as pursuing the long-term goal of assuring Kansans of a fair marketplace. Even more than in 1979, we hope to take consumer protection on the road in Kansas, devoting more time to education and prevention of consumer deception in the state.

STATISTICS FOR 1979

CASES RECEIVED:	4,189
CASES CLOSED:	4,524
MONEY RETURNED TO KANSAS CONSUMERS:	\$1,144,125.71

CASES CLOSED IN 1979

<u>CLOSING CODE</u>	<u># CLOSED</u>	<u>% OF TOTAL</u>
1- Inquiry or Information Only	1,221	29.32
2- Referred to Private Attorney	97	2.28
3- Potential Violator out of Business	56	1.31
4- Merchandise Repaired, Replaced or Delivered	1,621	39.09
5- Referred to County or District Atty.	171	3.95
6- Referred to Other Agency	372	8.66
7- Referred to Small Claims Court	38	0.88
8- No Jurisdiction	237	5.60
9- Unable to Locate Violator	75	1.70
10- No Basis	170	4.02
11- Unable to Satisfy Complainant Further Action not Warranted	26	0.58
12- Voluntary Assurance of Discontinuance	56	1.22
13- Court Cases Closed	49	1.39
TOTAL	4,189	100.00

OPENING CODES

<u>CODE</u>	<u># OPENED</u>	<u>% OF TOTAL</u>
1- Magazine	89	2.12
2- Home Improvement	152	3.63
3- Furniture & Appliances	184	4.39
4- Jewelry, Watches	29	0.69
5- Cameras, Photography & Calculators	50	1.19
9- Discount Buying	19	0.45
10- House Movers & Storage	30	0.72
11- Trade Schools	13	0.31
13- Automobiles	714	17.04
14- Health Clubs	15	0.36
15- Building Construction	36	0.86
18- Lotteries	23	0.55
20- Business	80	1.91
21- Credit Cards	39	0.93
22- Consumer Credit & Truth in Lending	38	0.91
23- Hearing Aids & Optical Equipment	18	0.43
24- Pesticides	41	0.98
31- False Advertising	40	0.95
32- Collection Agencies	171	4.63
33- Real Estate	115	2.75
37- Charitable Solicitation	5	0.12
46- Landlord-Tenant	75	1.79

47- Mobile Homes	80	1.91
48- Animals	39	0.93
53- Miscellaneous	964	23.01
56- Medical Problems	22	0.53
63- Inquiries	480	11.46
66- Door-to-Door	22	0.53
67- Mail Orders	482	11.51
68- False Billing	54	1.29
69- Boats, Aircraft, Bicycles	20	0.48
70- Nursing Homes	14	0.33
71- Energy Related	31	0.74
72- Travel Agencies	<u>5</u>	<u>0.12</u>
TOTAL	4,189	100.00

SUMMARY OF 1979 LAWSUITS

STATE, ex rel.,
v.
TOM MUNDAY, d/b/a TOM'S SALES AND SERVICE

A petition was filed in Dickinson County District Court during February, 1979. The complaint alleged false representations concerning a sewing machine. The action was concluded by agreement to a consent judgment.

STATE, ex rel.,
v.
HEART DISEASE RESEARCH FOUNDATION

This is an action brought against an alleged charitable organization. It seeks to enjoin the organization from soliciting contributions in the state of Kansas until it has properly registered and complied with our Charitable Solicitations Act. We have not been successful in obtaining service of the defendant; however, in mid-December we obtained a third address where service will be attempted.

STATE, ex rel.,
v.
AMERICAN TRUST COMPANY

This lawsuit was filed in June, 1978. The defendant sold a retirement plan to a consumer for \$650, said plan providing the consumer with no benefit due to his age, annual income and health. The relief requested included rescission of the contract, restitution, civil penalty and injunction.

Service of process was not made on defendant in June because the offices had been vacated. In August, 1978, defendant filed a Chapter XI petition in Texas seeking relief pursuant to the Bankruptcy Act. These proceedings were transferred to Colorado in November of 1978.

After consulting with officials in Colorado, a decision was made to dismiss this lawsuit. The bankruptcy rules operate in such a way as to preclude an aggrieved party from commencing or continuing a separate action once the petition in bankruptcy has been filed. The consumer forwarded a Proof of Claim to the bankruptcy court for consideration and payment.

STATE, ex rel.,
v.
RAY ROBINSON

An action had been filed against Robinson for acts committed by him while doing business as Air Jayhawk Tours. Defendant solicited moneys but provided nothing. A judgment of \$13,300 was obtained in July, 1978. Defendant was provided an opportunity to become employed and pay this obligation as an alternative to being incarcerated, said incarceration resulting from related criminal activity. However, defendant disappeared once probation was granted. He surfaced in Missouri and during March, 1979, was returned to Kansas. Defendant is currently serving a sentence at Kansas State Penitentiary.

STATE, ex rel.,
v.
AMERICAN COUNCIL OF THE BLIND, INC.;
ARLISS HENDERSON MANAGEMENT COMPANY, INC.

This action was brought under the Charitable Solicitations Act and seeks to enjoin the charitable organization, American Council of the Blind, from soliciting contributions in Kansas until it fully complies with state law, including registration with the Secretary of State.

Plaintiff filed a motion for summary judgment during early 1979; however, defendant opposed the motion and is attacking the constitutionality of the charitable solicitations statutes. By August the procedural questions had been dealt with, but a major problem was left to be contended with. American Council of the Blind has established a separately incorporated organization to acquire and operate its thrift stores. The new corporation is not a party to this action. Plaintiff has moved for leave to amend and supplement its petition. Unless the new corporation can be brought before the court, a full determination cannot be made and our action probably will be dismissed. Should this happen, a different lawsuit could be filed.

STATE, ex rel.,
v.
COCKRELL MUSIC CITY

A lawsuit was filed in Crawford County District Court during December, 1977. The petition alleged defendant made misrepresentations concerning the price of an organ and caused the consumer to suffer damages. The corporation had ceased doing business in Kansas sometime before mid-1978 because of financial troubles, according to the corporate spokesman. Thus, during 1979, the case was concluded with judgment in favor of the consumer for \$2,645. The writ of execution was returned showing no goods found and the judgment remains unsatisfied.

STATE, ex rel.,
v.
COLUMBIA RESEARCH CORPORATION

This action was filed against an Illinois corporation. The defendant sent solicitations offering a certificate purportedly entitling consumers to "vacations" in Nevada, Florida or California and solicited a charge of \$15.95 for each vacation package. The petition alleged the company misrepresented the vacation packages and benefits and the company engaged in deceptive acts in connection with the solicitation.

In August a consent decree was entered into with Columbia Research Corporation. The consent decree specifies numerous representations and statements Columbia Research Corporation is either prohibited from making or required to make in order that the solicitation not be deceptive. Also, the refund policy is revised. Those Kansans entitled to a refund were to submit their claims to this office by December 31, 1979. Refunds are to be mailed within 45 days.

STATE, ex rel.,
v.
CARLGREN PIANO AND ORGAN CO., INC.

A petition was filed against a Nebraska corporation engaged in the business of piano and organ sales. The primary allegation was that defendant sold musical instruments to residents of Kansas without complying with the provisions of the Consumer Protection Act relative to door-to-door sales. A consent judgment agreed to state, defendant shall refrain from making door-to-door sales in violation of K.S.A. 50-640. The company also paid \$677.75 representing restitution and other costs.

STATE, ex rel.,
v.
INVESTMENT SERVICES INTERNATIONAL, INC.
BRAD KNEIDL; RAYMOND MORRISSEY; SEBBY AMARA

A petition was filed against Investment Services International, a Connecticut corporation, and three named individuals. Defendants sold a business opportunity involving the operation of jewelry display cases. False representations were made concerning guaranteed income, established rental accounts, average weekly sales. A judgment was entered against defendants providing an injunction, cancellation of contracts, restitution totaling \$18,070 and civil penalties totaling \$10,000.

The corporate defendant closed its doors, having no assets, and the primary individual behind Investment Services International, Kneidl, absconded. He was

subsequently located and returned to Connecticut to be proceeded against by the federal authorities on charges arising out of transactions like those which were the subject of our action.

STATE, ex rel.,
v.
PALM RESTAURANT, INC., d/b/a
PALM MARKETING SERVICES; FRANK MASSE; MARY MASSE

On February 23, 1979, a petition was filed alleging Palm Marketing Services violated the Act in its solicitation, advertising and sale of jewelry display cases. The defendant sold the merchandise, case, and services for \$795 each by representing purchasers could expect to gross an extraordinary amount from their accounts, that weekly sales would average 20 per display, and the seller guaranteed each purchaser would gross an amount equal to the sum originally spent plus 10 percent within one year. A consent judgment entered permanently enjoined defendants from the advertisement or sale of any type of dealership, distributorship or franchise in Kansas and provided restitution of \$800 to the consumer.

STATE, ex rel.,
v.
DARRELL DEE JOHNSTON,
d/b/a DEE'S TOY KENNEL

Defendant operated a dog business in Johnson County. A consent judgment was entered into whereby defendant agreed to refrain from making false representations concerning the age, health, medical history, or AKC registration status of a dog. Payment of \$679.30, which included restitution, was also made.

STATE, ex rel.,
v.
LORSAN, INCORPORATED

Defendant sold vending machines and distributorships for cigarettes. A subpoena was issued when defendant began operating out of a local motel, as this office had been alerted to the business practices of defendant and desired to collect information and investigate the probability of consumer deception. Defendant failed to comply with the subpoena. A petition was filed and, after proper service, judgment was granted for plaintiff. The defendant is enjoined from the sale or advertisement of any property or services in Kansas until the subpoena is complied with.

STATE, ex rel.,
v.
PAT MULLIN, d/b/a
MULLIN EXTERIOR DESIGNING

An action was filed against defendant alleging deception in connection with a contract to furnish and install a patio cover. The petition alleged defendant guaranteed the roof section would not leak, but when he was notified of a problem shortly after installation, he refused to comply with the guarantee, correct the problem, or refund the contract price. Restitution of \$680.51, as well as a civil penalty, is requested. We have been unsuccessful in our attempts to serve defendant, but are continuing our efforts.

STATE, ex rel.,
v.
DIVERSIFIED VENTURES, INC.;
OWEN MALICOAT

During March, 1979, an action was filed against the defendant who sold a business opportunity involving the operation of jewelry displays and racks. The corporation provided a buy-back agreement designated Repurchase Agreement. The petition alleged representations made in connection with the sales constituted deceptive acts and practices.

Subsequent to the commencement of our action, we were advised that James Lancer, a/k/a James Marsh, was involved with the corporation. A conference was held with the Office of the Securities Commissioner and a determination made that the transactions which were the subject of our action fell under the jurisdiction of the Kansas Securities Act. Our action was dismissed because of limitations imposed by statutory definitions and the matter pursued by the Securities Commissioner.

STATE, ex rel.,
v.
JAMES L. MARSH, a/k/a JAMES LANCER

In June, 1979, proceedings were commenced against Marsh for indirect civil contempt. It was alleged that while under an injunction which prohibited Marsh from engaging in the business of selling any type of dealership, distributorship, or franchise in the state of Kansas, he had become involved with Diversified Ventures, Inc. and violated the court's order. Defendant did not appear at the hearing because he was incarcerated. Defendant was found guilty of the offense of security fraud and sentenced. At this time, defendant is in Colorado serving time for a conviction of a federal offense and a state offense.

STATE, ex rel.,
v.
FRAGRANCES UNLIMITED, INC.;
THOMAS M. HIGGS

Defendant entered into a consumer transaction with two Kansans whereby an inventory and services were sold and the purchaser assembled and packaged air fresheners to be resold by the seller and distributed. The petition alleged the defendant seller engaged in deceptive and unconscionable acts in connection with this transaction. The lawsuit seeks an injunction, damages of \$4,700, and civil penalties. Defendants have not yet been served.

STATE, ex rel.,
v.
JACK STRUYK, d/b/a/ STRUYK ENTERPRISES

A petition was filed in May, 1979, seeking to enjoin defendant from selling or advertising any property or service in Kansas until defendant complies with a subpoena duly issued. The subpoena was prompted by several inquiries and complaints received from Kansas consumers experiencing difficulty with receiving hog confinement buildings contracted and partially paid for. Defendant could not be found to be served with the petition and authorities in Nebraska advise defendant's whereabouts are unknown. However, defendant has ceased doing business in Kansas.

STATE, ex rel.,
v.
INTERSTATE BUSINESS MARKETING, INC.;
HUFF & SON ASSOCIATES; JOHN HUFF; MAX HUFF

In April, 1979, a petition was filed against defendants' Colorado businesses. Defendant promised to nationally expose the consumer's business as being for sale in exchange for a fee. A journal entry of consent judgment provides that defendants agree to cease doing business in Kansas and not solicit or advertise or enter into any advertising agreements or contracts with Kansas residents as well as pay \$5,075, this amount representing refunds for consumers and costs.

STATE, ex rel.,
v.
UNITED DOG BREEDERS, INC.

This action was brought against defendant in July, 1979. Defendant solicited and sold to consumers breeding stock and set-up kits. Defendants made false statements to induce individuals to enter into the breeding contracts. The petition alleged defendants specifically delivered breeding stock much older than

represented; failed to replace its dogs that would not breed as provided in the Breeder's Contract; failed to honor its 30-day unconditional guarantee and replace a dog in poor health; failed to purchase puppies, as provided for in the Breeder's Contract. Judgment was granted against defendant and provided an injunction enjoining defendant from selling breeders' contracts in violation of the Act, cancellation of contracts, restitution of \$3,363, and civil penalty and costs of \$2,200. The corporation has no known assets and the judgment remains unsatisfied.

STATE, ex rel.,
v.
ARTHUR DONALD MACK

In November, 1979, proceedings were instituted against the defendant seeking to recover a civil penalty for defendant violating a previous court order. Defendant solicits advertising for a magazine, "Today's Policeman," and has allegedly mailed billing statements to persons in Kansas in an attempt to create an impression of an existing obligation to pay for advertising without having entered into a valid contract within six months preceding the date of that billing.

STATE, ex rel.,
v.
PHILIP M. PARKER, d/b/a
PHOTOGRAPHY BY PHIL PARKER

In November, 1979, an action was filed against the defendant. The petition alleges defendant committed deceptive acts while engaged in the business of taking and selling photographs. Defendant took photographs at quarterhorse shows, accepting payment in advance in many instances, but has failed and refused to provide either the photograph or the refund. The lawsuit seeks restitution, civil penalties, and reasonable expenses and costs.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN,
v.
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 they would vend a specific number of sales per day. The suit also alleges the sales transactions are unconscionable as being excessively one-sided and of no material benefit to the consumer.

Service of process and interrogatories were served. Defendant answered petition, but has failed to answer the interrogatories. Kansas counsel for the defendant has since withdrawn from the case. Judgment was subsequently entered against the defendant and the return of all moneys paid by Kansas consumers was ordered by the court. To date, this office has been unsuccessful in getting the judgment satisfied.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
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 Kansas Consumer Protection Act by engaging in deceptive business practices that misrepresent to the buyers they will receive an exclusive territory which would vend a specific number of sales per day. The suit also alleges 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.

On February 16, 1979, the court approved a settlement and oral stipulation between the parties whereby consumers were returned their entire investment or a sizeable portion thereof.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
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 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 the defendant fails to disclose to the contributors the actual manner in which the money is spent. Such is a violation of the Consumer Protection Act.

Kansas counsel for the defendant and plaintiff agreed the defendant would supply to the plaintiff a full disclosure of defendant's spending for the past several years.

Defense counsel subsequently supplied the needed information. Further, defendant has registered with the Kansas Secretary of State's office as a charitable organization. Based on this information, on November 21, 1979, the Attorney General's office agreed to a consent judgment and journal entry whereby the defendant agrees to comply with the Kansas laws governing its activities.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
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 an odometer 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.

A pretrial order has been drawn and a list of witnesses and exhibits have been exchanged. The trial date has not been set.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
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 the defendant advertised a diesel truck with 50,000 miles with a major in-frame overhaul; however, defendant failed to disclose to the consumer they knew 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 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.

Interrogatories were subsequently exchanged and the defendant has deposed the state's complaining witness. The state now stands ready to try the case.

STATE OF KANSAS, ex rel.,
v.
RALPH GARCIA, d/b/a GARCIA'S AUTORAMA

This lawsuit was filed on September 8, 1978, alleging defendant advertised a vehicle as being a 1969 Chevrolet Z-28 Camaro. A Z-28 Camaro commands a higher market price than a normal Camaro. The vehicle in question was not a Z-28 Camaro. The odometer reading for the pseudo Z-28 was also incorrect. The petition requests a refund of all moneys, \$2,750, rescission of the contract and other provable damages.

The state has requested a pretrial conference be set at the court's earliest convenience.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
LOWELL POUNDS, d/b/a POUNDS MOTORS

In response to a complaint filed in our office, a letter of inquiry was sent to Lowell Pounds asking him to respond to the complaint. Mr. Pounds did not respond and a subpoena was subsequently issued commanding Mr. Pounds to appear in our office to discuss the complaint. Mr. Pounds also failed to respond to the subpoena. As a result, this office filed a petition asking the court to: (1) enjoin the defendant from selling or advertising any merchandise in the state of Kansas; (2) revoke or suspend the defendant's dealer's license; and (3) assess costs to the defendant.

A consent judgment was sent to defense counsel, but was never signed. Due to the failure of the defendant to plead or otherwise respond to the state's petition, a motion for default judgment has been filed and set for hearing.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
SKYLINE CORPORATION and CLELL BARB,
d/b/a CLELL BARB COMPANIES

This case originated in the sale of a "travel trailer" home by Clell Barb. The trailer was manufactured by the Skyline Corporation. The complainants in this

case began to experience severe problems with the trailer almost immediately after its purchase. Despite repeated attempts by the defendants to rectify the existing problems, the trailer continues to be uninhabitable. Because the defendants refused to return the purchase price to the complainants, this office filed suit seeking to have the contract declared null and void and the return of all moneys paid by the complainants.

The petition alleges the defendant, Clell Barb, told the complainants the travel trailer could be used as a full-time residence when, in fact, they knew or should have known it could not. The petition also alleges the defendant, Clell Barb, or his agent, misrepresented several material facts in connection with the sale. The petition seeks to have these practices declared to be deceptive and unconscionable and deceptive as provided for in the Kansas Consumer Protection Act.

The petition also alleges the defendant, Skyline Corporation, knew the complainants were living in the trailer as a full-time residence. Further, an agent for Skyline promised if the complainants continued to have problems that Skyline would refund their money. The petition seeks to have the above practices declared to be deceptive and unconscionable. In addition, the petition alleges it is an unconscionable business practice for the Skyline Corporation to manufacture for sale such a defective product and then refuse to return the purchase price to the consumer when demand is made.

The state's petition was filed on December 13, 1979, and an answer from the defendants has not been received.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN

v.

J. D. SCHRINER, SHANE HOMES, INC.,
and KIMBERLY DEVELOPMENT, INC.

This petition was filed on April 30, 1979, alleging the defendants had misrepresented several material facts to the complainants in connection with the sale of a modular home. Most important of these misrepresentations was the defendant's promise that the electrical bills would not exceed approximately \$130 when, in fact, they have approached \$300. Further, the petition alleges the defendant misrepresented material facts as to: (1) workmanship; (2) heating and cooling capacity; and (3) insulation. The petition seeks to have the acts of the defendants declared to be unconscionable as provided for in the Kansas Consumer Protection Act.

Interrogatories have been exchanged and answered. The state has sought to get the matter set for pretrial, but the defendants have notified our office they must

depose the complaining witnesses before they will be ready to proceed to pretrial. The date for said depositions has not been set.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN

v.

THE SPORTS CAR SHOPPE, LTD.,
MARION ADAMS, and RICHARD HAITBRINK

A petition was filed against the defendants on March 30, 1977. It was alleged the 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). Richard Haitbrink was subsequently dismissed from the action.

In November, 1979, we were finally successful in obtaining from the remaining defendants a check for \$1,000 as settlement of this matter. Our office has forwarded the "Release of Claim" form and check to the complainant. We now await the return of the release, at which time this action shall be dismissed by our office.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN

v.

BOB SAYRE, d/b/a BOB SAYRE SALES

This petition was filed on May 3, 1979. It alleges the defendant represented to the complainant the complainant's pick-up was sufficient in size to hold the camper the defendant subsequently sold to the complainant, when, in fact, the pick-up will not hold the camper. The petition prays that this representation be declared as deceptive and unconscionable business practice pursuant to K.S.A. 50-626(b)(3) and K.S.A. 50-627. Further, the defendant sold the camper "as is" in violation of K.S.A. 50-639.

Depositions of the complaining witnesses were taken. On September 24, 1979, a pretrial conference was held. At this conference the possibility of settlement was discussed and all parties agreed to attempt to settle the matter. As a result, an offer of settlement was made by the state. The defendant has rejected this offer, but has submitted a counter offer. This counter offer was not acceptable and the matter will now proceed to trial.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
LOMBARDO INTERNATIONAL TRUCKS, INC.

This petition was filed on May 17, 1979, alleging the defendant committed an unconscionable and deceptive business practice in connection with repairs the defendant performed on complainant's truck. In this regard, by defendant's own admission, unauthorized work was performed. As a direct result, the complainant's truck engine has been damaged. The petition seeks damages for the repair costs and loss of earnings.

Interrogatories have been exchanged by both sides. The defendant has also presented the plaintiff with a request for production of documents, which essentially seek the records from which the damages were computed. These documents have been supplied.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
RON STICKNEY, d/b/a RON STICKNEY PAINTING

This petition was filed on August 15, 1979, alleging the defendant failed to complete a contract for the painting of a home, although he accepted full payment for said contract. The petition seeks to regain the contract price and an injunction against future violations of the Kansas Consumer Protection Act.

The defendant subsequently moved from Topeka. Service of process was finally obtained in October of 1979.

The matter is currently being negotiated for possible settlement.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
U. S. INDUSTRIES, INC., d/b/a
ISEMAN MOBILE HOMES, and TIM IRVINE

This petition was filed on April 30, 1979, seeking rescission of a contract entered into between the defendant, U. S. Industries, and the complainant. The State has alleged the defendant, Tim Irvine, a salesman for U. S. Industries, misrepresented the contract terms to the complainant in that he assured them the sale would include credit life insurance when, in fact, it did not. Further, the petition asks the court to void the contract on the grounds it is unconscionable for the reason that at the time of the sale, there was no reasonable probability the complainant understood the terms of the contract and further, there was no reasonable probability of payment.

Service upon the defendant, Tim Irvine, was not obtained until August 23, 1979. Counsel for the defendant, U. S. Industries, subsequently called for the deposition of the complaining witness and the defendant, Tim Irvine. These depositions were taken on November 14, 1979. After the taking of these depositions, the state made an offer of settlement. Counsel for the defendant, U. S. Industries, has notified his client of the offer, but they refuse to make a decision until the depositions are returned.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
ANDREW KENDALL and DAISY LEGS, INC.

This action was filed on September 21, 1978. The petition alleged the defendants misrepresented to the complainant in connection with the sale of a panty hose distributorship they would: (1) provide established accounts; (2) said accounts will be high volume and low cost; (3) no selling would be involved; and (4) the purchase price would be for inventory and equipment.

Andrew Kendall could not be personally served and was subsequently dismissed from the suit. Default judgment was taken against the defendant corporation. However, said corporation is now defunct and recovery of the contract price is not anticipated.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
ZANE GRAY MOTORS, INC. and JOE GRAY

This petition was filed on February 9, 1979, alleging the defendants had violated K.S.A. 50-626(b)(1)(A), K.S.A. 50-626(b)(1)(D), and K.S.A. 50-627(b)(6) by making incorrect statements in connection with sale of a used vehicle. Contrary to representations, the vehicle began to smoke and use large quantities of oil.

The defendant subsequently returned the purchase price and the state dismissed its case.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN
v.
FRED GALLION and BRUCE CLEMONS,
d/b/a/ ASTRO WORLD IMPORTS

On March 14, 1979, pursuant to K.S.A. 50-632, this office entered into a consent judgment whereby the defendants, Fred Gallion and Bruce Clemons, were held to be in violation of 15 U.C.C. 1988 and regulations promulgated thereunder. In addition, it was held that Fred Gallion had violated the Kansas Consumer

Protection Act, K.S.A. 50-626(B)(3). As a result of said violation, the defendant was ordered to pay \$750 into the Attorney General's office investigatory fund. Both defendants were enjoined from future violations of the Consumer Protection Act.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN, Attorney General

v.
BALL'S SUPER FOOD STORES, INC.

On November 14, 1979, a consent judgment was filed and approved by the Wyandotte County District Court. The case involved advertisements by the defendant concerning a "grocery bonanza" which did not inform the public that no purchase was required from the defendant in order to participate and that grocery tapes from any grocery store would enable the public to enter the contest. By the consent decree, the defendant agreed it would cease and desist from any future use of such advertisements and agreed and did pay the sum of \$200 for expenses and investigatory fees to the Attorney General's office.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN, Attorney General

v.
RONALD GENE THOMISON, d/b/a THOMISON AUCTIONS, and
MRS. O. E. WALTER, and MRS. O. E. MARTIN

This action was filed on September 25, 1979, alleging the defendant advertised certain items of personal property as being antique, when, in fact, they were not; it claims the representations amounted to violations of the Kansas Consumer Protection Act. An answer has been filed by the defendants. The case is now at the discovery stage. The matter is pending in the District Court of Saline County.

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN, Attorney General

v.
V. J. LANE, WOODLAWN CEMETERY ASSOCIATION,
UNKNOWN CEMETERY CORPORATIONS, and
BROTHERHOOD STATE BANK

This action was filed on June 13, 1979, in the District Court of Wyandotte County, Kansas. This action was based on 1979 Kansas House Bill No. 2210, parenthetically K.S.A. 17-1366, et seq. It was alleged in the petition the cemetery in question has been abandoned and the city of Kansas City should be required to provide for the maintenance of the cemetery.

The city has intervened and filed an answer which, among other things, questioned the constitutionality of the act. Motions for summary judgment were filed by both the state and the city. These were argued to the court on October 26, 1979. On December 21, 1979, the court held the act was "constitutionally infirm," being violative of the Fifth and Fourteenth Amendments to the United States Constitution and Articles 1 and 2 of the Kansas Bill of Rights by providing for the "taking" of private property without compensation and due process.

A decision concerning appeal has not been made as of the date of this report.

STATE OF KANSAS, ex rel.;
ROBERT T. STEPHAN

v.
COOK OIL COMPANY

On August 2, 1979, a petition was filed against the Cook Oil Company alleging the defendant had sold adulterated gasoline to Kansas consumers. The contaminant was identified through Kansas Bureau of Investigation tests as being distillate.

A settlement was negotiated providing consumers with actual and estimated damages ranging from \$5 to \$275, plus \$50 each "for said consumer's inconvenience." Also, the defendants agreed to pay \$250 into the state fund for investigative costs. Based upon this settlement, the state dismissed its case.

IN RE: GENERAL MOTORS/CHEVROLET ENGINES IN OLDSMOBILES

General Motors has made an offer to some 620 Kansas consumers who purchased 1977 Oldsmobiles equipped with V-8 Chevrolet engines on or before April 10, 1977. The offer is for \$200 in settlement and transferable mechanical insurance coverage. The transferable mechanical insurance coverage is for 36 months or 36,000 miles and covers the engine, transmission and drive axle of the automobiles.

The mechanical insurance coverage may be transferred to a subsequent owner of the automobile, or if the original purchaser has sold the 1977 Oldsmobile involved in the offer, but still owns another 1977 GM automobile, the coverage may be transferred to that automobile. Individuals who have sold their 1977 Oldsmobile involved in the offer, and do not own another 1977 GM product, receive only the \$200 settlement.

For individuals who do receive the mechanical insurance coverage, the policy is retroactive, and repairs made during the period of the policy that can be

documented will be honored by the mechanical insurance company, regardless of the cost of the repairs or where they were made.

IN RE: UNITED MISSOURI BANK AND
FIRST NATIONAL BANK OF
KANSAS CITY, MISSOURI

Following the "credit crunch" in the fall of 1979, banks and other financial institutions responded in a number of ways in seeking to pass higher interest rates on to the consumer. One such tactic involved the raising of interest rates on open-end credit cards such as MasterCharge and VISA. While Kansas banks were restricted by law to charge no more than 18 percent, Missouri had recently increased its maximum to 22 percent, and in November this higher rate was employed by two Kansas City, Missouri, banks--United Missouri and First National. This office became involved when it became apparent Kansas cardholders, many of whom had obtained their cards through Kansas banks, were affected by the higher rates (due to the Kansas banks having passed the applications on to the Missouri banks). While a recent U. S. Supreme Court decision allowed the higher rates to be imposed on Kansas consumers, even though Kansas law was unchanged, this office was able to persuade both banks to follow Kansas law in other respects, namely, that a 6-month notice period be observed before the rates became effective. Thus, the new rates, which would have gone into effect in December-January, after only two months' notice, will not be effective until April-May. This allows Kansas consumers time to pay off any outstanding balances, or to switch their accounts to another bank. It is estimated that over 70,000 Kansas consumers were benefitted by this delayed imposition of the higher interest rates.

CONCLUSION

The responsibilities of the Consumer Protection Division are in two areas. The top priority is always the recovery of money for the consumer who has been deceived. Another important responsibility of the division is to create a climate in the Kansas marketplace which is not receptive to the deceptive acts and practices of individuals representing themselves as honest businesspeople.

Much has been done to maintain both these responsibilities for Kansans. For the first time in the history of Kansas consumer protection, over \$1 million was saved on behalf of the citizens of this state. Through the cooperation of Kansas businesspeople, great strides have been made in stopping fraudulent companies before they even begin.

It is the sincere intent and desire of the Attorney General's Consumer Protection Division to continue on a path of energetic and enthusiastic enforcement of the Consumer Protection Act throughout Kansas.

Should you have any questions, or if you are in need of assistance, please feel free to contact the Consumer Protection Division:

Office of Attorney General Robert T. Stephan
Kansas Judicial Center - 2d Floor
Topeka, Kansas 66612
913/296-2215

END